

**IN THE SUPERIOR COURT OF JUDICATURE  
IN THE SUPREME COURT OF GHANA  
ACCRA- A.D. 2025**

Suit No.

Between

**VINCENT EKOW ASSAFUAH**  
Plot 10, Blk E,  
Old Tafo, Kumasi.

**Plaintiff**

And

**THE ATTORNEY-GENERAL**  
Office of the Attorney-General and Ministry of Justice,  
Accra

**Defendant**

**STATEMENT OF PLAINTIFF'S CASE**

**INTRODUCTION**

The instant action is filed out of the desire to protect the hallowed principles of judicial independence and the security of tenure of Justices of the Superior Courts of Judicature.

We present this Statement of Case in the following order:

- A. Facts of case.
- B. Original jurisdiction of this Honourable Court.
- C. The proper and applicable principles of interpretation.
- D. Arguments in support of reliefs sought by plaintiff.
- E. Conclusion.

There may be various sub-headings under some topics set out above, for the purpose of ensuring clarity in the presentation of the submissions.

**FACTS OF CASE**

1. On Tuesday, 25<sup>th</sup> March, 2025, the nation was surprised by a media release by the Spokesperson to the President. The said media release was

a press statement entitled “*President Mahama Consults with the Council of State on three (3) Petitions for the removal of the Chief Justice*”. By this, the Spokesperson to the President informed the public that the President has received 3 petitions seeking the removal of the Chief Justice and “*has forwarded same to the Council of State to commence the consultation process mandated by Article 146 of the 1992 Constitution.*”

2. The plaintiff, a Member of Parliament, representing the Old Tafo constituency in the Ashanti Region, was intrigued as intelligence he had received indicated that the President had not even informed the Chief Justice about the petitions nor invited her to present her comments and responses thereon. The plaintiff considered the development as one which could potentially violate constitutionally stipulated safeguards for protecting the security of tenure of the Chief Justice, thereby interfering with the independence of the Judiciary.
3. As a citizen of Ghana, plaintiff was concerned about the patent disregard for well-established constitutional principles of due process and the violation of the independence of the Judiciary manifest in the action of the President in commencing the consultation process for the removal of the Chief Justice without having notified her and invited her responses to the allegations against her. Thus, on 27<sup>th</sup> March, 2025, the plaintiff herein invoked the original jurisdiction of this Honourable Court for the following reliefs:
  - (i) A declaration that upon a true and proper interpretation of articles 146(1), (2), (4), (6) and (7), 23, 57(3) and 296 of the Constitution, the President is mandated to notify the Chief Justice about a petition for the removal of the Chief Justice and obtain his or her comments and responses to the content of such petition before referring the petition to the Council of State or commencing the consultation processes with the Council of State for the removal of the Chief Justice;
  - (ii) a declaration that upon a true and proper interpretation of articles 146(1), (2), (4), (6) and (7), 23 and 296 of the Constitution, a failure by the President to notify the Chief Justice and obtain his or her comments and responses to a petition for the removal of the Chief Justice before triggering the consultation process with the Council of State constitutes a violation of article 146(6) as well as the constitutional protection of the security of tenure of the Chief Justice who is a Justice of the Superior Court of Judicature stipulated in article 146(1) of the Constitution.

- (iii) a declaration that upon a true and proper interpretation of articles 146(1), (2), (4), (6) and (7), 23,(57(3) and 296 of the Constitution, a failure by the President to notify the Chief Justice and obtain his or her comments and responses to a petition for the removal of the Chief Justice before triggering the consultation process with the Council of State amounts to an unjustified interference with the independence of the Judiciary enshrined in article 127(1) and (2) of the Constitution;
- (iv) a declaration that the failure by the President to notify the Chief Justice and obtain her comments and responses to a petition for the removal of the Chief Justice before triggering the process for her removal, constitutes a violation of the fundamental right to a fair hearing contained in articles 23 and 296, and renders the consultation processes for the removal of the Chief Justice initiated by the President null, void and of no effect;
- (v) any other order(s) as to this Honourable Court may seem meet.

**ORIGINAL JURISDICTION OF THIS HONOURABLE COURT.**

4. Acquah JSC (as he then was) expressed in **Attorney-General (No.2) vrs. Tsatsu Tsikata (No. 2)** [2001-2002] SCGLR 620 at 646 that:

*“It is therefore trite knowledge that the first duty of every judge in any proceedings is to satisfy himself that he has jurisdiction in the matter before him”.*

5. We would, in this light, proceed to address the Court on the issue of the jurisdiction of this Honourable Court in the instant action. The original jurisdiction of this Court in this case springs from the Constitution. The explicit terms of articles 2(1) and 130(1) of the Constitution, 1992 ground the Court’s jurisdiction to entertain actions by which a person either seeks

interpretation of identified provisions of the Constitution or an enforcement of same.

6. For the avoidance of doubt, article 2(1) of the Constitution, 1992 provides thus:

***“2. Enforcement of the Constitution***

*(1) A person who alleges that*

*(a) an enactment or anything contained in or done under the authority of that or any other enactment, or*

*(b) any act or omission of any person,*

*is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.”*

7. Article 130(1) further provides that:

***“130. Original jurisdiction of the Supreme Court***

*(1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in*

*(a) all matters relating to the enforcement or interpretation of this Constitution;*

*(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution.”*

8. The Court has in jurisprudence developed for more than fifty (50) years, set out circumstances in which an issue of interpretation may arise. In

**Republic v Special Tribunal; ex parte Akosah** [1980] GLR 592 for instance, the Court of Appeal, sitting as the Supreme Court, considered when an issue of enforcement or interpretation within the meaning of article 118(1)(a) of the 1979 Constitution arises. Article 118(1)(a) of the 1979 Constitution provided that:

“118. (1) *The Supreme Court shall, except as otherwise provided in article 35 of this Constitution, have original jurisdiction, to the exclusion of all other courts,*

*(a) in all matters relating to the enforcement or interpretation of any provision of this Constitution; and*

*(b) where a question arises whether an enactment was made in excess of the powers conferred upon Parliament or any other authority or person by law or under this Constitution.”*

9. *Anin JA*, delivering the judgment of the Court after reviewing previous decisions of the Court, summarised the position at page 605 thus:

*“Summary of the Case Law on Enforcement or Interpretation*

*From the foregoing dicta, we would conclude that an issue of enforcement or interpretation of a provision of the Constitution under article 118(1)(a) arises in any of the following eventualities:*

*(a) where the words of the provision are imprecise or unclear or ambiguous. Put in another way, it arises if one party invites the court to declare that the words of the article have a double-meaning or are obscure or otherwise mean something different from or more than what they say;*

*(b) where rival meanings have been placed by the litigants on the words of any provision of the Constitution;*

(c) *where there is a conflict in the meaning and effect of two or more articles of the Constitution, and the question is raised as to which provision shall prevail;*

(d) *where on the face of the provisions, there is a conflict between the operation of particular institutions set up under the Constitution, and thereby raising problems of enforcement and of interpretation.*

*On the other hand, there is no case of “enforcement or interpretation” where the language of the article of the Constitution is clear, precise and unambiguous...he should certainly not invoke the Supreme Court’s original jurisdiction under article 118.”*

10. The test set out in the **Ex parte Akosah** case (supra) has been applied with approval by the Supreme Court in the Fourth Republic in relation to its original interpretative and enforcement jurisdiction under articles 2(1) and 130(1) of the Constitution in cases such as **Republic v Special Tribunal**; **ex parte Forson** [1980] GLR 529, **Republic v High Court (Fast Track Division) Accra**; **ex parte Electoral Commission (Mettle-Nunoo & Others Interested Parties)** [2005-2006] SCGLR 514, **Republic v Edusei (No. 2) v Attorney General** [1998-99] SCGLR 753; and **Republic v Court of Appeal, Accra**; **ex parte Tsatsu Tsikata** [2005-2006] SCGLR 612.

11. The same approach has been adopted by the Court in recent decisions in **Justice Abdulai v. The Attorney-General** – Suit no. J1/07/2022 (Unreported – Judgment delivered on 9<sup>th</sup> March, 2022); **Michael Ankomah Nimfa v. James Gyakyee Quayson** Suit No. J1/11/2022 (Unreported – Judgment delivered on 17<sup>th</sup> May, 2023); and **Alexander Afenyo Markin vrs. 1. Speaker of Parliament 2. Attorney-General** -

Suit No. J1/01/2025 (Unreported – Judgment delivered on 12<sup>th</sup> November, 2024).

12. In the instant case, it is respectfully submitted that a genuine issue of interpretation arises on careful consideration of the provisions of the Constitution in question. It ought to be noted that it is not in doubt that the words in article 146, particularly clauses (6) and (7), are sketchy and lend themselves to various rival meanings. Article 146(6) and (7) in its plain and literal form, simply provides that the President is required to, in consultation with the Council of State, set up a committee in the manner indicated in the provisions, to inquire into a petition for the removal of the Chief Justices on receipt of same. However, this Court's previous interpretation of the scanty words contained in the provisions in **Agyei-Twum v. Attorney-General & Akwetey [2005-2006] SCGLR 732**, shows that a literal construction of article 146(6) and (7) has the tendency to wreak havoc to the rights of the Chief Justice who is the subject of proceedings anticipated by the provision.
13. It is further submitted that the Court's previous interpretation of article 146(6) and (7) did not deal with the question whether the determination of a prima face case on a petition for the removal of the Chief Justice requires the extension of the right to be heard under the Constitution to the Chief Justice or that determination excludes the grant of a hearing to the head of the Judiciary in the Republic of Ghana.
14. In the view of the plaintiff, having regard to the overarching principles of judicial independence, the possibility of the deployment of a frivolous and vexatious process of petition for the removal of the Chief Justice as a tool by an overzealous Executive or a misguided person or authority in

the Republic to control the Judiciary and instigate either the removal or suspension of the Chief Justice, there is the need for an observance of the right to be heard before and during the conduct of the process to determine a prima facie case on a petition for the removal of the Chief Justice. This position is informed by a consideration of the operation and interaction of various provisions and principles animating the Constitution, which the plaintiff will draw the Court's attention to below. The Court will reach the conclusion espoused above upon a true and proper construction of relevant provisions of the Constitution.

15. Respectfully, considering the strong jurisprudence of the Court established over a period of over 50 years (some of which we have set out above), we are drawn to the irresistible conclusion that the original jurisdiction of the Court has been rightly invoked by the plaintiff herein to resolve the following important questions:

(a) Whether the Chief Justice is entitled to receive a copy of a petition for his removal or notified about the contents thereof, upon the receipt of same by the President before it is referred to the Council of State;

(b) Whether the Chief Justice is entitled to be heard in his defence before the determination of a prima facie case on a petition for his removal or that right accrues only after the determination of a prima facie case on the petition by the President in consultation with the Council of State.

16. We make these submissions purely out of the quest for fidelity to the Constitution and a zeal to ensure respect for the hallowed principles of

judicial independence and security of tenure of Justices of the Superior Courts, especially, the Chief Justice who is the Head of the Judiciary.

17. It ought to be noted that in a constitutional action, as held in **Tuffour v. Attorney-General** [1980] GLR 637, the only concern is the Constitution. The jurisdiction of the Court is only to do as dictated by the Constitution. There is no cause from which the action arises and therefore, the plaintiff ought not to show that a cause of action is vested in him personally. That is why the defendant in every constitutional action is the Attorney-General who is required to be the defendant in proceedings against the State.

18. In **Adjei Ampofo (No. 1) v. Accra Metropolitan Assembly and Attorney-General (No. 1)** [2007-2008] SCGLR 611, the Supreme Court asserted its exclusive original jurisdiction to interpret all provisions of the Constitution, including cases where the provision in question is part of Chapter Five of the Constitution on fundamental human rights.

See also: **Republic vs High Court [General Jurisdiction, Accra; Ex Parte Dr. Zanetor Rawlings (Ashithey and National Democratic Congress as interested Parties)]** [2015-2016] 1 SCGLR 92.

19. The same position was reached by the Court recently, in **Michael Ankomah Nimfah vrs. Gyakye Quayson & 2 Others**, when speaking through Amegatcher JSC, the Court noted as follows:

*“However, if parties raise rival positions regarding the meaning and application of the text of the Constitution or the words of a constitutional provision are imprecise, unclear, or ambiguous, then the exclusive jurisdiction of this court is properly invoked for the resolution of the proper*

*interpretation to place on the relevant provision under article 130. See the oft-cited decision in Republic v Special Tribunal; Ex Parke Akosah 1980 GLR 592. Again, if there is a breach of the Constitution, the enforcement jurisdiction of this court conferred in article 2 is rightly invoked...”*

### **THE PROPER AND APPLICABLE PRINCIPLES OF CONSTITUTIONAL INTERPRETATION**

20. The jurisprudence of this Honourable Court has clearly established over the years that the literal construction of the Constitution without reference to other related provisions of the Constitution and its underlying core values and objects, cannot be the proper approach to constitutional interpretation.

21. It is submitted that the starting or reference point for any discussion on a purposive interpretation of the Constitution has to be the locus classicus of **Tuffuor v. Attorney-General** [1980] GLR, C.A sitting as SC. *Sowah JSC* (as he then was) in his oft-quoted dictum, gave a clue as to what constitutes the spirit of the Constitution and the need to depart from a doctrinaire and narrow interpretation of the Constitution, at pages 647-648:

*“The Constitution has its letter of the law. Equally, the Constitution has its spirit ... Its language, therefore, must be considered as if it were a living organism capable of growth and development. A broad and liberal spirit is required for its interpretation. It does not admit of a narrow interpretation. A doctrinaire approach to interpretation would not do. We must take account of its principles and bring that consideration to bear, in bringing it into conformity with the needs of the time”.*

*Georgina Wood CJ*, quite recently in **Brown v. Attorney-General (Audit Service Case)** [2010] SCGLR 183, gave the necessary direction as to the most preferred approach to interpreting the Constitution of Ghana.

*“The purposive and literal approach in proper context is commendable; it is the purely mechanical or literal that pays no heed to the legislative purpose or intent, that has no place in this area of the law ... In the proper context, the objective purposive approach would be the preferred approach, if the Constitution must be read as a whole, in terms of both its explicit and implicit language, and read as a living document, with a view to actualizing core values and meeting the hopes and aspirations of the people for whom it was crafted. The spirit of the 1992 Constitution, a judicially established aid to interpretation is embodied not only in the actual texts, under consideration, but also the goals and objectives as captured in the Preamble, the Directive Principles of State Policy, and indeed the entire document.”*

22. In **Agyei-Twum v. Attorney-General & Akwetey** [2005-2006] SCGLR 732, *Date-Bah JSC* obviously inspired by *Sowah JSC*'s dictum in *Tuffuor v. Attorney-General* (*supra*), stated thus:

*“The fact that a country has a written constitution does not mean that only its letter may be interpreted. The courts have the responsibility for distilling the spirit of the Constitution from its underlying philosophy, core values, basic structure, the history and nature of the country's legal and political systems, etc. in order to determine what implicit provisions in the written constitution would flow inexorably from that spirit”.*

See also: **National Media Commission v. Attorney-General [2000] SCGLR 1; Asare v. Attorney-General [2003-2004] 2 SCGLR 823; Omaboe III v. Attorney-General [2005-2006] SCGLR 579; and Ghana Lotto Operators Association v. National Lottery Authority [2007-2008] 2 SCGLR 1088**

23. In light of the foregoing, it is correct to say that the mechanistic and literal way of interpreting the Constitution is now completely out of date and unhelpful to the realisation of our objects as a nation as enshrined in the Constitution. In contrast to the blindly literal approach, the modern purposive approach adopted by the courts invites judges to interpret and apply the Constitution in a way that brings to life and gives meaning to the core values, objects, and history that underpin its text.

24. This approach also cautions against judges deeming themselves impotent or incapacitated when faced with situations where there are lacunae or gaps in the law, and, instead, admonishes them to fill such gaps or omissions in appropriate cases, being mindful to do so in a way that harmonises with the values and goals of the nation as enshrined in the Constitution. The underlying rationale of this modern approach to constitutional interpretation is to avoid a blindly “strict construction” that would give rise to profound absurdity, manifest injustice, and social retrogression.

**ARGUMENTS IN SUPPORT OF RELIEFS SOUGHT BY  
PLAINTIFF**

25. Respectfully, we will invite the Court to hold, upon due consideration of the relevant provisions of the Constitution, after considering the submissions herein, that:

- a. The right to be notified of charge(s) levelled against one and to be heard on same is a fundamental and inalienable right enshrined in the Constitution, 1992.
- b. The right to be notified of charge(s) levelled against one assumes greater significance in the context of quasi-judicial proceedings.
- c. The process of determining the existence or otherwise of a prima facie case in a petition for the removal of the Chief Justice is a quasi-judicial one performed by the President in consultation with the Council of State.
- d. Following the presentation of a petition to the President for the removal of the Chief Justice, the Chief Justice is entitled to receive a copy of the petition and to be notified about the contents thereof.
- e. The Chief Justice, upon a true and proper interpretation of the Constitution, is entitled to deliver his or her responses to allegations contained in the petition which will be a basis for consultation between the President and the Council of State on whether a prima facie case is disclosed by the petition.
- f. A notification of the Chief Justice and the grant of an opportunity to deliver a response to allegations contained in a petition, are not only procedural rights but substantive due process. They are substantive rights designed to protect the institution of the Judiciary from abuse and undue interference and must therefore be strictly observed.
- g. Of the three arms of government, the Chief Justice is the only non-political head and therefore, there must be extreme caution exercised in the processes for her removal, including strict adherence to the demands of substantive due process and administrative justice.

- h. The process of furnishing the Chief Justice with a copy of the petition and requiring him or her to provide responses to same is akin to the conduct of a pre-removal inquiry in order to ascertain whether sufficient grounds exist to call for the Chief Justice's removal, existing in other jurisdictions.
- i. A failure by the President to notify the Chief Justice about allegations contained in a petition filed against him or her before consulting the Council of State on same, results in a violation of a substantive right impinging on an abuse of the Head of the Judiciary, shows complete bad faith and renders the process null, void and of no effect.
- j. There is the need for the enactment of a Judicial Officers Act which provides a detailed and more rigorous procedure for the removal of judges in order to protect the independence of the Judiciary, security of tenure of judges and, to make it more difficult for an unusual development as the removal of a judge to occur in Ghana.

**Examination of the constitutional provisions in question**

26. Respectfully, the relevant provisions of the Constitution which are at play in this action are:

**Article 125(1), (3) and (4)** which stipulate as follows:

*“(1) Justice emanates from the people and shall be administered in the name of the Republic by the Judiciary which shall be independent and subject only to this Constitution.*

*(3) 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.*

*(4) The Chief Justice shall, subject to this Constitution, be the Head of the Judiciary and shall be responsible for the administration and supervision of the Judiciary.”*

**Article 127 (1) and (2)** stipulate thus:

*“(1) In the exercise of the judicial power of Ghana, the Judiciary, in both its judicial and administrative functions, including financial administration, is subject only to this Constitution and shall not be subject to the control or direction of any person or authority.*

*(2) Neither the President nor Parliament nor any person acting under the authority of the President or Parliament nor any other person whatsoever shall interfered with Judges or judicial officers or other persons exercising judicial power, in the exercise of their judicial functions; and all organs and agencies of the State shall accord to the courts such assistance as the courts may reasonably require to protect the independence, dignity and effectiveness of the courts, subject to this Constitution.”*

Quite importantly, **Article 146** provides thus:

*“(1) A Justice of the Superior Court or a Chairman of the Regional Tribunal **shall not** be removed from office except for stated misbehaviour or incompetence or on ground of inability to perform the functions of his office arising from infirmity of body or mind.*

*(2) A Justice of the Superior Court of Judicature or a Chairman of the Regional Tribunal may only be removed in accordance with the procedure specified in this article.*

*(3) If the President receives a petition for the removal of Justice of a Superior Court other than the Chief Justice or for the removal of the Chairman of a Regional Tribunal, he shall refer the petition to the Chief Justice, who shall determine whether there is a prima facie case.*

*(4) Where the Chief Justice decides that there is a prima facie case, he shall set up a committee consisting of three Justices of the Superior Courts or Chairmen of the Regional Tribunals or both, appointed by the Judicial council and two other persons who are*

*not members of the Council of State, nor members of Parliament, nor lawyers, and who shall be appointed by the Chief Justice on the advice of the Council of State.*

*(6) Where the petition is for the removal of the Chief Justice, the President shall, acting in consultation with the Council of State, appoint a committee consisting of two Justices of the Supreme Court, one of whom shall be appointed chairman by the President, and three other persons who are not members of the Council of State, nor members of Parliament, nor lawyers.*

*(7) The committee appointed under clause (6) of this article shall inquire into the petition and recommend to the President whether the Chief Justice ought to be removed from office.*

*(8) All proceedings under this article shall be held in camera, and the Justice or Chairman against whom the petition is made is entitled to be heard in his defence by himself or by a lawyer or other expert of his choice.*

*(9) The President shall, in each case, act in accordance with the recommendations of the committee.*

*(10) Where a petition has been referred to a committee under this article, the President may - (a) in the case of the Chief Justice, acting in accordance with the advice of the Council of State, by warrant signed by him, suspend the Chief Justice; (b) in the case of any other Justice of a Superior court or of a Chairman of a Regional Tribunal, acting in accordance with the advice of the Judicial Council, suspend that Justice or that Chairman of a Regional Tribunal."*

27. A cursory look at article 146, particularly clauses (6) and (7), thereof show that there is no stipulation of a requirement for an assessment as to whether a prima facie case is disclosed in a petition presented for the removal of the Chief Justice, before the President in consultation with the Council of State shall appoint a committee to inquire into it. Thus, upon a literal reading of the provision, the President after having consulted the Council of State, is bound to constitute a committee to probe the allegations contained in the petition. However, this Honourable Court in **Agyei-Twum v. Attorney-General & Anor** (supra), has found, upon an objective and purposive reading of the provisions, that there is the necessity for a prima facie case to be established by the President in

consultation with the Council of State, before proceeding to form a committee to inquire into the merits of the petition.

28. We respectfully submit that **Agyei-Twum v. Attorney-General & Anor** was the first indicator by this Court in asserting the need for procedural fairness and integrity in the processes for the removal of a Justice of the Superior Court of Judicature in Ghana including the Head of Ghana's Judiciary, the Chief Justice. This requirement for observance of procedural fairness and protection of the integrity of article 146 proceedings, as upheld and emphasised in **Agyei-Twum v. Attorney-General & Anor** (supra), is informed by the need to respect at all times the sublime constitutional principle of independence of the Judiciary, especially in an attempt to remove a Justice of the Superior Court or the Head of the Judiciary, the Chief Justice.
29. It is further respectfully submitted that the need to protect the Judiciary and ensure its complete independence in both its judicial and administrative functions, subject only to the Constitution, enjoins that all the incidents of due process and fair hearing, contemplated by the combined effect of **articles 296 and 23**, are strictly complied with by the President and the Council of State when superintending over the processes for the removal of the Chief Justice. It is the only way the Judiciary can be protected from undue interference by an overbearing authority or a President who may be actuated by some illicit motives, capriciousness or sheer resentment of the Chief justice or a particular Justice of the Superior Court of Judicature.
30. Respectfully, it cannot be disputed that when the President and the Council of State superintends over whether a petition for the removal of the Chief Justice holds merit or warrants further inquiry by a committee set up under article 146 of the Constitution, they are performing a quasi-judicial function. Undoubtedly, the President and the Council of State will be exercising judgment at a very crucial point in the processes to remove a Chief Justice – the Head of an arm of government. The exercise of judgment in the determination of a prima facie case is implicit in what constitutes prima facie case.
31. A “*prima facie*” case is defined in **Black Law's Dictionary, 11<sup>th</sup> Edition**, page 1441 as “*a party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favour.*” In other words, there must be enough evidence to establish a fact unless the contrary is proved.

32. We are further fortified by the dictum of *Benin JSC* sitting in the Supreme Court in **Justice Paul Uter Dery v Tiger Eye PI & 2 Others** [2015-2016] 2 SCGLR 812, wherein he noted that a “*prima facie*” determination upon receiving a petition, means examining available evidence to determine if the petition raises serious issues warranting further investigation. This requires seeking a response from the named respondent before making the *prima facie* determination, as this involves examining available evidence in a quasi-judicial decision-making process.
33. Applying this definition of “*prima facie*” case to the removal processes of the Chief Justice in Ghana, we respectfully submit that the determination of a *prima facie* case by the President in consultation with the Council of State, before deciding whether to constitute a committee for a full inquiry into allegations contained in a petition, is a process akin to a pre-removal inquiry. It is a quasi-judicial process that involves an ascertainment of whether allegations concerning the ability or behaviour of the Chief Justice, buttressed by evidence submitted with the petition and considered in light of the preliminary responses of the Chief Justice, warrant further inquiry by a committee contemplated by article 146 of the Constitution. This process, apart from giving to the Chief Justice an opportunity to deliver a written response, may even involve extending to him or her a right to be further orally heard or examined on the matters on basis of which the authority – President in consultation with the Council of State – will determine whether there is a *prima facie* case or not.
34. It is submitted, that this must be the only logical and constitutionally permissible standard to apply when removing the Chief Justice of Ghana. This is in view of the fundamental principles of separation of powers, judicial independence and respect for the security of tenure of judges. This, indeed, is the procedure recognised in serious democracies for the removal of a Justice of the Superior Court, even though that process or exercise is sparingly engaged in, as we will soon demonstrate below in these submissions. It must be rigorous and not easy for a constitutionally appointed Chief Justice to be removed from office, especially when that process is superintended by the President, head of the Executive branch of government and who is most often politically motivated, and acts in consultation with a Council of State more than half of which he appoints directly.
35. Respectfully, inherent in the performance of a quasi-judicial function is a requirement for compliance with the elements of a fair hearing, which on the strength of the jurisprudence of this Honourable Court and time-tested

values, involve the grant of an opportunity to be heard to the party to be affected by the proceedings in question. The function of the President, in consulting the Council of State to make a determination of the existence or otherwise of a prima facie case in a petition presented for the removal of the Chief Justice, is both a public and quasi-judicial one. It is one that impinges on the smooth running of Ghana's Judiciary and affects the rights of the person sought to be removed – the Chief Justice. Thus, it goes without saying that there must be compliance with all the prescriptions and safeguards of procedural fairness, including the right to be heard.

**Violation of a procedure required by the Constitution in this case is a violation of a substantive right**

36. Respectfully, the Court will be invited to hold that observance of the right of a hearing, particularly, giving the Chief Justice a copy of the petition and an opportunity to deliver her response, is not only due process but a substantive right. The Court in this situation must distinguish between procedural due process and substantive due process in this regard. It is submitted that where, as in this case, a failure to adhere to due process impinges on the violation of a constitutional provision and affects the rights of an important person in the constitutional architecture of the nation like the Chief Justice, such a violation is substantive and not merely a procedural irregularity which can be waived.

37. This, it is submitted, is the combined effect of articles 23 and 296. Article 23 of the Constitution provides as follows:

*“23. Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal”*

Article 296 of the Constitution also provides thus:

*“296 Where in this Constitution or in any other law, discretionary power is vested in any person or authority,  
(a) that discretionary power shall be deemed to imply a duty to be fair and candid;*

*(b) the exercise of the discretionary power shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law.”*

38. It is our contention that **articles 23 and 296** of the Constitution reinforce each other and place the imprimatur of constitutional necessity and injunction on the need for all administrative bodies in Ghana to act fairly and reasonably, without caprice or ill-will when taking decision, especially where such decisions affect the rights, interests and legitimate expectations of third parties.

39. This Honourable Court has had opportunity to interpret articles 23 and 296 of the Constitution and its effect on the performance of administrative functions which are essentially quasi-judicial. In **Awuni v. West African Examinations Council (WAEC)** [2003 – 2004] 1 SCGLR 471 at 514, the Court per *Sophia Akuffo JSC*, expatiated on the meaning and implications of article 23 in these words:

*“Thus, by this article (i.e. Article 23) the right to administrative justice is given constitutional force, the objective being the assurance to all persons the due observance and application of the principles of natural justice which foster due process and the stated qualities, in the performance of administrative activities that affect them. In my view, the scope of article 23 is such that, there is no distinction made between acts done in exercise of ordinary administrative functions and quasi-administrative functions. Where a body or officer has an administrative function to perform, the activity must be conducted with, and reflect the qualities of fairness, reasonableness and legal compliance. I will not venture to give a comprehensive definition of what is fair and reasonable, since these qualities are dictated by the circumstances in which the administrative function. At the very least however it includes probity, transparency, objectivity, opportunity to be heard, legal competence, absence of bias, caprice or ill-will.”*

Please see also: **TDC & Musah v. Atta Baffour**, [2005 -2006] SCGLR 121.

40. It is quite clear therefore that, a violation of articles 296 and 23 borders on an infraction of a substantive right. Respectfully, the need to give the Chief Justice a hearing assumes greater significance in the context of the necessity to assure integrity of process. As emphasised in **Agyei-Twum v. Attorney-General & Anor** (supra), there is the utmost need to ensure that no frivolous petition for the removal of the Chief Justice prevails.

Granting the Chief Justice a hearing will ensure that before the President in consultation with the Council of State makes a prima facie determination on a petition for the Chief Justice's removal, there is the presentation of responses by the Chief Justice to the allegations contained in the petition which may expose their frivolity. A true and faithful determination of a prima facie case, taking account of the information and responses provided by the Chief Justice, will thus strengthen the integrity of the process and prevent article 146 proceedings from being deployed as an easy tool for settling scores against the Chief Justice and attaining other misguided ends.

41. The Court will be further invited to hold that even though all persons are equal before the law, in the instant case, in view of the fact that a violation of the Constitution has implications for the independence of the Judiciary and the security of tenure of the Head of an arm of Government which is required to be non-political, greater protection ought to be given to the Chief Justice in the process for his or her purported removal from office. This means that all substantive procedural safeguards contemplated by the letter and spirit of the Constitution must be strictly adhered to, and a failure to comply renders the process null, void and of no effect.

**Not granting the Chief Justice a hearing before triggering removal processes shows bad faith**

42. The reliefs claimed by plaintiff herein in the writ of summons filed on 27<sup>th</sup> March, 2025, show that plaintiff asserts that the Chief Justice must be furnished with a copy of a petition filed against him or her and be accorded an opportunity of responding to same, before the President may trigger the removal processes by consulting the Council of State on same. The President, by the press release by his Spokesperson, clearly did not act as claimed on the writ of summons.
43. In our submission, a purported step to furnish the Chief Justice with a copy of the petition and request his or her answers after the consultation process with the Council of State has begun, violates the constitutional requirements of due process anticipated by articles 23 and 296 as stated above. Such a step further shows bad faith and should not be condoned by the Court. Respectfully, there is no justifiable reason for the President to "*commence the consultation process mandated by Article 146 of the Constitution*", and announce it to the world before coming back to ask the Chief Justice for her responses. This is unfair and violates due process. It

is outstandingly bad, shocking and egregiously unfair for the President to announce a trigger of the removal processes of the Chief Justice under article 146 to the whole world, when he has not even extended the courtesy of informing the Chief Justice about a receipt of the petition(s) in question. What could explain the unbridled zeal of the President to trigger article 146 and commence consultation with the Council of State as announced by his Spokesperson to the world when he had not informed the Chief Justice or given her a copy? What kind of consultation had the President actually commenced with the Council of State? Was it consultation to form a committee, or a consultation to make a prima facie determination? These questions arise from the press release by the President. In our humble submission, it shows bad faith, capriciousness and unfairness of the highest order, when the Chief Justice had not even been informed about the existence of any petition(s).

44. With the greatest respect, the overzealousness or unbridled haste of the President in commencing consultations for the removal of the Chief Justice under article 146, as communicated to the world, without informing the Chief Justice of receipt of such petition(s) violates the standards of due process and powers vested in an administrative authority contained in **articles 23 and 296** of the Constitution. The President, it is respectfully submitted, is bound by the prescriptions of this Honourable Court in **Awuni v. WAEC** (supra) and **TDC v. Musa & Baffour** (supra). This Court speaking through *Sophia Akuffo JSC*, **Awuni v. WAEC**, explained thus:

*“Thus by this article (i.e. Article 23) the right to administrative justice is given constitutional force, the objective being the assurance to all persons the due observance and application of the principles of natural justice which foster due process and the stated qualities, in the performance of administrative activities that affect them. In my view, the scope of article 23 is such that, there is no distinction made between acts done in exercise of ordinary administrative functions and quasi-administrative functions. Where a body or officer has an administrative function to perform, the activity must be conducted with, and reflect the qualities of fairness, reasonableness and legal compliance. ... At the very least however it includes probity, transparency, objectivity, opportunity to be heard, legal competence, absence of bias, caprice or ill-will.”*

45. It is respectfully submitted that a failure to abide by the tenets of fairness and due process renders the whole process superintended by the President for the removal of the Chief Justice null, void and of no effect as claimed

in relief (iv) on the writ of summons. Having regard to the history of this country for some political administrations in the past to control the Judiciary through removal processes, the Court ought to insist on a strict compliance with the procedural requirements anticipated by the letter and spirit of articles 23, 146 and 296 in the processes for an attempt to remove the Chief Justice, and declare any step taken in violation of the provisions null, void and of no effect.

### The history of protection of the independence of the Judiciary in Ghana

46. It is further submitted that respecting the Chief Justice's right of hearing before a prima facie determination on a petition for his removal, will further safeguard judicial independence. A consideration of the history of this country shows that article 146 was written into the Constitution, 1992 in response to the need to protect the independence of Ghana's Judiciary and to prevent it from being subjected to the whims and caprices of the Executive. In order to understand the point made herein, we make a quick excursion into the history of the protection of the independence of the country through the stipulation of clauses similar to article 146 in the Constitution, 1992.
47. The Court will note that the **1957 Constitution** afforded very limited security of tenure for Justices of the Superior Courts of Judicature. In a rather scanty provision, article 54(3) of the **1957 Constitution** provided as follows:

*"A Judge of the Supreme Court shall not be removed except by the Governor-General on an address of the Assembly carried by not less than two-thirds of the Members thereof, praying for his removal from office on the grounds of stated misbehaviour or of infirmity of body or mind."*

There was no provision for a procedure by which a Justice of the Supreme Court could be removed only after proven infirmity of body or mind or stated misbehaviour. Neither was there a procedure for the conduct of proceedings inquiring into an allegation made that a Justice of the Supreme Court was unfit to hold office on account of stated misbehaviour or infirmity of body or mind. The provision on the removal of a judge only required the fiat or will of *"the Governor-General on an address of the Assembly."* This address had to be *carried by not less than two-thirds of the Members*. In effect, judges served at the pleasure of the Governor-General. The 1957 Constitution is no doubt, perceived as very low in the protection of the independence of the Judiciary.

#### 44. 1960 Constitution

The 1960 Constitution continued the practice of minimal protection for the security of tenure of Justices of the Superior Courts. **Article 45** of the **1960 Constitution** had the following provisions:

*“(1) Judges of the Superior courts shall be appointed by the President by instrument under the Public Seal.*

*(2) Provision shall be made by law for the form and administration of the judicial oath, which shall be taken by every person appointed as Judge of a Superior Court before the exercise by him of any judicial function.*

*(3) Subject to the following provisions of this Article, no person shall be removed from office as a Judge of the Superior Court or a Judge of the High Court except by the President in pursuance of a resolution of the National Assembly supported by the votes of not less than two-thirds of the Members of Parliament and passed on the grounds of stated misbehaviour or infirmity of body of mind.*

48. Quite predictably, the 1960 Constitution thrust Ghana into a dark age in the history of the protection of the independence of the Judiciary. Buoyed by the ability to remove a Justice of the Supreme Court simply by winning the votes of two-thirds of the National Assembly, **the President in 1963 dismissed the Chief Justice**. This was supported by the votes of two-thirds of the Assembly in a Parliament dominated by one political party – a situation very similar to the circumstances Ghana finds itself in now as a country.

49. The experience in 1963 permitted by the Constitution of 1960, became a scar on the conscience of the nation as it was the apogee of Executive control of the Judiciary.

50. The nation seemed to have learn at a lesson from it. Thus, in 1969 a new Constitution promulgated, for the first time, incorporated provisions not only assuring the security of tenure of Justices of the Superior Courts of Judicature, but also stipulating a procedure for an inquiry by a body or class of people, other than the Executive and the Legislature, into an allegation calling for the removal of a Justice.

#### 51. 1969 Constitution

**Article 116(3), (4), (5) and (6)** of the **1969 Constitution** provided thus:

*“(3) A Judge of the Superior Court of Judicature may be removed from office only for inability to perform the functions of his office, whether arising from infirmity of body or mind or for stated misbehaviour, and shall not be so removed save in accordance with the provisions of this article.*

*(4) If the President is satisfied on a petition presented to him in that behalf, that the question of removing a Judge of the Superior Court of Judicature, other than the Chief Justice, ought to be investigated, then*

*(a) the President shall refer the petition to the Chief Justice for inquiry by a tribunal consisting of three judges of the Superior Court of Judicature appointed by the Judicial Council and*

*(b) The tribunal shall inquire into the matter and report the facts and the findings of thereon to the President and recommend to the President whether the judge ought to be removed under the provisions of this article.*

*and the President shall act in accordance with the recommendations of the tribunal.*

*(5) If the President is satisfied, on a petition presented to him in that behalf, that the question of removing the Chief Justice ought to be investigated, then*

*(b) the President shall, acting in consultation with the Council of State, appoint a tribunal to which he shall refer the petition and which tribunal shall consist of,*

*(i) three Justices of the Supreme Court, one of whom shall be appointed chairman by the President, and*

*(ii) two other persons who are not members of the Council of State or of the National Assembly or legal practitioners, and*

*(c) that tribunal shall inquire into the matter and report the facts and findings thereon to the President;*

*and the President shall act in accordance with the recommendations of the tribunal.”*

52. It is submitted that the **1969 Constitution** represented the first real attempt by the nation to write into its constitution provisions protecting the security of tenure of judges and guaranteeing the independence of the Judiciary. It was informed by the sordid events of the 1960s. It also marked a break from that era when judges virtually served at the pleasure of the President and could be removed by the President acting in collaboration with a Parliament dominated by a political party on whose ticket the President had been elected to office. For the first time, the nation saw an elaborate procedure for the removal of a Justice of a Superior Court. The procedure enjoined that a committee set up by the President in consultation with the Council of State, inquiring into the impugned conduct of a Justice of the Superior Court, would be dominated by judges themselves. It specifically barred members of the Parliament, the Council of State and legal practitioners from undertaking an inquiry into an allegation against a judge. It also introduced the concept of a “pre-removal inquiry”, through the words *“If the President is satisfied, on a petition presented to him in that behalf, that the question of removing the Chief Justice ought to be investigated ...”*
53. In our respectful view, the words *“If the President is satisfied, on a petition presented to him in that behalf ... ”* in clauses (4) and (5) of article 116 of the Constitution, 1969, implied the need for the President to carry out a preliminary assessment of the merits of a petition presented for the removal of the President before same shall be referred to a committee constituted by the President in consultation with the Council of State. This necessity held for both the removal of “a regular” Justice of the Superior Court as well as the Chief Justice. Thus, instructively, before the Supreme Court held in *Agyei-Twum v. Attorney-General & Anor* that the Chief Justice ought to have the benefit of a determination of a prima facie case in any petition brought for his removal, the 1969 Constitution had made provision for such a situation in mandating the President to consult the Council of State on the appointment of a committee to probe a petition against the Chief Justice, **only if satisfied that the petition be investigated.**
54. The 1969 Constitution showed a conscious effort by its framers to insulate the Judiciary from undue manipulation by the Executive or the Legislature. It was a significant attempt to prevent undue interference with the independence of the Judiciary and curb the tendency of some political administrations to deploy removal processes as a tool to control the Judiciary. Undoubtedly, the 1969 Constitution became the model adopted by the nation in subsequent constitutions in so far as the

protection of the independence of the Judiciary and assurance of the security of tenure of judges.

55. Thus, in 1979, similar provisions were adopted by the nation in its Third Republican Constitution.

**Article 128 of the 1979 Constitution** provided as follows:

- “(4) A Justice of the Superior Court of Judicature may be removed from office only for inability to perform the functions of his office, whether arising from infirmity of body or mind or for stated misbehaviour, and shall not be so removed save in accordance with the provisions of this article.*
- (5) For the purpose of the removal from office of a Justice of the Superior Court of Judicature, a petition in writing, stating that the Justice of the Superior Court of Judicature be removed on any of the grounds specified in clause (4) of this article, shall be presented to the President.*
- (6) the petition referred to in clause 5 of this article shall set out in detail the facts, supported by the necessary documents, on which it is claimed that the Justice be removed from office.*
- (7) In the case of the Chief Justice, the President upon the receipt of the petition referred to in clause (5) of this article, shall, acting in consultation with the Council of State, appoint a tribunal to which he shall refer the petition, and which shall consist of—*
- (a) three Justices of the Supreme Court, one of whom shall be appointed chairman by the President, and*
- (b) two other persons who are not members of the Council of State nor members of Parliament nor legal practitioners.*
- (8) The tribunal appointed in accordance with this article shall inquire into the matter and report the facts and findings thereon to the President;*
- (9) The President shall act in accordance with the recommendations of the tribunal.”*

56. The Court would note that the Constitution, 1992 essentially repeats the provisions of the 1979 Constitution on the protection of the independence of judges and security of tenure of judges, including the Chief Justice. Article 128 of the 1979 Constitution, even though explicitly omitting the requirement of a prima facie determination by the President in consultation with the Council of State, required that the petition must “*set out in detail the facts, supported by the necessary documents, on which it is claimed that the Justice be removed from office.*”
57. The upshot of the foregoing is that, history has shown that the nation has taken a firm position that petitions for the removal of a Justice of the Superior Court ought to be entertained only when they set out in material detail the basis for the call, are accompanied by the relevant documentation and have satisfied a preliminary examination of whether there is substance in them or not – a prima facie case. The object is to insulate Justices of the Superior Courts and the Head of the Judiciary, the Chief Justice, from the frivolous endeavour of some ill-motivated persons or authority who simply “**want them out**” for the pursuit of some parochial agenda. Further, in the conduct of the preliminary assessment of the merits or otherwise of such petitions, the affected person is entitled to be notified and to be given a hearing on same.
58. The above proposition finds support in the law and practice of various jurisdictions.

#### Examination of the practice in other jurisdictions.

59. We would like to state that there is not much literature on the processes for the removal of Justices of the Superior Courts in advanced democracies. This is not difficult to understand because because the act of impeaching a justice of the Supreme Court, let alone the Chief Justice, is not one that many serious legal systems confront – certainly not in the open to merit significant academic literature and discussion. In our considered view, it is also so much a matter of common sense to merit debate and literature. It is noted that there is only one evidence of a “Judge’s Removal” in the history of Bangladesh and India. In Bangladesh, there is only one evidence of attempting to remove of Judges of the Supreme Court, whereas India has made some attempts in case of removal of the Judges of the Higher Judiciary. All of them were unsuccessful.
60. The processes in advanced legal systems for the removal of Justices of the Superior Courts are certainly more rigorous than in Ghana.

### The United States of America

61. Article III of the Constitution governs the appointment, tenure, and payment of Supreme Court justices, and federal circuit and district judges. These judges, popularly referred to as “Article III judges,” are nominated by the President and confirmed by the U.S. Senate. Article III states that these judges “*hold their office during good behavior,*” which has been construed to mean that they have a lifetime appointment, except under very limited circumstances.
62. Significantly Article III of the US Constitution provides that judges covered therein can be removed from office only through impeachment by the House of Representatives and conviction by the Senate with a two-thirds majority vote. This is every rigorous and is hardly resorted to.

### Canada

63. In Canada, there is a more elaborate procedure set out in the **Judges Act** of that country.

**Section 80, 95, 96, 98, 99 and 100** of the **Judges Act** provide as follows:

*“80. For the purposes of this Division, the removal from office of a judge is justified only if, for any of the following reasons, the judge’s continuation in office would undermine public confidence in the impartiality, integrity or independence of the judge or of their office to such an extent that it would render the judge incapable of executing the functions of judicial office:*

*(a) infirmity;*

*(b) misconduct;*

*(c) failure in the due execution of judicial office;*

*(d) the judge is in a position that a reasonable, fair-minded and informed observer would consider to be incompatible with the due execution of judicial office.*

### *Referral to Council*

**95** *If the reviewing member does not dismiss the complaint, they shall refer it to the Council for the establishment of a review panel.*

### *Notice of decision*

**96** *The reviewing member shall give notice of their decision to the judge who is the subject of the complaint and to the chief justice of the court of which the judge is a member.*

### *Review Panel*

#### *Establishment*

**98 (1)** *Subject to subsection (2), on receipt of a complaint referred to it under section 95, the Council shall establish a review panel consisting of the following persons designated by the Council to review the complaint:*

*(a) a member of the Council;*

*(b) a judge named in the roster of judges; and*

*(c) a person named in the roster of lay persons.*

**(2)** *If a complaint is referred to the Council under section 95 and a review panel established to review a previous complaint involving the same judge has not yet made a decision in respect of that complaint, the Council may direct the review panel to also review the new complaint.*

#### *Written submissions*

**99** *The review panel shall give the judge who is the subject of the complaint and chief justice of the court of which the judge is a member an opportunity to provide written submissions within the time limit established by the Council for the purpose of this section.*

#### *Basis of decisions*

**100** *The review panel shall make its decision only on the basis of the substance of the complaint, any information provided under section 97, any written submissions provided under section 99 and any other document that it considers relevant.”*

**United Kingdom**

64. The United Kingdom has a procedure for removal of Justices of Superior Courts enshrined in the **Senior Courts Act 1981**. The procedure is rarely invoked as it is well accepted that the security of tenure of judges and respect for the independence of the Judiciary make it untenable for judges to be removed without serious cause.

65. Section 3 of the **Senior Courts Act** stipulates that:

*“A person appointed to an office to which this section applies shall hold that office during good behaviour, subject to a power of removal by Her Majesty on an address presented to Her by both Houses of Parliament.”*

66. Section 3(A) of the **Senior Courts Act** provides thus:

*“It is for the Lord Chancellor to recommend to Her Majesty the exercise of the power of removal under subsection (3).”*

67. Practice shows that the address by both Houses of Parliament on basis of which the Lord Chancellor recommends to the His Majesty or Her Majesty [as the case may be] is supported by two-thirds votes on both occasions.

### **South Africa**

68. **Section 177 of the South African Constitution** provides that:

*“1. A judge may be removed from office only if -*

*a. the Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct; and*

*b. the National Assembly calls for that judge to be removed, by a resolution adopted with a supporting vote of at least two thirds of its members.*

*2. The President must remove a judge from office upon adoption of a resolution calling for that judge to be removed.*

*3. The President on the advice of the Judicial Service Commission may suspend a judge who is the subject of a procedure in terms of subsection (1).*

69. One writer, **Mbekezeli Benjamin**, explained the process in South Africa as follows:

*“The section says a judge may be removed from office only if the Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct; and the National Assembly calls for that judge to be removed, by a resolution adopted with a supporting vote of at least two thirds of its members.*

*The President must remove a judge from office upon adoption of a resolution calling for that judge to be removed.*

*The Judicial Conduct Tribunal investigation together with the JSC’s finding of gross misconduct satisfy the first stage of the process.*

*It then moves to the second stage, which is the National Assembly calling for the judge’s removal through a two-thirds majority vote. In practice, according to Parliament’s Legal Services division, this means that the Speaker must send the Chief Justice’s letter, the tribunal report, the JSC’s finding, and the SCA judgment to the National Assembly Committee on Justice and Correctional Services, which must do background work before the National Assembly vote.*

*The Committee must confirm that the JSC has completed the first stage of the process in terms of section 177 of the Constitution, in that there is a finding of gross misconduct from the JSC. If there is such a finding (which there is), the Committee will then prepare a report for the National Assembly, with a recommendation that the JSC finding be subject to a vote on the removal of the judge from office.*

*Significantly, unlike the section 89 process to impeach the President, or the section 94 process to impeach the head of a Chapter 9 institution such as the Public Protector, Parliament has an extremely limited role in the impeachment of judges. It cannot re-open an inquiry into the guilt or otherwise of the judge – that process has already been undertaken and completed by the JSC. This was made clear in the John Hlophe v JSC judgment of the Gauteng High Court.*

*Upon receipt of the Committee's report, the Speaker must then schedule a sitting of the National Assembly where a motion calling for the removal of the judge will be tabled. Members of Parliament may then debate the motion, with arguments for or against the removal of the judge from office. Following the debate, a vote will be taken.*

*If two-thirds of the National Assembly members (a minimum of 267 members) vote in favour of the motion, that will mean the motion passes and the judge must be removed from office.*

*The Speaker must then write a letter to the President confirming the National Assembly's resolution. Similarly, if the motion fails to attract the two-thirds majority vote, it will mean that the judge will remain in office.*

*This might seem strange, but Parliament, through freely elected public representatives, plays a special role as the ultimate oversight authority over the exercise of all public power given by the Constitution. Through its political judgment, Parliament holds all public office bearers accountable and decides who may hold a constitutional office and who may not.*

*The vote on the motion to remove the judge will bring an end to the second part of the process.*

*The third and final stage, in terms of section 177 of the Constitution, is the President, based on the letter received from the Speaker, signing an official document called a presidential minute, confirming the date on which the judge is officially removed from office. From that date onwards, the judge will lose the title and status of a judge, and the benefits that come with the office, including a salary of over R1-million for life, medical benefits and a car allowance."*

### **Kenya**

**70. Article 168 of the Constitution of Kenya stipulates that**

*"Removal from office.*

*168. (1) A judge of a superior court may be removed from office only on the grounds of—*

- (a) *inability to perform the functions of office arising from mental or physical incapacity;*
  - (b) *a breach of a code of conduct prescribed for judges of the superior courts by an Act of Parliament;*
  - (c) *bankruptcy;*
  - (d) *incompetence; or*
  - (e) *gross misconduct or misbehaviour.*
- (2) *The removal of a judge may be initiated only by the Judicial Service Commission acting on its own motion, or on the petition of any person to the Judicial Service Commission.*
- (3) *A petition by a person to the Judicial Service Commission under clause (2) shall be in writing, setting out the alleged facts constituting the grounds for the judge's removal.*
- (4) *The Judicial Service Commission shall consider the petition and, if it is satisfied that the petition discloses a ground for removal under clause (1), send the petition to the President.*
- (5) *The President shall, within fourteen days after receiving the petition, suspend the judge from office and, acting in accordance with the recommendation of the Judicial Service Commission—*
- (a) *in the case of the Chief Justice, appoint a tribunal consisting of—*
    - (i) *the Speaker of the National Assembly, as chairperson;*
    - (ii) *three superior court judges from common-law jurisdictions;*
    - (iii) *one advocate of fifteen years standing; and*
    - (iv) *two other persons with experience in public affairs;**or*
  - (b) *in the case of a judge other than the Chief Justice, appoint a tribunal*  
*consisting of—*
    - (i) *a chairperson and three other members from among persons who hold or have held office as a judge of a*

- superior court, or who are qualified to be appointed as such but who, in either case, have not been members of the Judicial Service Commission at any time within the immediately preceding three years;*
- (ii) one advocate of fifteen years standing; and*
- (iii) two other persons with experience in public affairs.*
- (6) Despite Article 160(4), the remuneration and benefits payable to a judge who is suspended from office under clause (5) shall be adjusted to one half until such time as the judge is removed from, or reinstated in, office.*
- (7) A tribunal appointed under clause (5) shall—*
- (a) be responsible for the regulation of its proceedings, subject to any legislation contemplated in clause (10); and*
- (b) inquire into the matter expeditiously and report on the facts and make binding recommendations to the President.*
- (8) A judge who is aggrieved by a decision of the tribunal under this Article may appeal against the decision to the Supreme Court, within ten days after the tribunal makes its recommendations.*
- (9) The President shall act in accordance with the recommendations made by the tribunal on the later of—*
- (a) the expiry of the time allowed for an appeal under clause (8), if no such appeal is taken; or*
- (b) the completion of all rights of appeal in any proceedings allowed for under clause (8), if such an appeal is taken and the final order in the matter affirms the tribunal's recommendations.*
- (10) Parliament shall enact legislation providing for the procedure of a tribunal appointed under this Article.”*

71. The upshot of the foregoing is that, all advanced legal systems stipulate a rigorous and elaborate procedure for the removal of a judge of a superior court. The procedures do not consider such exercises lightly and are calculated at protecting judges from abusive tendencies to compromise the independence of the Judiciary – a necessary organ for the running of any healthy society. Even when the legal framework is as scanty and

sketchy as Ghana's, practice has ensured that it is only through an elaborate and rigorous mechanism that the removal of a superior court judge may be effected. It is even more so in the case of the Head of the Judiciary – the Chief Justice. Thus, in the United States, a nation with a very sketchy Constitution, the practice is to remove a Justice only after two-thirds vote in both houses. Same pertains in the United Kingdom. South Africa requires a Judicial Service Commission's finding of guilt (after a process of a hearing) preceded by a Judicial Conduct Tribunal investigation and a vote of two-thirds of Parliament before the President may remove a judge from office. Kenya requires a Judicial Service Commission investigation and finding that the conduct of a judge satisfies the grounds for removal stipulated in the Constitution before a recommendation to the President may be made. It is at that stage that the President constitutes a committee to probe the allegations.

72. It is respectfully submitted that having regard to the sketchy provisions in the Constitution of Ghana for the removal of the Chief Justice, this Court ought to exercise its powers of constitutional interpretation to require that due process as accords with the dictates of constitutionalism and good governance, be adopted to safeguard the security of tenure of the Chief Justice and the independence of the Judiciary. The practice of the President in not providing the Chief Justice with a copy of a petition against him or her, and proceeding straight away to engage in "*consultation processes with the Council of State*" for her removal is hardly in tune with the requirements of constitutionalism and best practice internationally, especially in advanced legal systems. This Court ought to, with respect, exercise its judicial review under articles 2(1) and 130(1) to nullify all steps taken purportedly to remove the Chief Justice from office as prayed for in the writ of summons.

### CONCLUSION

73. The plaintiff herein sums up his case as follows:

(a) The Court's original and exclusive jurisdiction to determine the constitutionality of the decision of the President in commencing consultation with the Council of State for the removal of the Chief Justice without notifying the Chief Justice of the petition(s) against her and giving her an opportunity to respond to same.

(b) The instant case raises serious questions bordering on:

- i. Whether the Chief Justice is entitled to receive a copy of a petition for his removal or notified about the contents thereof, upon the receipt of same by the President before it is referred to the Council of State;
  - ii. Whether the Chief Justice is entitled to be heard in his defence before the determination of a prima facie case on a petition for his removal or that right accrues only after the determination of a prima facie case on the petition by the President in consultation with the Council of State.
- (c) The right to be notified of charge(s) levelled against one and to be heard on same is a fundamental and inalienable right enshrined in the Constitution, 1992.
- (d) The right to be notified of charge(s) levelled is non-negotiable in the context of quasi-judicial proceedings. The process of determining the existence or otherwise of a prima facie case in a petition for the removal of the Chief Justice is quasi-judicial.
- (e) Upon a true and proper interpretation of the Constitution, before the President presents a petition for the removal of the Chief Justice to the Council of State, the President is required to furnish the Chief Justice with a copy of the petition and obtain his or her comments on allegations contained therein.
- (f) The comments or responses by the Chief Justice must form the basis for consultation between the President and the Council of State on whether a prima facie case is disclosed by the petition.

(g) A notification of the Chief Justice and the grant of an opportunity to deliver a response to allegations contained in a petition, are not mere procedural rights but substantive due process. They are substantive rights designed to protect the institution of the Judiciary from abuse and undue interference, a violation of which results in a nullity of the process triggered under article 146 of the Constitution for the removal of the Chief Justice.

(h) Strict adherence to the demands of substantive due process and administrative justice is required in the processes for the removal of the Chief Justice, who is the only non-political head of the three arms of government.

(i) A failure by the President to notify the Chief Justice about allegations contained in a petition filed against him or her before consulting the Council of State on same, results in a violation of a substantive right impinging on an abuse of the Head of the Judiciary, shows complete bad faith and renders the process null, void and of no effect.

(j) There is the need for the enactment of a Judicial Officers Act which provides a detailed and more rigorous procedure for the removal of judges in order to protect the independence of the Judiciary, security of tenure of judges and, to make it more difficult for an unusual development as the removal of a judge to occur in Ghana.

Respectfully submitted.

**LIST OF AUTHORITIES PLAINTIFF INTENDS TO RELY ON**

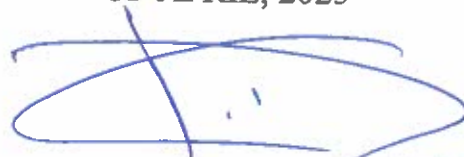
Plaintiff shall at the hearing, rely on the following reported cases:

1. **Tuffuor v. Attorney-General** [1980] GLR, C.A sitting as SC.
2. **Agyei-Twum v. Attorney-General & Akwetey** [2005-2006] SCGLR 732
3. **R v Special Tribunal Exparte Akosah** [1980] GLR 592 at 605
4. **Justice Paul Uuter Dery v Tiger Eye PI & 2 Others** [2015-2016] 2 SCGLR 812
5. **Awuni v. West African Examinations Council (WAEC)** [2003 – 2004] 1 SCGLR 471 at 514
6. **TDC & Musah v. Atta Baffour**, [2005 -2006] SCGLR 121.
7. **National Media Commission v. Attorney-General** [2000] SCGLR 1
8. **Justice Abdulai v. The Attorney-General – Suit no. J1/07/2022** (Unreported – Judgment delivered on 9<sup>th</sup> March, 2022).
9. **Michael Ankomah Nimfa v. James Gyakye Quayson** Suit No. J1/11/2022 (Unreported – Judgment delivered on 17<sup>th</sup> May, 2023).
10. **Alexander Afenyo Markin vrs. 1. Speaker of Parliament 2. Attorney-General - Suit No. J1/01/2025** (Unreported – Judgment delivered on 12<sup>th</sup> November, 2024)
11. **Adjei Ampofo (No. 1) v. Accra Metropolitan Assembly and Attorney-General (No. 1)** [2007-2008] SCGLR 611
12. **Asare v. Attorney-General** [2003-2004] 2 SCGLR 823
13. **Brown v. Attorney-General (Audit Service Case)** [2010] SCGLR 183
14. **Omaboe III v. Attorney-General** [2005-2006] SCGLR 579
15. **Ghana Lotto Operators Association v. National Lottery Authority** [2007-2008] 2 SCGLR 1088
16. **Republic v. High Court (Fast Track Division) Accra; Ex parte Commission on Human Rights and Administrative Justice (Richard Anane interested Party** [2007-2008] 1 SCGLR 213

The plaintiff shall at the hearing seek to rely on the following laws:

- **The Constitution of the Republic of Ghana, 1992.**
- **Supreme Court Rules, 1996 (C.I.16)**

DATED AT DAME & PARTNERS, CANTONMENTS, ACCRA  
THIS 8<sup>TH</sup> DAY OF APRIL, 2025



**Godfred Yeboah Dame**

Solicitor's Licence No: eGAR0417/25

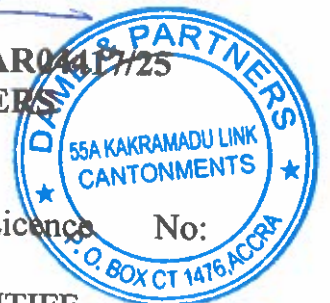
**DAME AND PARTNERS**

55A Kakramadu Link,  
Cantonments, Accra.

Chamber Reg. Licence No:

ePP09695/25

LAWYER FOR PLAINTIFF



The Registrar,  
Supreme Court,  
Accra.

AND FOR SERVICE ON: THE ATTORNEY-GENERAL,  
MINISTRIES, ACCRA.

Filed on... 07/04/2025  
at... 8:40 am/pm  
.....Registrar  
SUPREME COURT OF GHANA

**IN THE SUPERIOR COURT OF JUDICATURE  
IN THE SUPREME COURT OF GHANA  
ACCRA- A.D. 2025**

Suit No.

Between

**VINCENT EKOW ASSAFUAH**  
Plot 10, Blk E,  
Old Tafo, Kumasi.

**Plaintiff**

And

**THE ATTORNEY-GENERAL**  
Office of the Attorney-General and Ministry of Justice,  
Accra

**Defendant**

**AFFIDAVIT IN VERIFICATION OF STATEMENT OF CASE**

I, YAA KOBI FRIMPOMAAH, of Christian Street, Achimota, Accra, do make oath and say as follows:

1. That I am a lawyer in the law firm of Messrs. Dame and Partners, Accra, and the deponent hereto.
2. That I have the consent and authority of the plaintiff herein, who is undergoing medical treatment abroad, to depose to this affidavit in respect of matters within my knowledge, information and honest belief.
3. That on 9<sup>th</sup> April, 2025, the plaintiff herein filed a statement of case in support of writ which had been issued on 27<sup>th</sup> March, 2025.
4. That the facts stated in the said statement of case are true to the best of my knowledge and belief.

WHEREFORE I swear to this affidavit in support.

SWORN in Accra this

DEPONENT

This day of April, 2025)

BEFORE ME  
EDWARD ADDU-YOBU  
COMMISSIONER FOR OATHS  
HIGH COURT, ACCRA  
1982

COMMISSIONER FOR OATHS

The Registrar,  
Supreme Court,  
Accra.

AND TO THE ABOVE-NAMED DEFENDANT