(96)

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA – A.D. 2020

WRIT NO. J1/5/2021

ARTICLE 64 OF THE 1992 CONSTITUTION AND SUPREME COURT RULES, 1996 (C.I. 16) (AS AMENDED BY C.I. 74 AND C.I. 99)

AMENDED PRESIDENTIAL ELECTION PETITION
PURSUANT TO LEAVE GRANTED BY THIS COURT ON 14TH JANUARY 2021
PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER 2020.

JOHN DRAMANI MAHAMA — **PETITIONER**
No. 33 Chain Homes
Airport Valley Drive
Accra

AND

1. **ELECTORAL COMMISSION** — **1ST RESPONDENT**
   National Headquarters
   6th Avenue
   Ridge – Accra

2. **NANA ADDO DANKWA AKUFO-ADDO** — **2ND RESPONDENT**
   House No. 02 Onyaa Crescent
   Nima - Accra

MOTION ON NOTICE
FOR LEAVE TO: (A) FILE AN ADDITIONAL GROUND OF REVIEW; (B) REPLACE PARAGRAPH 28 OF THE ORIGINAL STATEMENT OF CASE; AND (c) FILE A SUPPLEMENT TO THE STATEMENT OF CASE

TAKE NOTICE that this Honourable Court shall be moved by counsel for and on behalf of Petitioner/Applicant/Applicant herein (Applicant) praying the Court for an order granting Applicant leave to:

A. File and/or argue an additional ground for his application for review filed on 20th January 2021, namely:

060561
25-01-2021

"Ground (d) That the ruling of this Court was per incuriam Article 129(4) of the Constitution as well as its own earlier decisions in Ex Parte Magna International Transport Ltd and Bernard Mornah v. The Attorney-General."

B. Replace Paragraph 28 of the Original Statement of Case; and

C. File a Supplement to the Statement of Case.

UPON the grounds stated in the accompanying affidavit and for such other order(s) as to this Honourable Court may deem fit.

COURT TO BE MOVED on TUESDAY the 26TH day of January, 2021 at 9 o'clock in the forenoon or so soon thereafter as Counsel for the Applicant may be heard.

DATED IN ACCRA THIS 25TH DAY OF JANUARY 2021.

.....

TONY LITHUR

SOLICITOR FOR PETITIONER/APPLICANT/APPLICANT

SOLICITOR'S LIC. NO. eGAR 00278/21

LAW FIRM REG. NO. ePP00047/21

LITHUR BREW & COMPANY
No. 110B 1ST KADE CLOSE,
KANDA ESTATES
P. O. BOX CT 3865 CANTONMENTS ACCRA
TEL: 0302208104/05

THE REGISTRAR

SUPREME COURT

ACCRA

AND COPY EACH FOR SERVICE ON THE ABOVE-NAMED RESPONDENTS OR THEIR SOLICITORS:

1. **JUSTIN AMENUVOR, AMENUVOR & ASSOCIATES, NO. 8 NII ODARTEY OSRO STREET, KUKU HILL (FRONTLINE CAPITAL ADVISORS BUILDING), OSU, ACCRA.**

2. **AKOTO AMPAW, AKUFO-ADDO, PREMPEH & CO., 67 KOJO THOMPSON ROAD, ADABRAKA, ACCRA**

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AFFIDAVIT IN SUPPORT
OF MOTION ON NOTICE FOR LEAVE TO: (A) FILE AN ADDITIONAL GROUND OF REVIEW; (B) REPLACE PARAGRAPH 28 OF THE ORIGINAL STATEMENT OF CASE; AND (c) FILE A SUPPLEMENT TO THE STATEMENT OF CASE

I, **JOHN DRAMANI MAHAMA**, of House No. 33 Chain Homes, Airport Valley Drive, Accra, make oath and say as follows:

1. That I am the Petitioner and Applicant herein.

2. That the facts in this affidavit, unless otherwise stated, are within my personal knowledge, information or belief.

3. That at the hearing of this application, I shall, through my counsel, seek leave of this Honourable Court to refer to all processes filed in this case, and in respect of those filed by me, as if same were reproduced here *in extenso* and sworn to by me on oath.

4. That on **19th January 2021**, this Honourable Court ruled, refusing my application for leave to serve interrogatories on the 1st Respondent/Respondent/Respondent (1st Respondent).

5. That the following morning, **20th January 2021**, I caused my Counsel to file an application for review, with a Statement of Case in support, in respect of the said ruling which, I am advised by Counsel and verily believe, contained fundamental errors of law, thereby occasioning a grave miscarriage of justice to me.

6. That I am advised by Counsel, and verily believe same to be true, that he seeks leave to provide additional assistance to this Honourable Court by filing an additional ground of review and a supplement to the Statement of Case already filed.

7. That I am advised by Counsel, and I verily believe same to be true, that the additional ground that Counsel intends to file is an additional exceptional circumstance that supports the application for review.

8. That the additional ground of review and the draft Statement of Case in support are attached herewith and marked as Exhibit **"REVIEW 1"**.

9. That I am also advised by Counsel, and I verily believe same to be true, that the draft supplement to the Statement of Case will furnish the Court with additional legal authority in support of the submissions by Counsel.

10. That I am also advised by Counsel, and verily believe same to be true, that this Honourable Court would be provided further assistance if Paragraph 28 in the original Statement of Case should be replaced with the paragraph as herewith attached and marked as Exhibit **"REVIEW 2"**.

11. That Respondents will not, in any way, be prejudiced by the grant of leave, as they will also have a chance to respond to both the additional

ground for review as well as the Supplement to the Statement of Case should they wish to do so.

WHEREFORE, I swear to this affidavit.

SWORN IN ACCRA THIS 25th

DAY OF JANUARY, 2021]

.....

DEPONENT

BEFORE ME

JAMES KOTEI HAMMOND COMM. FOR OATHS
P. O. BOX 1466
MAMPROBI
TEL: 0244438636
SUPREME COURT OF GHANA

COMMISSIONER FOR OATHS

EXHIBIT 'REVIEW 1'

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA – A.D. 2020

This is the document marked "Review 1" referred to in the Affidavit of this 25th day of January 2021 before me

WRIT NO. J1/5/2021

ARTICLE 64 OF THE 1992 CONSTITUTION AND SUPREME COURT RULES, 1996 (C.I. 16) (AS AMENDED BY C.I. 74 AND C.I. 99)

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DRAFT

SUPPLEMENT TO STATEMENT OF CASE

I. INTRODUCTION

1. This Supplement to the Statement of Case relates to the motion on notice seeking the leave of this Honourable Court to file an additional ground of review, "Ground (d)", in respect of the Court's ruling of 19th January 2020. It is filed pursuant to the leave of the Honourable Court granted on the day of January, 2021.

II. ARGUMENTS

A. That the ruling of this Court was *per incuriam* Article 129(4) of the Constitution as well as its own earlier decisions in *Ex Parte Magna International Transport Ltd and Bernard Mornah v. The Attorney-General.*

2. Even beyond the application of Rule 5 of the Supreme Court Rules to fill a gap, Article 129(4) of the Constitution provides as follows:

> *"For the purposes of hearing and determining a matter within its jurisdiction and the amendment, execution or the enforcement of a judgment or order made on any matter, and for the purposes of any other authority, expressly or by necessary implication given to the Supreme Court by this Constitution or any other law, the Supreme Court shall have all the powers, authority and jurisdiction vested in any court established by this Constitution or any other law."*

This provision elevates the power to one granted to the Supreme Court by the Constitution and not just by statute. Thus, in exercising its authority to determine an Election Petition in respect of Presidential Elections, the Supreme Court has power, by virtue of this provision, to order interrogatories in the way a High Court can under **Order 22 of C.I. 47**. The Supreme Court recognized in ***Bernard Mornah v. Attorney-General*** [2013] SCGLR Special Edition, 504, that the Rules of Court Committee:

> *"... was not empowered to amend the substantive law/s without express authorization. One such substantive law in place is the right of review given to the Supreme Court by virtue of article 133(1) of the 1992 Constitution. Review is not a matter of mere procedure, but an important and substantial constitutional right. Any attempt to remove the Supreme Court's review jurisdiction or a party's right to apply for review except through an amendment following due procedure under the 1992 Constitution would be unconstitutional."* (at p. 512).

The Court also determined that when the Rules of Court Committee purported to have the Supreme Court sit on public holidays, it was a violation of the Public Holidays Act, 2001 (Act 601), sections 1, 4(1) and 6:

"thereby exceeding the mandate given to the Rules of Court Committee under article 64(3) of the Constitution and is in direct conflict with article 93(2) of the Constitution and is thus void and of no effect."

Therefore, it is our submission that the ruling of this court was *per incuriam* of Article 129(4) of the Constitution as well as its own earlier decisions in ***Ex parte Magna International Transport Ltd and Bernard Mornah v. The Attorney-General.***

3. We demonstrate in the next section of this Supplement how the decisions of the Supreme Court in the 2013 Election Petition are consistent with the said provision of the Constitution, as well as reaffirming the decisions of the Supreme Court in ***Ex parte Magna International Transport Ltd and Bernard Mornah v. The Attorney-General.*** These constitute a line of authority that this Court should have followed in its ruling.

B. The honourable Court fundamentally erred in law when it held that CI 99 repealed or otherwise excluded the application of C.I. 47 either in whole or in part.

4. The Supreme Court in ***The Republic v. High Court, General Jurisdiction, Accra, Ex parte: Magna International Transport Ltd, (Applicant), Ghana Telecommunications Co. Ltd (Interested Party)*** (Civil Motion No. J5/66A/2017) (unreported decision of 7th November 2018), was faced with the issue, stated succinctly in the opening paragraph of the ruling of Benin JSC:

"Whether by virtue of rule 27A of the Court of Appeal Rules, 1997, C.I. 29 as amended by C.I. 21 the Court of Appeal has exclusive jurisdiction to hear applications for stay of proceedings from the moment an interlocutory appeal is filed."

An earlier decision of the Supreme Court in **Republic v. Fast Track High Court, Accra, Ex parte Daniel Kwasi Abodakpi,** Civil Motion No. J5/15/2005 dated 25th October 2005, unreported, had taken the following position:

"Paragraph 27A of the Court of Appeal Rules, 1997 (C.I.19) as amended by C.I. 21, make it quite clear that in interlocutory appeals, it is the Court of Appeal, rather than the High Court

which has the jurisdiction to grant an order of stay of proceedings."

5. Twelve years after this decision which had denied an accused person, Daniel Kwasi Abodakpi, of the opportunity to have a hearing in the High Court of an application for stay of proceedings, the Supreme Court decided that its earlier decision in that case was in error. By closely analysing the law prior to the introduction of rule 27A by C.I. 21 and considering the terms of rule 27A, their Lordships reached the conclusion that:

> *"... Rule 27A did not give exclusive jurisdiction to the Court of Appeal in application for stay of proceedings in interlocutory appeal. ... Rule 27A does not amend, either expressly or even by implication the provisions of rules 21 and 28. Indeed, conditions do not exist for implied repeal to be applied in the instant in so far as the principle of harmonious construction may be applied to allow all these provisions to co-exist."* (per Benin JSC at pp. 9-10).

The Supreme Court, therefore, went on to read rules 21, 27, 27A of C.I. 19 together and showed clearly the correct construction of each, such that rule 27A could not be interpreted as impliedly amending or repealing rules 21 or 28. "For these reasons", Benin JSC concluded, "we decide that the decision in Ex parte Abodakpi was given *per incuriam* and we depart from it accordingly in line with article 129(3) of the Constitution, 1992." (p. 10).

6. In our submission, in an exactly similar way to how the Supreme Court erred in ***Ex parte Abodakpi***, the Court in the instant case, erred fundamentally in its conception of C.I. 99 as impliedly amending or repealing the discovery rules of C.I. 47 (including Order 22 in C.I. 47) which this very Supreme Court had adopted in the 2013 Election Petition. The Supreme Court should have proceeded in the instant case as it did in ***Ex parte Magna International Transport Ltd.*** and applied "the principle of harmonious construction" to arrive at the correct construction of each Constitutional Instrument. That way, it would have become obvious that the timelines provided for in C.I. 99, far from justifying an exclusion of pre-trial processes as contained in Order 22 of C.I. 47, actually anticipate "Pre-trial" in the Second Schedule, where a period of five (5) days is allocated. Thus, instead of following the Court's

own earlier decisions in the 2013 Election Petition, the Court in the instant case, on the basis of a misapprehension of what rule 69C(4) provided for, did exactly as the Court in ***Ex parte Abodakpi*** did, deny an applicant well-established rights to which he was entitled by virtue of the rules of court. This fundamental error is what has occasioned a miscarriage of justice to the Petitioner/Applicant/Applicant on account of which the review application has been filed.

7. The following words of Benin JSC in ***Ex parte Magna International Transport Ltd*** in respect of the power to stay proceedings is true of the pre-trial processes provided for in C.I. 47 and adopted by the Supreme Court in its decisions in 2013:

> *"The court's inherent power to stay proceedings has become so entrenched in the law as to assume the status of indispensability unless clearly ousted by statute. ... we are mindful that where there is clear statutory provision which is in conflict with an aspect of the court's inherent jurisdiction, the statute will prevail."* (p. 5).

8. There is nothing in C.I. 99 which suggests that it sought to repeal or set aside Rule 5 of C.I. 16 by reference to which the Supreme Court in the 2013 Election Petition decided that the Supreme Court would apply the provisions of C.I. 47. In the words of Gbadegbe JSC, speaking for a unanimous bench:

> *"It does appear to us the framers of the rules of this court envisaged a gap in the rules regulating the practice and procedure in the Supreme Court by making a provision to that effect in rule 5 of the Supreme Court Rules, 1996 (CI 16). In this regard, we think that the current High Court (Civil Procedure) Rules, 2004 (CI 47), particularly, Order 11 rule 12 [on application for further and better particulars], and Order 22 [on interrogatories]... are beneficial to us by way of guidance as to the appropriate practice to prescribe..."* (p. 54).

In a separate ruling, again speaking for a unanimous bench, Sophia Adinyira JSC stated categorically:

> *"The Supreme Court Rules (CI 16) has no provisions regarding discovery and inspection of documents. In accordance with rule 5 of CI 16, we are therefore as a matter of practice adopting the provisions of the High Court (Civil Procedure) Rules, 2004 (CI 47), Order 21."* (p. 69, emphasis supplied),

9. It is also worthy of note that, having clearly had recourse to C.I. 47, Gbadegbe JSC went on to state:

> *"It must be observed, however, that where the rules of this court prescribe a different procedure, then they supersede the applicable Rules of the High Court. One such rule is rule 69A (4) of CI 16 as substituted by CI 74. That rule, unlike the procedure available in the High Court, does not make an application for particulars to be preceded by a request to the other party."* (p. 54).

Thus, without doubt, rule 69BA prohibits joinder to the petition by other parties beyond those spelt out in CI 99. It is respectfully submitted that nothing in CI 99 can even remotely be considered as affecting the operation of the pre-trial discovery processes that are well-established in the common law and that have been enacted in CI 47. Indeed, the court itself ordering the filing of witness statements involves resorting to C.I. 47 (as amended by C.I. 87 of 2014). There is no good reason for the provisions in C.I. 47 on interrogatories not to be applied in exactly the same way as the provisions on witness statements. Indeed, both of these aspects of C.I. 47 are designed to expedite trials and save costs. It should also be obvious that the timelines indicated in the Second Schedule have to be applied in conjunction with other powers the Court has to achieve the ends of justice rather than in a literal manner. For instance, the timeline stated in the Second Schedule to C.I. 99 for filing and service is expressly January. Applying the schedule literally would mean that filing and service of the petition earlier in December would not be compliant! Meanwhile, there is a 21-day time limit for filing. The second Schedule of C.I. 99 must not be applied mechanically so as to lead to absurdity and denial of pre-trial processes that are so well-established both by common law and procedural rules that this court itself previously applied them without hesitation in an election petition.

10. In its ruling on interrogatories in the 2013 Election Petition, the Court proceeded in a very similar manner to how it proceeded in ***Ex parte Magna International Transport Ltd.*** It referred initially to common law practice as contained in a well-known practice book: "In regard to interrogatories, the learned authors of ***Atkin's Court Forms***, writing in Volume 22 (2nd ed), 1980 Issue, state at page 451 with the heading "Power to order interrogatories as follows:

> *"A party to any cause or matter may apply to the court for an order giving him leave to serve on any other party interrogatories relating to any other matter in question between the applicant and that other party in the cause or matter and requiring that other party to answer the interrogatories on affidavit within such period as may be specified in the order."(p. 56).*

This passage is followed immediately by the recognition of something the authors of that practice book say in respect of English law that is inapplicable in Ghanaian law:

> *"Although at the next page the learned authors say that interrogatories are not ordered in election petitions and cited the English case of **Wells v. Wren** (1880) 5 C.P.D. 546 in support of the said contention, a careful reading of the case reveals that the limitation on the powers of the court is derived from the applicable statutory provisions regulating the conduct of election petitions in England and as such the restriction is inapplicable to courts in our jurisdiction. There being no statutory fetter, so to say, on the power of the court in appropriate instances to order either further or better particulars or interrogatories, we proceed to consider the applications before us." (p. 56).*

11. It is unfortunate that, in the instant case, the Supreme Court, in fundamental error, did what Lindley J. did in ***Wells v. Wren*** in denying an application for interrogatories in an election petition because:

> *"... upon the true construction of ss. 2 and 26 of the Act of 1868, I have no power to make this order, although the election*

judge can, by making a rule under s. 25, authorize interrogatories to be delivered: as yet, however, there is no such rule." (at p. 546).

On appeal, this decision was held, in the words of Lord Coleridge C.J. to be "perfectly correct." The relevant English statutory provisions did not give the High Court the power to issue interrogatories in that case. By contrast, in the instant case, the relevant Ghanaian statutory provision, C.I. 47 Order 22, adopted by the Supreme Court for its purposes also, enables the grant of leave to serve interrogatories upon an application as the Petitioner herein put before the Court. It is also worth recalling that the broad objects of C.I. 47 are stated in the very first Rule as follows:

> *"These Rules shall be interpreted and applied so as to achieve speedy and effective justice, avoid delays and unnecessary expense, and ensure that as far as possible, all matters in dispute between parties may be completely, effectively and finally determined and multiplicity of proceedings concerning any of such matters avoided."*

12. In our submission, rule 69(C)4 of C.I. 99 must be interpreted and applied so as: a) not to force an inconsistency that does not actually exist between that Instrument and C.I. 47, and b) not to sacrifice justice for expedition should there be circumstances in which competing considerations have to be weighed. Indeed, it is the refusal to grant leave for interrogatories in accordance with normal judicial practice under common law and C.I. 47 that is occasioning delay in these proceedings and leading to a multiplicity of proceedings.

C. Relevance of questions in interrogatories and reasonableness in exercise of discretionary power

13. It is respectfully submitted that, on any reasonable assessment, the questions posed in the interrogatories are very relevant to the determination of this suit. Indeed, Counsel for the 1st Respondent, in open court, stated that the answer of 1st Respondent deals with the matters in the interrogatories. That is a clear admission of their relevance. Petitioner

alleges that, on the figures pronounced by the Chairperson of the Electoral Commission, Mrs. Jean Adukwei Mensa, she had no constitutional basis for the declaration she purported to make. The non-compliance with pre-conditions in the Constitution and the arbitrary and capricious exercise of power on the basis of bias, absence of due process and breach of electoral laws are also among issues raised in the Petition, as amended.

14. The Amended Answer of the 1st Respondent admits errors in figures announced by their Chairperson, denies any bias and sets out in generic terms stages of the process leading to the declaration of results.

15. Questions raised, for instance, about the actual steps taken, including steps related to alleged errors in figures quoted by the Chairperson of the 1st Respondent and purported "corrections" in respect of these errors are, obviously, legitimate questions. When and how the 1st Respondent became aware of what have been claimed in unsigned press releases of the 1st Respondent were inadvertent errors are extremely pertinent.

16. The peremptory manner in which the questions posed in the interrogatories were considered in the ruling as not satisfying a common law "relevancy" test is precisely what Article 296 of the Constitution seeks to outlaw. The Supreme Court, in the exercise of its powers of judicial review of administrative actions, has expounded important principles which, we submit, are also applicable to the court's own exercise of its discretionary powers as they are to the conduct of the 1st Respondent and its Chairperson. In ***TDC & Musah v. Atta Baffuor*** [2005-2006] SCGLR 121, their Lordships gave extensive consideration to the issue of discretionary powers and their review. In the words of Date-Bah JSC:

> *"I believe that the requirement of "reasonableness" in administrative decisions should be given as fundamental a role in Ghanaian law as it has attained in English law. Indeed, as my learned brother, Atuguba JSC has today in his judgment in this case shown, article 23 of the 1992 Constitution, which is contained in the chapter on fundamental human rights, contains within it a similar concept and therefore reasonableness in administrative*

decisions is a matter of fundamental human rights in this jurisdiction." (at pp. 152-3).

17. In the judgment of Atuguba JSC, he made the following pertinent observation after considering the principles stated in a number of English cases:

> *"All these principles have sometimes been put into a sort of judicial diskette for ease of reference and it is in that condensed form that I sought to state them when in* ***Apaloo v. Electoral Commission of Ghana*** *[2001-2002] SCGLR 1 at 45, I said: 'I must also stress, that the power to determine how effectively to discharge its electoral functions, vests in the Electoral Commission. It is trite law, that a court would not interfere with the decision of an administrative officer having statutory power to take that decision, but that the court is restricted to the question, whether the officer concerned followed the correct legal process in arriving at his decision or otherwise, exercised his said powers in accordance with law: see Chief Constable of Wales Police v. Evans [1982] 3 All E.R. 141." (The emphasis is mine) ... Were this case to arise after the commencement of the 1992 Constitution all that I have said would have been condensed into article 23 thereof..."* (at p. 151).

18. The lead judgment of Georgina Wood JSC (as she then was) also delved into English case law, particularly:

> *"two important cases, namely, Associated Provincial Picture Houses Ltd. V. Wednesbury Corporation [1948] 1 K.B. 223, and the celebrated case of Council of Civil Service Unions v. Minister for the Civil Service [1948] 3 All ER 935, HL in which Lord Greene's formulation of the basic principles of judicial review, often referred to as the Wednesbury principles, was reformulated by Lord Diplock .. at page 949 ... To qualify as a subject for judicial review the decision must have consequences which affect some person (or body of persons) other than the decisionmaker, although it may affect him too. It must affect such other person either (a) by altering rights or obligations of*

that person which are enforceable by or against him in private law; or (b) by depriving him of some benefit or advantage which (i) he has in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational ground for withdrawing it on which he has been given an opportunity to comment or (ii) he has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should be withdrawn... " (at p. 129).

19. Holding the 1st Respondent and, particularly, its Chairperson, accountable for the exercise of powers conferred by the Constitution and statute surely require them as part of judicial oversight of their actions, to be subjected to processes such as interrogatories under Order 22 of CI 47, exactly as happened in the 2013 Election Petition. What possible justification can there be for this Electoral Commission not to be subject to the same process to answer questions that are crucial to the issues in controversy in this suit? The peremptory determination that the questions were irrelevant was in fundamental error and has occasioned a serious miscarriage of justice to the Petitioner/Applicant/Applicant. As we further show in the next section from the authority of the Supreme Court's decision in ***Hannah Assi (No. 2) v. Gihoc Refrigeration*** [2007-2008] SCGLR 16, substantial justice will be served by this Court reviewing its ruling with respect to interrogatories.

D. The review jurisdiction – achieving substantial justice

20. In ***Hannah Assi (No. 2) v. Gihoc Refrigeration*** [2007-2008] SCGLR 16, the Supreme Court, by a 6-1 majority, reviewed a majority decision of its ordinary bench to the effect that in the absence of a formal counterclaim, the trial court had no jurisdiction to grant the reliefs of declaration of title and recovery of possession of a disputed property to the Defendant/Appellant/Applicant. Professor Ocran JSC, after extensive discussion of authorities on the exercise of the review jurisdiction, concluded:

> *"Upon reviewing all these precedents, I have arrived at the conclusion that the case presently before us is reviewable, because the effect of our failure to correct the majority decision handed down at the ordinary panel of this court would be to brush aside a legitimate case of exceptional circumstances that would in turn result in a miscarriage of justice. I would adopt the definition of miscarriage of justice as "prejudice to the substantial rights of a party ... if we do not grant the applicant's request for a formal declaration of title in this court but ask him to go back to the High Court to seek that relief in the circumstances of this case, we would be undercutting the importance of judicial economy and at the same time unduly increasing the cost of the citizen's access to justice."* (at pp. 40-41).

In the concurring opinion of Georgina Wood JSC (as she then was), she stated:

> *"To my mind, the grave error which has led to a failure of justice, as ably demonstrated by my learned brother Prof Ocran JSC, arises from the conclusion that, notwithstanding the licensee's open and direct challenge to his licensor's ownership of the disputed property, on the peculiar facts of the case, the applicant was not entitled to those remedies, on the sole ground that he did not lodge a formal counterclaim."* (p. 42).

His Lordship Ansah JSC, who had been part of the majority decision sought to be reviewed, had this to say:

> *"Looking at the facts and circumstances of this suit, I think substantial justice would be done the applicant more in granting the application for review than in refusing it. Consequently, I would make a volte-face from my earlier stand in the majority judgment."* (p. 43).

III. CONCLUSION

21. It is respectfully submitted that, in view of the exceptional circumstances shown in this application, in terms of this court not having taken account of a constitutional provision (Article 129(4)) nor its own binding precedents, substantial justice requires this court to make a volte-face and grant leave for the interrogatories to be served on the 1st Respondent.

Respectfully submitted.

DATED IN ACCRA THIS 25TH DAY OF JANUARY 2021.

.....

TONY LITHUR
SOLICITOR FOR PETITIONER/APPLICANT/APPLICANT
SOLICITOR'S LIC. NO. eGAR 00278/21
LAW FIRM REG. NO. ePP00047/21

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THE REGISTRAR
SUPREME COURT
ACCRA

AND COPY EACH FOR SERVICE ON THE ABOVE-NAMED RESPONDENTS OR THEIR SOLICITORS:

1. **JUSTIN AMENUVOR, AMENUVOR & ASSOCIATES, NO. 8 NII ODARTEY OSRO STREET, KUKU HILL (FRONTLINE CAPITAL ADVISORS BUILDING), OSU, ACCRA**

2. **AKOTO AMPAW, AKUFO-ADDO, PREMPEH & CO., 67 KOJO THOMPSON ROAD, ADABRAKA, ACCRA.**

EXHIBIT "REVIEW 2"

The Original Statement of Case filed on 20th January 2021, is hereby amended by the substitution of **Paragraph 28** with the following:

Paragraph 28:

"There is no reference whatsoever in Rule 69(C)(4) of C.I. 99 to amendments. It is rather Rule 68(7) and Rule 69A (6) which provide, respectively as follows:

> *68(7) 'A petitioner shall not amend a petition so as to add unto or alter the grounds of petition as stated in the filed petition.'*
>
> *69A(6) 'The respondents to the petition shall not amend an answer to the petition so as to add unto or alter the answer to the filed petition.'*

In the clear terms of these provisions, it is *not* the case that amendments ought not to be sought or granted. The provisions are limited and are very clearly qualified. In respect of the Petitioner, an amendment sought by him is prohibited only to the extent that such an amendment seeks '*to add unto or alter the grounds of petition*'. Other kinds of amendment may be sought or granted. Similarly, in respect of the Respondents, an amendment sought by any of them is prohibited only to the extent that such an amendment seeks '*to add unto or alter the answer to the filed petition*'. Other kinds of amendment may be sought or granted.

The fundamental legal errors that the ruling of my Lords contain are compounded by two factors, namely, (a) Rule 69(C)(4) of C.I. 99 has nothing to do with amendments; and (b) only amendments which seek to add unto or alter the grounds of the petition or the answer to it are disallowed, and not all amendments as my Lords held."