IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA- A.D. 2022

Suit No: J1/07/2022

JUSTICE ABDULAI PLAINTIFF/APPLICANT
GE-173-1565 Abuom Junction
Kwabenya, Accra

VRS

THE ATTORNEY-GENERAL DEFENDANT/RESPONDENT
Attorney-General's Department
Ministries, Accra.

STATEMENT OF PLAINTIFF/APPLICANT'S CASE

My Lords,

INTRODUCTION

1. This is an application invoking the review jurisdiction of this Court under **Articles 133 of the Constitution** of the Republic of Ghana; **Section 6 of the Courts Act, 1993, Act 459**; and **Rules 54(a) of the Supreme Court Rules C.I. 16**. We hereby seek a review of the judgment of the Ordinary Bench of this Court dated **9th March, 2022**; Coram: **E. Yonny Kulendi, V.J M. Dotse, N.A Amegatcher, Prof. N.A. Kotey, M. Owusu (MS), A. Lovelace-Johnson (MS), C.J Honyenuga JJSC.**

2. The Plaintiff in this matter sought interpretation and enforcement of **Articles 102 and 104(1) of the Constitution** in the Supreme Court. the Ordinary Bench of the Court gave judgment in which it basically held that:

a. The Deputy Speaker could count himself for purposes of a quorum, and is entitled to an original vote;

b. That Order 109(3) of the Standing Orders of Parliament of the Republic of Ghana is inconsistent with the 1992 Constitution;

c. That the decision of Parliament approving the Government of Ghana budget and economic policy for 2022, taken on the 30th November, 2021, with the Deputy Speaker as part of the quorum of Parliament, is valid;

d. That Ghana's position on the right of the presiding officer of Parliament to vote on a matter is in consonance with the Law or practice in the Commonwealth and Anglo-American Jurisdictions as the United Kingdom, United States, Canada, Australia, Kenya, and South Africa.

e. That the decision of parliament approving the budget and economic policy of Government on 30th November, 2021, was valid.

3. It is our humble submission that the Judgment of the Ordinary Bench is *per in curium*, and constitute exceptional circumstances that resulted in the miscarriage of Justice. We rely on the facts as deposed to in the accompanying affidavit, and the legal grounds stated in the Motion paper of this Application.

ARGUMENT

4. We hereby apply under Article 133 of the Constitution, Sections 6 of the Courts Act, 1993, (Act 459) and Rule 54(a) of the Supreme Court Rules, 1996, (C.I 16), for review of the referred Judgment. **Article 133** of the 1992 Constitution provides as follows:

(1) The Supreme Court may review any decision made or given by it on such grounds and subject to such conditions as may be prescribed by rules of court.

(2) The Supreme Court, when reviewing its decisions under this Article, shall be constituted by not less than seven Justices of the Supreme Court.

This provision is re-enacted as Section 6 of the Courts Act. The conditions for invoking your review jurisdiction are duly prescribed in rule 54 of C.I 16. **Rule 54 of C.I** provides as follows:

Rule 54—Grounds for Review.

The Court may review any decision made or given by it on the following grounds—

(a) exceptional circumstances which have resulted in miscarriage of justice;

(b) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decision was given.

5. As indicated earlier, we are relying on sub rule (a) of rule 54 in this application. Before we proceed, we must acknowledge our burden under this rule as consistently interpreted by this court. It has become trite from consistent interpretive emphasis of this court on rule 54(a), that the review jurisdiction is a special jurisdiction which is neither an avenue for a losing party to appeal the decision of the Ordinary Bench, nor to re-argue the case that was argued before the Ordinary Bench.

6. This was especially stated by the Supreme Court in ***Ellis Tamakloe v. the Republic [2011]1 SCGLR 29*** as follows:

"...The grounds on which this Court will grant an application for review have been clearly laid out in the case law. Notable in the long line of relevant cases are *Mechanical Lloyd Assembly Plant v Nartey* [1987-88]2 GLR 598; *Bisi and others v Kwayie* [1987-88]2 GLR 295; *Nasali v Addy* [1987-88]2 GLR 286; *Ababio v Mensah (No.2)* [1989-90]1 GLR 573; *Quartey v Central Services Co. Ltd.* [1996-97] SC GLR 398; *Pianim (No. 3) v Ekwam* [1996-97] SC GLR 431; *Koglex (Gh) Ltd. v Attieh* [2001-2002] SC GLR 947; and *Attorney General (No. 2) v Tsatsu Tsikata (No. 2)* [2001-2002] SC GLR 620. The principles established by these cases and others are that *the review jurisdiction of the Supreme Court is a special jurisdiction and is not intended to provide an opportunity for a further appeal. It is a jurisdiction which is to be exercised where the applicant succeeds in persuading the Court that there has been some fundamental or basic error which the Court inadvertently committed in the course of delivering its judgment and which error has resulted in a miscarriage of justice.* This ground of the review jurisdiction is currently exercised by the Court pursuant to rule 54(a) of the Supreme Court Rules 1996 (CI 16), which refers to "exceptional circumstances which have resulted in miscarriage of justice."

7. Based on the foregoing, the fine boundaries of the review jurisdiction of this court are clear, and we are fully aware of the nature of burden we are assuming in this application. However, in the same ***Ellis Tamakloe v. The Republic (supra),*** this court also stated as follows:

"it would emasculate the Review jurisdiction if too much emphasis is put on the question whether the matter has previously been argued rather than on the character of the judgment emanating from the

matter argued. If despite argument on the matter a court arrives at a decision that is so palpably unsustainable as to be describable as perverse, is that not an exceptional circumstance? One has only to consider the meaning of the word "perverse" in order to see its implications."

8. Having said the above, we would now proceed to demonstrate that, the judgment being sought to be reviewed contains errors that are so basic and fundamental as to constitute exceptional circumstances that resulted in the miscarriage of justice. Our submission on these errors is delivered under the headings as are indicated below.

A. *Failure of the Ordinary Bench to consider legislative antecedents when it held that a Deputy Speaker has an original vote in Parliament*

9. First of all, it is our humble submission that the Ordinary Bench of the Court overlooked considerations of legislative antecedents to the 1992 Constitution, including binding effects of Law, on the issue:

   Whether a Deputy Speaker, whilst presiding in Parliament, or any other person presiding in Parliament, has an original vote and can be counted as part of the quorum for determining a matter in Parliament.

10. As a result of this failure, the Ordinary Bench of the Supreme Court Held at **Page 21- 22 of the Judgment** as follows:

    That upon a true and proper interpretation of Articles 102 and 104(1) of the Constitution, 1992, a Deputy Speaker of Parliament or any other member of Parliament presiding over Parliament, in the absence of the Speaker, can vote and take part in a decision by parliament. That is to say that a Deputy Speaker or person presiding, other than the Speaker, does not lose their right to vote when they are presiding over the proceedings of Parliament

11. Under Section 10(2)(a) of the ***Interpretation Act, 2009, (Act 792),*** The Ordinary Bench ought to have considered the legislative antecedents to Articles 102, 104(1) & (2), 295(2) in particular, and to the 1992 Constitution in general in its interpretation of those provisions of the Constitution. **Section 10(2)(a) of *Act 792*** provides as follows:

A court may, where it considers the language of an enactment to be ambiguous or obscure, take cognizance of legislative antecedents of the enactment; ...

12. The oversight led the Ordinary Bench to the Primary error that the context of our Constitution does not allow a presiding Deputy Speaker to bear the Constitutional limitations of the Speaker in Article 104(2), as expressly required under Article 295(2) of the Constitution. These legislative antecedents and binding effects of law are part of the full context that ought to have been considered by the Ordinary Bench in interpreting **Articles 102, 104(1) & (2), and 295(2) of the Constitution.**

Legislative antecedents of the original vote of a Deputy Speaker of Parliament or any person (other the Speaker) presiding

13. The **original vote of a presiding Deputy Speaker or any person (other than the Speaker) presiding in our Parliament**, was expressly provided for in **Section 40 of Ghana's Constitution (Order in Council),1957**, and **Section 14 of the National Assembly Act, 1965, (Act 300)**. Both enactments expressly provided that, unlike the Speaker of Parliament who shall have neither original nor casting vote, a presiding Deputy Speaker of Parliament or any person presiding over business in Parliament shall have an original Vote.

Section 40(2)(a) of the 1957 Constitution (Order in council) provided as follows:

The Speaker shall have neither an original nor a casting vote

Section 40(2)(b) of the same enactment provided as follows:

Any other person, including the Deputy Speaker, shall when presiding in the Assembly, have an original vote but no casting vote.

After the 1957 Constitution, the original vote of a presiding person or Deputy Speaker in Parliament was retained in **Section 14 of the Parliament Act, 1965, (Act 300).**

Section 14(2) of Act 300 also provided as follows:

The Speaker shall have neither an original nor a casting vote, but any other person presiding, including a deputy Speaker shall have an original vote but no casting vote.

14. Act 300 governed the 1960 Constitution until the advent of the National Liberation Council which overthrew the government of the Convention Peoples Party (CPP) on 24th February, 1966. The 1960 Constitution of Ghana was abrogated. Act 300 however remained in force. The original vote of a Deputy Speaker or any person (other than the Speaker) presiding in Parliament as provided for in Section 14(2)(b) of Act 300, also remained.

15. Then came the Constitution (consequential and transitional) provisions Decree, 1969, (NLCD 406). By **Section 19 of NLCD 406, Section 14(2)(b) of Act 300**, which remained the only provision giving original vote to a presiding Deputy speaker or any other presiding person in parliament (other than the Speaker) was repealed along with other provisions of the Act. The rest of Act 300 was however retained and remains in force till date. Consequently, after the coming into force of

NLCD 406, the original vote for a Deputy Speaker or a person (other than the Speaker) presiding in Parliament ceased to exist. Ghana, as a sovereign country, deliberately abolished the original vote of a presiding Deputy Speaker by NLCD 406.

16. NLCD 406 was also repealed subsequently by **Section 34 of the National Redemption Council (establishment) Proclamation, 1972, (NRCD 1),** but that did not take away its repeal effect. By **Section 8(1)(a) & (b) of the then Interpretation Act, 1960, (CA 4)** which is reinforced by **Section 34(a) & (b) of the current Interpretation Act, 2009, (Act 792),** a repeal or revocation of an enactment does not affect or reverse what had been done, or revive what had been repealed by or under that enactment when it was in forced. The referred provisions are as follows:

Section 8 of CA 4—Effect of Repeal, Revocation or Cesser.

(1) The repeal or revocation of an enactment shall not—

(a) revive anything not in force or existing at the time when the repeal or revocation takes effect; or

(b) affect the previous operation of the enactment or anything duly done or suffered thereunder

Section 34 of Act 792-Effect of repeal

34. (1) Where an enactment repeals or revokes an enactment, the repeal or revocation shall not, except as in this Section otherwise provided,

(a) revive an enactment or a thing not in force or existing at the time

(b) affect the previous operation of the enactment that is repealed or revoked, or anything duly done or suffered under the enactment;

On the authority of the above provisions, it is our submission that the original vote of a Presiding Deputy Speaker or any other presiding officer in Parliament (other than the Speaker), which existed but was subsequently repealed, remained repealed by NLCD 406, although NLCD 406 itself was subsequently repealed. After the deliberate repeal of this concept from our legal system, there has been no subsequent enactment that reintroduces it in our Parliament. It is therefore nonexistent. It may only be expressly brought back by another enactment but not implied in interpretation. It is therefore our submission that, in the absence of any enactment expressly bringing back the Original vote of a presiding Deputy Speaker, it cannot be implied in any context within our legal system.

17. It is also instructive to note that although **Section 40(1) of the 1957 Constitution (order in council)** contained similar provisions as that of **Article 104(1) of the 1992 Constitution**, the framers of the 1957 Constitution still found it needful to expressly confer on a Deputy Speaker and any person (other the Speaker) an original vote. This means that the language and content of **Section 40(1) and, for that matter, Article 104(1) of the 1992 Constitution** per se does not confer that vote.

Legislative antecedents of the quorum of our Parliaments

18. On the issue of quorum, our past Constitutions and enactments have been consistent in excluding the Deputy Speaker and any person presiding from it. Even when original vote was conferred on persons presiding in Parliament by earlier enactments, such enactments in unequivocal terms excluded person presiding in Parliament. Our Constitution **(Order in council) of 1957**, though conferred original vote on a presiding Deputy Speaker, excluded him from the quorum by its **Section 39**. The said **Section 39** provided as follows:

Quorum

No business except of adjournment shall be transacted in the Assembly if objection is taken by any Member present that there are less than twenty-five members present ***besides the Speaker or Member presiding [****my emphasis****]***

This clearly means that under the 1957 Constitution, though the Deputy Speaker had an original vote whilst presiding, he was not part of the Quorum. And he was not part of Parliamentary quorum although by **Section 22 of the 1957 Constitution (Order in Council)**, he was elected from among members of the National Assembly.

19. In Act 300 which governed the 1960 Parliament of our Republic, although its Section 14 aforesaid conferred an original vote on a presiding Deputy Speaker or any other person (other than the Speaker), its Section 13 excluded the Deputy Speaker and the other presiding persons from forming part of the quorum of Parliament. **Section 13 of Act 300** provides as follows:

No business except of adjournment shall be transacted in the Assembly if objection is taken by any Member present, not being a Member presiding, that there are less than twenty-five Members present, ***excluding any member presiding*** [my emphasis]

This was the case although **Section 8 of the said Act** required that the Deputy Speaker be elected from among members of the National Assembly.

20. It is important to note here that in both the **1957 Constitution (Order in council) and Act 300,** the minimum number of members required for a quorum was the same as the members required for voting to take a decision- 25 Members. In either case, the person presiding was not counted for the purpose of a quorum. The difference between "general" quorum and that required for determining a matter by voting, was first introduced in the

1969 Constitution. The 1969 Constitution, by its Article 80 required one-third of all members of parliament for the purpose of quorum, whilst Article 82 thereof required one-half of all members for voting to take a decision. **Article 80 and 82 of the 1969 Constitution** provide as follows:

Article 80-Quorum

If objection is taken by any Member of the National Assembly Present that there are present in the Assembly, ***besides the person presiding*** *[our emphasis], less than one-third of all Members of the Assembly, and after such period as may be prescribed in the rules of Procedure of the Assembly, the person presiding ascertains that the number of Members present is still less than one-third of the number of all Members of the National Assembly, he shall thereupon adjourn the Assembly.*

Article 82-voting

No question for decision in the National Assembly shall be proposed for determination unless there are present in the Assembly not less than one-half of all Members of the Assembly, and save as otherwise provided in this Constitution, the question proposed shall be determined by the majority of the votes of Members so present and voting

21. This new difference in, and between, "general quorum" and voting requirements in our Parliament was repeated in **Articles 84 and 86 of the 1979 Constitution** and, now, **Articles 102 and 104(1) of the 1992 Constitution**. Thus far, it is clear from **Article 80 of the 1969 Constitution; Article 84 of the 1979 Constitution;** and **Article 102 of the 1992 Constitution** that a person presiding in Parliament is expressly excluded when determining the quorum of Parliament. It however appears that, the new difference between "general quorum" and voting requirements which commenced with the **1969 Constitution**, seems to weigh heavily on the minds of the Ordinary Bench in reaching the conclusion that, the Deputy

Speaker can be counted for the purpose of quorum when it comes to voting to determine a matter. This was motivated by the thinking of the Ordinary Bench that once the Deputy Speaker is a member of Parliament, he is by default entitled to an original vote, and his occasional ascension to the presiding position/status should not deprive him of that vote.

22. This, in our humble submission, is erroneous for the following reasons:

(a) In the **1957 and 1960 National Assemblies**, where a presiding Deputy Speaker and other presiding persons (other than the Speaker) were excluded from the quorum for voting, the Deputy Speaker was also a Member of Parliament. The subsequent introduction of a higher number of Members (one-half) for purposes of voting in subsequent Constitutions cannot not be construed to now include the Deputy Speaker in determining the quorum of Parliament.

(b) The original vote of the Deputy Speaker, as earlier indicated, had already been repealed by the consequential and transitional provision to the 1969 Constitution itself. The repeal, as demonstrated earlier, is still binding and has not been revived by any subsequent enactment. Therefore, the mere difference between the number of Members for quorum and that for voting as first introduced in the **1969 Constitution**, cannot by any stretch of the imagination be deemed to have revived the original vote of the presiding Deputy Speaker. In the same vein, provisions in subsequent Constitutions similar to those in the 1969 Constitution, will also not revive that original vote.

23. Our conclusion under this heading therefore is that, the Ordinary Bench failed to consider the forgoing legislative antecedents of **Articles 102 and 104(1) of the 1992 Constitution**, and if they had considered it, their decision would have been different.

Failure of the Ordinary Bench to consider Article 297(h) of the Constitution, Section 10 of the Parliament Act, 1965, (Act 300), as well as the legislative antecedents in interpreting Articles 295(2) and 104(2) of the Constitution

24. We are of the submission that the Ordinary Bench of the court failed to consider **Article 297(h) of the Constitution; Section 10 of the National Assembly Act, 1965, (Act 300)**; and the legislative antecedents of chapter ten of the Constitution when it held that the voting disqualification in Article 104(2) is specific to the Speaker and therefore does not apply generally to the person presiding over proceedings in Parliament. In this regard, the Ordinary Bench of the Court held at **Page 22** as follows:

> ***Significantly, the voting disqualification in Article 104(2) is specific to the Speaker and therefore does not apply generally to "the person presiding"-which is the formulation used in the Constitution when a provision is intended to apply to the Speaker as well as the Deputy Speaker presiding in the Speaker's absence...***

At **Page 26 of the Judgment**, the Ordinary Bench continued as follows:

> *The court is not unaware of the provisions of Article 295(2) of the Constitution... however, we wish to note that, the words* ***"unless the context otherwise requires" used in Article 295(2)*** *above are instructive. With regards to the positions of Speaker and Deputy Speaker, the two distinguished and contra distinguished by the intra Constitutional context discussed above and found in Article 95 and 96 in particular, but more generally in all chapter Chapter 10 of the Constitution.*

25. **Article 295(2) of the 1992 Constitution** seeks to give the same designation of an office holder to any other person acting in the stead or performing the functions of that office holder. In other words, it seeks to extend, not just the designation of the office holder, but also his duties,

privileges, limitations or disqualification to any other person acting in his stead or performing the functions of his office, unless the context otherwise requires. This means that by the combined effect of Articles 104(2) and 295(2) of the Constitution, the disqualification of the Speaker of Parliament to cast an original or casting vote in Parliament under Article 104(2) would also have been applicable to the Deputy Speaker any time the Deputy Speaker assumes the presiding function of the Speaker. However, the above quoted holdings of the Ordinary Bench instruct that the disqualification of the Speaker to vote in determining a matter in Parliament is, from the context of the Constitution, specific to the Speaker and should not be extended to the Deputy Speaker or any Member of Parliament even when they are presiding over proceedings in Parliament.

26. As indicated earlier, **Act 300, as saved by NLCD 406**, is still in force. **Section 10 of Act 300** is one of the provisions saved by NLCD 406 and it has tailored the general provisions and effect of **Article 295(2)** specifically to the relations between the Speaker and Deputy Speakers. It is therefore *in pari materia with* **Article 295(2) of the 1992 Constitution**. It provides as follows:

In the absence of any indication to the contrary in an enactment conferring functions on the Speaker, a Deputy Speaker shall have power, if authorized in that behalf by the Speaker or by Standing Orders, or if the office of the Speaker is vacant, to perform any of those functions which are obligatory; and references to the Speaker in an enactment shall be construed accordingly.

The above provision is not only consistent with Article 295(2) but is also consistent with **Article 297(h) of the 1992 Constitution** which provides that words applying to a public officer by his designation, also include his successors, deputies and all assistants. It provides as follows:

In this Constitution and in any other law - ...(h) words directing or empowering a public officer to do any act or thing, or otherwise applying to him by the designation of his office, include his successors in office and all his deputies and all other assistants.

All the above provisions irresistibly lead to the conclusion that the disqualification words in **Article 104(2)** for the Speaker of Parliament should also apply to Deputy Speakers. It is also clear from the above provisions that the Speaker is not ***"distinguished and contradistinguished"*** from Deputy Speakers under our Laws as held by the ordinary Bench. But does the context really require otherwise?

27. We humbly submit that the proper context referred to in **Article 295(2) of the 1992 Constitution** include legislative antecedents, other provisions outside **Chapter ten of the 1992 Constitution**, and existing Laws or effects of laws that are *in pari materia* with **Article 295(2)** of the Constitution. This is because unlike the saving clause in **Article 104(1)** and other similar Articles in the Constitution, **Article 295(2)** does not limit its context to only the Constitution. Where a saving clause of the Constitution seeks to limit its operation to only the internal context of the Constitution, the words ***"in this Constitution"*** are normally added to that saving clause. For instance, in **Article 104(1)** of the Constitution where the saving clause seeks to limit its operation to only the internal context of the Constitution, the saving clause reads as follows: *"except as otherwise provided* ***in this Constitution****"*. The saving clause in **Article 295(2)(a)** is however open. it says ***"unless the context otherwise requires"*** without the words *"in this Constitution"*. This means that the context intended in Article 295(2)(a) include provision of other enactment outside the Constitution which might be *in pari materia* with it. We therefore submit that the decision of the Ordinary Bench to limit itself to only **chapter ten** as the context in construing **Article 295(2)(a)** is erroneous and consequently deprived it of the true intention of the Constitution's framers.

28. As earlier pointed out, the existing laws that are in *pari materia* with **Article 295(2) of the Constitution** are **Section 10 of Act 300**, and **NLCD 406** whose operational effect is still binding, though repealed. As stated earlier, **Section 19 of NLCD 406** has expressly repealed the original voting "right" of a Deputy Speaker or any person (other than the Speaker) presiding in Parliament. That repeal is still binding. In such a context, the expressly repealed "right" cannot be implied in other enactments. It requires an express provision of subsequent enactment to revive it. In the absence of such an enactment, the proper context of Articles 295(2) includes the repeal of the original voting "right" of Deputy Speakers and other persons who preside in Parliament. In proper regard to such a context, it would be obvious that **Articles 295(2)(a), 297(h) and Section 10 of Act 300** do not require otherwise than the extension of the Speaker's disqualifications under **Article 104(2)** to Deputy Speakers when they are presiding in Parliament. It is our submission that, if the Ordinary Bench had considered the above referred broader context as required by **Section 10(2)(a) of the *Interpretation Act*,** it would not have come to the decision that a Deputy Speaker of Parliament is so distinguished from the Speaker as to escape the limitations and disqualifications of the Speaker even when he is performing the functions or acting in the stead of the Speaker.

Failure of the Ordinary Bench to consider the saving clause in Article 104(1) when interpreting Articles 102 and 104(1) of the Constitution

29. We submit that the Ordinary Bench in construing **Article 104(1)** failed to consider the saving words ***"except as otherwise provided"*** which led it to the erroneous conclusion that there is no express disqualification of a presiding Deputy Speaker of parliament from being counted in determining a quorum of Parliament or casting an original vote. This failure is evident in the Court's meticulous consideration of the saving or exception clause in **Article 295(2).** The express and particular reference by the Ordinary Bench to the words ***"unless the context otherwise requires"*** in **Article 295(2)**, and pronouncing their legal effect in the context, albeit wrongly, without

doing same to the words ***"except as otherwise provided in this Constitution"*** as contained in **Article 104(1),** reveals that they failed to consider that saving clause in Article 104(1). This failure led them to the decision that the only voting disqualification for a Deputy Speaker of Parliament who is presiding, is that applicable to all members of Parliament (**Article 104(5)).**

30. As my Lords are already aware, and have demonstrated in the construction of **Article 295(2) of the Constitution**, a saving clause is a basic concept in the law of interpretation and an essential tool for keeping the internal harmony of a legal text. Its purpose is to limit the effect of the provision it precedes, so as to preserve earlier or other provisions on matters that are similar to the ones being provided for in that provision. The provision in which it appears, is therefore subservient to any other provision(s) in the law dealing with similar matters. This means that where there is conflict between the other provisions in the Constitution and the one preceded by the saving clause, the other provisions would prevail. In the case at hand, it is not in doubt that Articles in the Constitution other than **Article 104(1)** have already made provisions for quorum in terms of minimum number of members required for specified decisions, as well as persons who are not qualified to be counted as part of that quorum. The words of **Article 104(1)** therefore commence with the words ***"except as otherwise provided in this Constitution"*** to save those other provisions in the Constitution which apparently conflict with the provision of Article 104(1) in some material particular, and to give the assurance that such provisions have not been compromised or neutralized by the content of Article 104(1).

31. Some of the matters that conflict with the content of **Article 104(1)** and meant to be saved are: matters of **Article 31** on approval, extension, abridgment, or revocation of a state of emergency that requires votes of more than half of all members of Parliament; matters on removal of the President in **Article 69(1)** that requires two-third or more of all the members of Parliament; ratification of treaties, agreements or conventions

under **Article 75(2)** that requires votes of more than half of the members of Parliament; censure on a Minister of state under **Article 82(1)** which requires two-third of all members of Parliament; exempting ratification of mineral concession under **Article 268** which requires votes of two-third of all Members of Parliament; and, of course, exclusion of presiding persons from a quorum as provided for in **Article 102**, etc. What is more interesting about **Article 102** is that, its exclusion of presiding members of Parliament from quorum is not met with any contrary provision in **Article 104(1),** and may not even need be saved by reference to the saving clause in **Article 104(1).**

32. Applying the saving clause in **Article 104(1)** specifically to **Article 102 of the Constitution**, **Article 104(1)** may be read as follows:

> ***"Except as otherwise provided in Article 102 of this Constitution, matters in Parliament shall be determined by majority of the members of Parliament present and voting, with at least half of all the members of Parliament present."***

With the above reading, one would still find the words ***"apart from the person presiding"*** inconspicuously present in **Article 104(1).** They are imported there by the saving clause in Article 104(1) of the Constitution. It would consequently mean that the one-half quorum provided in Article 104(1) and the majority thereof whose votes determine a matter, are still without the person presiding as part of the quorum. Accordingly, we submit that, it is not correct to say that the words ***"apart from the person presiding"*** as present in **Article 102**, are absent in **Article 104(1)** of the Constitution. This renders the ***expressio unius*** principle applied by the Ordinary Bench in the interpretation of **Articles 102 and 104(1) of the Constitution** unnecessary.

33. The failure of the Supreme Court to recognize and consider this saving clause in **Article 104 (1)** also deprived them of the framers' intention and

rendered their conclusion erroneous. Accordingly, the decision of the Supreme Court that the Deputy Speaker, whilst presiding, counts for the purpose of a quorum is a grave error of law.

Failure of the Ordinary Bench to consider Article 298 of the Constitution- wrong assumption of jurisdiction

34. The Ordinary Bench of the Court stated that there is no express disqualification of a Deputy Speaker from voting or counting himself part of a quorum of Parliament whilst presiding. There is equally no provision in the Constitution, expressly conferring original vote on a Deputy Speaker who is presiding in the absence of the Speaker. The question therefore is whether the original vote of the Deputy Speaker or his participation in a quorum can be gleaned from the Constitution by Necessary implication. We have already, demonstrated that, from the legislative antecedents of the Constitutional provisions, an original vote for a Deputy Speaker cannot be implied either necessarily or otherwise from the Constitution. In such a situation we submit that there is a *casus omissus* (a lacuna) on those issues within the Constitution. The Constitution has not expressly or by necessary implication provide for such issues. Therefore, the decision of the Ordinary Bench that the Deputy Speakers and other Members of Parliament may vote and participate in a quorum of Parliament whilst presiding is an attempt to fill in a Constitutional gap.

35. It is true that this is not the first time this court is filling in a Constitutional lacuna. In ***Agyei-Twum v A-G & Akwetey [2005-2006] SCGLR 732***, this court introduced words into the Constitution to the effect that a committee of inquiry should always be constituted to investigate allegations for removal of a Chief Justice although words to that effect were not provided in the Constitution expressly or by necessary implication. Also, in ***Hon. Appiah Ofori v. Attorney-General [2010]2 GLR 294*** the retiring age of an Auditor-General was read into the Constitution although there was neither express provision nor necessary implication of it from the Constitution. It is however

our submission that this endeavor of the Supreme Court is in excess of its Jurisdiction and must be departed from. Article 298 of the 1992 Constitution has expressly conferred the jurisdiction to fill in Constitutional gaps, on Parliament. **Article 298** provides as follows:

Article 298:

Subject to the provisions of Chapter 25 of this Constitution, where on any matter, whether arising out of this Constitution or otherwise, there is no provision, express or by necessary implication of this Constitution which deals with the matter, that has arisen, Parliament shall, by an Act of Parliament, not being inconsistent with any provision of this Constitution, provide for that matter to be dealt with.

From the above provision, it is clear that the jurisdiction to fill in a lacuna in the Constitution, is for Parliament. It is also clear that the struck down **Order 109(3) of the Standing Orders of Parliament**, which actually provided for what is not in the Constitution, was rather consistent with the 1992 Constitution and ought not to have been struck down. Especially that, it is evident from **Page 36 Para 54** of the ***Committee of Experts Report on Proposal for a draft Constitution of Ghana (July 31, 1991)*** that the President was removed as a constituent part of Parliament in deference to the principle of separation of Powers.

36. We submit that the Supreme Court filled in Constitutional gaps in the above cases, without consideration of **Article 298**. Their oversight of Article 298 led them to consideration of Australian, Canadian, and United States of American cases which, according to them, upheld rights before their adoption in bills of rights or Constitutions as the case may be. We must admit that this jurisdiction of the Courts may be exercised where there is no express Constitutional provision conferring the jurisdiction on a different institution. In Ghana, Article 298 is unambiguous in its words. It confers that jurisdiction on Parliament, and the earlier exercise of jurisdiction by this

Court to fill in Constitutional gaps is *per in curium* Article 298. In the same vein, the Ordinary Bench of this court's decision to reintroduce the repealed original vote of the Deputy Speaker, and introduce afresh, his participation in quorum of Parliament by interpretation is *per in curium* Article 298 of the Constitution and ought to be reviewed.

37. In ***Okudzeto Ablakwa (No.2) & Anor v. the Attorney-General & Obetsebi-Lamptey [2012] 2 SCGLR*** 845, where, **Article 287(1)** empowered CHRAJ to, among others, investigate complaints of conflict of interest, the Supreme Court interpreted Article 287(1) to mean that the Supreme Court lacks jurisdiction to **investigate** complaints relating to contraventions of Article 284. At **Page 868-869** of the report **Brobbey JSC,** delivering the lead judgment of the court stated as follows:

The issue of conflict of interest raised here can easily be resolved by recourse to Article 287 of the 1992 Constitution. Article 287 mandates that complaints under Chapter 24 of the 1992 Constitution are to be investigated exclusively by the Commission for Human Rights and Administrative Justice... Since specific remedy has been provided for ***investigating*** *complaints of conflict of interest, the plaintiffs were clearly in the wrong forum* ***when they applied to this court to investigate complaints relating to conflict of interest involving those public officers.*** **[my emphasis]**

In the same vein, the Supreme Court ought to have declined jurisdiction over filling in Constitutional gaps, in the light of **Article 298 of the Constitution**. To the extent that the ordinary Bench assumed such a jurisdiction, its decision is per *in curium* Article 298 and therefore ought to be reviewed.

Conclusion

My Lords, **Article 34 of the 1992 Constitution** states in the Directive Principles that in applying, enforcing, implementing and or interpreting the constitution, citizens, Parliament, the President, the Judiciary, the Council

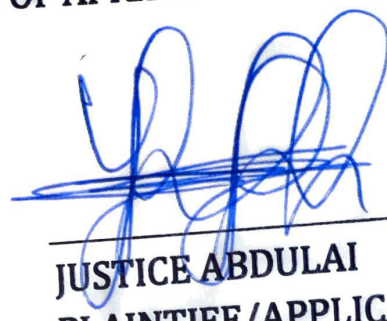
of State, the Cabinet, Political Parties and other bodies and persons are to be guided by the values and principles of the constitution.

My Lords, I humbly submit that as part of the overriding constitutional principles and values of the 1992 Constitution, fairness, equity, justice, the rule of law among other internationally recognised constitutional values are important consideration for the growth and development are imperative to achieve a just society. To this end, I believe and submit that any interpretation and or enforcement of the Constitution that does not attain these values and principles will not inure to the benefit of the Ghanaian society and their Constitutional democracy. Thus any interpretation and enforcement should, in my mind, achieve these overriding principles and values.

In conclusion, we submit that giving the obscure nature of a presiding Deputy Speaker's vote and participation in the quorum of Parliament within the 1992 Constitution, the 1992 Constitution as a whole, the legislative antecedents of its **Articles 102, 104 (1) & (2), 295(2)(a) as borne out in the 1957, 1960, 1969, and 1979 Constitutions**, as well other enactments *in pari materia* as **Act 300** and **NLCD 406**, should have all been considered by the Ordinary Bench in searching for the true intention of the framers of the 1992 Constitution. This would have revealed to the Ordinary Bench of the Court that the original vote of a Deputy Speaker once existed in our Parliament but was repealed by NLCD 406 and never returned. It would have also revealed to them that none of our past Constitutions or enactments ever allowed a Deputy Speaker or a person presiding in Parliament to participate in the quorum of Parliament. The failure of the Ordinary Bench to consider the above broader context in interpreting the Constitution, they arrived at a decision that is inconsistent with the intention of the Framers of the 1992 Constitution. This constitutes exceptional circumstance that occasions miscarriage of justice. The judgment therefore ought to be reviewed.

We humbly submit.

DATED AT ACCRA THIS 7TH DAY OF APRIL 2022



JUSTICE ABDULAI
PLAINTIFF/APPLICANT