

IN THE SUPREME COURT OF JUSTICE
ACCRA - A. D. 2021

Filed on 22-01-2021
at 1:00 am/pm
Registrar
SUPREME COURT OF GHANA

Suit No. J1/5/2021

ARTICLE 64 OF THE 1992 CONSTITUTION AND SUPREME COURT
RULES, 1996 (C.1. 16) (AS AMENDED BY C.I. 74 AND C.I. 99)

AMENDED PRESIDENTIAL ELECTION PETITION

PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER, 2020.

The Petition of:

JOHN DRAMANI MAHAMA
No. 33 Chain Homes
Airport Valley Drive
Accra GL-128-5622

PETITIONER

AND

ELECTORAL COMMISSION OF GHANA
8TH AVENUE, RIDGE – ACCRA

RESPONDENTS

NANA ADDO DANKWA AKUFO-ADDO
House No. 02 Onyaa Crescent
Nima - Accra

PRELIMINARY LEGAL OBJECTION

My Lords,

1. It is our humble submission that the Petition herein has not disclosed any reasonable cause of action.
2. It is our further submission that the facts alleged in the Petition are not enough to support the reliefs claimed by the Petitioner. The Petitioner prays this Honourable Court for the following reliefs;

- a. A declaration that Mrs. Jean Adukwei Mensah, Chairperson of the 1st Respondent (sic) and the Returning Officer for the Presidential Elections held on 7th December, 2020 was in breach of Article 63(3) of the 1992 Constitution in the declaration she made on 9th December, 2020 in respect of the Presidential Election held on 7th December, 2020
- b. A declaration that, based on the data contained in the declaration made by Mrs. Jean Adukwei Mensa, Chairperson of the 1st Respondent (sic) and the Returning Officer for the Presidential Elections held on 7th December, 2020 no candidate satisfied the requirement of Article 63(3) of the 1992 Constitution to be declared President elect.
- c. A declaration that the purported declaration made on 9th December, 2020 of the results of the Presidential Election by Mrs. Jean Adukwei Mensa, Chairperson of the 1st Respondent (sic) and the Returning Officer for the Presidential Elections held on 7th December, 2020 is unconstitutional, null and void and of no effect.
- d. An order annulling the Declaration of President-Elect Instrument, 2020 (C.I. 135) dated 9th December, 2020, issued under the hand of Mrs. Jean Adukwei Mensa, Chairperson of the 1st Respondent (sic) and the Returning Officer for the Presidential Elections held on 7th December, 2020 and gazetted on 10th December, 2020.
- e. An order of injunction restraining the 2nd Respondent (sic) from holding himself out as President-Elect;

- f. An order of mandatory injunction directing the 1st Respondent to proceed to conduct a second election with the Petitioner and 1st Respondent (sic) as the candidates as required under Articles 63(4) and (5) of the 1992 Constitution.
3. The Petitioner concludes in paragraph 16 of his Petition that the 2nd Respondent obtained only 49.625% of the valid votes cast and invites this court to vary the declaration of results made by the 1st Respondent on 9th December, 2020. Paragraph 16 of the Petition is the foundation of the other reliefs.
4. My Lords, it is our submission that all that is required at this stage of the process is for the Petitioner to allege facts, which when finally proven, will entitle him to his reliefs. The Petitioner must make a claim deserving of a trial otherwise the pleading needs to be struck out and the Petition dismissed as disclosing no cause of action.
5. My Lords it is a cardinal principle of law that for a person to institute an action he or she must have a cause of action which must accrue at the time of the institution of the action.
6. In the case of Spokesman (Publications) Ltd. v. Attorney-General [1974] 1 GLR 88-93 Court of Appeal (Full Bench), the court explained the expression “a cause of action” at page 89 of the report as follows:
- “A party had a cause of action when he was able to allege all the facts or combination of facts necessary to establish his right to sue.” (see also dictum of Diplock L.J. in Letang v. Cooper [1965] 1 Q.B. 232 at pp. 242-243, C.A.).
7. My Lords, this definition of “cause of action” is further expanded in the case of Letang v Cooper [1956] 1 Q.B. 232 at pp. 242 – 243, C.A. per Lord Diplock as a “factual situation the existence of which

entitles one person to obtain from the court a remedy against another.” Lord Diplock’s definition remains good and has been adopted and applied by this court in cases like *Amidu v. Kufuor & Ors* [2001-2002] 2 GLR 510 and *Harley v. Ejura Farms (Ghana) Limited* [1977] 2GLR 179.

8. My Lords, the Petitioner’s case, by his own showing, is founded on two assumptions. Two extreme speculations which must both exist to sustain the claim that the 2nd Respondent obtained only 49.625% (not more than 50%) of the Valid Votes. These wrong assumptions are set out as follows:

a. Hold unto the wrong figure mentioned as the Valid Votes (13,434,574) even though the right figure is known. See Paragraph 12 of the Petition and Paragraph 20 of the Answer which admits the fact.

b. Assign all the Techiman South votes to the Petitioner even though the actual results were known at the time of filing the Petition. Again, on the Petitioner’s own showing, at the time of filing the Petition, he knew the number of the Valid Votes he had obtained in the Techiman South Constituency.

9. These are the Petitioner’s imaginary facts on which this whole action is built. .

10. My Lords, the Petitioner in Paragraph 12 of his own Petition averred that the total number of votes obtained by all the Candidates as declared by the 1st Respondent on 9th December, 2020 was

13,121,111 rather than the 13,434,574 announced. The 1st Respondent admits this fact in its Answer.

11. My Lords, on the Petitioner's own showing and pleading it is so obvious that the 13,434,574 inadvertently announced as the Total Valid Votes is an error. The 2nd Respondent obtained 6,730,413 representing more than 50% of the 13,121,111 Valid Votes i.e., 51.295%.
12. The Petitioner's in his Petition maintains that this Honourable Court should hold that the wrong figure i.e., 13,434,574 is the Valid Votes. My Lords assuming without admitting that the wrong total Valid Votes figure of 13,434,574 (the total votes – not the total valid votes), is the *Valid Votes*, the Petitioner's calculations in Paragraph 8 of his own Petition puts the 2nd Respondent above 50% i.e., 50.098%. This figure too does not sustain the Petition.
13. My Lords, it is our submission that the Petitioner needs more than the wrong Total Valid Votes figure to sustain his action; he also needs this Honourable Court to assign all the 128,018 registered voters of Techiman South Constituency to him. It is only then that the imaginary scenario he has created in Paragraph 16 of his Petition becomes possible in which case the 2nd Respondent obtained 49.625% of the wrong Valid Votes.
14. My Lords, these two assumptions underlying the Petition are non-existent and the Petitioner has demonstrated that in his own pleading. The Petitioner correctly states the Total Valid Votes in paragraph 12 of his Petition and the Petitioner also knew at the time

of filing the Petition the total Valid Votes he had obtained in the Techiman South Constituency.

15. My Lords, the **Total Valid Votes** obtained by all the Candidates is obvious from the votes declared and correctly calculated by the Petitioner himself in Paragraph 12 of his Petition. The Techiman South Constituency Results are known by the Petitioner and the self-same Petitioner attached the Summary Sheet thereof to his Petition as part of Exhibit "E". Indeed in the Techiman South Constituency the Petitioner obtained 52,034 of the valid votes and the 2nd Respondent obtained 46,379 of the valid votes.

16. Again, my Lords, from his own pleadings, even if the wrong Total Valid Votes figure of 13,434,574 is kept and the actual Techiman South Constituency votes are added to the votes obtained by each Candidate, the 2nd Respondent still obtains more than 50% of the Valid Votes i.e., $6,776,792 / 13,534,010 * 100 = 50.07\%$. This clearly shows that even on his own version of facts he did not have a cause of action at the time this action was instituted.

17. My Lords, this court in *Republic v High Court, Sunyani, Ex Parte Collins Dauda (Boakye-Boateng Interested Party)* [2009] SCGLR 447 held as follows:

"...a party, before suing, must satisfy himself or herself that he or she has a cause of action at the time of the institution of the suit."

18. Finally, my Lords if the Techiman South Constituency actual result is added to the correct number of Valid Votes, 13,121,111, (as at the date of the declaration) the 2nd Respondent then obtains $6,776,792 / 13,220,547 * 100 = 51.260\%$.

19. My Lords, these submissions are based on a review of the Petitioner's own Petition as amended and filed in this Honourable Court. *Cadit quaestio!*
20. The Petitioner alleged vote padding in paragraphs 31 and 32 of his petition but drew no conclusion on how exactly the said allegation affected the outcome of the election he seeks to challenge. In addition to drawing no conclusion from these two paragraphs which specifically allege vote padding, the Petitioner claims no substantive reliefs based on the alleged vote padding.
21. My Lords, it is for the above reasons that we invite this Honourable Court to dismiss the Petition. We further submit that the facts as pleaded does not disclose a reasonable cause of action.
22. The Petition does not merit a trial and it is a total waste of the Court's time.
23. Respectfully submitted.

DATED AT #8 NII ODARTEY OSRO STREET KUUKU HILL
(FRONTLINE CAPITAL ADVISORS BUILDING), OSU - ACCRA,
THIS 22ND DAY OF JANUARY, 2021.



JUSTIN AMENUVOR #eGAR 01459/21
AMENUVOR AND ASSOCIATES
LAWYERS FOR THE ELECTORAL
COMMISSION OF GHANA

THE REGISTRAR
SUPREME COURT
ACCRA



AND FOR SERVICE ON THE PETITIONER OR HIS LAWYER, TONY LITHUR ESQ., LITHUR BREW & COMPANY NO. 110B 1ST KADE CLOSE KANDA ESTATES, ACCRA

AND FOR SERVICE ON NANA ADDO DANKWA AKUFO-ADDO OR HIS LAWYER AKOTO AMPAW ESQ., AKUFO-ADDO, PREMPEH & CO., 67 KOJO THOMPSON ROAD, ADABRAKA – ACCRA.

LIST OF AUTHORITIES RELIED ON:

1. The Constitution
2. Public Election Regulations, 2020 (C.I. 127)
3. *Amidu v. Kufuor & Ors* [2001-2002] 2 GLR 510
4. *Harlley v Ejura Farms (Ghana) Limited* [1977] 2GLR 179.
5. *Republic v High Court, Sunyani, Ex Parte Collins Dauda (Boakye-Boateng Interested Party)* [2009] SCGLR 447
6. *Letang v. Cooper* [1965] 1 Q.B. 232 at pp. 242-243, C.A.).
7. *Spokesman (Publications) Ltd. v. Attorney-General* [1974] 1 GLR 88