IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (GENERAL JURISDICTION COURT 7) HELD IN ACCRA ON THURSDAY THE 22ND DAY OF JULY, 2021 BEFORE HER LADYSHIP REBECCA SITTIE (MRS)

SUIT NO. HR 0064/2020

SUIT NO. GJ 0855/2020

IN THE MATTER OF AN APPLICATION UNDER ARTICLE 33 OF THE CONSTITUTION, 1992

AND

ORDER 67 OF THE HIGH COURT (CIVIL PROCEDURE) RULES, 2004, (CI 47)

AND

THE INHERENT JURISDICTION OF THE HIGH COURT

BETWEEN

FRANCIS KWARTENG ARTHUR .... APPLICANT

VS

1. **GHANA TELECOMMUNICATIONS COMPANY LIMITED**
2. **SCANCOM PLC (MTN GHANA)**
3. **KELNI GVG LIMITED**
4. **NATIONAL COMMUNICATION AUTHORITY**
5. **THE ATTORNEY GENERAL .... RESPONDENTS**

RULING

The Applicant, Francis Kwarteng Arthur, a Barrister and Solicitor of the Supreme Court of Ghana filed a Motion on Notice on 6th April, 2020 for an Order of Interlocutory Injunction and on the 30th July, 2020 by an Amended Originating Motion with leave of the Court dated 23rd July, 2020 under Order 67 of CI 47 and the inherent jurisdiction of the High Court, prayed for the following reliefs:

a. A declaration

i. That by procuring or causing the 3rd Respondent, the 4th Respondent or another person to procure the Applicant's personal information from the 1st Respondent or the 2nd Respondent without following laid down law or procedure or without the Applicant's consent, the President and the Government have violated, are violating or are likely to violate the Applicants fundamental human rights to administrative justice, to privacy or to equality or non-discrimination:

ii. That by implementing or intending to implement the President's directive in E.I 63 to procure the Applicants' personal information from the 1st Respondent or the 2nd Respondent, 3rd Respondent or the 4th Respondent have violated, are violating or are likely to violate the Applicant's fundamental human rights to administrative justice, to privacy or to equality or non-discrimination; and

iii. That by relying or intending to rely on E.I 63 to make the Application's personal information in their possession available to the President, the Government, the 2nd Respondent, the 3rd Respondent or any other person for that matter, the 1st Respondent and the 2nd Respondent have violated, are violating or are likely to violate the Applicant's fundamental human rights to administrative justice, to privacy or to equality or non-discrimination.

b. Make an order of certiorari to quash the President's directives in E.I 63 to the extent that they have violated, are violating or are likely to violate my fundamental human rights and freedoms.

c. Make an order of injunction to restrain:

i. The President, the Government, the 3rd Respondent and the 4th Respondent or their Agents, Assigns or Workmen, howsoever described or named, from relying on E.I 63 to procure the Applicant's personal information from the 1st Respondent; and

ii. The 1st Respondent and the 2nd Respondent, their Agents, Assigns or Workmen, howsoever described or named, from relying on E.I 63 to make the Applicant's personal

information in their possession available to the President, the Government, the 3rd Respondent, the 4th Respondent or their Agents, Assigns or Workmen, howsoever described or named, or to a Third Party: and

d. Provide any other remedies that the Honourable Court may deem fit for the greater good of the Ghanaian society as a whole.

Applicant deposed in his affidavit that he is a network subscriber to 1st Respondent's Network with Mobile Number 0208131971 as well as 2nd Respondent, with Mobile Number 0540100813 both of whom are Limited Liability Companies incorporated and licensed under the Laws of Ghana to provide telecommunication services to the Public. Applicant says 3rd Respondent is a Limited Liability Company incorporated among other businesses to carry on information, communication technology and other related services. The 4th Respondent is the statutory body established to generally regulate the provision of communication services in Ghana particularly to enforce the Electronic Communication Act, 2008 (Act 775) among others.

Applicant says the 5th Respondent is the Principal Legal Advisor to the President and the Government and the person against whom all suits against the President or the Government may be brought.

Applicant's case is that on 23rd March, 2020, the President purporting to exercise his powers under Act 775, did make an Executive Instrument – Establishment of Emergency Communications System Instrument, 2020, (E.I 63) – to, either directly or through the 3rd Respondent, the 4th Respondent or another person, request or direct all Communication Network Operators or Service Providers (including the 1st Respondent and the 2nd Respondent) to cooperate with or to make available to the President certain personal information of Communication Network Subscribers (including the Applicant) which are in the possession of such Communications Network Operators.

Applicant says that on or about March 27, 2020, the 3rd Respondent, a private entity, acting on behalf or purporting to act on behalf of the President or the 4th Respondent, did write to all Communication Network Operators or Service Providers (including the 1st Respondent and the 2nd Respondent) directing or requesting them, ostensibly pursuant to the said E.I. 63, to put his

personal information and the personal information of other Communication Network Subscribers at their disposal, which personal information includes (but not limited to):

a. A dump of subscriber database;

b. The Subscriber cell reference data;

c. The unhashed subscriber mobile money transfer data; and

d. A dump Mobile Money Merchant codes and addresses.

Applicant deposed that on the advice of his Counsel which he believes to be true that his personal information which is in possession of the 1st Respondent and the 2nd Respondent is protected by the Constitution and may not be given out by the 1st Respondent or the 2nd Respondent to a Third Party (including the President, the Government or their Agents) without recourse to law or laid down procedure or without my express permission or consent.

Further on the advice of Applicant's Counsel which he believes to be true the President's directive per E.I 63 and their implementation by the Respondents have violated, are violating or are likely to violate his fundamental human rights to:

a. Administrative justice,

b. Privacy; and

c. Equality or non-discrimination.

It is Applicant's case that unless the Respondents are prohibited, restrained or otherwise ordered by this Court to desist or discontinue, the Respondents will violate or continue to violate the above-named rights in respect of him.

Applicant therefore prays the Court in the exercise of its jurisdiction make a declaration of the reliefs stated above.

i. That by procuring or causing the 3rd Respondent, the 4th Respondent or another person to procure my personal information from the 1st Respondent and the 2nd Respondent without

following laid down law or procedure or without my consent, the President and the Government have violated, are violating or are likely to violate my fundamental human rights to administrative justice, to privacy or to equality or non-discrimination;

ii. That by implementing or intending to implement the President's directive in E.I 63 to procure my personal information from the 1st Respondent or the 2nd Respondent have violated, are violating or are likely to violate my fundamental human rights to administrative justice, to privacy or to equality or non-discrimination.

b. Make an Order of Certiorari to quash the President's directives in E.I 63 to the extent that they have violated, are violating or are likely to violate my fundamental human rights and freedoms.

c. Make an order of perpetual in junction to restrain:

i. The President, the Government, the 3rd Respondent and the 4th Respondent or their Agents, Assigns or Workmen, howsoever described or named, from relying on E.I 63 to procure my personal information from the 1st Respondent and the 2nd Respondent; and

ii. The 1st Respondent or the 2nd Respondent, their Agents Assigns or Workmen, howsoever described or named, from relying on E.I 63 to make my personal information in their possession available to the President, the Government, the 3rd Respondent, the 4th Respondent or their Agents, Assigns or Workmen, howsoever described or named, or to a Third Party; and

d. Provide any other remedies that the Honourable Court may deem fit for the greater good of the Ghanaian society as a whole.

The application for interlocutory injunction was dismissed on 23rd May, 2020.

The Applicant's Counsel in his written address says that Applicant as a subscriber to services provided by 1st and 2nd Respondents directly gave some particulars of Applicant's personal information including his Name, Date of Birth, Address, Bank Account details, occupation among others to them. Applicants says by using 1st and 2nd Respondent services they have acquired and continue to acquire other particulars of Applicant's personal information.

Counsel stated some of the particulars as Applicant's cash flow and other financial information, Applicant's health, real time information on Applicant's physical movement and location, the contents of Applicant's private calls and messages and other correspondences, information on Applicant's home and property, the personal information on Applicant's family, friends, colleagues and business associates. The relevant portions of the detailed arguments submitted by Applicant setting forth the manner in which his rights have been affected by the directives of His Excellency the President and his Agents are reproduced for its full impact and effect as follows:

Counsel argues that the sole purpose for which 1st and 2nd Respondents acquired and continue to acquire and store all these particulars are for the provision of telecommunication services and nothing more.

Counsel states that on the 23rd March, 2020, His Excellency the President made several directives to Respondents to enable and assist him to procure some particulars of the Applicant's personal information from 1st and 2nd Respondents. These directives are contained in the Executive Instrument, Electronic Communication Act Emergency Communication Systems Instrument, 2020 by the (E.I 63 purportedly derived from his powers under the Electronic Communications Act, 2008 (Act 775). These particulars were required by His Excellency the President for the purposes of fighting or containing the Covid-19 pandemic as stated in the 3rd paragraph of the preamble of E.I 63. It is Applicant's case that even though the Covid-19 disease is a pandemic no other country in the whole world has made such a sweeping intrusion into the privacy of its citizens or residents using indiscriminate extraction of telecommunication data.

Subsequent to E.I 63, 3rd and 4th Respondents have in various communications to 1st and 2nd Respondents required them to make Applicant's personal information available to them. This can be clearly seen from 4th Respondent's affidavit in opposition and Exhibit 'NCA1' filed on 18th June, 2020 and 2nd Respondent's affidavit in opposition with Exhibit 'M2' filed on 20th May 2020. Counsel stated that the **information sought and obtained from 1st and 2nd Respondents included unhashed (fully disclosed) mobile money transfer data and dump Mobile Money Merchant Codes, Subscriber's Address, Time of Calls, Text and Call Content as well as other personal information and Bank details among others.**

Applicant says he is alarmed and disagrees vehemently with His Excellency the President's claim that he followed the law and due process in requesting or causing a request to be made for the body of personal information belonging to the Applicant and over 10 million subscribers of telecommunication services. The Applicant believes that even though His Excellency the President has power to procure Applicant's personal information under appropriate circumstances taking into account the appropriate factors, the manner in which His Excellency the President has procured and is still procuring the information at this particular time does in a blatant manner breach the law and consequently violate Applicant's right to administrative justice, to privacy and equality. Hence this action.

Applicant's Legal Argument are divided into two. The first part deals with the Violation of Applicant's Right to Privacy and the second on his claim to administrative justice. Applicant states the right to equality and non-discrimination are derivatives of two rights and therefore does not argue the right to equality and non-discrimination.

Let me say here and now that there is nothing in E. I. 63 either expressly or implied that Applicant's right to equality and non-discrimination has been interfered with. The information required is as follows: "A network operator or service provider shall make available the following: **all caller and called numbers;** Merchant Codes; Mobile Station International Subscriber Directory Number Codes; and International Mobile Equipment Identity Codes and site location. A Network Operator or Service Provider shall ensure that all roaming files are made available to the National Communications Authority Common Platform; and location log files are provided to the National Communications Authority Common Platform to facilitate location-based tracking." (Emphasis mine). So that all registered mobile phone users are affected; not only Applicant. I find that Applicant's right to equality and non-discrimination has not been interfered with.

Applicant contends that by releasing or collecting Applicant's personal information in the manner the Respondents did they have violated and are violating or likely to violate the Applicant's right to privacy. The relevant portions of the detailed arguments submitted by Applicant setting forth the manner in which his rights have been affected by the directives of His Excellency the President and his Agents are reproduced for its full impact and effect as follows:

A. That the right to Privacy is subject to limitation

10. The Constitution protects the right of every person's right to privacy. See of **Cubage v Yeboah** (2017) and **Addo v Attorney General & Inspector General of Police** (2017). This includes the Applicant's right to privacy in his personal information which he has left in the possession of the 1st and 2nd Respondents. Particularly Article 18(2) of the 1992 Constitution which provides that:

> "No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others."

The first import of Article 18(2) is that the Applicant's right to privacy is not absolute. The second import of Article 18(2) is that personal information that the Applicant has left in the possession of 1st and 2nd Respondents may be disclosed to a Third Party (including the Excellency the President or his Officials or Agents) but only under a limited set of conditions. The first condition is where the Applicant himself consents or otherwise gives permission for the information to be released to a Third Party. This condition does not arise in this case; the Applicant has not (and the 1st and 2nd Respondent are not claiming that the Applicant has) granted them permission to release the said personal information. The second condition is where even without the consent of the Applicant, the personal information may be released to a Third Party "in accordance with law". This second condition seems to be the applicable condition in this case not least because the Respondents have cited a law - Act 775 - as the basis for their conduct.

11. Consequently, where (as here) the information may be released "in accordance with law", three further conditions need to be satisfied in order that the limitations that is placed on the right does not render the rights in question meaningless. This is known as the "permissible limitation test" or the "Oakes test". See **Ahumah Ocansey v Electoral Commission, Centre for Human Rights and Civil Liberties (CHURCIL) v Attorney General [2010] SCGLR 575** where the Supreme Court adopted, developed and applied the Oaks Test. The three-way test measures (1) legality; (2) legitimacy, and (3)

proportionality. First, the processes or procedure for the release must be pre-determined by law and complied with strictly. Secondly, the purpose for which the law allows the information to be released must be legitimate in a democracy. And third, that the measures that are adopted for achieving the purpose must be proportionate to ends to be achieved.

It must be noted from the outset that all (not some) of the three tests must be satisfied in order to pass the limitation test. In other words, a failure to follow what for the time being is the law will amount to a breach of Article 18. Similarly, if the law is followed but the purpose for which the right to privacy is suspended falls short of the legitimate purposes that the Constitution allows, Article 18 will still be breached.

Finally, where the measures for releasing the personal information is disproportionate to the intended aim, the right to privacy is still breached (notwithstanding that the law was followed and the purpose legitimate). In short the suspension of the right by law as well as the purpose for the suspension must coincide with the Oaks Test, and consequently, the Constitution's requirement.

B. That the collection or release of the Applicant's personal information was illegal

As indicated the right to privacy is not absolute. It is subject to the condition of legality. Within this context, legality means the Applicant's right to privacy of his personal information that he has deposited with 1st and 2nd Respondents can only be released to His Excellence the President **"in accordance with law".** (See Article 18(2) of the 1992 Constitution). In this regard, the Supreme Court has had the opportunity to explain what "law" means. Particularly, the Supreme Court stated that "law" within the intendment of Article 18(2) can only mean that the person who wishes to limit another's right to privacy must first obtain a Court Warrant in order to do so. Thus in the case of **Abena Pokuaa Ackah v Agricultural Development Bank (Suit No J4/31/2014 Supreme Court Judgment dated December 19, 2017),** where the Defendant a Public Authority pleaded that the right to privacy is not absolute and that the authority could curtail it in accordance with its established laws, the majority of the Supreme Court (Pwamang JSC dissenting), speaking through Dotse JSC explained the law as follows: "there is a school of thought that under the above constitutional provisions some of the rights of the Applicant on privacy can be curtailed and or interfered with without necessarily resorting to a judicial scrutiny.

It is further argued that the involvement of the Courts will be cumbersome and inconvenient. Even though this view looks attractive, it is not convincing as it has the tendency of whittling away the rights of the individuals as guaranteed under the Constitutional provision....Taking the above declarations into consideration, our views are emboldened in deciding that the reference to the phrase "in accordance to law" in Article 18(2) can only be a reference to a prior judicial endorsement. We are not prepared to accept any arbitrary and or unilateral curtailment of the rights of individuals in this enjoyment of the said rights without judicial activism... we will therefore hold and rule that the Court below erred in deciding to the contrary that the Applicant's right to privacy and others could be curtailed and interfered with without recourse to judicial action." Respectfully we pray the Court to avert to the framework of stare decisis in applying this authoritative position of the Supreme Court on the interpretation of and application of the phrase "in accordance with law" as used in the Article [18(2)] of the Constitution.

13. Accordingly, any limitation of a person's right to privacy, let alone on such an extremely large scale as E.I. 63 does, to the extent that it has done without a "prior judicial endorsement" can only be illegal. Therefore we submit, most respectfully that the Respondents have to the extent of refusing to obtain prior judicial endorsement of their decision to direct, release, or collect the Applicant's personal information violated and continues to violate the Applicant's right to privacy of his personal information.

C. That the Purpose for the Release, or Collection of the Applicant's Personal information is illegitimate.

For a limitation on the right to privacy to be valid, the purpose for the limitation must be legitimate in a democracy. These aims are often captured in phrases like "National Security", "Public Interest", "Public Safety", etc. while this aim may be legitimate on the face of it , the legal authorities have converged on the point that one always need to have in mind the legitimacy dimension of the test is not to be taken on the surface. As stated by the UN Special Rapporteur on the issue:

"The use of amorphous concept on "National Security" to justify invasive limitation on the enjoyment of human rights is of serious concern. The concept is broadly defined and is thus vulnerable to manipulation by the State as a means of justifying actions that target vulnerable

groups such as human rights defenders, journalists, or activists. It also acts to warrant often-unnecessary secrecy around investigations or law enforcement activities, undermining the principles of transparency and accountability." [See: A/HRC/23/40, report of 17 April 2013 at para. 58, available at http:/www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf]

Applicant raised the question on how the Court can or should determine whether the purpose is truly legitimate i.e. whether it is indeed for Public Health, national security etc. and not for some other motive. Applicant said the authorities converge on point that the burden is on the public body to show to the Court that the purpose is indeed legitimate by way of evidence and not merely repeating that it is in the public interest or for purposes of public safety, security, health etc. as the Respondents have done in this case. Applicant cited the cases of **Republic v Tommy Thompson Books Ltd [No2] [1996-97] SCGLR 484 at 500-501 and Kofi Boateng & Ors v Electoral Commission & Anor** where Anin JA (as he then was) stated "The general categories of public interest are public order, public safety, security, Public Health and public morality. Certainly, in designing the modalities, **the Commission is entitle to consider public interest; but in these proceedings, the law requires that the Commission demonstrates to what extent and in what way public interest justifies** the delay or inaction for the unreasonable period of a decade."

15. The Respondents have alleged that the purpose of E.I. 63 is the maintenance of Public Health which has been endangered severely by the Covid-19 pandemic. While there cannot be a reasonable doubt that Covid-19 poses an extreme Public Health threat, **it is extremely doubtful if the collection of personal information (including personal financial details-like mobile money account details) could serve any legitimate purpose in the fight against Covid-19.** In this regard, the 2nd Respondent, a leading global telecommunication service provider stated in paragraph 15 of their affidavit filed on May 20, 2020, that: "**indeed there is no way that a person's mobile money transaction can assist in contact-tracing, as such transactions cannot by the most basic scientific understanding aid the spread of the novel corona virus...**"

16. As the authorities have stated, the legitimacy of the purpose is a question of evidence (rather than a mere gratuitous assumption). However, none of the Respondents have beyond mere words and presumptuous commentaries, provided any evidence before this Honourable Court to show or even suggest how such personal information (particularly mobile money details) of the Applicant did or could help to fight the Covid -19 pandemic. Accordingly we submit that the purpose which the Respondents have attributed to the limitation in E.I. 63 is illegitimate, thereby making the request, release and collection of the Applicant's personal information in question unlawful.

D. That the Measures that the Respondents have deployed in E.I. 63 are Extremely Disproportionate to the Intended Aim.

17. Where the limitation passes the legality test and the aim thereof is found to be legitimate, the Oakes Test requires that the measures chosen be proportionate to the stated aim. Here, the measures must be the least intrusive measure amongst those which might achieve the desired result. In **Ahuma Ahumah-Ocansey v Electoral Commission; Centre for Human Rights & Civil Liberties (Churcil) v Attorney General & Electoral Commission (Consolidated) [2010] SCGLR 575** it was the learned Chief Justice (now emeritus) who stated that: "It must be further shown that the law itself is a fairly proper means of achieving this important objective. This will involve an examination of the provisions of the law to determine inter alia, whether the provisions infringe any fundamental principle of law like natural justice, and whether they **unduly impair the constitutional right.** The nature of the examination in the second stage will depend on the nature of law and the issues at stake." She stated quite [emphatically] that:

"But to meet the proportionality test, the following must be established. First that the infringement of the right achieves a constitutionally valid purpose and that the **chosen means are reasonably and demonstrably justified.**"

18. As may be noted in the processes which have been filed in this matter none of the Respondents has made even a feeble attempt at substantiating their claim **that the mass indiscriminate collection of subscribers' personal information has any propensity to contain the pandemic**. Neither have they attempted to show that the chosen means is

"reasonable and demonstrably justified." Above all, the Respondents did not obtain prior judicial approval (as dictated by the Supreme Court in **Abena Pokuaa Ackah v Agricultural Development Bank**).

19. My Lord, as if all the above weaknesses are not enough E.I. 63 has not a sunset clause- it operates in perpetuity. This means that if this Honourable Court allows E.I. 63 to stand, the Respondent will continue to collect and use in an indiscriminate manner the personal information of the Applicant and all other subscribers regardless of the circumstances and without a mechanism of an end. This lack of sunset clause makes the already illegal, illegitimate and disproportionate E.I. 63 even more disproportionate to the aim to be achieved.

Quite clearly, therefore, this outcome is not and cannot be the intendment of the law maker when they enacted Act 775. However, should this Honourable Court even hold that such were the intendment of Parliament when they enacted Act 775, we contend further and very sternly that such an intension runs inconsistent with the intention of the framers of the Constitution behind Article 19(2) as disclosed by the Supreme Court in the **Abena Pokuaa Ackah v Agricultural Development Bank** case cited above.

20. In the light of the above failure to pass the Oakes Test, we humbly pray this Honourable Court to adjudge and hold that the Respondents have, either jointly or severally violated the Applicant's rights to privacy.

V. THE RIGHT TO ADMINISTRATIVE JUSTICE

A. That the President's Power to make E.I. 63 is Administrative in nature.

Applicant argues that the test for determining whether a body or person is subject to administrative justice is the source of power which the person or authority exercises. Therefore a body or person's act or decision is subject to administrative justice where the source or power behind the act or decision is public law- constitution, legislation, or a subsidiary legislation. Applicant cites Sir John Donaldson MR in **R v Panel on Takeovers and Mergers, ex parte Datafin Plc [1987] QB 815, 847** where he stated: "if the source of power is a statute or subordinate legislation under statute, then clearly the body in

question will be subject to Judicial Review." Applicant also cited **Council for Civil Service Unions v Minister for Civil Service [1985] AC 374 409, Enekwa v Kwame Nkrumah University of Science and Technology [2009] SCGLR 242** to support his claim that the existence or extent of prerogative power are subject to Judicial Review. Applicant quoted Data-Bah JSC's definition of administrative bodies in the case of **Awuni v West African Examination Council [2003-2004] SCGLR** 471 as follows: "To my mind therefore "administrative bodies" and "administration officials" should be interpreted as references to bodies and individuals respectively, which or who exercise public functions which affect individuals. These individuals are entitled to protection from the Courts in their interaction with such public bodies or their employees."

While Dr. Twum JSC reasoned that: "In my view all bodies and persons whose authority to act derives by this process of sub-infeudation (to borrow the English feudal land law concept) from the President, however tenuous the connection may be, are the "administrative bodies" and "administrative officials" mentioned in Article 23 of the 1992 Constitution"

22. His Excellency, the President's directive to the Respondents to collect the Applicant's personal information for the purposes was by way of an executive instrument which His Excellency made, purportedly, pursuant to Section 100 of Act 775 [see preamble to E.I. 63]. We contend that the directive, having been made by way of an executive instrument amounts to an exercise of administrative power see **Republic v Minister for the interior; Ex parte Bombelli [1984-1986] 1 GLR 204]; Akoto v Ac [2012] @ SCGLR 1295**

B. That the President's power to make E.I. 63 is subject to the Rules of Administrative Justice.

Counsel for Applicant under this heading looks at the definition of Administrative Justice as defined in Wade and Forsyth Administrative Law and cites Lord Diplock in the case of **Council for Civil Service Unions v Minister for the Civil Service [1985] AC 374 @ 409** that at common law the Courts have power to strike down decisions and actions of public bodies. These have been applied by our Courts in several cases. Counsel submitted that the President's decision to collect the Applicant's personal information is subject to the rules of Administrative Justice and therefore

Judicial Review. See the case of **Tema Development Corporation v Musah [2005-2006] SCGLR 147** and **Enekwa v Kwame Nkrumah University of Science and Technology** supra.

Counsel goes further to argue that Administrative Justice is a fundamental human right in Ghana under Article 23 of the Constitution which allows a person to pursue Judicial Review remedies as a fundamental human right in this country. Article 23 of the 1992 Constitution states: "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." This offers persons natural or legal to challenge the actions and decisions of administrative bodies and thereby seek redress by way of human rights action under Chapter 5 of the 1992 Constitution. The Supreme Court has upheld the application of Article 23 in a number of decisions some of which have been cited above.

Counsel for Applicant argued that the President has violated Applicant's right to administrative justice. Counsel said Administrative Justice requires that administrative bodies or officials (in this case, His Excellency the President and derivatively, the Respondents who acted upon his directives under E. I. 63) to act within the confines of some standards or principles and not according to their whims and caprices. Counsel referred to Sir William Wade in **Administrative Law** (6th Ed) at page 6 as follows: "The essence of administrative lies in judge-made doctrines which apply rightly across board and which therefore set legal standard of conduct for public authorities." It is Counsel for Plaintiff's case that consequently administrative bodies should not in their decisions and actions, violate at least three cardinal standards (a) they are not to act outside the powers given them (ultra vires) or act in an illegal manner; (b) they are not to be irrational or unreasonable in exercising the discretion accorded them or in exercising their judgment; and (c) they are not to act in breach of the dictates of natural justice, fair hearing or what is known elsewhere as 'due process'. See the case of **Council for Civil Service Unions v Minister for the Civil Service [1985] AC 374 @ 409** where Lord Diplock laid down three heads under which administrative justice is subject to judicial control as illegality, irrationality and procedural impropriety. Counsel for Applicant said the President has violated Applicant's right to Administrative Justice in two ways by acting illegally or ultra vires and unreasonably. Counsel said the President acted illegally when in making E.I. 63 he acted outside the law. The President's

power to make E.I. 63 is derived from Act 775 which allows him to make such requests on Service Providers under Section 100, was made quite clear in the long title of E.I. 63. However reading Act 775 as a whole, there is a condition precedent in Section 100 which the President failed to invoke. According to Applicant the condition precedent is that the President should have first declared a state of emergency under Article 31 of the 1992 Constitution. Applicant said under Section 99(1) of Act 775 which states: "Where a state of emergency is declared under Article 31 of the Constitution or, another law, an operator of communications or mass communications systems shall give priority to requests and orders for the transmission of voice or data that the President considers necessary in the interest of national security and defence." According to Applicant the president failed to declare a state of emergency prior to issuing E.I. 63 and to that extent the President acted illegally. Applicant prays the Court to declare that the President and the Respondent either jointly and severally violated Applicant's right to Administrative Justice.

Applicant cited the case of **Republic v State Fishing Corporation Commission of Enquiry (Chairman); Exparte Bannerman [1967] GLR** where the law was that the National Liberation Council (NLC) could not dismiss an employee without first assuming control of the corporation. The Court held that assuming control of the Corporation was a condition precedent.

Applicant in his conclusion states: "My Lord, ours is a democracy. We are a nation of constitutionalism – that doctrine which prescribes that public power (including the power of His Excellency, the President) be limited. The doctrines of rule of law, separation of powers, checks and balances, Judicial Review and human right are the foundation upon which the 1992 constitution is mounted. Therefore, we are not upholding the Constitution, even as the Judiciary, unless we are ready to keep and insist on keeping the lines of limitation on public power (including the power of the President) courageously, without ill-will or affection. However, when we do, posterity will be on our side." I find this case in applicable to the present one.

Applicant was given leave to file Supplementary Address on issues of law raised by Respondents in their addresses of the on 22nd February, 2021.

1ST RESPONDENT'S CASE:

In 1st Respondent's affidavit filed in response to Applicant's Amended Origination summons it was deposed on its behalf it prayed that the Applicant amends the name of the 1st Respondent from Vodafone Ghana Limited to Ghana Telecommunications Company Limited. 1st Respondent deposed that 3rd Respondent is known to it as the entity designated by Government to manage the Common Platform which is the location where all the requested information under the establishment of Emergency Communications System Instrument, 2020 (E.I. 63) is to be submitted and that in all correspondence between 1st and 4th Respondents on the implementation of E.I. 63. 3rd Respondent has been in copy. 1st Respondent says it was under that understanding that the email from the 3rd Respondent on 27th March, 2020 was received. 1st Respondent says that the circumstances of the times required prompt action from all who had a part to play in actualizing the objectives of E. I. 63 as it involved matters of life and death. 1st Respondent stated that it was advised by Counsel and believed that Applicant's right is subject to, among others, the existing laws of the land, considerations of public safety, protection of Public Health and security of the state. 1st Respondent says that as a responsible corporate citizen, it adheres strictly to all the laws that govern its operations, including personal data protection regulations in managing the personal information of its subscribers. 1st Respondent says information authorized to be released under E.I. 63 is for the purposes of establishing emergency communications system to trace all contacts and identify and places visited by persons suspected of or actually affected by the novel corona virus (Covid-19) which has plagued the world including Ghana. 1st Respondent says in releasing the personal information of the Applicant at the disposal of the 4th Respondent through the 3rd Respondent was only in compliance with the provisions of E.I. 63 which was issued pursuant to the Electronic Communications Act, 2008 (Act 775), where the President has power to make written requests and issue orders to operators or providers of electronic communication networks or services in aid of law enforcement or national security. 1st Respondent says it has not violated, is not violating or is not likely to violate Applicant's fundamental human rights particularly the right to administrative justice, privacy and equality or non-discrimination. 1st Respondent says on the advice of his Counsel that Applicant's right to administrative justice and the remedying of breaches of same is in respect of public bodies and officials, and that Applicant's right to administrative justice is inapplicable to 1st Respondent. Furthermore that Applicant's right to equality and non- discrimination has not been violated in

any way by the 1st Respondent. And that Applicant's allegations of violations of his human rights are speculative and must be put to strict proof because Applicant has not produced any evidence of the said violations. 1st Respondent says on the advice of its Counsel which he believes to be true, Applicant is not entitled to any or all of the reliefs sought in this Application and this Court ought to dismiss this Application as being unmeritorious.

Counsel for 1st Respondent in his written address ordered by the Court summarized the facts of the case which need not be repeated. I will as much as possible quote 1st Respondent's argument for its full effect and paraphrase some.

In 1st Respondent's written address it states: "1st Respondent's position is that E.I. 63 is a law properly promulgated and is in force in Ghana as at March 23rd, 2020. 1st Respondent as a responsible corporate citizen is obliged by law and procedure to abide by all the laws in Ghana including E.I. 63 until such time that the law is amended or repealed.....the Court in its ruling of June 23, 2020 dismissed the Application for injunction. In a letter dated June 26, 2020 the 4th Respondent directed the 1st Respondent to resume with immediate effect the submission of all data for the implementation of E.I. 63 to the Common Platform operated by the 3rd Respondent."

Article 12 of the Constitution 1992 provides as follows:

(2) Every person in Ghana, whatever his race, place of origin, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter but subject to respect for the rights and freedoms of others and for the public interest.

Article 18 (2) of the Constitution 1992 provides as follows:

(2) No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.

Article 31 of Constitution 1992 is on emergency powers it provides thus:

(1) The President may, acting in accordance with the advice of the Council of State, by Proclamation published in the Gazette, declare that a state of emergency exists in Ghana or in any part of Ghana for the purposes of the provisions of this Constitution.

Article 295 of the Constitution defines "public interest" to include right or advantage which enures or is intended to the benefit generally of the whole of the people of Ghana.

Section100 of the Electronic Communications Act 2020 (Act 775) provides as follows:

Powers of the President:

100. The President may by executive instrument make written requests and issue orders to operators or providers of electronic communications networks or services requiring them to intercept communications, provide any user information or otherwise in aid of law enforcement or national security.

The preamble of E.I.63 provides as follows:

WHEREAS, under the power conferred by Section 100 of the Electronic Communications Act, 2008 (Act 775), the President may, by Executive Instrument, make written requests and issue orders to Operators or Providers of Electronic Communications Networks or Services requiring them to provide user information or otherwise in aid of law enforcement or national security;

WHEREAS, Ghana is committed to dealing with emergency situations, especially Public Health emergencies;

WHEREAS, there is an urgent need to establish an emergency communications system to trace all contacts of persons suspected of or actually affected by a Public Health Emergency and identify the places visited by persons suspected of or actually affected by a Public Health Emergency;

Section 1(1) (b) of E.I. 63 provides as follows:

1. Emergency preparedness:

A network operator or service provider shall: cooperate with the National Communications Authority Common Platform to provide information to State agencies in the case of an emergency, including a Public Health Emergency.

A Network Operator or Service Provider shall make available the following: all caller and called numbers; Merchant Codes; Mobile Station International Subscriber Directory Number Codes; and International Mobile Equipment Identity Codes and site location. A Network Operator or Service Provider shall ensure that all roaming files are made available to the National Communications Authority Common Platform; and location log files are provided to the National Communications Authority Common Platform to facilitate location-based tracking.

3. RESPONSE TO CLAIMS

It has always been the position of 1st Respondent that it has been acting in accordance with law and the legal directives of the 4th Respondent Regulator.

The combined effect of the provisions on public interest and safety in the Constitution, Act 775 and E.I. 63 (as set out in point 2 above) empowers 1st Respondent to act on the legal instructions of public authorities to release information relevant for law enforcement and national security. The Covid-19 pandemic, which falls under the purview of Public Health Emergency and therefore a matter of national security makes it imperative that 1st Respondent provides information when same is required by the health authorities. 1st Respondent is therefore bound by law to provide law enforcement assistance where there are substantial grounds to believe among others that the assistance is necessary and proportionate to prevent an imminent threat to national security or public safety or the prevention of serious crime or risk of life. Clearly, the Covid-19 pandemic portends risk to human life and in such circumstances 1st Respondent is bound by law to assist law enforcement authorities in the contact tracing exercise as a means to curb and control the spread of the pandemic. The circumstances of the time required prompt action from all who had a part to play in actualizing the objectives of E.I. 63 as it involved matters of life and death.

In response to the issue that E.I. 63 is not proportionate to the ends to be achieved and that the placement of Applicant's mobile money transactions at the disposal of 3rd and 4th Respondents

is a violation of his human right 1st Respondent says that this issue lies squarely with the Regulator, the 4th Respondent.... 1st Respondent duly submits that Article 18 of the Constitution has limits and that all actions it has taken and continues to take in fighting the Covid-19 pandemic are within the remits of the law. 1st Respondent further argues that the Applicant's right is subject to among others, the existing of the land, and considerations of public safety as well as protection of Public Health and security of the state. Articles 1 and 295 of the Constitution clearly affirms the above position. In **Samuel Okudzeto Ablakwa & Dr. Edward Kofi Omane Boamah v The Attorney General & Hon Jake Obetsebi-Lamptey (Writ No J1/4/2009-22/05/2012),** the Supreme Court held that:

"Public purpose was not so defined but its ordinary meaning is not mind boggling giving a broad, wide and liberal meaning to it may mean the aim or the reason for or behind a particular activity was definitely or intentionally for the public benefit or good"

"It is the position of 1st Respondent that all its action has been within the remit of the law in the public interest. 1st Respondent has not on its own accord provided any information of the Applicant or its customers to any public person, body or authority. It is the submission of the 1st Respondent that it has always acted with due regard to the Constitution, statutory provisions and E.I. 63 among others. 1st Respondent also contends that it has acted and continues to act in accordance with laid down procedure as set out under E.I. 63".

1st Respondent argues that the Applicant has not presented any proof to this Honourable Court that its rights have been violated or likely to be violated and that Applicant's apprehensions of the President's directives are not borne out of any evidence. The Applicant has not demonstrated a breach or threatened breach of his fundamental human rights or that he has been discriminated against. The Applicant's allegations of violations of his human rights by the 1st Respondent is speculative and not borne out evidence and that the application be dismissed in its entirety.

THE 2ND RESPONDENT'S CASE:

2nd Respondent only filed an affidavit in response to the Applicant's application for interlocutory injunction which was dismissed. It actually did not oppose Applicant's application but virtually corroborated Applicant's claims. I will paraphrase portions and quote portions for its full effect.

It was deposed on 2nd Respondent's behalf that as legal person established under the laws of Ghana it has utmost respect for the laws of Ghana and the protection of the privacy of its subscribers including the Applicant and would not disclose personal information of its subscribers except in accordance with law. It was deposed that as responsible citizen it had a duty with the outbreak of the Covid-19 pandemic to cooperate and support the Government in its effort to deal with the situation. 2nd Respondent says with the passage of the Emergency Communications Systems Instrument 2020 (E.I. 63) it had engagements with the 4th Respondent the Industry Regulator to ensure compliance with the dictates of the law without jeopardizing the privacy of its subscribers. 2nd Respondent deposed that 4th Respondent in a detailed guideline titled DATA REQUIREMENTS FOR IMPLEMENTATION OF PROVISIONS IN THE EXECUTIVE INSTRUMENT 2020 and attached a copy as Exhibit 'M1'. It stated that the guidelines allowed subscribers' numbers to be hushed which 2nd Respondent provided the satisfactory protection of the privacy of its subscribers even though it raised issues on the scope of the data requirements in view of the "constitutional test of necessity and proportionality." 2nd Respondent said it complied with the request for data under the guidelines made under E.I. 63. I wish to quote in extensor portions 2nd Respondent's Affidavit from paragraph 10-23 as follows:

"10. However 3rd Respondent (which is the entity designated by the Minister under paragraph 4 to host the data) proceeded by email to make a request for further data which was neither required by the E.I. or the NCA detailed guidelines. Attached hereto and marked Exhibit "M2" is the said email from the 3rd Respondent.

11. In the aforementioned email, the 3rd Respondent requested not just the mobile money transaction of subscribers but also that the subscribers numbers should be

un-hushed (fully disclosed) and therefore be supplied without any privacy protection whatsoever.

12. *As the Electronic Communication, Act 2008, (775) specifically gave the power to make requests for personal user information specifically to the President, and specified the means as by Executive Instrument, the 2nd Respondent was deeply disturbed by the 3rd Respondent (a private company) attempt to exercise that presidential power by means of an email.*

13. *2nd Respondent's grievance with the email request was aggravated by the fact that the request was for details of all subscribers and therefore constituted a disproportionate invasion of privacy.*

14. *Moreover the request had absolutely no nexus with the purpose of the law as stated in the preamble which is for contact tracing, nor was it included in the data requests of the law itself.*

15. *Indeed there is no way that a person's mobile money transaction can assist in contract-tracing, as such transactions cannot by the most basic scientific understanding aid the spread of the novel corona virus. The Respondent therefore had no doubt that it did not meet the test of necessity as well.*

16. *The 2nd Respondent is advised that while the request for mobile money transactions details of subscribers is not required by E.I. 63, the disclosure of such details constitutes a violation of statutes ranging from fields of data protection to banking as the mobile money wallets of many subscribers are linked with bank accounts to enable transfers from bank accounts.*

17. *This request for mobile money transaction data which is actually not provided for in E.I. 63 has earned the law much notoriety and frequently receives hallmark mention when the law is cited in public discussions as a violation of the constitutional rights to privacy including a recent parliamentary vetting of Supreme Court nominees; notwithstanding that the law as well as NCA detailed operationalization of the law rightly makes no such requests at all.*

18. *The 2nd Respondent is further advised that to cooperate with such a request without legal basis would expose it to liability for breach of privacy and therefore 2nd Respondent pursued an administrative resolution of the matter with a letter to the 4th Respondent dated 6th April, 2020. Attached hereto and marked as Exhibit "M3" is a copy of the said letter to 4th Respondent.*

19. *The 2nd Respondent was yet to receive a response to its complaint when it was served with the current suit and would be grateful for the Court to intervene promptly and bring finality to issues surrounding the E.I. including the validity of 4th (3rd) Respondent's request made via email for mobile money data.*

20. *While the 2nd Respondent is ready to abide by the decision of the Court once it finds all the data requests to meet the test of necessity, proportionality and legality the 2nd Respondent is particularly aggrieved by the attempt at 3rd Respondent to use the opportunity of the pandemic and the E.I. to obtain data which is not required by the E.I. and has no relevance to the stated purpose of the law i.e. Covid-19 contact tracing.*

21. *Indeed the request is also counterproductive as in the time of this pandemic there is the need to encourage the use of Electronic Money Transactions such as mobile money rather than cash notes transactions which can aid the spread of Covid-19. The request may discourage resort to Mobile Money transactions and encourage the use of cash notes to maintain privacy of financial transactions.*

22. *Further, this request has created the false impression that the Government with the support of Mobile Operators including 2nd Respondent is engaged in an unnecessary and disproportionate invasion of the privacy under the guise of fighting Covid-19; a concern which has assumed international human rights dimensions; whereas neither the law nor the Government or any statutory body has actually made such requests.*

23. *The 2nd Respondent has readily laid at the disposal of Government its network for purposes of communication in accordance with the E.I. and is eager to assist*

Government in every lawful effort to curb the pandemic but is desirous that finality be brought to the controversy over the E.I. particularly the attempt by a private company to use it for what can only be its own ends unsupported by the law."

3RD RESPONDENT'S CASE:

I will paraphrase and quote portions for full effect. In 3rd Respondent's Affidavit in Opposition it was deposed as follows:

4. *"That on the 28th day of April, 2020, the Applicant herein filed an Amended Application invoking this Honourable Court's jurisdiction under Article 33(1) of the Constitution of Ghana, 1992 for the reliefs endorsed thereon.*
5. *That the 3rd Respondent is vehemently opposed to this application as there has not been or likely to be any unjustifiable interference with the Applicant's human right as alleged.*
6. *That in response to paragraph 9 of the Amended Affidavit in Support of this instant application, the President of the Republic of Ghana did make the impugned E.I. 63 to facilitate the Government's enhanced contact tracing programme as part of its holistic approach to contain the spread of the novel corona virus, COVID-19, a still raging global Public Health Emergency.*
7. *That in response to paragraph 10 of the Amended Affidavit in Support of this instant application, the 3rd Defendant did not by itself make any such direct demand on the 1st and 2nd Respondents and other communication network Service Providers (referred to as "The Telcos") as alleged by the Applicant.*
8. *That in further response, an officer of the 3rd Respondent -company on the 27th day of March, 2020 wrote (via email) to the 1st and 2nd Respondents and other Telcos, to provide feedback on the data/ information they (the Telcos) had, at the date of the said emails, already shared to the Emergency Communication System that had or was being established by the 4th Respondent pursuant to E.I. 63.*
9. *That the said officer of the 3rd Respondent Company had prior to sending the said emails, been appointed on the 26th day of March, 2020 as the Point/Contact Person through whom*

all concerns and information pertaining to the technical implementation and operationalization of the provisions of E.I. 63 were to be channeled.

10. *That the said meeting was convened by the 4th Respondent on the 26th day of March, 2020 with the Telcos and the 3rd Respondent to discuss the technical implementation of the provisions of E.I. 63 and to address any concerns/ challenges of the Telcos in that regard.*

11. *That in response to paragraph 11 of the Amended Affidavit in Support of this instant application, there has not been any unjustified interference with the constitutionally guaranteed rights of the Applicant as the impugned E.I. 63 was issued by the President in accordance with law to serve a legitimate and necessary purpose and is proportional in its implementation in relation to any derogation of the Applicant's rights in light of the recent COVID -19 global health pandemic.*

12. *That in response to paragraph 12 of the Amended Affidavit in Support of this instant application, the Applicant has not alleged in any material way, how the said E.I. 63 violates his rights to administrative justice as enshrined in Article 23 of the Constitution of Ghana, 1992.*

13. *In any event, the Applicant has admitted in paragraph 9 of his amended affidavit in support, that E.I. 63 was issued by the President in accordance with Section 100 of the Electronic Communication Act, 2008 (Act 775) thereby complying with all the due process requirements of the law.*

14. *That though the Applicant's private information is protected by the Constitution of Ghana, 1992, the impugned E.I. 63 does not or is not likely to occasion an unjustified interference with the Applicant's right to privacy.*

15. *That I have been advised by Counsel and believe same to be true that the right to privacy is by no means absolute and may therefore be justifiably interfered with in the public interest and for the protection of the health and safety of the general public.*

16. *That I am further advised by Counsel and believe same to be true that for any such interference to be justifiable, the alleged interference must first of all be necessary. i.e. it*

must serve a legitimate public purpose, and secondly, the alleged interference must be proportional in its implementation to the extent to which it interferes with the Applicant's right.

17. *That the information requested by the President in the said E.I. 63 is to allow the Government establish communication system to trace all contacts of persons who have actually contracted or suspected of having contracted the COVID -19 virus and to identify the places such persons may have visited as part of its efforts to curb the spread of the said virus.*

18. *That the requested caller and called numbers; merchant codes with their corresponding merchant names and addresses as well as mobile money data; Mobile Station International Subscriber Directory Number Codes as well as the International Mobile Equipment Identity Codes and site locations are therefore necessary in the Government's efforts to protect the health and wellbeing of the general public.*

19. *That the impugned E.I. 63 is also proportionate in its implementation as it does not obliterate the Applicant's right to privacy.*

20. *That the said E.I. 63 does not require the Telcos to divulge the content of the calls made or received by subscribers and neither does it require the Telcos to reveal any details of the mobile money transactions undertaken by the Applicant and other subscribers and merchants.*

21. *That in effect the President cannot, pursuant to the said E.I. 63, be able to record, monitor or intercept the content of any incoming or outgoing electronic communication traffic including voice, video or data (whether local or international) of the Applicant and neither can any agency or institution appointed by the President pursuant to E.I. 63 thereby safeguarding the Applicant's right to privacy.*

22. *The Applicant has not in any way alleged how the said E.I. 63 discriminates against him, thereby violating the equal protection provisions of the Constitution.*

23. *That in any event, the said E.I. 63 contains no provisions exempting some individuals, class or group of persons from the scope of its application.*

24. *That the Applicant has not been able to demonstrate that the provisions of the said E.I. 63 has in any way breached or threatens to breach his constitutional rights. On the contrary, the said E.I. 63 is aimed at protecting the lives of all Ghanaians including the Applicant herein.*

25. *That this application is substantially without merit and ought to be dismissed and I pray this Court to so do."*

In 3rd Respondent's written address it states as follows:

3. *"The 3rd Respondent has had the opportunity to read the Written Address for and on behalf of the Applicant on 6th day of November, 2020. Though the Applicant alleged breaches of the rights to administrative justice, privacy and to equality and non-discrimination in the Originating Motion and sought declarations to the effect, in his written address, Counsel for Applicant advanced legal arguments for the alleged breaches of the Applicant's right to private administrative justice only.*

4. *Furthermore, even though Counsel for the Applicant states in paragraph 8 of his Written Address that the right to equality and non-discrimination is "to all intents and purposes derivative to the two rights" and will therefore not be argued distinctively or separately, no attempt was made to draw any linkages between the said rights. It is therefore deemed that the Applicants has abandoned those reliefs.*

II. LEGAL ARGUMENTS:

5. *The 3rd Respondent will advance legal arguments to establish that contrary to the assertion of the Applicants, the provisions of the impugned Emergency Communications System Instrument, 2020 (E.I. 60) do not violate or are not likely to violate the Applicant's right to privacy and administrative justice.*

A. THE RIGHT TO PRIVACY

6. *It is submitted that the provisions of E.I. 63 do not violate the Applicant's right to privacy as guaranteed under Article 18(2) of the Constitution of Ghana, 1992. The right to privacy is by no means absolute and may thus be justifiably interfered with under certain conditions. This is inherent in Article 18(2) and in Article 12 (2) of the Constitution.*

7. *Thus Article 18(2) provides that for any interference with the right guaranteed to be justifiable it must be:*

   i. In accordance with law;

   ii. Necessary in a free and democratic society

   a. For public safety or

   b. For the economic wellbeing of the country or

   c. For the protection of health and morals.

8. *The Supreme Court has had occasion to make profound pronouncements on the fact of the right to privacy not been absolute. In the case of* ***ABENA POKUAA ACKAH V AGRICULTURAL DEVELOPMENT BANK (Civil Appeal No J4/31/2017)*** *delivered on the 19th day of December 2017, the Supreme Court held as follows:*

   "There is no doubt that Article 12 (2) confers on the Applicant the constitutional right to the enjoyment of all the constitutional provisions on fundamental human rights and freedoms subject only to the respect for the rights and freedoms of others and for the public interest."

9. *In determining the validity of any limitation placed on a constitutional right, the questions that need to be determined are:*

   (a) Is the limitation necessary? In other words, is the limitation necessary for the enhancement of democracy and freedoms of all, is it for the public good?

(b) *Is the limitation proportional? I.e. is the limitation over-broad such as to effectively nullify a particular right or freedom guaranteed by the constitution?*

See the Supreme Court case ***of CIVIL AND LOCAL GOVERNMENT STAFF ASSOCIATION OF GHANA (CLOSSAG) v THE ATTORNEY GENERAL & 2 OTHERS*** *(Writ No. J1/16/2016) delivered on the 14th day of June 2017.*

10. *It is submitted that the E.I. 63 as passed by the President was made "in accord with law" as provided by Article 18(2) of the Constitution. Counsel for the Applicant has sought to rely on the Supreme Court's decision in the case of* ***ABENA POKUAA ACKAH AGRICULTURAL DEVELOPMENT BANK (supra)*** *in which case the Supreme Court held that "in accordance with law in article 18(2) can only be a reference to a prior judicial endorsement."*

11. *It is submitted that the said case is clearly distinguishable from the case at bar. Whiles acknowledging the importance of the principle of stares decisis in our legal jurisprudence, the willy-nilly application of legal principles enunciated in a particular case without due consideration to the factual basis culminating in the said decision is wrong.*

12. *In the Supreme Court case of AMIDU (NO.3) v THE ATTORNEY GENERAL &2 OTHERS (No.2) [2013 -2014] 1 SCGLR@ 658, it was held that:*

"It must be clear that the indiscriminate and blanket application of legal principle enunciated on the particular legal and factual circumstances of a given case, is not in accord with the law or sound judicial policy."

13. *The Abena Pokuaa case involved a non-state actor allegedly interfering with the rights of another private citizen. Put differently and unlike this instant case, that case involved a private legal person with no legal powers (constitutional, statutory or otherwise) to justifiably interfere with the rights of another. It was therefore right for the Supreme Court to hold under the circumstance that prior judicial endorsement was required for a non-state actor to engage in any conduct that interferes or is likely to interfere with an individual's right to privacy.*

14. *In this instant case, the alleged instigator of the interference complained of is the President of Ghana. The impugned E.I. 63 issued by the President pursuant to the power conferred on him under Section 100 of the Electronic Communications Act, 2008 (Act 775) forms part of the laws of Ghana being an enactment made by or under the authority of Parliament as provided in Article 11(1) (b) of the Constitution.*

15. *Under this circumstance, the President, unlike the Defendant in the Abena Pokuaa case had the legal power to make the request so made under E.I. 63 without recourse to the Courts and still remain within the bounds of the law.*

16. *It is therefore submitted the impugned executive instrument was made in accordance with law by the President pursuant to his power under Act 775.*

17. *It is also submitted that the said E.I. 63 passed the necessity test as it serves a legitimate purpose and thus not an unjustified interference with the Applicant's right to privacy. Article 18(2) permits the right to privacy to be justifiably limited for the protection of health.*

18. *The said E.I. 63 was issued by the President for the purpose of establishing an emergency communications system to trace all contacts of persons suspected of or actually affected by a Public Health Emergency and identify the places visited by person suspected of or actually affected by a Public Health Emergency. The stated intent of the law is therefore within the permissible limitations as stated in Article 18(2) of the Constitution.*

19. *The Applicant has not alleged any nefarious intent or motive belying the stated intent of the impugned Executive Instrument. The said E.I. 63 was issued in the wake of the COVID-19 Pandemic as part of the Government's efforts to contain the spread of the virus. Judicial Notice may be taken of the fact that proprietors of places of public access require patrons of such places to provide their names and contact for the purposes of contact-tracing should infections be traced to those places. The Government is only engaging in similar exercise only on a larger scale having regard to the powers and resources available to it.*

20. *The information network operators or Service Providers such as the 1st and 2nd Respondents are required to provide are essential for any efficient and holistic contact-tracing programme. The information requested allows for associates or contacts of persons affected by a Public Health Emergency such as the on-going COVID-19 pandemic to not only be identified but also located for appropriate measures such as testing treatment and quarantining to be carried out where appropriate.*

21. *Contrary to the assertions of Counsel for the Applicant in paragraph 15 of his written address, the impugned Executive Instrument does not require the 1st and 2nd Respondents to provide the details of the Applicant's financial details such as his mobile money account details. The E.I. requires the 1st and 2nd Respondents to make available Merchant Codes to allow the Government conduct contact tracing through Mobile Money Merchants. These codes contain information as to customers who have transacted with a particular merchant within a stated period. In the event that any such one customer is affected or is suspected of having been exposed to the virus, health authorities may rely on the merchant codes to identify other persons who might have ~~[come]~~ transacted with the said Mobile Money Merchant within the stated period for the purposes of contact tracing.*

22. *It is therefore submitted that the limitations placed on the right to privacy under the impugned Executive Instrument is justifiable as it serves a legitimate purpose.*

23. *It is further submitted that the limitation placed on the right to privacy by the said E.I. 63 is not disproportionate to the intended aim as alleged by the Applicant. The E.I. is limited in the scope of the information required. Though call logs, merchant codes and device site location details are required for the purpose of contact-tracing of persons affected or suspected to be affected by a health pandemic, the content of calls made or received as well as the details of any transaction undertaken by the user remain private. There is therefore a balance in the Government's legitimate and necessary need for the requested information per the E.I. and the respect of the Applicant's right under Article 18(2).*

24. *The Applicant's right to privacy under Article 18(2) is therefore not obliterated under the impugned Executive Instrument.*

25. *In response to Counsel for Applicant's submissions contained in paragraph 19 of his written address, it is stated that although E.I. 63 was issued in the wake of the COVID - 19 pandemic, the system sought to be established thereunder goes beyond that particular pandemic. Reference is made to the recitals of the said Executive Instrument. The intendment of the E.I. is to enhance the nation's preparedness to deal with any and all Public Health Emergencies that may arise and not to necessarily deal with the on-going pandemic. In that regard, the impugned E.I. provides the legal framework for a standing system ready to be relied upon should the need be.*

26. *It is therefore submitted that E.I. 63 does not unjustifiably interfere with the Applicant's rights as guaranteed by Article 18 (2) and we pray this Court to hold that the Applicant's rights under the said article have not been violated.*

B. THE RIGHT TO ADMINISTRATIVE JUSTTCE

27. *It is submitted that the Applicant's right to administrative justice has not been violated. There is no dispute that the President's powers under Section 100 of Act 775 pursuant to which E.I. 63 was passed are administrative in nature.*

28. *To be able to establish that the President in issuing E.I. 63 violated the Applicant's right to administrative justice, the Applicant ought to demonstrate that the impugned E.I. 63 did not comply with the requirements of the law i.e. the due process of the law was not followed in the issuance of the said E.I. 63. See the case of* ***OKUDZETO ABLAKWA (N0.2) V THE ATTORNEY GENERAL & ANOTHER [2012] 2 SCGLR 845@ 865***

29. *The Applicant admits that the President in issuing the impugned Executive Instrument did so pursuant to the powers conferred on him by Section 100 of the Electronic Communications Act, 2008 (Act 775).*

30. *The Applicant however argues that the said Section 100 of Act 775 ought to be read together with Section 99 (1) of Act 775 and argues further that Section 99 (1) contains as*

a condition precedent, the declaration of a state of emergency under Article 31 of the Constitution, before the President's powers under Section 100 can be exercised.

31. *It is a basic rule of statutory construction that statutes must be read and construed as a whole in order to ascertain the true intention of the legislation and the mind of the law-maker. It therefore behoves on the judge to read each section, subsection, and clause of the parent Act and any instrument passed pursuant to the Act as a whole to understand and appreciate the true intention of the legislation. See the case of THE REPUBLIC V NATIONAL HOUSE OF CHIEFS & 2 OTHERS EX PARTE: AHANTA TRADITIONAL COUNCIL (OSAHENE KATAKYI BUSUMAKURA II) (Civil Appeal No J4/32/2013) delivered on the 30th of January, 2019.*

32. *The above canon of interpretation notwithstanding, Courts always seek to give effect to the true meaning of provisions and avoid constructions that would lead to manifest absurdities.*

33. *It is submitted that when read together, it is clear that Sections 99 (1) and 100 of Act 775 are distinct in scope and application. The two provisions when read together are not only totally independent of each other but apply to two distinct scenarios and seek to achieve two very distinct objectives.*

34. *Section 99 (1) deals with the situation where the President requests the operators of communication or mass communication systems to prioritise the dissemination of certain broadcasts and information during the time of national strive. Article 99 of Act 775 therefore deals with establishing an effective communication and public broadcast system in order to keep the populace efficiency informed during national emergencies.*

35. *Section 100 on the other hand, deals with situations the President requires the providers of electronic communication networks or services to provide information that would be useful in the handling of a law enforcement or national security matter. The President, per the said provision is to make any such request by the issuance of an Executive Instrument. This is unlike the provisions of Section 99 (1) where no Executive Instrument is required.*

36. *It is therefore disingenuous, with the greatest of respect to Counsel for the Applicant, for the condition precedent in Section 99 (1) to be read into Section 100 when the two provisions seek to address different situations as well as achieve different objectives.*

37. *It is therefore submitted that the Applicant has not been able to demonstrate that his rights to administrative justice has been violated.*

III. CONCLUSION:

38. *It is submitted that the Applicant has not been able to demonstrate that his rights to privacy and to administrative justice has been violated.*

39. *Any alleged interference with the said rights are as demonstrated above, justified having regard to the provisions of the Constitution and I pray this Court to so hold.*

40. *It is therefore prayed that the reliefs endorsed on the Applicant's Motion be refused and the action dismissed.*

Respectfully submitted."

4TH RESPONDENT'S CASE:

In 4th Respondent's affidavit in answer to the originating motion for enforcement of fundamental human rights, it was deposed as follows:

5. *"That at the hearing of the instant application, Counsel for the 4th Respondent shall seek leave of this Honourable Court to refer to the processes filed so far in the suit.*

6. *That the 4th Respondent has been served with the Applicant's Amended Originating Motion of Notice for Enforcement of Fundamental Human Rights and is vehemently opposed to same as being wholly misconceived and must therefore be refused.*

7. *That on 23rd March, 2020, the President of the Republic of Ghana made Executive Instrument, Establishment of Emergency Communications System Instrument, 2020 (E.I. 63) for the purpose of setting up an Emergency Communication System to help trace all contacts of persons affected by a Public Health Emergency and identify places visited by person suspected of or actually affected by a Public Health Emergency.*

8. *That E. I. 63 was made by the President of Ghana in the wake of the Corona Virus outbreak which has been declared pandemic by the World Health Organisation and has become a Public Health Emergency.*

9. *The E. I. 63 was made by the President pursuant to the power conferred on the President by Section 100 of the Electronic Communications Act, 2007 (Act 775) which empowers the President to, by Executive Instruments, make requests and issue orders to operators of Electronic Communications networks requiring them to provide user information or otherwise in aid of law enforcement or national security.*

10. *That under E.I. 63, Network operators were mandated to cooperate with the 4th Respondent's Common Platform to provide information to State agencies in the case of an emergency including a Public Health Emergency.*

11. *That in furtherance of the orders/directives contained in E.I. 63, the 4th Respondent convened a meeting with the network operators on the Matters of sharing information for the purpose of setting up the Emergency Communication System, and the 3rd Respondent being the 4th Respondent's Agent who runs the Common Platform on behalf of the 4th Respondent was also invited to the said meeting.*

12. *That at the said meeting, a representative of the 3rd Respondent Company was appointed as a point person to follow up on all the data that the network operators were required to share to the Common Platform to enable the Emergency Communication System to be set up, and it was for that reason that the said representative sent e-mails to the Service Providers to confirm which information the network operators have shared to the Common Platform. Attached are copies of the e-mails marked as Exhibits 'NCA' 1 series.*

13. *That it was in the course of implementing E.I. 63 that the Applicant herein commenced the present suit for the reliefs endorsed on his Amended Originating Motion.*

14. *That the 4th Respondent in answer to paragraph 9 of the Affidavit in Support says that the right is subject to interference in accordance with law in cases where:*

    a. *Such interference is for the safety of the public or economic wellbeing of the country:*

    b. *Such interference is for the protection of health or morals or:*

    c. *Such interference is for the prevention of disorder or crime or for the protection of the rights or freedoms of others.*

15. *That the 4th Respondent is advised and believes same to be true that any interference with a person's right to privacy with accords with any of the above exceptions is justified under the Constitution provided same is done in accordance with law and for protection of the general public.*

16. *That the 4th Respondent is advised and verily believes same to be true that the Electronic Communications (Act 775) particularly Section 100 thereof, was enacted to, among others, allow for the lawful interference with the privacy of individuals in a manner that gives meaning to the exceptions under the Constitution 1992.*

17. *That the 4th Respondent therefore says that Executive Instrument (E.I 63) was made pursuant to power granted the President under Section 100 of the Electronic Communications Act, 2008 (Act 775) under which the 4th Respondent is tasked to collaborate with Network Operations or Service Providers in the event of a Public Health Emergency, and that any step taken in that regard is in accordance with law,*

18. *That the 4th Respondent says that the Emergency Communication System to be set up pursuant to E.I. 63 is to achieve on purpose only and that is to collect subscriber information that will assist in the tracing of persons affected by a Public Health Emergency such as the outbreak of the Covid-19 and the places they have been to, and the System therefore does not even concern itself with the contents of the data, voice, or*

video communication of subscribers of the various Network or Service Providers as same are unnecessary for the purposes of contact tracing.

19. *That the 4th Respondent therefore says that the Emergency Communication System will not listen in on users' communication as such data is not relevant to the identification of persons affected by a Public Health Emergency such as Covid-19 and the places they have been to. The claim of breach of privacy that suggests an intrusion on personal communication is therefore misplaced.*

20. *That the 4th Respondent says further that the Emergency Communication System for tracing such persons has become necessary as same will aid in the tracing of persons who are either suspected or actually affected by a Public Health Emergency and the places they have been shall be made available to the relevant State agencies and not the specific details of the communication of the subscribers.*

21. *That the 4th Respondent says further that the Emergency Communication System for tracing such persons has become necessary as same will aid in the tracing of persons who are either suspected or actually affected by a Public Health Emergency (in the instant case Covid-19) and the places they have been to so as to be able to control the spread and ravages of the novel Coronavirus that is wreaking havoc across the globe with thousands of Ghanaians already infected with more than fifty (50) fatalities.*

22. *That the 4th Respondent says in answer to paragraph 11 that a person's constitutional right to privacy is subject to the overriding interest of Public Health and safety and that any interference with such privacy in accordance with law is justifiable and that (E.I. 63) having been passed pursuant to a power conferred on the President under Section 100 of the Electronic Communications Act, was made in accordance with law.*

23. *That 4th Respondent says further that E.I. 63 has become necessary in the wake of the outbreak of the novel Coronavirus which has been declared by the World Health Organisation as a global pandemic and has to date taken several lives globally with over ten thousand (10,000) infections and 54 fatalities in Ghana alone and any step taken under*

an authority conferred by Statute to help halt the spread of the deadly virus ought not to be deprecated.

24. *That the 4th Respondent says that the novel Coronavirus which is spread by contact with an infected person is such that it is imperative for all those infected as well as those they have come into contact with to be identified for purposes of isolation and treatment to help stem the tide of the spread of the virus hence the need for the Emergency Communication System for purposes of contact tracing which is what E. I. 63 sets out to accomplish.*

25. *That I am advised that greater hardship will be suffered by the vast majority of Ghanaians if efforts at identifying and isolating persons affected by the Coronavirus or any health emergency for that matter are hampered as same will put lives of millions of Ghanaians in peril. The balance of convenience therefore tilts in favour of a refusal of the instant application and that any inconvenience suffered by a person as a result of sharing information for the purpose of tracing those he or she might have come into contact with who may have been affected by the coronavirus is far outweighed by the need to save Ghanaian lives by stopping the spread of the virus and identifying persons for testing and treatment.*

26. *That indeed, since the inception of the present suit, the number of infections in Ghana, in the case of Coronavirus infections has moved from a few hundreds to thousands of infections and aggressive identification of infected persons will help keep the deadly virus in check.*

27. *That the 4th Respondent says in answer to paragraphs 12 and 13 of the Affidavit in support that the Applicant is indulging in speculation and has failed to clearly demonstrate how E.I. 63 violates his right to administrative justice, or not discrimination particularly when E.I. 63 was also made in strict compliance with law for the sole purpose of identifying persons affected by a Public Health Emergency and any issues of equality, administrative justice and non-discrimination are therefore misplaced.*

28. *That the 4th Respondent says in answer to paragraph 14 that Applicant has failed to show any manifest violation of law that makes the application of the directives contained in E.I. 63 illegal or unreasonable as to justify a declaration to the effect and a quashing of same by certiorari and that the Emergency Communication System to be set up pursuant to E. I. 63 is reasonable having regard to the fact that its intended purposes is to share only subscriber information necessary for tracing subscribers who may have come into contact with other persons after being affected by a health emergency such as Covid–19.*

29. *That I am further advised that it is reasonable for such information for purposes of contact tracing to be shared with authorised persons as same is aimed at protecting millions of Ghanaians from being infected by the coronavirus.*

30. *That I am advised and verily believe same to be true that the instant action ought to be refused on the premise that:*

    a. *That the Applicant has failed to show what specific injury he has suffered or is likely to suffer by the implementation of E.I. 63 and how such implementation actually violates his right to privacy in a manner that is inconsistent with law.*

    b. *That the Applicant has provided no legal basis for the grant of certiorari having failed to properly canvass any of the legal grounds for the grant of the relief.*

    c. *That the Applicant having failed to show how his legal right is directly affected by E.I. 63 in a manner inconsistent with law, and what specific injury he stands to suffer thereby is not entitled to the relief of perpetual injury he stands to suffer thereby is not entitled to the relief of perpetual injunction, particularly when the jurisprudence of our Courts frown on the unnecessary fettering of the exercise of discretionary power vested in a public person or body, and also that greater hardship will be suffered by the country by the grant of such injunction.*

31. *That I am advised and verily believe same to be true that by reason of the foregoing the instant suit ought to be dismissed as misconceived and without merit."*

In 3rd Respondent's Supplementary Statement of case filed on 18th June, 2020, it tries to justify the need to collect names and addresses of merchant codes and to an extension mobile money details as being necessary for contact tracing. 3rd Respondent concedes that E.I. 63 does not expressly in its letter demand the Telcos including 1st and 2nd Respondents to make available mobile money data with unhashed numbers of subscribers. I will paraphrase portions and quote portions for its full effect.

"What is expressly stated in the said Executive Instrument is for Telco's to make available ""Merchant codes" defined in the interpretation clause of the Executive Instrument to mean "a specific code assigned to a merchant by a mobile money operator for payment on the platform of the operator.

It is argued that if one were to consider the object or intendment of E.I. 63, the request for un-hashed mobile money data, though not expressly stated in the executive instrument, may be read into the said E.I. to give full effect to the intention of the President. As has been previously stated in the recitals of E.I 63 clearly states the intendment or purpose of the E.I. 63: to establish emergency communications system to trace all contacts of persons suspected of or actually affected by a Public Health Emergency and identify the places visited by persons suspected of or actually affected by a Public Health Emergency. Judicial notice is taken of the fact that the President made the said E.I. 63 in the wake of the COVID-19 pandemic which has till date affected over 8, 000 persons and has claimed the lives of about 60 persons. The request for Merchant Codes as Stated in the E.I. is to allow the Government conduct contact tracing through Mobile Money Merchants. These codes contain information as to customers who have transacted with a particular merchant within a stated period. In the event that any such one customer is affected or is suspected of having been exposed to the virus, health authorities may rely on the merchant codes to identify other persons who might have ~~[come]~~ transacted with the said Mobile Money Merchant within the stated period for the purposes of contact tracing. This can only be effectively undertaken if access is had to the full un-hashed numbers of these potentially exposed "fellow customers" of that particular merchant. In effect to effectively carry out contact tracing through Mobile Money Merchants, it is not only nearly enough to have merchant codes, the merchant's names addresses as well as the unhashed numbers of patrons is essential to actualize the purpose of the Executive Instrument.

*It is appreciated that an argument may be made that the President may well have as well included the disputed information in the Executive Instrument if same were essential. But as observed by Justice Crabbe at page 61 of his book "**Understanding Statutes**" on the topic of "casus omissus":*

"An Act of Parliament may be badly crafted. That may result in an omission of certain matters in the Act, or even of a word or words. It may be the fault of the Parliamentary Counsel who drafted the Bill for the Act. In those circumstances, the intention of the Legislature, however obvious it may be, must, no doubt, in the construction of statutes, be defeated where the language it has chosen compels to the result, but only where it compels to it." See the case of London and India Docks Co. v Thames Stream Tug and Lighterage Co. Ltd [1909] AC at p.23. The rationale for such an occurrence is that, in cases where a material and relevant particular is not provided for in express terms there is a "casus omissus".

*In the case of **Seaford Court Estates Ltd v Asher [1949] 2 KB 481 at 499**. Denning LJ stated as follows: "Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold set of faults which may arise, and even if it were, it is not possible to provide for them in terms free from all ambiguity....A judge believing himself to be fettered by the supposed rule that he must look to the language and nothing else laments that the draftsmen have not provided for this or that or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy and then he must supplement the written word so as to give ""force and life" to the intention of the legislature. That was clearly laid down by the resolution of the Judges in the Heydon's case, and it is the safest guide today.....Put in a homely metaphor it is this: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have strengthened it out. He must then do as they would have done. A Judge must not alter the material which it is woven, but he can and should iron out the creases."*

The obvious "crease" or "omissus" in the impugned Executive Instrument is the omission of the requirement for the Telcos to make available unhashed mobile money date. But as admonished by the Court in the case of ***Magor and St Mellon's Rural District Council v Newport Corporation [1950] 2 ALL ER 1226 at p. 1236*** *"We do not sit here to pull the language of Parliament and of Ministers to pieces and make nonsense of it. That is an easy thing to do, and it is a thing which lawyers are often prone.* ***We sit here to find the intention of Parliament and Ministers and carry it out, and we do this by filling in the gaps and making sense of the enactment than opening it up to destructive analysis****." Emphasis*

We therefore pray this Honourable Court to fill in the "casus omissus" in E.I. 63 therein by reading and construing same to include the disclosure of the unhashed mobile money data so as not to defeat the purpose for which same was made by the President. This would not be without precedent. The Supreme Court in the recent case of ***Board of Governors, Achimota School v Nii Arko Nortey II & 2 Others (Civil Appeal No. J4/9/2019 delivered on 20th May 2020)*** *held that the Plaintiff had capacity to institute and maintain the action even though the Education Act, 2008 (Act 778) in its letter did not expressly cloth them with capacity to sue on behalf of the school having regard to the intentions of Parliament.*

In conclusion, we argue that such a construction poses no danger to the privacy of the Applicant's mobile money transactions. As previously argued, the details or particulars of any mobile money transactions undertaken either personally by Applicant or with a merchant code are not the subject of disclosures to be made by the Telcos including 1st and 2nd Respondents. We therefore pray this Court to dismiss this instant application as same is without merit."

Let me make this comment here and now. It is not about interpreting the E.I. 63 to include what is not there. Even if it is in the statute and the disclosure of Applicant's mobile money details and unhashed mobile money details are found to violate the privacy of Applicant and all other subscribers, the High Court has power to declare same a violation of the fundamental human right of the Applicant.

4TH RESPONDENT'S WRITTEN SUBMISSIONS:

"My Lord, before you, is an Amended Originating Motion of Notice for Enforcement of fundamental human rights to administrative justice filed on 28th April, 2020, by which the Applicant herein claims the reliefs endorsed thereon. The 4th Respondent is vehemently opposed to same and the basis of its opposition are canvassed hereafter.

It has been held in the case of ***Amegatcher (No. 1) v. Attorney – General (2012) SCGLR at page 938*** *that where an executive action has been authorised expressly by legislation, a rebuttable presumption of regularity and constitutionality would be made in support and that to rebut the presumption, the person impugning the Executive action would need to demonstrate clearly that the authorizing legislation was inconsistent with the constitution. It is our submission that the present application with seeks to impugn the constitutionality of E.I. 63 made pursuant to section 100 of Act 775 is misconceived as it does not challenge the constitutionality of section 100 of Act 775 but rather the E.I. made pursuant thereto. There being no challenged to the constitutionality of section 100 of Act 775, the present action is misconceived and ought to be dismissed.*

My Lord, it has also been held in the case of ***Abena Pokuaa Ackah vrs. Agricultural Development Bank – Suit No. J4/31/2014 dated 19th December, 2017*** *that the requirement of prior judicial approval before invasion of a person privacy applies to matters arising from private contract and does not apply where the purported interference derives authority from an act of Parliament. It is therefore our submission that the claim that the President ought to have first sought prior judicial approval before making E.I. 63 is wholly without merits.*

It is also our submission that Section 99 of Act 775 does not create a condition precedent to the exercise by the President of the powers conferred on him by section 100 of Act 775. The two provisions envisage two different scenarios with Section 99 applying in cases where a state of emergency has been declared under Section 31 whereas under Section 100 the President is empowered to make executive instruments for law enforcement among others. It is our submission therefore that the President did not breach any condition precedent (that is declaring a state of emergency) when he made E. I. 63.

My Lord, in the case of ***Council for Civil Service Unions vrs. Minister for Civil Service (1984) 3 ALL ER 935****, Lord Diplock said of unreasonableness that "by' irrationality' I mean what can by now be succinctly referred to as Wednesbury unreasonableness' (see Associated Provincial Picture Houses Ltd. Vrs. Wednesbury Corp (1947)2 All ER 680, (1948) 1kb 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it".*

It is our submission that E.I. 63 meets the requirement of reasonableness as it was made to set up an Emergency Health System to fight Public Health Emergency such as the coronavirus pandemic which continues to affect thousands of Ghanaians and has claimed over 500 lives. Further, the Emergency Health System will not have the capability of listening or recording the data, voice or video communication of network operators' subscribers. It will only concern itself with just those details necessary for identifying those persons affected by a health emergency such as the coronavirus pandemic. The need to protect the lives of millions of Ghanaians outweigh any claims of breach of privacy particularly when such claims remain unsubstantiated.

FACTS:

My Lord, the facts forming the basis of the instant application have been set forth in the respective affidavits filed by the parties before this Honourable Court.

APPLICANT'S CASE:

The Applicant claims to be a subscriber to the Telecommunication Networks of both 1st and 2nd Respondent. It is his case that on 23rd March, 2020, the President of Ghana purported to make Executive Instrument – Establishment of Emergency Communications System Instrument, 2020 (E.I. 63 for purposes of requesting or directing 1st and 2nd Respondents as well as other Network Operators or Service Providers to cooperate with and make available certain pieces of personal information of the subscribers including the Applicant.

It is his contention that the 3rd Respondent acting on behalf of the 4th Respondent wrote to network providers including the 1st and 2nd Respondents to make some personal information of subscribers available to the 4th Respondent. The Applicant submits that the personal information

requested by 3rd and 4th Respondent may only be given out in accordance with law, and in so contending argues that the manner in which the President proceeded by E.I. 63 does not accord with law. Further, that the President's directive by E.I. 63 has violated or is likely to violate his right to administrative justice, privacy and equality or non-discrimination.

The 4th Respondent's Case:

The pith of the 4th Respondent's case is that E.I. 63 which was made by the President in the wake of the coronavirus pandemic was made pursuant to the power conferred on him by section 100 of the Electronic Communication Act, 2007 (Act 775). Under E.I. 63, 4th Respondent was mandated to set up an Emergency Communication System to help address Public Health Emergency. The 4th Respondent's case is that under E.I. 63, network operators and required to cooperate with 4th Respondents Common Platform to provide information to state agencies in case of an emergency including a Public Health Emergency such as the ravaging Coronavirus pandemic.

In furtherance of the order/directives contained in E.I. 63, the 4th Respondent convened a meeting with the network operators on the matters of sharing information for the purpose of setting up the Emergency Communication System, and that the 3rd Respondent being the 4th Respondent's Agent who runs the Common Platform on behalf of the 4th Respondent was also invited to the meeting.

The Applicant says that a person's right to privacy under Article 18 of the Constitution is not absolute but rather subject to exceptions such as when the interference is done in accordance with law for public safety and economic wellbeing of the people of Ghana. The 4th Respondent's case, therefore, is that E.I. 63 which draws sustenance from Section 100 of Act 775 having been made to create an Emergency Communication System for purposes of fighting health emergencies such as the marauding Coronavirus is justifiable under Article 18(2) of the Constitution.

The 4th Respondent also says that not only is E.I. 63 justifiable under Article 18(2) of the Constitution but also that the claims of undue interference with privacy are completely misplaced as the Common Platform on which the Emergency Communication System is to be deployed does

not have the capability of listening to, or recording voice, data or video communications of network subscribers. (Has not been denied) All that the Emergency communication system will do will be to share that information necessary for contact tracing of person affected by Covid-19 pandemic which naturally will exclude voice, data and video communications of network subscribers. It is 4th Respondent's contention that the Emergency Communication System for tracing such persons has become necessary as same will aid in the tracing of persons who are either suspected or actually affected by a Public Health Emergency (in the instant case Covid-19) and places they have been to so as to be able to control the spread and ravages of the novel Coronavirus that is wreaking havoc across the globe with thousands of Ghanaians already affected and fatalities soaring over five hundred(500).

It is therefore the case of the 4th Respondent that there is the urgent need to get ahead of the Coronavirus pandemic and a Health Emergency System that will safeguard lives cannot by any stretch of the human imagination be viewed as being intrusive of the Applicant's right to privacy. Indeed the 4th Respondent argues that the Applicant has failed to show any manifest violation of law that makes the application of the directives contained in the E.I. 63 illegal or unreasonable as to justify a declaration to that effect and a quashing of same, and that the Emergency Communication system to be set up pursuant to E.I. 63 is reasonable having regard to the fact that its intended purpose is to share only subscriber information necessary for tracing subscribers who may have come into contact with other persons after being affected by a heath emergency such as Covid-19.

The 4th Respondent therefore prays this Honourable Court to dismiss the Application as being without merits.

4th Respondent raises three main issues arise for determination viz:

1. *Whether or not the present Application which essentially challenges the constitutional of E.I. 63 is competent;*
2. *Whether or not E.I. 63 and its implementation violate the Applicant's rights to privacy;*
3. *Whether or not E.I. 63 and its implementation are unreasonable and disproportionate*

Whether the present Application which essentially challenges the constitutionality of E.I. 63 is competent;

My Lord, we raise for preliminary determination the competence of the action brought by the Applicant herein. My Lord, the nub of the Applicant's plaints before this Honourable Court is that by making E.I. 63 the president has violated Article 18(2) of the Constitution and E.I. 63 is therefore impliedly unconstitutional. Indeed, the Applicant proceeds to invite this Court to quash E.I. 63 by means of the prerogative Writ of certiorari.

My Lord, it has been held in the case of ***Amegatcher (No. 1) v. Attorney-General [2012] SCGLR at page 938*** *that where an executive action has been authorised expressly by legislation, rebuttable presumption of regularity and constitutionality would be made in support, and that to rebut that presumption, the person impugning the Executive action would need to demonstrate clearly that the authorizing legislation was inconsistent with the Constitution. In simple terms, where the enabling Statute of an Executive Instrument has not been impeached as being unconstitutional, an E.I. made pursuant thereto cannot be impeached as offending the Constitution.*

My Lord, E.I. 63 was spawned by section 100 of the Electronic Communications Act, 2007 (Act 775) which enacts as follows:

"The President may by executive instrument make written requests and issue orders to operators or providers of electronic communications networks or services requiring them to intercept communications, provide any user information or otherwise in aid of law enforcement or national security"

Evidently, all the President did, in exercising executive authority to make E.I. 63, was to draw on its power to make Executive instrument under section 100 of ACT 775. Thus, there is, ab initio, a presumption of regularity and constitutionality of E.I. 63. In other words, E.I. 63 having been made in accordance with statute must be taken to be regular and in accord with Article 18 of the 1992 Constitution. My Lord, the Amegatcher case (supra) teaches us that an E. I. made pursuant to power conferred under a statute cannot suffer a direct attack on its constitutionality. That attack must be waged on the statutory provision authorizing the making

of the Executive Instrument with the consequence that a successful attack on the statutory provision will lead to the natural death of the E.I. Made pursuant thereto.

It stands to reason therefore that to succeed in attacking E.I. 63, the Applicant must demonstrate that Section 100 of the Electronic Communications Act, 2007 (Act 775) is inconsistent with his right privacy guaranteed under the Constitution. My Lord, nowhere in the Applicant's case has the constitutionality of Section 10 of Act 775 been questioned. The Applicant has concerned himself with bemoaning what he sees as a procedural defect in the making of E.I. 63 as according to him E. I. 63 ought to have been made, among others, with prior judicial approval. The absurdness of that argument shall be demonstrated later but suffice it to say that the so called procedural defect arises from the provision of Section 100 of Act 775 which has not been questioned before this Honourable Court.

It is therefore our respectful submission that having failed to mount an attack on the constitutionality of Section 100 of Act 775, the Applicant cannot be heard to question the constitutionality of E.I. 63.

Indeed, it is our respectful submission that the Applicants action strictly speaking is one inviting this Honourable Court to quash E.I. 63 as unconstitutional since it is inconsistent with Article 18 of the 1992 constitution, in other words, the Applicant is asking for the enforcement of a constitutional provision, that is Article 18(2) by challenging the constitutionality of E.I. 63 and by extension Section 100 of Act 775. That being the case, this Honourable Court is not the proper forum to maintain the present action. The right course will be to invoke the Supreme Court's jurisdiction under Articles 2 and 130 of the Constitution 1992.

Thus in the case of ***Okudzeto Ablakwa & anor. Vrs. Attorney – General & anor. [2011] 2 SCGLR 986 at page 998****, Atuguba JSC said of the Supreme Court's jurisdiction under Articles 2 and 130 that:*

"The instant case really calls up the vexed question as to what should be the real test for determining what is a constitutional case for either interpretation or enforcement within the exclusive jurisdiction of this Court under Articles 2 are 130 of the 1992 Constitution. It is trite

law that the known test is what is the real issue or as is sometimes put in this and other jurisdiction, what is the pith and substance of the action"

It is provided in Article 2 (1) of the 1992 Constitution as follows:

"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"*

At page 10 of the Applicant's Written Submissions, it was submitted on his behalf as follows:

"quite clearly, therefore, this outcome is not and cannot be the intendment of the lawmaker when they enacted Act 775. However, should this Honourable Court even hold that such were the intendments of parliament when they enacted Act 775, we contend further and very sternly that such an intention runs inconsistent with the intention of the framers of the Constitution behind Article 19(2) [sic] as disclosed by the Supreme Court in the ***Abena Pokuaa Ackah vrs. Agricultural Development Bank*** *case"*

It is on the basis of the foregoing that the Applicant claims, among others, the relief of certiorari quashing E.I. 63 as contained in relief "B" endorsed on his Amended Originating Motion filed on 28th April, 2020.

My Lord, the pith of the matter before this Court as demonstrated above is that the Applicant is in Court seeking declaratory and injunctive reliefs as well as orders of certiorari as he considers E.I. 63 made by the President to have been made in contravention of Article 18(2) and to that extent unconstitutional. Indeed, the Applicant invites this Honourable Court to question the intendment of parliament as being out of sync with Article 18(2) of the constitution. It is therefore abundantly clear that what is before your lordship is a constitutional matter garbed in the robes of a human rights action. In other words, the matter before the Court is in essence more of a constitutional matter than one that seeks to enforce a personal right. The relevant law

for the determination of the issues raised before this Court, as has been demonstrated by the Applicant himself, is the 1992 Constitution, particularly Articles 18 and 23. That being the case, it is the respectful view of the 4th Respondent that it is the Supreme Court and not this Honourable that has jurisdiction to determine this matter. My Lord, we are fortified in this thinking by the fact that throughout his case (affidavit in support), the Applicant has offered nothing by way of cogent evidence to demonstrate a breach of privacy and unreasonableness in the making and implementation of E.I. 63.

We therefore pray this Honourable Court to hold the entire action as being misconceived, this Court not being the proper forum for the instant action. We therefore pray that, on that score alone, the instant Motion be dismissed with punitive costs.

Whether or not E.I. 63 and its implementation violate the Applicant's right to privacy;

My Lord, it has been urged on this Court, rather strenuously, that E.I. 63 as well as its implementation violate or will violate the Applicant's right to privacy, administrative justice and non-discrimination. In that connection, the Applicant planks his arguments on three main grounds namely:

1. *That E. I. 63 is procedurally flowed as the President failed to obtain prior judicial approval before making it;*
2. *That E.I. and its implementation is or will be unreasonable; and*

My Lord, Article 18(2) of the 1992 Constitution provides as follows:

"no person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic wellbeing of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others"

Again, section 100 of the Electronic Communications Act, 2008 (Act 775) also enacts as follows:

"The President may be executive instrument make written requests and issues orders to operators or providers of electronic communications networks or services requiring them to intercept communications, provide any user information or otherwise in aid of law enforcement or national security"

It is the case of the Applicant that the phrase "in accordance with law" ought to be interpreted as requiring prior judicial approval before any such interference can be said to be lawful. The Applicant refers to the unreported Supreme Court case of ***Abena Pokuaa Ackah v. Agricultural Development Bank – Suit No. J4/31/2014*** *dated 19th December, 2017 and argues that the holding of the Court per Dotse JSC that the phrase "in accordance with law" must mean prior judicial approval is applicable to this Court.*

My Lord, it is our respectful submission that the Abena Pokuaa Ackah case (Supra) is inapplicable to the present case. In seeking to rely on the recording that was deemed as breaching the privacy of the Plaintiff in the Abena Pokuaa Ackah case, the Defendant was not acting on any express power or right conferred on it by statute or any law. The requirement by the Court that there be prior judicial approval before acting in a manner that is deemed as breaching the privacy of a person was to curtail a situation where persons not acting under lawful authority can unilaterally engage in acts that intrude upon the privacy of others. It is our submission that the interpretation that was put on the phrase "in accordance with law" as requiring prior judicial approach was not intended to have sweeping applicability as to void even acts expressly authorised by Acts of Parliament that have not been declared unconstitutional. To stretch the Supreme Court's decision that far will mean the judiciary will be slipping from its province to that of the Legislature. My Lord, under Article 93(2), legislative power vests in Parliament and Parliament exercises such power in the manner specified in Article 106. Where therefore Parliament makes law, that law can only be struck down by the Supreme Court under Article 130(1) (b) of the Constitution.

The ratio in the Abena Pokuaa case cannot therefore be read to mean that Parliament is deprived of power to make laws curtailing the freedom of citizens in the interest of the masses, and that where such power is granted under an Act of Parliament, a person authorised so to act

will nonetheless have to seek prior judicial approval even where that has not been expressly stated by the Act. We submit that this Court ought to reject any such claims.

My Lord, indeed, in the Abena Pokuaa case, his Lordship Justice Pwamang opined at page 69 that:

> *"Article 18(2) does not provide for prior judicial fiat before interference with privacy but it is rather statutes made pursuant to the article that provide for prior Court permission before state agencies can interfere with privacy"*

His Lordship proceeded to cite examples of statutes that require prior judicial approval before interference with the privacy of individuals such as ***Section 27 of the Narcotics Drugs (Control, Enforcement and Sanctions) Act 1990 (Act 526)*** *and* ***Sections 29 and 30 of the Security and intelligence Agencies Act 1996 (Act 526)*** *all of which require the intervention of the Court before interfering with the privacy of individuals. His Lordship also referred to other instances where the requirement of prior judicial approval is waived such as* ***Section 8 of the Criminal Procedure Code, 1960 (Act 30)*** *and* ***Section 24 of the Narcotics Drugs (Control, Enforcement and Sanctions).***

It is therefore our submission that when the Supreme Court per Jones Dotse JSC held that prior judicial approval was required for interfering with the privacy of another, the Supreme Court did not purport to create an all-encompassing principle of law that will apply to all cases, and indeed it did not intend for that principle or rule of law to apply to situations where statute has expressly conferred power on a person or authority as section 100 of Act 775 did.

My Lord, again, section 100 of Act 775 provides that "the President may be executive instrument make written requests and issue orders to operators or providers of electronic Communication Networks or services requiring them to intercept communications provide any user information or otherwise in aid of law enforcement or national security"

Nowhere in Section 100 is the President required to obtain prior judicial approval before making an Executive instrument under section 100. In making E.I. 63 therefore, there was no obligation on the President to obtain judicial approval first. Such reasoning will be radically at variance with the language of Section 100 of Act 775.

Again, as we have already urged on this Court, the constitutionality of Section 100 of Act 775 has not been questioned before this Honourable Court. It being an Act of Parliament, it occupies second place behind the 1992 Constitution in the hierarchy of laws under Article 11 of the 1992 Constitution. It therefore satisfies the requirement of the phrase "accordance with law" as provided in Article 18(2) of the Constitution.

In sum, while Article 18(2) creates a right in an individual to protection from interference with his communication, such right is not absolute but is subject to rights of others for the protection of the health of others, the only caveat or proviso being that such interference must accord with law. It is Section 100 of the Electronic Communication Act that gives the president the power to make Executive Instrument for the purpose of requesting from communication networks or Service Providers any user information or otherwise in aid of law enforcement or national security. E.I. 63 therefore only gives meaning to Section 100 of Act 775 which may in tune be viewed as one of the ways of lawfully enforcing the proviso in Article 18(2) of the Constitution.

Even though the Applicant's right to privacy is guaranteed under the Constitution, such right is subject to the right of others as enshrined in Article 18(2) of the 1992 Constitution, provided it is in accordance with the law. Since the Electronic Communication Act mandates the President to make written requests and issue orders by Executive Instrument to operators or providers of electronic communications networks o services requiring them to provide any user information in aid of law enforcement, the requirement of Article 18(2) is thereby met.

We submit on the strength of the foregoing that the President in making E.I. 63 acted intra vires and not ultra vires as has been pressed on this Court with passion that can rival the zeal of a religious fanatic.

My Lord, another argument that has been urged on this Court is E.I. 63 failed to meet a condition precedent to its making. The Applicant argues that the President's power under section 100 of Act 775 is only exercisable in the vent of the conditions in Section 99 arising. It will therefore be worthwhile to reproduce the two sections here in full. (These sections have been reproduced several times and therefore omitted.)

My Lord, it is evident form a careful reading of the above provisions that the President has two distinct powers, on exercisable by the President after a State of Emergency has first been declared by the President under Article 31 of the 1992 Constitution: the second, which is exercisable under Section 100 is wholly independent of the power under section 99 and the President may at any time, for the purposes of law enforcement and national security exercise that right. Law enforcement is not only necessary in times when a state of emergency has been declared. In fact, a reading of Section 99 (6) of the Act for instance reveals that in the event of a State of Emergency arising out of war, the president is able to take over control of electronic communications systems without the need for any Executive Instrument.

It is our submission that Sections 99 and 100 of Act 775 create two separate regimes and are to that extent independent of each other. The President in making E.I. 63 was therefore not under any obligation to first and foremost declare a state of emergency as has been argued by the Applicant. The Applicant's invitation to this Honourable Court to construe Sections 99 and 100 of the Electronic Communications Act together and read section 100 as dependent on Section 99 is grossly misconceived and this Honourable Court should not be persuaded by the argument

Whether a making of E.I. 63 and its implementation was unreasonable and disproportionate.

My Lord, the Preamble to Executive Instrument 63 provides, among others that, "whereas, there is an urgent need to establish an emergency communication system to trace all contacts of persons suspected of or actually affected by a Public Health Emergency and identity the places visited by persons suspected of or actually affected by a Public Health Emergency..."

It is also provided in Article 23 of the Constitution, 1992 as follows:

> *"Administrative bodies and administrative officials shall act fairly and reasonable 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''*

My Lord, it has been argued before you that the conduct of the Respondents, particularly the President (herein represented by the 5th Respondent) is exceptionally disproportionate and

therefore in breach of Article 23 of the constitution. Article 23 requires fairness and reasonableness on the part of administrative bodies. The test for reasonableness has been applied in the case of ***Counsel for Civil Service Unions v Minister for Civil Service [1984] 3 ALL ER 935,*** *Lord Diplock said of unreasonableness that;*

> *''by 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (see Associated Provincial Picture Houses Ltd v Wednesbury Corp [1947] 2 ALL ER 680, [1948] 1 KB 223]. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it''.*

What therefore was the purpose for which E.I. 63 was made by the President? My Lord, as the 4th Respondent has been at pains to point out in its Affidavit in Answer, E.I. 63 was made for the specific purpose of tracing persons affected by a Public Health Emergency such as Covid-19 and the places such persons have been to. In effect, it is the identity of the persons and the places that they have been to that the Emergency Communication System will be interested in. There will therefore be no interference with his data, voice or videos communications of subscribers as to intrude upon his privacy. Indeed, the Applicant who makes that claim has not been able demonstrate that there will be such invasion neither has any of the Network Providers made any such claim. The Applicant is therefore inviting this Honourable Court to join him on the speculative journey that has embarked upon.

The question that arises for immediate determination is whether any reasonable person applying his mind to the rationale behind E.I. 63 as stated in its preamble cited supra will come to the conclusion that E.I. is outrageous in its defiance of logic or acceptable moral standards.

There is in fact logic and good reason for the use of E.I. 63 to trace all person affected by the Public Health Emergency, identify the places they have been to so as to be able to isolate and treat persons affected by such health emergency. It is indeed a matter for the greater good of the people of Ghana. It is absolutely unreasonable to argue that one man's fears of breach of privacy should move the Court to orders that will actually put lives of millions of Ghanaians in peril. E.I. 63 came on the heels of the novel Coronavirus that has taken its toll on Ghanaians as not only have over 60,000 persons been infected with nearly 600 fatalities but also many businesses have

been crippled by the closure of borders and a slew of other measures put in place to curb the spread of the virus. Indeed, as has been notoriously and widely published in the media, our health facilities have been stretched and unless urgent and responsible steps are taken, the country risks being overrun by the pandemic. The cries of one man who has come to Court to make unproven allegations of breach of his privacy and has offered absolutely nothing by way of evidence of unreasonableness cannot be allowed to drown the millions of voices that cry out every day for a solution that will see the coronavirus banished from this country.

Any order or orders that will hamper efforts at fighting the virus must be restrained and in the instant case, that will be achieved by dismissing the instant application. Indeed, we are fortified in our belief that the instant application is without basis as the affidavit in support of the instant motion has been bare in the claim that the Respondents have acted unreasonably or disproportionately. More importantly, the 4th Respondent has made the direct claim that the Common Platform over which the Emergency Communication System is to be implemented does not have the power to record voice, data or videos communication. The 4th Respondent has also made the direct claim that only data such as the name and the whereabouts of person affected by the novel Coronavirus will be passed on to relevant health officials for contact tracing and treatment of persons affected by the pandemic. These claims have not been refuted by the Applicant as nowhere in the Applicant's case before this Honourable Court has the claim been made that the 4th Respondent, and for that matter, the 1st, 2nd and 3rd Respondents have evinced an intention to use whatever data is collected pursuant to E.I. 63 for any purpose other than the lawful purpose indicated in Executive Instrument No. 63.

We submit very respectfully that the test in the case of Council for Civil Service Unions supra cannot be said to have been met and E.I. 63 is therefore reasonable and proportionate in its application.

My Lord, the Applicant speaks of administrative justice, equality and non-discrimination, but does not offer in the affidavit in support any demonstration that he has been discriminated against and has also not been treated equally. The fanciful claims of non-discrimination and lack of equality must be equally dismissed as being without any basis.

In the premise, we pray your lordship to dismiss the instant application as being without merit.

CONCLUSION:

We wish to sum up by submitting that the action commenced by the Applicant is incompetent on the strength of the ***Amegatcher*** *case (supra) and ought to be dismissed on grounds that it targets an Executive Instrument which was made pursuant to a power conferred on the President under section 100 of Act 775 without first questioning the constitutionality of section 100 of Act 775.*

It is also our submission that E.I. 63 meets the requirement of Article 18(2) as same was made in accordance with law, to wit, Section 100 of Act 775. The claim that the President required prior judicial approval before making E.I. 63 is misconceived as that requirement relates to matters arising out a private contract and the exercise of executive power pursuant to power conferred on the president by Statute.

It is also our submission that E.I. 63 meets the test of reasonableness under Article 23 of the Constitution as the E.I. is intended to help set an Emergency Health System to tackle health emergencies such as the current coronavirus pandemic which has currently affected over 60,000 Ghanaians and has claimed nearly 400 lives already. The Emergency Health System is required to help in tracing and identifying persons affected by the epidemic for testing and treatment and will in that regard help save millions lives. It is therefore our submission that the Applicant's case is without merits and same ought to be dismissed with punitive costs."

5TH RESPONDENT'S CASE:

In 5th Respondent's affidavit in response to the Applicant's Originating summons for enforcement of fundamental Human Rights, it made the following depositions.

It admitted that the averments in paragraphs 5, 6, 7 and 8 of the Affidavit in Support of the summons were not in dispute.

It is 5th Respondent's case that the President's power to make written requests and issue orders to operators or providers of telecommunications network services requiring them to

provide information or otherwise in aid of law enforcement or national is derived from statute and therefore lawful.

According to 5th Respondent the Executive Instrument (E.I. 63) provides for such powers the purpose of which is to afford the President the opportunity to deal with emergency situations such as the current pandemic in respect of which the establishment of a communications system is required to trace contacts of persons and identify places visited by persons suspected to be or actually affected by the pandemic.

It is deposed further that Applicant has not furnished this Honourable Court with any evidence in respect of the averment in paragraph 10 of the affidavit in support. 5th Respondent stated that the same Constitution which guarantees the protection of the Applicant's rights sets limits within which the protection may be limited or curtailed and such limitations include when it becomes necessary for the protection of health to do so.

5th Respondent deposed that the President's actions emanate from legislation which did not require that the Applicant's consent should be obtained.

In response to paragraph 12 of the affidavit in support, 5th Respondent says the Applicant has not furnished this Court with any evidence to show that he has been discriminated against as a result of the implementation of the provision of E.I. 63, neither has he demonstrated that his consent ought to have been obtained prior to the President's orders. In any case the provisions of E.I. 63 are not personal to the Applicant or targeted at him personally. 5th Respondent says there has not been any violation or any likelihood of violating the Applicant's rights which warrants the granting of such orders to restrain the Respondents. Its' 5th Respondents case that the instant application in its entirety, is misconceived, without any merit and ought to be dismissed.

5th Respondent's written address repeats most of its depositions in the affidavit in response to the summons. For the sake of avoiding repetitions I will summarize the arguments. 5th Respondent argues that due process has been followed by His Excellency the President in requesting or causing a request to be made available the said information and that the constitutional provisions in Article 18 (2) on which the Applicant's claim is premised also provides exceptional circumstances in which all rights enshrined therein may be interfered with,

and such interferences should not done in accordance with the law. It stated that the purpose of the E.I. 63 is to afford His Excellency the President the opportunity to deal with emergency situations such as the current pandemic in respect of which the establishment of a communication system is required to trace contacts of persons and identify places visited by persons suspected to be or actually affected by the pandemic. 5th Respondent strongly contends that the Applicant has not furnished this Honourable Court with any evidence in respect of averments and allegations brought before this Honourable Court and further that the Constitution of Ghana, 1992 guarantees the protection of the Applicant's right and further sets limits within which the said rights may be enjoyed and by so doing the said rights could be justifiably limited or curtailed and such limitations include when it becomes necessary for the protection of health to do so.

The 5th Respondent also states that the Applicant has failed to provided evidence to show that indeed he has been discriminated against as a result of the implementation of the provisions of E.I. 63, neither has he demonstrated that his consent ought to have been obtained prior to His Excellency the President's orders. In any case, the provisions of E.I. 63 are not personal to the Applicant or targeted at him personally as he contends. Also, the 5th Respondent asserts that there has not been any violation or any likelihood of such violation of the Applicant's right that should warrant the granting of the orders being sought by the Applicant in this present Application.

5th Respondent stated that the burden of proof and producing evidence in proof of the facts asserted lies on whoever is making the claim and cited the case of **Baker-Woode v Nana Fitz [2007-2008] SCGLR at** 879 per Dr. S. Twum JSC. Counsel supported the burden of producing admissible evidence and not just repeating averments on oath by citing the case of **Majolagbe v Larbi [1959] GLR 190-195** at **192** where it was stated that "where a party makes an averment, and his averment is denied, he is unlikely to be held by the Court to have sufficiently proved that averment by his merely... repeating the averment on oath, if he does not adduce that corroborative evidence which is certain to exist." It is 5th Respondents case that generally, and as provided by the **Evidence Act**, "except otherwise provided by law, unless it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting." 5th Respondent cited a number of other cases like **Okudzeto Ablakwa v A.G. and Another,** to establish the fact that the burden of proof is on the Applicant

to establish on the balance of probabilities that indeed the allegations and claims made against the Respondents are true and substantiated. Which is buttressed by section 17(b) of the Evidence Act.

5th Respondent's case is that the Applicant has failed to furnish this Honourable Court with any evidence of the averments and allegations brought before this Honourable Court and accordingly has failed to discharge the burden of proof placed on him by law for him to be successful in this present application. Therefore the instant application is misconceived and without merit and accordingly should be dismissed by this Honourable Court.

5th Respondent raises three issues to be resolved by the Court:

a. Whether or not the Applicant's Right to Privacy has been violated by the President of the Republic of Ghana?
b. Whether or not the Applicant's Right to Administrative Justice have been violated by the President of the Republic of Ghana?
c. Whether or not the Applicant is entitled to the reliefs sought in this present Application?

I will reproduce 5th Respondent's arguments as follows:

37. *"My Lord, in resolving these issues, the 5th Respondent contends that the role of this Honourable Court as held in the cases of* ***Re Pollayd [1869] LR 2PC*** *and* ***Halm v Republic [1969] CC 96*** *is not to serve as a mere umpire but rather to find out the truth and do justice according to the law.*

F. *ISSUE 1: WHETHER OR NOT THE APPLICANT'S RIGHT TO PRIVACY HAS BEEN VIOLATED BY THE PRESIDENT OF THE REPUBLIC OF GHANA*

38. *My Lord, the 1992 Constitution of Ghana guarantees the enjoyment of certain rights and entitlements by persons by reason of them being human beings.*
39. *My Lord, these rights are universally regarded as inalienable and constitute the birth right of an individual as a human being.*

40. *My Lord, accordingly,* ***Article 12(2) of the 1992 Constitution of Ghana*** *provides that, "the fundamental human rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all other organs of Government and its agencies and, where applicable to them, by all natural and legal persons in Ghana, and shall be enforceable by the Courts as provided for in this Constitution."*

41. *My Lord, furthermore* ***Article 12(1)*** *provides that, "every person in Ghana, whatever his race, place of origin, political opinion, color, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter* ***but subject to respect for the rights and freedoms of others and for the public interest.***"

42. *My Lord, accordingly, the 1992 Constitution has empowered Courts with the jurisdiction to enforce the fundamental human rights provisions under Chapter 5 of the 1992 Constitution and to provide redress in the event of breach of same.(see Articles 33(1), 130(1) and 140 (2) etc.*

43. *My Lord, the guaranteed human rights as provided under the 1992 Constitution of Ghana include the protection of the right to privacy.*

44. *My Lord,* ***Article 18(2) of the 1992 Constitution*** *provides that, "no person shall be subjected to interference with the privacy of his home, property, correspondence or communication* ***except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic wellbeing of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.***"

45. *My Lord, the Supreme Court of Ghana in Professor Stephen Kwaku Asare v Attorney General and the General Legal Council Civil Appeal No. J1/1/2016 dated 22nd June, 2017 has highlighted that the Constitution of Ghana highly guarantees the privacy of property which is the right of a person to be left alone on or in the use of his property and the exclusive enjoyment of same.*

46. *My Lord, the above provision which provide for the enjoyment of the fundamental human right to privacy as enshrined in the 1992 Constitution also expressly provide that the enjoyment of the said right is not absolute.*

47. *My Lord, the right to privacy of property can be limited and curtailed so long as it is done "**in accordance with law and as may be necessary in a free and democratic society for public safety or the economic wellbeing of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.**"*

48. *My Lord, similarly the 1992 Constitution of Ghana expressly provides that all the fundamental human rights and freedoms of the individual contained in Chapter 5 of the Constitution, inclusive that of the right to privacy, is **subject to the respect for the rights and freedoms of others and for the public interest.***

49. *My Lord, thus in the case of **Republic v. Tommy Thompson Books Ltd, Quarcoo & Coomson [1996-97] SCGLR 804 at 883** the Court stated in line with Article 12(2) of the 1992 Constitution that "the principle of prior restraint of a constitutional freedom, even an entrenched freedom, is not unknown to our Constitution and is founded on the universally accepted principle that every right of freedom is subject to the rights and freedoms of others and the protection of the reasonable interests for the common good."*

50. *My Lord, it is the case of the 5th Respondent that the Executive Instrument i.e. Establishment of Emergency Communications System Instrument, 2020 (E.I. 63), made pursuant to His Excellency the President's powers under the Electronic Communications Act 2008 (Act 775) were done in accordance with law and thus did not require the consent or prior concurrence of the Applicant in order to be passed.*

51. *My Lord, the said Act 775 in section 100 provides that, "the President may by executive instrument make written requests and issue orders to operators or provision of electronic communications networks or services requiring them to intercept communications, provide any user information or otherwise in aid of law enforcement or national security."*

52. *My Lord, accordingly, His Excellency the President in accordance with the performance of the power provided in Act 775 passed the E.I. 63 so as to deal with the emergency situation brought about by the prevailing Public Health crisis as a result of the Covid-19 pandemic.*

53. *My Lord, E.I. 63 is necessary to establish an emergency communication system to trace all contacts of persons suspected of or actually affected by the Public Health Emergency and also to identify the places visited by persons suspected of or actually affected by a Public Health Emergency.*

54. *My Lord, the claim by the Applicant that His Excellency the President in exercising a constitutional and statutory right and/or mandate required a Court Warrant is false and erroneous and ought not to be countenanced by this Honourable Court.*

55. *My Lord, the Applicant claims that the exercise of the power by His Excellency the President to pass E.I. 63 which according to him involves a limitation of his rights is not legal, is illegitimate and not proportional is false, not supported by any evidence on record and thus baseless.*

56. *My Lord, to the contrary, the passage of the E.I. as well as its contents in the midst of the prevailing Public Health crisis passes the so-called test in the R v Oakes case [1986] 1SCR 103 since the passage of E.I. 63 has a goal which is pressing and substantial and more so is very important and necessary considering the prevailing circumstances.*

57. *In any case, the Applicant has done very little to show to this Court through the leading of cogent evidence how indeed his fundamental human rights have been or is likely to be breached.*

58. *My Lord, merely repeating on oath his allegations does no amount to proof in law.*

59. *My Lord, assuming without admitting that indeed the passage of E.I. 63 has limited any of the fundamental rights and freedoms of any of the citizens of Ghana, the goal of E.I. 63 is sufficiently important to warrant the overriding of the said rights that have been curtailed. Also, the measures provided in E.I. 63 by which the said rights would be*

curtailed are justifiable in that they are fair and not arbitrary, they are carefully designed to achieve the sole object of protecting the public safety, interest and rights of others as well as the fact that whatever measures are not severe but rather relate to the objective in question.

60. *My Lord, the burden is on the Applicant to show otherwise and this the Applicant has woefully failed.*

G. *ISSUE 2: WHETHER OR NOT THE APPLICANT'S RIGHT TO ADMINISTRATIVE JUSTICE HAVE BEEN VIOLATED BY THE PRESIDENT OF THE REPUBLIC OF GHANA?*

61. *My Lord, the Applicant claims that His Excellency the President's directive to the Respondents to collect the Applicant's personal information for the purpose for which it was made for amounts to an exercise of administrative power.*

62. *Furthermore, the Applicant's further claim that the decision of His Excellency the President to, through E.I. 63, collect or direct the collection of the Applicant's personal information is subject to the rules of administrative justice and therefore judicial.*

63. *My Lord, indeed, the Constitution provides and guarantees the right of an individual to administrative justice in that, "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 trial." See Article 23, 1992 Constitution.*

64. *My Lord, in the case of* ***Awuni v WAEC [2003-2004] ISCGLR 471****, Sophia Akuffo JSC highlighted the right to administrative justice by stating that:*

"...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-judicial 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 is performed. At the very least however, it includes probity, transparency, objectivity, opportunity to be heard, legal competence and absence of bias, caprice or ill-will..."

65. *My Lord, it is this right that the Applicant claims without providing any cogent evidence that His Excellency the President of the Republic of Ghana has violated due to the invoking of his power under Act 775 to pass E.I. 63.*

66. *My Lord, to be successful in proving that the passage of E.I. 63 has led to the infringement of the Applicant's right to administrative justice, the Applicant ought to have shown that the actions and decisions of His Excellency the President was not done in tune with the requirements of fairness and reasonableness. (Awuni v WAEC [2003-2004] 1SCGLR 471 and Prince Ganaku and Others v the General Legal Council, High Court Suit No HR/008/2020 dated 13th October, 2020.)*

67. *My Lord, thus, the Applicant was duty bound to prove that the actions of His Excellency the President was ultra vires the enabling statute i.e. Act 775 thus leading to an infringement of his rights or that the President executed his mandate outside the scope of the laws of the Republic of Ghana.*

68. *My Lord, this, the Applicant has failed to prove.*

69. *My Lord, the Applicant has failed to show by cogent evidence that indeed the passage of same and the accompanying results have led to an infringement of his right to administrative justice.*

70. *More so, my Lord, the Applicant has failed to show that indeed the passage of E.I. 63 was done unfairly, unreasonably and in arbitrary manner.*

71. *My Lord, also, the Applicant has failed to show that indeed the President has acted illegally or ultra vires his powers as mandated by law or the Constitution of Ghana.*

72. *My Lord, as explained above, a person's human rights can be limited once the limitation was not applied in a discriminatory manner so as o derogate against the principles of equality before the law as enshrined under Article 17 of the 1992 Constitution.*

73. *My Lord, the Applicant has failed to show that indeed the application of E.I. 63 was done in a manner that was unfair to him so as to amount to a selective and discriminatory application of the statutory instrument.*

74. *My Lord, indeed, the sole object of E.I. 63 is for the protection of the public safety, interest and rights of others. This shows that the E.I. was passed for good reason and accordingly reflects qualities of fairness, reasonableness and legal compliance.*

75. *My Lord, a critical look at the importance of the objective of E.I. 63 would show that the directives of the President are not geared towards discriminating against or injuring any individual unless an individual who has had his rights so violated is able to prove same.*

76. *My Lord, more so, the Applicant has not been able to show that in the circumstances there were other less restrictive methods available to achieve the same result that E.I. 63 was intended to achieve so as to justify a claim of unfairness and unreasonableness.*

77. *My Lord, in the current circumstance and the prevalence of the health crisis, this Honourable Court is mandated to weigh the so-called limited rights of the Applicant to administrative justice against the human rights, public safety, national security of others and the values of society.*

78. *My Lord, all these lead to one conclusion that the directive of His Excellency the President is in no way irrational and illegal as the Applicant contends.*

79. *My Lord, an application of the Wednesbury Principles as espoused in the* ***Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1KB 223*** *would show that an administrative decision can be said to be illegal only if the decision maker did not*

understand correctly the law that regulates his decision-making power and thus failed to give effect to it.

80. *My Lord, the Wednesbury Principles further provide that to show that a decision was irrational, an Applicant must show that decision is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.*

81. *My Lord, lastly, the Wednesbury Principles also mandates that a person who is trying to impugn the exercise of an administrative decision must show that the said decision was carried out through procedural improprieties.*

82. *My Lord, under procedural impropriety, one must show more than mere failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. (Associated Provincial Picture Houses Ltd v Wednesbury Corporation supra)*

83. *My Lord, one must show critically that the one who exercised the administrative decision failed to observe the procedural rules that are expressly laid down in the statutory instrument by which the jurisdiction of power to exercise the decision is conferred. My Lord, this is independent of whether or not the said failure involves any denial of natural justice.*

84. *My Lord, in the present Application, the Applicant has failed to show that His Excellency the President's directives are illegal, irrational and smack of procedural impropriety. Civil Service Unions v Minister of State for Civil Service [1985] AC 374.*

85. *My Lord, the Applicant has made a feeble attempt to urge this Honourable Court to read Act 775 as a whole so as to import an interpretation that the Act contains a condition precedent for His Excellency the President's invocation of his power in Section 100.*

86. *My Lord, the Applicant is urging this Honourable Court to interpret Act 775 to mean that the President could issue E.I. 63 only after declaring a state of emergency in accordance with Article 31 of the 1992 Constitution.*

87. *My Lord, this interpretation is erroneous and should not be accepted by this Honourable Court as it constitutes a last-minute attempt to save the Applicant's case which he has failed to prove.*

H. ISSUE 3: WHETHER OR NOT THE APPLICANT IS ENTITLED TO THE RELIEFS SOUGHT IN THIS PRESENT APPLICATION?

88. *My Lord, the Applicant has sought from this Honourable Court reliefs in the nature of declarations, certiorari, perpetual injunction and any other remedies as the Court deems fit.*

89. *My Lord, the reliefs being sought by the Applicant are discretionary and are not granted as of right.*

90. *My Lord, in order to be granted the said reliefs, an Applicant has to prove his case on the balance of probabilities and lead evidence to show that indeed the allegations being made are more probable in terms of their existence as opposed to their non-existence.*

91. *My Lord, an Applicant is required to prove the existence of certain facts and elements that entitle him to the reliefs being sought.*

92. *My Lord, the 5th Respondent claims that the Applicant has woefully failed to prove on the balance of probabilities that he is entitled to the reliefs being sought in this application.*

93. *My Lord, in fact, the Applicant's claims in this present action are erroneous, misconceived and baseless.*

94. *The Applicant has failed to prove that his fundamental human rights have or are likely to be breached.*

95. *My Lord, accordingly, the Applicant is no entitled to the reliefs being sought or at all.*

I. CONCLUSION:

96. *My Lord, accordingly the 5th Respondent prays this Honourable Court to dismiss the Applicant's Application with punitive cost."*

Applicant was granted leave to file a supplementary address in response the issues raised by the Respondents on 22nd February, 2021 which is reproduce as follows:

SUPPLEMENTARY WRITTEN ADDRESS OF APPLICANT FILED ON 22ND MARCH 2021

1. *"This address is a supplement in support of the Applicant's claim of human rights violations against the Respondents jointly or severally by the claims of violation, the Applicant is praying this Court to enforce his fundamental human rights to administrative justice, to privacy or to equality or non-discrimination. The supplementary address is filed pursuant to the order of this Honourable Court to afford the Applicant an opportunity to reply to some of the issues of law that the Respondents have raised in their respective addresses. Accordingly, this supplementary address will respond to three main arguments, namely:*

   a. *That the request by His Excellency, the President, and the consequential supply by the 1st and the 2nd Respondents of the Applicant's personal data to the 3rd and 4th Respondents are the factual/ evidential basis of the human rights violations in question.*

   b. *That it is emphatically the exclusive original jurisdiction of this Honourable High Court to enforce the fundamental human rights and freedoms under the Constitution; and the Supreme Court may only exercise its jurisdiction in this regard by way of:*

      i. *An appeal in accordance with Article 131,*

      ii. *A supervision in accordance with Article 132, or*

iii. *A reference in accordance with article 130(2)*

c. *That on a true and proper interpretation of Act 775, a request under Section 100 cannot be made unless a state of emergency under Article 31 of the Constitution is first declared under Section 99 of Act 755*

d. *That the interpretation of Article 18(2) by the Supreme Court in the Abena Pokuaa case applies to this case fully and is binding on this Honourable Court.*

If it pleases the Court, we will argue the grounds of law as follow:

II. LEGAL ARGUMENTS

A. *That the Request by His Excellency, the President and the Consequential Supply by the 1st and the 2nd Respondents of the Applicant's Personal Data to the 3rd and 4th Respondents are the Factual/Evidential basis of the Human Rights Violations in Question.*

2. *The 1st Respondent has argued in its address which was filed on March 4, 2021, that the Applicant has provided no proof of the alleged violation. Particularly, at page 10 of its address, the 1st Respondent stated that:*

"In the instant case, the Applicant has failed to produce any scintilla of evidence to support his position that fundamental human rights have been violated or are likely to be violated. The Applicant has no evidential basis whatsoever for the grant of the reliefs it (sic) seeks in the instant case."

Secondly, the 5th Respondent, the Attorney – General, has also argued at paragraph 34 at page 9 of his Address that: "The Applicant has failed to furnish this Honourable Court with any evidence in respect of the averments and allegations brought before this Honourable Court and accordingly has failed to discharge the burden of proof placed on him by law for him to be successful in this present application."

3. *In respect of these claims, we submit that the 1st and the 5th Respondents have quite a grave misconception of the nature of the Applicant's case. It is, therefore, important to state the Applicant's case again. The Applicant's case is as follows:*

a. *That he has deposited the particulars of his personal information with the 1st and the 2nd Respondents;*

b. *That the Constitution protects the privacy of those particulars of his personal information;*

c. *That by that Constitutional protection, a person could only demand or release those particulars of personal information "in accordance with law" or with his (the Applicant's) consent;*

d. *That his Excellency, the President has, through E.I. 63, made a request for those particulars of personal information from the 1st and the 2nd Respondents;*

e. *That His Excellency, the President, made that request, without his (the Applicant's) consent and without acting in accordance with law;*

f. *That the 1st and the 2nd Respondents have released and still continue to release those particulars of his (the Applicant's) personal information to the 3rd and the 4th Respondents, all without his (the Applicant's) consent and also without acting in accordance with law; and finally*

g. *That by demanding, releasing, receiving or using the particulars of his personal information in question (and that of the over 20 million subscribers) without consent and without acting in accordance with law, all the Respondents have violated, are violating or are likely to violate his (the Applicant's) rights and the rights of the over 20 million subscribers.*

4. *In paragraphs 9 and 10 of his amended Affidavit dated April 28, 2020, the Applicant deposed on oath, categorically, that the said demand and release of those particulars of his personal data have taken place and have been continuous since then. Further in its Affidavit in opposition dated June 6, 2020, the 1st Respondent admitted the Applicants deposition in paragraphs 9 and 10 of the Affidavit in Support of the originating motion. One Emmanuel Murray, who swore the affidavit for the 1st Respondent stated in paragraph 5 that:*

"That 1st Respondent admits paragraphs 4 to 10 Applicant's amended Affidavit in Support of the originating motion"

Mr. Murray, then went on in paragraphs 6 to 8 to provide the details of the personal information that the 1st Respondent has been supplying to the 3rd Respondent under the request by the 4th Respondent and His Excellency, the President Again, the 2nd Respondent in its affidavit dated May 20, 2020, admitted having been instructed by the 3rd Respondent Private Company, who ostensibly was acting under the direction of the 4th Respondent and the President, to supply it (the 3rd Respondent) with the personal information in question. Indeed, the 2nd Respondent has attached Exhibit 'M' as evidence of the personal information in question, which, according to the 3rd Respondent to them, are to be 'UNHASHED'. The 2nd Respondent, MTN, one of the leading telecommunication Service Providers in the world, went on to state in paragraph 11 of its affidavit that:

"In the aforementioned email, the 3rd Respondent requested not just mobile money transaction details of subscribers, but also that the subscriber numbers be "un-hashed" (fully disclosed) and therefore be supplied without any privacy protection whatsoever".

Further, the 3rd Respondent in paragraphs 6 to 9 of its Affidavits did admit that its officials have, on March 27, 2020, sent an email to request the particulars of the personal information in question from the 1st and the 2nd Respondents and all other Telecommunication Service Providers in the country, which information the 1st and 2nd Respondent have supplied and continue to supply to date. On their part, the 4th Respondent admitted that the particulars of the personal information in question have been requested by the 3rd Respondent on their authority and provided by the 1st and the 2nd Respondents; and that the requested particulars of personal information are duly supplied.

5. *In Fori vrs. Ayirebi & Ors. [1966] GLR 627, Ollennu, JSC, stated the position of the law on pleadings and affidavits at 647 as follows:*

"The law is that when a party makes an averment and that averment is not denied, no issue is joined on that averment, and no evidence need be led. Again, when a party gives evidence of a material fact and is not cross-examined upon it, he needs not call further evidence of that

fact". It is, therefore, mysterious that the 1st Respondent, after having empathically admitted on oath to supplying the particulars of personal information in question (which admission is corroborated by the 2nd, 3rd, and 4th Respondents) could still find breath to suggest that no factual/evidential basis has been provided in support of the claims in the originating motion.

6. *My Lord, upon the Affidavit evidence that is laid before this Honourable Court, we submit that there is no dispute among reasonable men that the factual/evidential basis of the Applicant's claims in the motion is absolutely established. Rather, what appears from the pleadings to be in dispute is the legal implications of the demand, supply and use of the particulars of personal information in question. We, thus, pray this Honourable Court to outrightly reject the frolicsome claims by the 1st and the 5th Respondents that no factual/evidential basis exists for the claims in this motion.*

A. *That it is emphatically the Exclusive Original Jurisdiction of this Honourable High Court to Enforce the Applicant's fundamental Human Rights and Freedoms under the Constitution.*

2. *The Applicant's argument of a human rights violation is two – pronged. The first prong is that the terms of E.I. 63 violates his human rights. This first prong of the argument is based on the claim that His Excellency, the President, made E.I. 63 without first declaring a state of emergency under Article 31 of the Constitution as required by the Sections 99 and 100 of Act 775 read as a whole. The second prong of the Applicant's argument is an alternative to the first, namely, that in the unlikely event that this Honourable Court holds that E.I. 63 was not made in violation of Act 775 read as a whole, then, it ought to hold that Section 100 of Act 775 violates the fundamental human rights of the Applicant as guaranteed under Chapter 5 of the 1992 Constitution.*

3. *In its response to the first prong of the Applicant's argument, the 4th Respondent argued that E.I. 63 does not violate Act 775. The 4th Respondent based its argument on the literal, isolated and non-contextual approach to interpretation of statute. To the second prong of the Applicant's argument, the 4th Respondent argues that the High Court is not the proper forum for challenging an Act which is alleged to violate the human rights*

provisions of the Constitution. The 4th Respondent, therefore, argued at page 7 of its address as follows:

"The relevant law for the determination of the issue raised before this Court, as has been demonstrated by the Applicant himself, is the 1992 Constitution Articles 18 and 23. That being the case, it is the respectful view of the 4th Respondent that it is the Supreme Court and not the Honourable Court that has jurisdiction to determine the matter".

4. *My Lord, we contend that the 4th Respondent's argument is a total departure from the well-established jurisprudence of the Supreme Court on the matter. Article 33(1) of the Constitution prescribes the High Court as the exclusive original forum for pursuing claims under Chapter 5 of the Constitution. Chapter 5 comprises of Articles 12 to 33. Articles 18 and 23 (which the Applicant has impugned as being violated by either E.I. 63 or Act 775) are within Chapter 5 of the Constitution. Particularly, Article 33 (1) provides that:*

"Where a person alleges that a provision of this Constitution of the fundamental human rights and freedoms has been or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress."

Further, Article 130(1) excludes human rights claims (under Chapter 5 of the Constitution) from the jurisdiction of the Supreme Court to enforce the Constitution under Article 2(1). It expressly donates that power to the High Court. It provides as follows:

"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 and (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".

5. *The Supreme Court has, accordingly, interpreted this provision as an exception to the jurisdiction of the Supreme Court under Article 2(1) and Article 130(1). Thus, in Edusei*

vrs. Attorney General [1996-97] SCGLR 97 AND Edusei (No2) vrs. Attorney – General [1998-99-] SCGLR 753, the Supreme Court stated as follows:

"Although the High Court's jurisdiction in article 140(2) appears to be very broad, the provision is nothing more than a practical restatement of the exception to the Supreme Court's Jurisdiction, as defined by article 130(1), in cases brought under article 2(1). The High Court's enforcement power is, therefore, to be exercised within the scope of Article 33(1), the language of which is clear"

Similarly, in Federation of Youth Association of Ghana (FEDYAG) vrs. Public Universities of Ghana and Ors. [2010] SCGLR 547, Atuguba, JSC, explained the position in relation to the High Court's jurisdiction to enforce the Constitution as follows:

"The High Court however also has some jurisdiction to enforce the Constitution. Thus the High Court has jurisdiction to enforce those of its provisions relating to the fundamental human rights and freedoms, see Articles 33(1), 130(1) and 140(2)".

Indeed, the very learned Justice, after reviewing a long line of authorities on the matters went on to state as follows:

"This Court has, since the majority decisions in the Edusei cases, supra consistently held that where an action is one to enforce the individual fundamental human rights, in a personal particular, it is the High Court which has exclusive original jurisdiction to entertain the same. This position has been clearly upheld in Adjei – Ampofo (No. 1) vrs. Accra Metropolitan Assembly & Attorney – General (No. 1), supra"

Again, in Sm (No. 2) vrs. Attorney – General [2000] SCGLR 305: Bamford Addo JSC explained further:

"Whereas Article 2(1) gives standing to any person who is a citizen to seek an interpretation and enforcement of the Constitution, in furtherance of the duty imposed on all citizens "to defend the Constitution "under Article 3(4) (a) and Article 41(b) by seeking an interpretation and a nullification of provisions which are inconsistent with the Constitution. In the case under Article 33(1) any person be he a citizen or not can go to

the High Court for enforcement of his fundamental human rights and freedoms Reference Article 12(2)."

6. *In Bimpong – Buta Vrs. General Legal Council [2003 – 2005] I GLR 738 at pp. 750, the Supreme Court reiterated the point beyond dispute that:*

"Since the coming into force of the constitution, 1992 this Court has had numerous opportunities to interpret and define the scope of its original jurisdiction under both Articles 2 and 130(1). The crystallised position may be summed up as follows. The Supreme Court's power of enforcement under Article 2 of the Constitution, 1992, by exercise of its original jurisdiction, does not cover the enforcement of the individual's human rights provisions: that power, by the terms of Articles 33(1) and 130(1) of the Constitution, 1992 is vested exclusively in the High Court (cf. Edusei vrs. Attorney – General [1996-97] SCGLR 1: Edusei vrs. Attorney – General [1998-99] SCGLR 753 and Adjei – Amposo vrs. Attorney – General [2003-2004] SCGLR 411)."

7. *Accordingly, it has always been the position of the Supreme Court that the High Court has exclusive original jurisdiction over the enforcement of the fundamental human rights in the Constitution. This position has never changed and has been sternly affirmed by the Supreme Court even in very recent cases. Thus, in Gregory Afoko vrs. Attorney – General Writ No. JI/8/2019, Unreported Judgment of the Supreme Court dated June 19, 2019, Marful– Sau, JSC, spoke for the Court in these words:*

"Article 23 of the Constitution deals with administrative actions and even where a breach of that provision is alleged, the remedy lies in the High Court and not in this [Supreme] Court. Article 23 is part of Chapter 5 of the 1992 Constitution on Fundamental Human Rights and Freedoms, which by Article 33(1) & (2) of the Constitution, ought to be enforced in the High Court."

Again, two weeks ago, in John Dramani Mahama vrs Nana Akufo Addo, Writ No. JI/05/2020, unreported Judgment of the Supreme Court dated March 4, 2021, Yeboah CJ, put the matter this way:

"If it is the case of anybody that the 1st Respondent violated Article 23 in the discharge of its duties, which included the declaration of the Presidential results under Article 63(3) of the 1992 Constitution, the remedy of that person lies in the High Court, because strictly, such a complaint cannot be an election petition challenging the validity of the election of the President of Ghana."

8. *Further, even where the nature of the facts is such that the Supreme Court shares jurisdiction with the High Court on the enforcement of the fundamental human rights, the Supreme Court has held that it would relinquish such shared jurisdiction to the High Court and will only assume an appellate jurisdiction over the cause. This position was stated emphatically by the Supreme Court in Bimpong-Buta vrs. General Legal Council [2003-2005] 1 GLR 738 at pp. 750-751.*

".... Where the real issues arising from a Writ brought under Article 2 or 130(1) of the Constitution, 1992 are not, in actuality, of such character as to be determinable exclusively by the Supreme Court, but rather fall within a cause of action cognizable by any other Court or tribunal of competent jurisdiction (cf Yiadom I vrs Amaniampong [1981] GLR 3, SC: (No 2) vrs Ghana Bar Association vrs Attorney – General (Abban Case) [2003-2004] SCGLR 250; Edusei v Attorney-General (supra) and Aduamoa II v Twum II [2000] SCGLR 165)."

9. *Finally, where an issue of constitutional interpretation arises in the High Court during the exercise of its human rights enforcement jurisdiction, the High Court is not to abdicate or decline jurisdiction. It is required to stay proceedings and refer the constitution interpretation question to the Supreme Court in accordance with Article 130(2), which says that:*

"Where an issue that relates to a matter or question referred to in clause (1) of this article arises in any proceedings in a Court other than the Supreme Court, that Court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the Court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court."

10. *Accordingly, we was submit that this Honourable Court has jurisdiction to adjudge or declare not only that E.I. 63 violates the Applicant's human rights, but also that Act 775 or any part thereof (including Section100) violate the Applicant's human rights which are protected under Articles 18 and 23 of the 1992 Constitution.*

B. *That on a True and Proper Interpretation of Act 775, a Request under Section 100 cannot be made unless a State of Emergency is first declared.*

11. *The Applicant submits that E.I. 63 was made in violation of Act 775. A part of that violation is that the President acted illegally or acted ultra vires the terms of Act 755. This submission is based on the argument that when read as a whole, His Excellency, the President, ought not and could not exercise his power under Section 100 of Act 775 without, first declaring a state of emergency as prescribed by Section 99 of ACT 775. This argument by the Applicant, indeed, calls for a true and proper interpretation of Act 775 in particular reference of Sections 99 and 100. Section 99(1) of Act 775 provides that:*

"Where a state of emergency is declared under Article 31 of the Constitution or another law, an operator of communications or mass communications systems shall give priority to requests and orders for the transmission of voice or data that the President considers necessary in the interest of national security and defence". (the boldening is ours)".

This provision, thus, establishes the substantive power of His Excellency, the President, to make requests for personal data of subscribers from the telecommunication Service Providers. It also provides the condition precedent for the President's exercise of that power, namely, that he or she first needs to declare a state of emergency. This condition precedent is, to all intents and purposes, meant to follow the terms of the protection of human rights which is offered under the state of emergency provisions of Articles 31 and 32 (also under Chapter 5) of the Constitution. The Applicant's preferred interpretation of Sections 99 and 100 of Act 755, therefore, is in line with the presumption that Parliament does not intend to violate the Constitution or the human rights of citizens. We have advance this argument in more detail in our substantive address in this matter filed on November 6, 2020.

12. *Section 100 of Act 775, then, goes on to specify the nature of the personal data that the President may exercise the power given to him under Section 99 to request. Section 100 thus, provides that:*

"The President may, be executive instrument, make written ***requests*** *and issue* ***orders*** *to operators or providers of electronic communications networks or services requiring them to intercept communications,* ***provide any user information*** *or otherwise in aid of law enforcement or national security"*

13. *It is, therefore, apparent, even on the face of the two Sections, that His Excellency's power under Section 100 could not be exercised without, first, satisfying the condition precedent in Section 99, which is a declaration by him of a state of emergency. Accordingly, Section 100 sought in essence to, upon a true and proper interpretation be read mentally as:*

*"The President may [****after having declared a state of emergency under section 99****] by executive instrument make written requests and issue orders to operators or providers of electronic communications networks or services requiring them to intercept communications, provide any user information or otherwise in aid of law enforcement or national security"*

14. *Holding otherwise (as the Respondents urge this Honourable Court to hold) would result in a number of absurdities. The first absurdity is that without the condition precedent in Section 99, citizens would be deprived, in absolute terms, of their enjoyment of the right to privacy that the Constitution guarantees to them. This is because His Excellency, the President , could, then, at any time, without any procedure, acting merely on his whims and with ill-will or affection, just by a mere executive fiat, "make written requests and issue orders to operators or providers of electronic communications networks or services requiring them to intercept communications, provide any user information or otherwise" This certainly, is not the intention of the drafters of the Constitution when they enacted Article 18 into the Constitution and, most certainly, not the intention of Parliament when they enacted Act 775.*

The Second absurdity is that the Respondents interpretation renders the condition precedent in Section 99(1) superfluous. This is because, if the President can simply "make written ***requests*** *and issue* ***orders*** *to operator or providers of electronic communications networks or services requiring them to intercept communications, provide any user information or otherwise" at any time and without first declaring a state of emergency, what then will be the use of Section 99 (1)? Concomitantly, why would His or Her Excellency, the President, ever bother to trouble through a declaration of a state of emergency if he or she could just achieve the same purpose without such trouble? Such an interpretation will offend the presumption against surplusage which says that the legislature does not intend to speak in vain and that Courts ought to avoid interpreting a provision in a way that would render other provisions of an Act superfluous or unnecessary. See: Bailey vrs. United States. 516 U.S 137. 138-39 (1995): Lowery vrs. Klemm. 845 NE. 2D 1124. 1128 (Mass. 2006) (rejecting an interpretation that "would require [the Court] to ignore much of the definition of 'sexual harassment' provided in" Massachusetts law)*

The third absurdity is that the Respondent's preferred interpretation would give an absolute power to the president in respect of access to the personal information that subscribers give to telecommunication subscribers. This may be seen, quite clearly, from the terms of E.I. 63, which has no sunset clause and, thus, allows personal information of all subscribers to be collected even after the purpose (assuming without admitting that such purpose is even legitimate) has been achieved. This is clearly inconsistent with the requirements of rule of law and constitutionalism which abhors power and rather promotes restraints on Governmental power.

The fourth absurdity with the Respondents interpretation of Section 100 is that it exposes Ghana to the consequences of a breach of binding international laws. This not only violates the Section 99 (4) of Act 755 which demands that the President's exercise of such powers under the Act "be in accordance with the International Telecommunications Union (ITU) Treaties" , it also violates the Constitutional injunction in Article 40 that ".. The Government shall promote respect for international law, treaty obligations..." The ITU Regulations, 2012, provide in its preamble that "member States affirm their commitment to implement these Regulations in a manner that respects and upholds their human rights obligations" This has been interpreted by the ITU to "affirms the need to respect human rights such as privacy of communications, the right to free transmission of data, and protection of personal data. "This interpretation is instructive,

considering that the ITU is a specialized agency of the United Nations and that Ghana both a member State of the UN and signatory to the UN Covenant on Civil and Political Rights. In Coltman vrs Bibby Tankers Limited [1986] 2 All ER 65 at 68 Sheen J stated that said:" it is to be presumed that Parliament did not intend to pass an Act which, on its true construction would be manifestly unjust or absurd." "We thus, submit that upon the true and proper interpretation of Section 99 and 100 of Act 775, His Excellency, the President, is not entitled to issue E.I. 63 when he had not declared a State of emergency in line with Chapter 5 of the Constitution.

C. *That the interpretation to Article 18(2) by the Supreme Court in the Abena Pokuaa case is binding on this Honourable Court*

15. *At Paragraph 12 of the Applicant's substantive Written Address, we submitted that on the authority of the Supreme Court's decision in Abena Pokuaa Ackah vrs. Agricultural Development Bank, (Suit No. J4/31/2014. Supreme Court Judgment of December 19, 2017), the Applicant's right to privacy in the information he provided to the 1st and 2nd Respondents can only be restricted "in accordance with law": and that "in accordance with law" means under a warrant to the Court. This argument may be found at page of the Applicant's substantive statement of case.*

16. *In the 3rd and 4th Respondents' Written Submissions, they admit that in the Abena Pokuaa case, the Supreme Court held that "in accordance with law" meant prior judicial approval. However, the 3rd Respondent argues that, the Abena Pokuaa decision is distinguishable from the present case. This, according to the 3rd Respondent, is because, the Abena Pokuaa case involved a violation of a private person's right by a non-state actor, and the Defendant was not acting on any express power or right conferred on it by statute or any law. The 4th Respondent also states that, Pwamang, JSC in his dissenting opinion at page 69 in the Abena Pokuaa case stated that, Article 18 does not provide for prior judicial fiat before interference with privacy right, but it is rather statutes made pursuant to the article that provide for prior Court permission before state agencies can interfere with privacy". We wish to respond to these two arguments in turn.*

17. *First: That based on the principle of stare decisis, the decision in Abena Pokuaa is that judicial scrutiny is required in limiting the right to privacy. It is a main feature of our*

legal system, as inherited under the common law, that Courts lower in the hierarchy are bound by the decisions of Courts higher in the hierarchy. More particularly, Article 129 (3) of the Constitution, 1992, provides that the decision of the Supreme Court shall bind all other Courts. This is affirmed in William Kwame Sablah vrs Cecilia Senu and Paulina Senu, Civil Appeal No: H1/06/20202 where the Supreme Court stated that, all Courts shall be bound to follow the decisions of the Supreme Court on questions of law. Further, a decision of the Supreme Court is the opinion of the majority. This was state in Federation of Youth Association of Ghana (FEDYAG) V. Public Universities of Ghana and Ors. [2010] SCGLR 547, where Atuguba JSC stated at page xxx that:

"It is a trite common law principle that the majority decision, where there is a division in a Court, constitutes the decision of the Court"

It is, therefore, the majority opinion that becomes precedent binding on all Courts, including this Honourable Court. In the Abena Pokuaa case, the majority speaking through Dotse, JSC, held that, the right to privacy may be limited in accordance with law and "in accordance with law" is only by judicial scrutiny. This, being the majority decision, is the precedent that binds this Honourable Court and not the dissenting opinion of Pwamang JSC. The 4th Respondent, on the other hand, seems to rely on the dissenting opinion of Pwamang, JSC, to advance its argument. Under stare decisis, this position cannot be countenanced. [sic] The argument, therefore, must be rejected with force.

18. *Second: That Article 18(2) allows limitation of the right to privacy only under the circumstance outlined therein. The 3rd Respondent argues that, the decision in the Abena Pokuaa is not applicable to instant case because the Abena Pokuaa case involved a private legal entity and not a state actor. Such argument would have been acceptable if the decision in Abena Pokuaa was limited to breaches involving private entities and individuals. However, the Court made no such distinction or specification in the case. The Court clearly stated that it was looking at what "in accordance with law" as used in Article 18(2) means. This is evident in the emphatic words of Dotse, JSC:*

"Taking the above declarations into consideration, our views are emboldened in deciding that the reference to the phrase "in accordance with law" in Article 18(2) can only be a

reference to a prior judicial endorsement. We are not prepared to accept any arbitrary and or unilateral curtailment of the rights of individuals in this enjoyment of the said rights without judicial activism."

This shows that the Supreme Court sought to explain what "in accordance with law" meant as a general limitation clause on the right to privacy and not what it meant between private individuals.

III CONCLUSION:

19. *My Lord, ours is a democracy. We are a nation of constitutionalism – that doctrine with prescribes that public power (including the power of His Excellency, the President) be limited. The doctrines of rule of law, separation of powers, checks and balances, Judicial Review and human rights are the foundation upon which the 1992 Constitution is mounted. Therefore, we are not upholding the Constitution, even as the judiciary, unless we are ready to keep and insist on keeping the lines of limitation on public power (including the power of the President) courageously, without ill – will or affection. However, when we do, posterity will be on our side.*

20. *My Lord, we have shown that E.I. 63 (like all executive Instruments) is an administrative act and not a legislative instrument, we have shown that E.I. 63 places a limitation on the right to privacy. We have shown, by referencing a binding Supreme Court decision, that the right to privacy cannot be limited without "prior judicial endorsement". We have shown that there was no prior judicial endorsement for the directives contained in E.I. 63. Based on this, we have urged my Lord, to quash the directives contained in E.I. 63.*

Further, we have shown that E.I. 63 offends the permissible limitation clause of the Constitution, namely the Oakes Test. In this regard, we have demonstrated that it was made illegally (without first declaring a state of emergency as prescribed by Act 775). We have shown that it has no legitimate purpose (as no country in the world has used such as indiscriminate measure to contain the Covid – 19 pandemic.) We have also shown that the mechanism that the

E.I. 63 deploys is extremely disproportionate to the intended purpose. My Lord, for all the above reasons we, respectfully, repeat the relief first above mentioned and so pray, humbly."

Let me say that that the issues raised by Applicant in his supplementary written address in response to the issues raised by the Respondents, I believe have been covered in my ruling.

RULING:

It is important to make some statements which run throughout this application, which all parties agree to:

1. That the right to privacy under Article 18(2) is not absolute.
2. That it is subject to the respect for the rights and freedoms of others for the public interest, including public safety, economic wellbeing of the country, protection of health and morals, prevention of disorder and prevention of crime.

With the exception of 2nd Respondent, all the other Respondents say that His Excellency the Presidents and its Agents 1st to 5th Respondents have acted in accordance with the constitution and in accordance with E.I. 63. I propose to deal with this application in two parts; first is the contents of 3rd Respondent request by email dated 27 March, 2020 to 2nd Respondent.

I wish to reproduce E.I. 63 and the email of 27th March, 2020 from 3rd Respondent to 2nd Respondent verbatim to enable me make a comparison of the contents:

***"WHEREAS**, under the power conferred by Section 100 of the Electronic Communications Act, 2008 (Act 775), the President may, by Executive Instrument, make written requests and issue orders to operators or providers of electronic communications networks or services requiring them to provide user information or otherwise in aid of law enforcement or national security;*

***WHEREAS**, Ghana is committed to dealing with emergency situations, especially Public Health Emergencies;*

WHEREAS, *there is an urgent need to establish an emergency communications system to trace all contacts of persons suspected of or actually affected by a Public Health Emergency and identify the places visited by persons suspected of or actually affected by a Public Health Emergency;*

NOW, THEREFORE, *I, Nana Addo Dankwa Akufo-Addo, the President of the Republic, do hereby make the following orders:*

1. EMERGENCY PREPAREDNESS

A network operator or service provider shall put the network of the network provider or service provider at the disposal of the State for the mass dissemination of information to the public in the case of an emergency, including a Public Health Emergency; and cooperate with the National Communications Authority Common Platform to provide information to State agencies in the case of an emergency, including a Public Health Emergency. A network operator or service provider shall make available the following: all caller and called numbers; Merchant Codes; Mobile Station International Subscriber Directory Number Codes; and International Mobile Equipment Identity Codes and site location. A network operator or service provider shall ensure that all roaming files are made available to the National Communications Authority Common Platform; and location log files are provided to the National Communications Authority Common Platform to facilitate location-based tracking.

2. CENTRAL SUBSCRIBER IDENTITY MODULE REGISTER

An institution designated by the Minister under paragraph 4 shall establish a Central Subscriber Identity Module Register.

The Central Subscriber Identity Module Register shall be the centralised database for validly registered Subscriber Identity Module cards and subscriber numbers on all networks of mobile and Service Providers in the country.

3. CENTRAL EQUIPMENT IDENTITY REGISTER

An institution designated by the Minister under paragraph 4 shall establish a Central Equipment Identity Register. The Central Equipment Identity Register shall be the centralised database for validly registered terminal equipment on all networks of mobile and Service Providers in the country. A network operator or a service provider who provides services over a public communication network shall establish an Equipment Identity Register. A network operator or service provider shall include in the Equipment Identity Register the Mobile Station International Subscriber Directory Number Code of the network operator or service provider; the International Mobile Equipment Identity Code of the network operator or service provider; the International Mobile Subscriber Identity and Site Location information of subscribers of the network operator or service provider; and any other information that the Minister may determine. A network operator or service provider shall connect the Equipment Identity Register of the network operator or service provider to the Central Equipment Identity Register for purposes of synchronisation and the sharing of information. A network operator or service provider shall ensure that only a terminal equipment which is registered with a unique identifier is connected to the network of the network operator or service provider.

4. HOSTING OF CENTRAL SUBSCRIBER IDENTITY MODULE REGISTER AND CENTRAL EQUIPMENT IDENTITY REGISTER

The Central Subscriber Identity Module Register and the Central Equipment Identity Register shall be hosted by an institution designated by the Minister responsible for Communications.

5. CONNECTION AND SYNCHRONISATION OF THE CENTRAL SUBSCRIBER IDENTITY MODULE AND CENTRAL EQUIPMENT IDENTITY REGISTERS

An institution designated under paragraph 4, shall where the circumstances require, connect the Central Subscriber Identity Module Register and Central Equipment Identity Register

to other external databases for the purpose of verification and validation of a subscriber number, a Merchant Code, a Subscriber Identity Module card, and a terminal equipment.

6. INTERPRETATION

In this Instrument, unless the context otherwise requires, "International Mobile Equipment Identity" means a code of a telephone device which is used to identify the telephone device; "Merchant Code" means a specific code assigned to a merchant by a mobile money operator for payment on the platform of the operator; "Mobile Station International Subscriber Directory Number" means a code on a Subscriber Identity Module card that identifies the Subscriber Identity Module card of the network including the phone number and network number; and "terminal equipment" means an equipment which is used to process a large amount of data in a speedy manner such as a server, hardware, software and terminal devices."

The contents of 3rd Respondent's request by email dated 27 March 2020 to 2nd Respondent:

"From:Kwabena Obeng-Nyarko [email adress]

Sent: Friday, March 27, 2020 3:53PM

To: Angela Adu Amofo [MTN Ghana]

Cc: Edmund; Fianko; Rouba Habboushi; Omar Jallow; Jonathan Ogwal

Subject: Covid-19 Feedback on file samples

Hello Angela

Please find below our feedback on the samples shared

GENERAL FEEDBACK

Use the following file name format for new samples shared

[MTN][inbound/outbound/domestic/subscriberdata/cell][if neededdata/voice/sms]_YYYYMMDD

e.g.mtn_inbound_data_20200325.csv

ormtn_cells_2020325.csv

FEEDBACK ON SAMPLE DATA

1. *Time format for all pos_time fields must be 24h instead of 12h, format: YYYY_MM_DD hh:mm:ss*
2. *Mccmne field should have 7didgits in inbound data (First seven digits of IMSI code representing MCC (3 digits) MCN(2 or 3 digits) and SIM serial beginning (1 or 2 digits depending on the length of MNC. This represents the reference to a country where the SIM card is from) for outbound data 5 or 6 digits mcc_mnc_destination is OK.*
3. *Remove "Volume" field*

Below are a few more points to note about the data requirements:

1. ***Please provide unhashed Mobile Money data from 1st January 2020 to date (data can be provided in phases just like the other files). Going forward we will need MTN to unhash mobile money data shared with the common platform so we can use that data for contact tracing.***
2. *We also need you to share a dump of your merchant codes with the corresponding merchant names and addresses.*
3. *For SUBSCRIBER DATA, we need you to share with us a dump of your latest subscriber database. Then going forward we would need a file a day to update us of any new subscriber added. This will be later fed into the SIM registry project.*
4. *CELL REFERENCE DATA please share the latest version of ALL your Cell info (LAC, Cell id, Longitude, Latitude valid _date, type_g, type_direction, angle). Then going forward direction, we would need you to share an update when you add any new cell."*

Thanks

Regards

Kwabena

(Confidentiality statement)"

Applicant's case is that on or about March 27, 2020, the 3rd Respondent, a private entity, acting on behalf or purporting to act on behalf of the President or the 4th Respondent, did write to all communication network operators or Service Providers (including the 1st Respondent and the 2nd Respondent) directing or requesting them**, ostensibly pursuant to the said EI 63,** to put his personal information and the personal information of other communication network subscribers at their disposal, which personal information includes (but not limited to):

a. A dump of subscriber database;
b. The subscriber cell reference data;
c. The unhashed subscriber mobile money transfer data; and
d. A dump Mobile Money Merchant codes and addresses.

Applicant deposed that on the advice of his Counsel which he believes to be true that his personal information which is in possession of the 1st Respondent and the 2nd Respondent is protected by the Constitution and may not be given out by the 1st Respondent or the 2nd Respondent to a Third Party (including the President, the Government or their Agents) without recourse to law or laid down procedure or without my his express permission or consent. (Emphasis mine)

The question is where in E.I. 63 quoted above has it been stated that mobile money details must be provided or that the unhashed details of Applicant's mobile money details should be provided to the common platform?

From E.I. 63 quoted above, nowhere in the E.I. did the President request any such information. That is why 2nd Respondent raised a red flag on this issue in its letter dated 6th April, 2020 marked Exhibit 'M3' to 4th Respondent in response to the request by 3rd Respondent. 2nd Respondent in its Affidavit in Response to the Application for Interlocutory Injunction filed on

20th May, 2020, stated that it does not see how the details of Applicant and its other subscriber's mobile money details will help contact tracing to control the Covid-19 pandemic. 2nd Respondent said it raised the issue because it wanted to avoid future legal tussles.

I wish to quote portions of the said letter:

"RE: IMPLEMENTATION OF EXECUTIVE INSTRUMENT ON ESTABLISHMENT OF EMERGENCY COMMUNICATION SYSTEM.
We write further to your letter dated March 25, 2020 with reference number NCR/R-SIM/VOL.1/23 in which the Authority stated that pursuant to the provisions of the Executive Instrument, MTN was required to provide data outlined in the attached Data Requirements document to facilitate the tracking of people potentially infected by COVID-19 which is a Public Health Emergency (emphasis ours).
MTN has since receipt of your letter comprehensively fulfilled all requests contained in the Data Requirements document and in accordance with what is prescribed in E.I. 63.
We have however received a further request from Kelni GVG, operators of the Common Platform, to submit Mobile Money transactions data. In an email dated March 27, Kelni GVG asked MTN to ***share unhashed Mobile Money data from January 1, 2020 to date and to unhash Mobile data*** *shared with Common Platform* ***"so we can use the data for contact tracing"*** *(emphasis ours).* ***Respectfully, the above mentioned request is neither part of the request contained in the letter of March 25 nor in line with EI 63. We would for that reason be grateful for some guidance or clarity from the Authority on this request."*** (emphasis mine).

Applicant said 3rd Respondent made the request for the personal mobile money information of Applicant and other subscribers ostensibly under E.I. 63 because that is what the email stated: "Covid-19 Feedback on file samples"

It must be noted that 4th Respondent as part of implementing E. I. 63 developed a guideline for data requirements. 2nd Respondent attached a copy as Exhibit 'M1' titled EMERGENCY COMMUNICATIONS DURING COVID-19 PUBLIC HEALTH EMERGENCY. DATA

REQUIREMENT FOR IMPLEMENTATION OF PROVISIONS IN THE EXECUTIVE INSTRUMENT, 2020.

2nd Respondent in its affidavit in response to that application for injunction raised some of the issues on privacy which establishes the basis of Applicant's claim/prayer to this Court for redress. Here are excerpts of the said affidavit:

6. *"Upon the passage of the Establishment of Emergency Communications Systems Instrument 2020 (E.I. 63), the 2nd Respondent had engagements with 4th Respondent (which is the industry regulator) to ensure that the dictates of the law are complied with* ***to meet the purpose of the law without unnecessary jeopardy to the privacy of subscribers****." (emphasis mine)*

8. *The guidelines allowed the subscriber numbers to be hashed and therefore the 2nd Respondent found it satisfactory for the protection of privacy although it raised some concerns about the scope of the data requirements in view of the constitutional test of necessity and proportionality.*

9. *The 2nd Defendant nevertheless proceeded to comply fully with all the request for data made under E.I. 63 as operationalized by the NCA guidelines with the expectation that the provision for the subscriber numbers to be hushed provided some protection for privacy.*

10. *However 3rd Respondent (which is the entity designated by the Minister under paragraph 4 to host the data) proceed by email to make a request for further data which was neither required by the E.I. or the NCA detailed guidelines. Attached hereto and marked Exhibit 'M2' is the said email from the 3rd Respondent.*

11. *In the aforementioned email, the 3rd Respondent requested* ***not just the mobile money transaction of subscribers but also that the subscribers numbers should be un-hushed (fully disclosed) and therefore be supplied without any privacy protection whatsoever.***

12. *As the Electronic Communication, Act 2008, (775) specifically gave the power to make requests for personal user information specifically to the President, and specified the*

means as by Executive Instrument, the 2nd Respondent was deeply disturbed by the 3rd Respondent (a private company) attempt to exercise that Presidential power by means of an email.

13. *2nd Respondent's grievance with the email request was aggravated by the fact that the request was for details of all subscribers and therefore constituted a disproportionate invasion of privacy.*

14. *Moreover the request had absolutely no nexus with the purpose of the law as stated in the preamble which is for contact tracing, nor was it included in the data requests of the law itself.*

15. *Indeed there is* ***no way that a person's mobile money transaction can assist in contract-tracing, as such transactions cannot by the most basic scientific understanding aid the spread of the novel Corona virus, the Respondent therefore had no doubt that it did not meet the test of necessity as well.***

16. *The 2nd Respondent is advised that while the request for mobile money transactions details of subscribers is not required by E.I. 63, the disclosure of such details constitutes a violation of statutes ranging from fields of data protection to banking as the mobile money wallets of many subscribers are linked with bank accounts to enable transfers from bank accounts.*

17. *This request for mobile money transaction data which is actually not provided for in E.I. 63 has earned the law much notoriety and frequently receives hallmark mention when the law is cited in public discussions as a violation of the constitutional rights to privacy including a recent Parliamentary vetting of Supreme Court nominees; notwithstanding that the law as well as NCA detailed operationalization of the law rightly makes no such requests at all.*

18. *The 2nd Respondent is further advised that to cooperate with such a request without legal basis would expose it to liability for breach of privacy and therefore 2nd Respondent pursued an administrative resolution of the matter with a letter to the 4th Respondent dated*

6th April, 2020. Attached hereto and marked as Exhibit "M3" is a copy of the said letter to 4th Respondent.

19. *The 2nd Respondent was yet to receive a response to its complaint when it was served with the current suit and would be grateful for the Court to intervene promptly and bring finality to issues surrounding the E.I. including the validity of 3rd Respondent's request made via email for mobile money data.*

20. *While the 2nd Respondent is ready to abide by the decision of the Court once it finds all the data requests to meet the test of necessity, proportionality and legality the 2nd Respondent is particularly aggrieved by the attempt at 3rd Respondent to use the opportunity of the pandemic and the E.I. to obtain data which is not required by the E.I. and has no relevance to the stated purpose of the law i.e. Covid-19 contact tracing."*

At the time 3rd Respondent requested for the un-hushed mobile details of all Subscribers there was the likelihood of Applicant's right and the rights of all Subscribers' rights to privacy being interfered with. 1st Respondent stated that after Applicant's application for interlocutory injunction was dismissed it proceeded to comply with 3rd Respondent's request in compliance with E.I. 63. So here is the evidence that Applicant's right to privacy and the rights of all other subscribers on 1st Respondent's network have been violated. What more evidence is needed to prove Applicant's claim? 2nd Respondent's affidavit says it all.

In 4th Respondent's Affidavit in Response to Applicant's application it attached Exhibits 'NCA1' addressed to Osei Poku Ernest of 1st Respondent, Exhibit 'NCA1a' addressed to Ugochukwa Uzoka of Glomobile Ghana and Exhibit 'NCA1c' addressed to Emmanuel Bull of Airteltigo Ghana all of which were dated 27th March, 2020. The contents of these are not the same as the contents of Exhibit 'M3' attached to 2nd Respondent affidavit in response to the application for interlocutory injunction filed on 20th May, 2020 reproduced above. However Exhibits 'NCA1', NCA1a and NCA1c are all communication to other network and Service Providers who are also to provide the personal details of their subscribers to 3rd Respondent and 4th Respondent.

It does not take any scientific analysis, pure common sense should tell us that mobile money details which are connected to Applicant's bank and other financial details will not and

can never help the President and other public or private agencies working to implement E.I. 63 control the Covid-19 pandemic for Public Health, public safety, national security etc.

I find that the request by 3rd Respondent under the assumption that the said requests are in compliance with E.I. 63 to control the COVID-19 pandemic through contact tracing as false. There can be no scientific basis that the mobile money details connected with Applicant's bank and financial details and that of all other subscribers can or will in any way help the President and other public or private agencies working to implement E.I. 63 control COVID-19 through contact tracing. What has the mobile money details of Applicant and other subscribers got to do with contact tracing? This is a clear intrusion into the privacy of Applicant and a violation of Applicant's and all other subscribers' rights to privacy. Respondents who claim that Applicant's claim has no evidence of such interference, is misguided and his application should be dismissed because the request made by 3rd Respondent, is in line with E.I. 63 has been proved to be false because as has been shown above, the requests made by 3rd Respondent as far as mobile money details and unhashed mobile money details are concerned they do not form part of E.I 63.

I find that to the extent that the requests of 3rd Respondent is not part of E.I. 63, the said details being requested by 3rd Respondent are illegal, unlawful, illegitimate and ultra vires.

The 3 principles of the Oakes Test of legality, proportionality and legitimacy do not even arise because 3rd Respondent's request is clearly not part of E.I. 63. The other Respondents' claim that 3rd Respondent's request was in fulfilment of implementing E.I. 63 is most unfortunate because it is not mentioned as part of E.I. 63 at all as Respondents with the exception of 2nd Respondent claimed. All the Respondents except 2nd Respondent failed to recognise that 3rd Respondent's request was illegal and ultra vires E.I. 63; it is a complete nullity and void *ab initio*. Though 3rd Respondent says it can be read into the E.I. 63, 3rd Respondent requests do and have interfered with the privacy of Applicant and other subscribers and will continue to interfere with Applicant's right and that of all other subscribers. Currently 1st Respondent is providing all the unhashed mobile money details of Applicant and all his other banking and financial details to 1st Respondent. Similarly all other subscribers' unhashed mobile money details of all other networks and Service Providers are being released to 3rd and 4th Respondents. I find that Applicant and all other mobile money subscribers right to privacy have been violated, are being violated and will

continue to be violated in contravention of their human rights guaranteed under the Constitution, in violation of Act 775 and E.I. 63.

I find that 4th Respondent as the regulator of the telecommunication industry and E.I. 63 woefully failed the Applicant and the public as a whole if it could not by itself or on the advice of 5th Respondent clearly see that the 3rd Respondent's request was unlawful even after 2nd Respondent had raised a red flag that the information being requested was not part of E.I. 63. 4th Respondent failed to seek legal advice from 5th Respondent after 2nd Respondent had written to seek clarification of the 3rd Respondent's request. 5th Respondent also has strenuously argued and supported 3rd Respondent's request as being justified and has not violated Applicant's or any other subscribers' rights.

The fact that a communication is tagged **"in compliance with E.I. 63"** or **"implementation of Covid-19"** does not mean it falls within the law. We must not look to the form but rather to the substance. I believe that if Respondents had taken time to look at the contents of Exhibit 'M2', no one would have missed the fact that the requests being made by 3rd Respondent was ultra vires because it is not part of E.I. 63, as it is not stated therein.

Secondly, looking at the purpose of E.I. 63 the requests 3rd Respondent made in Exhibit 'M2', as 2nd Respondent stated, ***"the request had absolutely no nexus with the purpose of the law as stated in the preamble which is for contact tracing"***

Thirdly, the requests 3rd Respondent made in Exhibit 'M2' is disproportionate to the stated purpose in E.I. 63 in the following: **WHEREAS, there is an urgent need to establish an emergency communications system to trace all contacts of persons suspected of or actually affected by a Public Health Emergency and identify the places visited by persons suspected of or actually affected by a Public Health Emergency."** Because there is no way that the mobile money details or the un-hashed mobile money details of Applicant or any other subscriber will help contact tracing to deal with the Public Health Emergency Covid-19. To repeat the words of Lord Diplock in the case of **Council for Civil Service Unions vrs. Minister for Civil Service (1984) 3 ALL ER 935:** Irrationality refers **to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it"**.

1st Respondent stated that after the injunction was dismissed it continued to provide the details requested by 3rd Respondent in helping Government deal with the COVID-19 pandemic. I find that 1st Respondent in providing the said details to 3rd Respondent under the watch of 4th and 5th Respondents have interfered with Applicant's privacy and helped the President under the guise of implementing E.I. 63 to invade the privacy of Applicant and all other subscribers when in actual fact the said request did not form part of E.I. 63. Similarly 4th Defendant has helped all other network and Service Providers who have invaded the privacy of all other mobile money users by releasing the unhashed mobile money details to 3rd Respondent ostensibly under the guise of implementing E.I. 63 when there was no such provision therein:

Consequently, it is hereby ordered that:

1. 1st and 2nd Respondents and all other Telecommunication Network and Service Providers be and are hereby restrained from providing the President, the Government, 3rd and 4th Respondents their Agents, Assigns or Workmen howsoever described with all the details and unhashed details of Applicant's mobile money and that of all other mobile money subscribers as 3rd Respondent requested in the email correspondence of 27th March, 2020 to 1st, 2nd Respondents and Ugochukwu Uzoka of Glomobile Ghana and any other Telecommunication Network and service provider with effect from the date of this ruling.

2. It is further ordered that all the mobile money details and unhashed mobile money details of Applicant and that of all other mobile money subscribers which 1st and 2nd Respondents and other Telecommunication Network and Service Providers have already provided to the President, the Government, 3rd and 4th Respondents or their Agents, Assigns or Workmen howsoever described per the request of 3rd Respondent's communication dated 27th March, 2020 be retrieved and cleared from all manual and electronic records of the President, the Government, 3rd and 4th Respondents their Agents, Assigns or Workmen howsoever described under the supervision of 4th Respondent within 14 days of from 30th July, 2021.

I wish now to look at the second leg of this application that is the contents of E.I. 63 in relation to Applicant's claims.

Article 31 states : "(1) The President may, acting in accordance with the advice of the Council of State, by Proclamation published in the Gazette, declare that a state of emergency exists in Ghana or in any part of Ghana for the purposes of the provisions of this Constitution."

The use of the word "may" in **Article 31** is permissive whereas the use of the word "shall" is mandatory. So it is the President's prerogative on the advice of the Council of State whether or not in a particular circumstance to declare a state of emergency.

Section 99(1) of the **Electronic Communications Act 2008, Act 775** states: "Where a state of emergency is declared under Article 31 of the Constitution or, another law, an operator of communications or mass communications systems shall give priority to requests and orders for the transmission of voice or data that the President considers necessary in the interest of national security and defence.

Section 100 the President may by executive instrument make written requests and issue orders to Operators or Providers of Electronic Communications Networks or Services requiring them to intercept communications, provide any user information or otherwise in aid of law enforcement or national security.

A reading of these two provisions clearly shows that whereas Section 99 of Act 775 deals with communication transmission during state of emergency under Article 31 of the Constitution, Section 100 deals with the powers of the President to make requests of electronic communication networks operators to intercept communications in aid of law enforcement or national security which in a way interferes with right to privacy under Article 18(2) of the Constitution. I find that these two provisions are unrelated in form and substance and do not in anyway support the Applicant's argument that Section 99 is a condition precedent for the exercise of the President's powers under Section 100. There is nothing to suggest expressly or impliedly that the President must declare a state of emergency before invoking his powers under Section 100. Where the President declares a state of emergency under Section 99(1) the President can request or order the operators of communication or mass communication systems for the transmission of voice or data which in the President's opinion is necessary for national security or defence.

Under Section 100 of Act 775, the President may choose not to declare a State of Emergency but on the advice the Council of State make an Executive Instrument and request providers of electronic communications networks or services requiring them to intercept communications, provide any user information or otherwise in aid of law enforcement or national security.

In the case of **Republic v State Fishing Corporation Commission of Enquiry (Chairman); Exparte Bannerman** supra cited by Applicant, the National Liberation Council (NLC) dismissed an employee without first assuming control of the Corporation. The Court held that assuming control of the Corporation was a condition precedent. I find that this case is not applicable in this instance. I find that in the current case declaring a state of emergency is not a condition precedent to passing E.I. 63. I uphold the arguments of Respondents that the President does not need to declare a state of emergency before passing E.I. 63.

I reject and dismiss Applicant's case that the President should have declared a state of emergency before issuing **Executive Instrument E.I. 63.**

I wish to look at E.I. 63 in the light of the "permissible limitation test" or the "Oakes Test" which the Supreme Court adopted, developed and applied in the case of **Ahumah Ocansey v Electoral Commission, Centre for Human Rights and Civil Liberties (CHURCIL) v Attorney General [2010] SCGLR 575**.

The three-way test measures (1) legality; (2) legitimacy, and (3) proportionality. First, the processes or procedure for the release of information must be pre-determined by law and complied with strictly. Secondly, the purpose for which the law allows the information to be released must be legitimate in a democracy. And thirdly, that the measures that are adopted for achieving the purpose must be proportionate to ends to be achieved.

The Applicant in interpreting in "accordance with law" in Article 18 (2) or the legality of E.I. 63 relied on Dotse JSC's statement of what "in accordance with law" means in the case of **Abena Pokuaa Ackah v Agricultural Development Bank** (Suit No J4/31/2014 Supreme Court Judgment dated December 19, 2017) and said that E.I. 63 is not in accordance with law because it was not subjected to prior Judicial endorsement. This was what JSC Dotse stated: "there is a

school of thought that under the above constitutional provisions some of the rights of the Applicant on privacy can be curtailed and or interfered with without necessarily resorting to a judicial scrutiny. It is further argued that the involvement of the Courts will be cumbersome and inconvenient. Even though this view looks attractive, it is not convincing as it has the tendency of whittling away the rights of the individuals as guaranteed under the Constitutional provision....Taking the above declarations into consideration, our views are emboldened in deciding that **the reference to the phrase" in accordance to law" in article 18(2) can only be a reference to a prior judicial endorsement.** We are not prepared to accept any arbitrary and or unilateral curtailment of the rights of individuals in this enjoyment of the said rights without judicial activism... we will therefore hold and rule that the Court below erred in deciding to the contrary that the Applicant's right to privacy and others could be curtailed and interfered with without recourse to judicial action."

Counsel for 4th Respondent stated that JSC Pwamang in his dissenting view at page 69 stated as follows:

> "Article 18(2) does not provide for prior judicial fiat before interference with privacy but it is rather statutes made pursuant to the article that provide for prior Court permission before state agencies can interfere with privacy"

His Lordship proceeded to cite examples of statutes that require prior judicial approval before interference with the privacy of individuals such as Section 27 of the Narcotics Drugs (Control, Enforcement and Sanctions) Act 1990 (Act 526) and Sections 29 and 30 of the Security and Intelligence Agencies Act 1996 (Act 526) all of which require the intervention of the Court before interfering with the privacy of individuals. His Lordship also referred to other instances where the requirement of prior judicial approval is waived such as Section 8 of the Criminal Procedure Code, 1960 (Act 30) and Section 24 of the Narcotics Drugs (Control, Enforcement and Sanctions). Counsel for 4th Defendant said it was not the intention of the Supreme Court that all subsidiary legislations and EI's would be subject to prior judicial scrutiny.

I agree and uphold Counsel for 4th Respondent's submission on this issue that E.I. 63 was "in accordance with law". Counsel stated: "It is our respectful submission that the Abena Pokuaa Ackah case (Supra) is inapplicable to the present case. In seeking to rely on the recording that

was deemed as breaching the privacy of the Plaintiff in the Abena Pokuaa Ackah case, the Defendant was not acting on any express power or right conferred on it by statute or any law. The requirement by the Court that there **be prior judicial approval before acting in a manner that is deemed as breaching the privacy of a person was to curtail a situation where persons not acting under lawful authority can unilaterally engage in acts that intrude upon the privacy of others.** It is our submission that the interpretation that was put on the phrase "in accordance with law" as requiring prior judicial approach was not intended to have sweeping applicability as to void even acts expressly authorised by Acts of Parliament that have not been declared unconstitutional. To stretch the Supreme Court's decision that far will mean the judiciary will be slipping from its province to that of the Legislature. My Lord, under Article 93(2), legislative power vests in Parliament and Parliament exercises such power in the manner specified in Article 106. Where therefore Parliament makes law, that law can only be struck down by the Supreme Court under Article 130(1) (b) of the Constitution.

The ratio in the Abena Pokuaa case cannot therefore be read to mean that Parliament is deprived of power to make laws curtailing the freedom of citizens in the interest of the masses, and that where such power is granted under an Act of Parliament, a person authorised so to act will nonetheless have to seek prior judicial approval even where that has not been expressly stated by the Act. We submit that this Court ought to reject any such claims." (Emphasis mine)

I find that that the Abena Pokuaa Ackah case (supra) is inapplicable to the present case. We need to distinguish Abena Ackah's case where Respondent (Appellant's employer) sought to rely on a recording which was not in accordance with any express power or right conferred on it by statute or any law from the instant case where E.I. 63 was made in accordance with law, Act 775. Mrs Abena Ackah was found to have breached the Oath of Secrecy of employment by the comments she made in a private conversation. That is quite different from breaching an Executive Instrument made in accordance with a provision of a duly passed Act of Parliament.

In the many cases on Human Rights cited by Applicant and Respondents in this case the Supreme Court has never explained "in accordance with law" to mean that all statutes, legislative instruments and Executive Instruments should be subjected to prior judicial pronouncement. If prior judicial pronouncement was required as Applicant says for all statutes, and Executive

Instruments, etc. based on JSC Dotse's statement then the Supreme Court would be stepping into the functions of the Legislature. Application for Judicial Review have been after the enforcement of the Constitution, statutes and Executive action through Executive Instruments when the Executive, public agencies etc are found to have interfered with or are likely to interfere with the Human rights of the citizenry as provided by the Constitution or with statutes or Executive Instruments and subsidiary legislations. I would say that since it is in only this case that the Supreme Court per JSC Dotse stated that "Taking the above declarations into consideration, our views are emboldened in deciding that the reference to the phrase **"in accordance to law" in article 18(2) can only be a reference to a prior judicial endorsement**. We are not prepared to accept any arbitrary and or unilateral curtailment of the rights of individuals in this enjoyment of the said rights without judicial activism in accordance with law" (Emphasis mine). It must be taken as an inconsistency with the prior decisions of the Supreme Court and to that extent I will apply the decision of the Supreme Court in the case of **Akpawey v The State [1965] GLR 661**, where the Supreme Court held that: 2) In the case of inconsistent decisions by the highest Court in the land, a lower Court may, in its own discretion, elect to follow the one or the other of the conflicting decisions or may take quite a different line." Applicant prayed the Court to apply the principle of stares decisis in applying the decision in Abena Ackah's case to declare that E.I 63 was not in accordance with law.

Since all the Respondents said E.I. 63 was based on an Act of Parliament, the Electronic Communication Act 2008, Act 775, it must be deemed to have been properly passed, having been subjected to the necessary procedures. No rebuttable evidence has been produced by Applicant that this was not done. I will uphold the arguments by 1st, 3rd, 4th and 5th Respondents and find same that E.I. 63 was made in accordance with law.

Having said that I will proceed to look at the content of E.I. 63 and find out if the Applicant's information and all other subscribers' information which the Respondents are requested to provide to the common platform under E.I. 63 are legitimate. It must be noted that these provisions may not affect Applicant per se but affect the general public as a whole. In **Republic v High Court Ho, ex parte Nana Diawuo Bediako II & Ors [2011] 35 GMJ 119 in holding 1** the Supreme Court held as follows: "the remedies of certiorari and prohibition were not restricted to the notion of locus standi; and every citizen had a standing to invite the Court to

prevent some abuse of power, and in so doing he might claim to be regarded not as a meddlesome busy body but a public benefactor." Therefore the Court has a right to look at all issues affecting the rights of not only Applicant but the public as whole.

The purpose of E.I. 63 as stated in the preamble is "....WHEREAS, Ghana is committed to dealing with emergency situations, especially Public Health Emergencies;

WHEREAS, there is **an urgent need to establish an emergency communications system to trace all contacts of persons suspected of or actually affected by a Public Health Emergency and identify the places visited by persons suspected of or actually affected by a Public Health Emergency;**

NOW, THEREFORE, I, Nana Addo Dankwa Akufo-Addo, the President of the Republic, do hereby make the following orders:

1. Emergency preparedness

A Network Operator or Service Provider shall put the network of the network provider or service provider at the disposal of the State for the mass dissemination of information to the public in the case of an emergency, including a Public Health Emergency; and cooperate with the National Communications Authority Common Platform to provide information to State agencies in the case of an emergency, including a Public Health Emergency. A network operator or service provider shall make available the following: all caller and called numbers**; Merchant Codes**; Mobile Station International Subscriber Directory Number Codes; and International Mobile Equipment Identity Codes and site location. A network operator or service provider shall ensure that **all roaming files** are made available to the National Communications Authority Common Platform; and location log files are provided to the National Communications Authority Common Platform to facilitate location-based tracking."

Merchant code has been defined in **Section 6** of E.I. 63 thus: "Merchant Code" means a specific code assigned to a merchant by **a mobile money operator** for payment on the platform of the operator. Any information relating to merchant code has to do with mobile money details. Looking at the purpose of the E.I. 63 for contact tracing in dealing with the Covid-19 mobile money details referred as Merchant Code or details of mobile money operators is not legitimate

because it cannot be considered necessary or essential in achieving or helping to deal with the Covid-19 health emergency. E.I. 63 is legitimate but does the request for details of Merchant code or details of mobile money operators meet the necessity and proportionality test?"

Request for **"Merchant code or details of mobile money operators"** in E.I. 63 is irrational, it is so outrageous and defies logic or of accepted moral standards in that the said mobile money operator details cannot in any way help contact tracing in dealing with the Covid -19 pandemic.

It is Applicant's case which I uphold, that asking 1st and 2nd Respondents and other Network Operators or Service Providers to provide merchant codes or details of mobile money operators to the common platform is outrageous and defies logic. The question is, in what way will the details of mobile money operators help trace all contacts of persons suspected of or actually affected by a Public Health Emergency and identify the places visited by persons suspected of or actually affected by a Public Health Emergency in contact tracing? Let me say that there is no way that a merchant code or the details of a mobile money operator can assist in contract-tracing, as such details cannot by the most basic scientific understanding aid the spread of the novel corona virus.

There are requests in E.I. 63 which are sufficient to trace the movements of the person(s) who have contracted the Covid 19 virus or are suspected of contracting the Covid-19 without the merchant code or details of the mobile money operator.

This also means that the requests to provide merchant codes is not proportionate to the purpose of E.I. 63 and it is therefore irrational.

It is hereby ordered that the provision for details of merchant code and details of mobile money operators and all details relating to same be expunged and is hereby expunged from E.I. 63.

It is hereby ordered that 1st and 2nd Respondents and all other Telecommunication Network and Service Providers be and are hereby restrained from providing the President, the Government, 3rd and 4th Respondents their Agents, Assigns or Workmen howsoever described

with details of merchant code and details of mobile money operators and all details relating to same with effect from the date of this ruling.

It is further ordered that all details of merchant codes and details of mobile money operators and all details relating to same which 1st and 2nd Respondents and other Telecommunication Network and Service Providers have already provided to the President, the Government, 3rd and 4th Respondents or their Agents, Assigns or Workmen howsoever described be retrieved and cleared from all manual and electronic records of the President, the Government, 3rd and 4th Respondents, their Agents, Assigns or Workmen howsoever described under the supervision of 4th Respondent within 14 days from 30th July, 2021.

E.I 63 states: "A Network Operator or Service Provider shall ensure that **all roaming files** are made available to the National Communications Authority Common Platform; and location log files are provided to the National Communications Authority Common Platform to facilitate location-based tracking."

The Guidelines developed by 4th Respondent provided to the Service Providers marked as Exhibit 'M1' by 2nd Respondent states:

> "1.6 OUTBOUND ROAMING DATA: Outbound roaming represents presence of domestic SIM cards within the network of a foreign MNO outside the country"

This implies that the Applicant and or any other subscriber who travels outside the jurisdiction are being monitored by His Excellency the President and his Agents 1st to 4th Respondents and all other network or Service Providers.

Applicant said no nation had made any law with such sweeping demands on its citizenry as the President has done and will continue to do as it purports to do under E.I. 63.

If the purpose of E.I. 63 is to help contact tracing in Ghana for the purpose of a Public Health Emergency in Ghana that is Covid-19, then any attempt at receiving information on Applicant and all subscribers when they are out of the country does not meet the Oaks Test or Wednesbury principles of legality, legitimacy and proportionality. It means the President and his agencies are spying on Applicant and all subscribers to the network or Service Providers. This

seriously interferes with the rights to privacy of Applicant and all subscribers of any network or service provider.

There are regular updates on the Covid-19 pandemic from World Health Organisation (WHO). The immigration stamps in Applicant's or any subscribers passport will indicate the countries the Applicant has travelled to at the airport and based on the international information of the Covid-19 Pandemic the authorities will know whether or not the said country is Covid endemic and that the person can be quarantined. There is currently a process in place at the Kotoka International Airport and other ports of entry to handle issues of people travelling from high endemic Covid-19 risk countries.

I find that any request for Applicant or any other subscriber's information through international roaming details is beyond the purpose of E.I. 63. The President may need that information for other purposes but not a Public Health pandemic in Ghana. I am of the view that international roaming details have nothing to do with contact tracing in Ghana for managing the Covid-19 pandemic. This is clearly an infringement of the Applicant's right to privacy as well as freedom of movement and association. There is no way that that surveillance of Applicant or any other subscriber's movement outside the country can help the Government and its agencies to control the Covid-19 pandemic in Ghana. I find that the request for 1st and 2nd Respondents and all other network or Service Providers to provide details of Applicant and all other subscribers' information on international roaming constitutes interference with Applicant's right to privacy and all other subscribers which is a right protected by **Article 18(1&2) of the 1992 Constitution.**

It is hereby ordered that the provision for details of caller and called numbers of subscribers and all details relating to same on all out bound roaming data be expunged and is hereby expunged from E.I. 63 and the Guidelines developed by 4th Respondent in implementation of E.I. 63.

It is hereby ordered that 1st and 2nd Respondents and all other Telecommunication Network and Service Providers be and are hereby restrained from providing the President, the Government, 3rd and 4th Respondents their Agents, Assigns or Workmen howsoever described with details of caller and called numbers of subscribers and all details relating to same on all out bound roaming data with effect from the date of this ruling.

It is further ordered that the provision for details of caller and called numbers of subscribers and all details relating to same on all out bound roaming data which 1st and 2nd Respondents and other Telecommunication Network and Service Providers have already provided to the President, the Government, 3rd and 4th Respondents or their Agents, Assigns or Workmen howsoever described be retrieved and cleared from all manual and electronic records of the President, the Government, 3rd and 4th Respondents, their Agents, Assigns or Workmen howsoever described under the supervision of 4th Respondent within 14 days from 30th July, 2021.

I need to comment on 4th Respondent's argument that the application before this Court is in effect challenging the constitutionality of E.I. 63 and therefore the High Court is not the forum but rather the Supreme Court. This is far from the truth, the jurisdiction of the Supreme Court and the High Court is settled in the case of **Edusei v Attorney General and Anor [1996-1997] SCGLR 1** per Ampiah, Kpegah and Adjabeng JJSC (1) the effect of Articles 33(1, 130(1) and 140(2) of the 1992 Constitution was to vest in the High Court as a Court of first instance, an exclusive jurisdiction in the enforcement of the fundamental human rights and freedoms of the individual. The Supreme Court has only appellate jurisdiction in such matters. It has no concurrent jurisdiction with the High Court in the enforcement of fundamental human rights contained in chapter, five i.e. Articles 20-30 of the Constitution."

Article 33(1) states: "(1) Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress."

Applicant brought this action under **Article 33 of the 1992 Constitution and Order 67 of the High Court Civil Procedure Rules, 2004, (CI 47)** for the enforcement of his human rights to privacy, administrative justice and equality or non-discrimination and I find that this is the right forum.

Applicant's case is that the President, the Government 1st, 2nd, 3rd and 4th Respondents by implementing E.I. 63 to procure his personal information from 1st and 2nd Respondents for 3rd Respondent, have violated, are violating or are likely to violate the Applicant's fundamental human rights to administrative justice.

Article 23 of the 1992 Constitution states: "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."

In the case of **Awuni v West African Examination Council [2003-2004] SCGLR 471** Date-Bah JSC defined administrative bodies as follows: *"To my mind therefore "administrative bodies" and "administrative officials" should be interpreted as references to bodies and individuals respectively, which or who exercise public functions which affect individuals. These individuals are entitled to protection from the Courts in their interaction with such public bodies or their employees."*

It must be noted that the President's power in making E.I. 63 is derived from Section 100 of Act 775 which is a statute and therefore administrative in nature and therefore subject to Judicial Review. There is no doubt in my mind that the Respondents as Agents of the President and Government implementing E.I. 63 are administrative bodies and administrative officials and are subject to Judicial Review if in their implementation of E.I. 63 they are found to have violated or interfered with Applicant's fundamental human rights.

3rd Respondent argues that it is not a public institution and therefore it not subject to Judicial Review. In **Awuni v West African Examination Council** supra Dr. Twum JSC defined administrative bodies to include Agents like 3rd Respondent when he stated: *"In my view all bodies and persons whose authority to act derives by this process of sub-infeudation (to borrow the English feudal land law concept) from the President,* ***however tenuous the connection may be, are the "administrative bodies" and "administrative officials"*** *mentioned in Article 23 of the 1992 Constitution."* (Emphasis mine) I find and hold that 3rd Respondent like 1st, 2nd and 4th Respondents are all performing functions as part of the implementation of E.I. 63 and are therefore administrative bodies and administrative officials who are subject to Judicial Review.

Applicant also raised the issue that the President required his consent in requesting 1st and 2nd Respondents to provide his personal details to 4th Respondent and 3rd Respondent in implementation of E.I. 63. As the Respondents all stated the enjoyment of Applicant's individual

rights is subject to the rights of others and Article 18 (2) has clearly defined the parameters as follows:

"No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and ***as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others."*** (Emphasis mine) So long as the personal information required under E.I. 63 is legitimate, proportionate and legal or in accordance with law, the President does not require Applicant's personal consent.

I find that Applicant's personal information is required under E.I. 63 **"for the protection of health"** i.e. the Covid-19 pandemic, which will affect public safety and the economic well-being of the country as a whole and the President does not require Applicant's consent.

Applicant states the right to equality and non-discrimination have been interfered with by the President and his Agents, the Respondents herein, which according to him are derivatives of two rights and therefore does not argue the right to equality and non-discrimination.

As I stated earlier that there is nothing in E.I. 63 either expressly or implied that Applicant's right to equality and non-discrimination have been interfered with. I believe that is why Applicant did not argue this point. E.I. 63 states:

"The information required is as follows: "A network operator or service provider shall make available the following**: all caller and called numbers;** Merchant Codes; Mobile Station International Subscriber Directory Number Codes; and International Mobile Equipment Identity Codes and site location. A network operator or service provider shall ensure that all roaming files are made available to the National Communications Authority Common Platform; and location log files are provided to the National Communications Authority Common Platform to facilitate location-based tracking." (Emphasis mine). So all registered mobile phone users are affected not only Applicant. I find that Applicant's right to equality and non-discrimination has not been interfered with.

The next issue I wish to address is whether or not Applicant is entitled to his reliefs in his application.

a. A declaration

i. That by procuring or causing the 3rd Respondent, the 4th Respondent or another person to procure the Applicant's personal information from the 1st Respondent or the 2nd Respondent without following laid down law or procedure or without the Applicant's consent, the President and the Government have violated, are violating or are likely to violate the Applicant's fundamental human rights to administrative justice, to privacy or to equality or non-discrimination:

ii. That by implementing or intending to implement the President's directive in E.I. 63 to procure the Applicants' personal information from the 1st Respondent or the 2nd Respondent, 3rd Respondent or the 4th Respondent have violated, are violating or are likely to violate the Applicant's fundamental human rights to administrative justice, to privacy or to equality or non-discrimination; and

iii. That by relying or intending to rely on E.I. 63 to make the Applicant's personal information in their possession available to the President, the Government, the 2nd Respondent, the 3rd Respondent or any other person for that matter, the 1st Respondent and the 2nd Respondent have violated, are violating or are likely to violate the Applicant's fundamental human rights to administrative justice, to privacy or to equality or non-discrimination.

b. Make an order of certiorari to quash the President's directives in E.I. 63 to the extent that they have violated, are violating or are likely to violate my fundamental human rights and freedoms.

c. Make an order of injunction to restrain:

i. The President, the Government, the 3rd Respondent and the 4th Respondent or their Agents, Assigns or Workmen, howsoever described or named, from relying on E.I. 63 to procure the Applicant's personal information from the 1st Respondent; and

ii. The 1st Respondent and the 2nd Respondent, their Agents, Assigns or Workmen, howsoever described or named, from relying on E.I. 63 to make the Applicant's personal information in their possession available to the President, the Government, the 3rd Respondent, the 4th Respondent or their Agents, Assigns or Workmen, howsoever described or named, or to a Third Party: and

d. Provide any other remedies that the Honourable Court may deem fit for the greater good of the Ghanaian society as a whole.

Article 33(2) provides as follows: (2) The High Court may, under Clause (1) of this Article, issue such directions or orders or writs including rites or orders in the nature of habeas corpus, certiorari, mandamus, prohibition, and *quo warranto* **as it may consider appropriate for the purposes of enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms to the protection of which the person concerned is entitled.** (Emphasis mine.)

Having looked at all the arguments I declare that E.I. 63 was made in accordance with law and any personal information of Applicant with 1st and 2nd Respondent necessary for contract tracing for the Public Health purpose of the Covid-19 pandemic meets the is legitimacy, proportionality and legality tests under the Wednesbury principles excluding the exceptions I have found to have violated Applicant's fundamental human rights, and are violating his fundamental human rights and are likely to violate his fundamental human rights and freedoms. To that extent E.I. 63 therefore does not constitute a violation of Applicant's fundamental human rights. This applies to all other subscribers of all network and Service Providers.

The first part of my ruling deals with violations of the rights to privacy of Applicant and all other subscribers of network and Service Providers by the request of 3rd Respondent for the mobile money details and unhashed mobile money details ostensibly in the implementation of E.I. 63, when in actual fact there was no such provision expressly or implied in E.I. 63.

I have made some orders which I repeat in my conclusion including additional ones.

1. It is hereby ordered that 1st and 2nd Respondents and all other Telecommunication Network and Service Providers be and are hereby restrained from providing the President,

the Government, 3rd and 4th Respondents their Agents, Assigns or Workmen howsoever described with all the details and unhashed details of Applicant's mobile money and that of all other mobile money subscribers as 3rd Respondent requested in the email correspondence of 27th March, 2020 to 1st, 2nd Respondents and Ugochukwu Uzoka of Glomobile Ghana and any other Telecommunication Network and service provider with effect from the date of this ruling.

2. It is further ordered that all the mobile money details and unhashed mobile money details of Applicant and that of all other mobile money subscribers which 1st and 2nd Respondents and other Telecommunication Network and Service Providers have already provided to the President, the Government, 3rd and 4th Respondents or their Agents, Assigns or Workmen howsoever described per the request of 3rd Respondent's communication dated 27th March, 2020 be retrieved and cleared from all manual and electronic records of the President, the Government, 3rd and 4th Respondents their Agents, Assigns or Workmen howsoever described under the supervision of 4th Respondent within 14 days of from 30th July, 2021.

3. It is hereby ordered that the provision for details of merchant code and details of mobile money operators and all details relating to same be expunged and is hereby expunged from E.I. 63.

4. It is hereby ordered that 1st and 2nd Respondents and all other Telecommunication Network and Service Providers be and are hereby restrained from providing the President, the Government, 3rd and 4th Respondents their Agents, Assigns or Workmen howsoever described with details of merchant code and details of mobile money operators and all details relating to same with effect from the date of this ruling.

5. It is further ordered that all details of merchant codes and details of mobile money operators and all details relating to same which 1st and 2nd Respondents and other Telecommunication Network and Service Providers have already provided to the President, the Government, 3rd and 4th Respondents or their Agents, Assigns or Workmen howsoever described be retrieved and cleared from all manual and electronic records of the President, the Government, 3rd and 4th Respondents, their Agents, Assigns or

Workmen howsoever described under the supervision of 4th Respondent within 14 days from 30th July, 2021.

6. It is hereby ordered that the provision for details of caller and called numbers of subscribers and all details relating to same on all out bound roaming data be expunged and is hereby expunged from E.I. 63 and the Guidelines developed by 4th Respondent in implementation of E.I. 63.

7. It is hereby ordered that 1st and 2nd Respondents and all other Telecommunication Network and Service Providers be and are hereby restrained from providing the President, the Government, 3rd and 4th Respondents their Agents, Assigns or Workmen howsoever described with details of caller and called numbers of subscribers and all details relating to same on all out bound roaming data with effect from the date of this ruling.

8. It is further ordered that the provision for details of caller and called numbers of subscribers and all details relating to same on all out bound roaming data which 1st and 2nd Respondents and other Telecommunication Network and Service Providers have already provided to the President, the Government, 3rd and 4th Respondents or their Agents, Assigns or Workmen howsoever described be retrieved and cleared from all manual and electronic records of the President, the Government, 3rd and 4th Respondents their Agents, Assigns or Workmen howsoever described under the supervision of 4th Respondent within 14 days from 30th July, 2021.

9. It is further ordered that E.I. 63 be amended within 12 months to reflect the orders of this Court stated above.

10. It is further ordered that 4th Respondent certify that the orders of this Court have been fully complied with and a copy of the certification should be filed with the Registrar of the Court after the 14 days in compliance with the orders of this Court.

I find that Applicant is not entitled to the relief for an Order of Certiorari to quash the President's directives in E.I. 63 to the extent that they have violated, are violating or are likely to violate his fundamental human rights and freedoms because it is not the whole of E.I. 63 that

constitutes a violation. To accede to Applicant's request would be to throw away the baby with its bath water.

I have made orders for those offending portions to be expunged from E.I. 63 to prevent any further violation of Applicant and all other subscribers' fundamental human rights and freedoms, particularly the rights to privacy. The Covid-19 pandemic is still with us with new and virulent variants also emerging, therefore E.I. 63 is still necessary to deal with the Covid-19 pandemic.

Applicant raised the issue that E.I. 63 has no end date. Covid-19 is a global pandemic therefore whenever the WHO declares an end to the pandemic there will be an automatic end to E.I. 63. If the President fails to declare an end to the implementation of E.I. 63, any person is entitled to a declaration from the Courts that the pandemic has ended and E.I. 63 is no longer legitimate.

Order 67 rule 8 states: "The Court may issue such directions, orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms of the Constitution to the protection of which the Applicant is entitled."

Having established that Applicant's rights to privacy has been interfered with or violated through the request 3rd Respondent made to 1st and 2nd Respondents to provide the unhashed mobile money details of Applicant, he is entitled to the award of damages. This is not an open license for all mobile money users to seek damages for such violation of their rights. I award Applicant GH₵20, 000 damages each against 3rd and 4th Respondents and GH₵10, 000 against 1st Respondent.

(SGD)

H/L REBECCA SITTIE (MRS.)
JUSTICE OF THE HIGH COURT

JUSTICE SREM-SAI ESQ. WITH NOAH ADAMPTEY ESQ. FOR THE APPLICANT

BERNARD GADZEKPO ESQ. HOLDING BRIEF FOR MARTIN AGYEN-SAMPONG ESQ. FOR THE 1ST RESPONDENT.

DENNIS ARMAH ESQ. HOLDING BRIEF FOR ANTHONY FORSON JNR. ESQ. FOR THE 2ND RESPONDENT

SELALI WOANYA ESQ. FOR THE 3RD RESPONDENT

EUNAS KOFI ESHUN ESQ. HOLDING BRIEF FOR KWAKU GYAU BAFFOUR ESQ. FOR THE 4TH RESPONDENT

REGINALD NII ODOI ESQ., ASSISTANT STATE ATTORNEY FOR THE 5TH RESPONDENT

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29/7/21
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CRIMINAL COURT
LAW COURT COMPLEX