

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
CAPE COAST – A. D. 2021**

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| FILED ON | 2/8/2021 |
| FILED BY | 4:35 pm |
| REGISTRAR | |
| HIGH COURT, CAPE COAST | |

SUIT NO. CRP/E/3/2021

**IN THE MATTER OF ARTICLE 99 OF THE 1992 CONSTITUTION
OF THE REPUBLIC OF GHANA**

AND

**IN THE MATTER OF SECTION 16 OF THE REPRESENTATION OF THE
PEOPLE ACT, 1992 (PNDCL 284) AS AMENDED**

AND

**IN THE MATTER OF PARLIAMENTARY ELECTIONS FOR THE ASSIN
NORTH CONSTITUENCY HELD ON 7TH DECEMBER, 2020**

AND

**IN THE MATTER OF PETITION BY MICHAEL ANKOMAH-NIMFAH
CHALLENGING THE DECLARATION BY THE ELECTORAL COMMISSION
OF JAMES QUAYSON a.k.a. JAMES GYAKYE QUAYSON AS MEMBER OF
PARLIAMENT FOR THE ASSIN-NORTH CONSTITUENCY PURSUANT TO
THE PARLIAMENTARY ELECTIONS HELD ON 7TH DECEMBER 2020**

BETWEEN

JAMES GYAKYE QUAYSON *** 1ST RESPONDENT/APPELLANT
HSE. NO. SD/16 SDA
ASSIN-BEREKU**

VRS

- 1. MICHAEL ANKOMAH-NIMFAH ***** PETITIONER/RESPONDENT
H/NO. 65 OB APIATUAA STREET,
ASSIN-BEREKU**
- 2. THE ELECTORAL COMMISSION ***** 2ND RESPONDENT/RESPONDENT
HEAD OFFICE
RIDGE, ACCRA**

NOTICE OF APPEAL

**TAKE NOTICE that the 1st Respondent/Appellant (hereinafter referred
to as the "Appellant") having been aggrieved by and dissatisfied with**

the judgment of the High Court, Cape Coast, in the above-mentioned suit [Coram: Kwasi Boakye J.] dated 28th July 2021, does hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3, and will at the hearing of the appeal seek the reliefs set out in paragraph 4.

FURTHER TAKE NOTICE that the names and addresses for service, within the jurisdiction, of the persons directly affected by this appeal are those set out in paragraph 5 of this notice.

2. PART OF DECISION OF THE HIGH COURT COMPLAINED OF

The whole judgment of the High Court, Cape Coast, dated 28th July 2021.

3. GROUNDS OF APPEAL:

(a) The decision of the High Court is *per incuriam* section 1(2) of the Evidence Act, 1975 (Act 323);

Particulars of error of law pursuant to rule 8(4) of C. I. 19:

(i) Section 1(2) of Act 323 makes the determination of foreign law (in this case, Canadian law pertaining to owing allegiance to Canada) a question of fact to be proven by leading evidence;

(ii) The High Court did not allow for proof of foreign law in the determination of the issue of whether or not the Appellant owed allegiance to a country other than Ghana.

b) The High Court's decision is *per incuriam* article 129(3) of the 1992 Constitution and the decision of the Supreme Court in Republic v. High Court (Commercial Division) Accra; ex parte Electoral Commission [2015-2016] 2 SCGLR 1091;

Particulars of error of law pursuant to rule 8(4) of C. I. 19:

(i) Per article 129(3) of the 1992 Constitution, all courts are bound to follow decisions of the Supreme Court on questions of law;

(ii) In the above-cited case, the Supreme Court ruled that the nomination period extends beyond the nomination day(s) announced by the Electoral Commission;

(iii) The High Court erred by limiting its decision to the nomination days (i.e. 5th to 9th October 2020)

- (c) The High Court breached section 20(1)(d) of the Representation of People Act, 1992, (PNDC Law 284) when purporting to decide that the election of the Appellant as a Member of Parliament on 7th December 2020 was void;

Particulars of error of law pursuant to rule 8(4) of C. I. 19:

- (i) Section 20(1)(d) of PNDC Law 284, a piece of substantive legislation, fixes the material time of qualification as the time of election;
- (ii) Regulation 8(1) of the Public Elections Regulations, 2020 (C. I. 127), a piece of subsidiary legislation, reckons the time of nomination as the material time of qualification;
- (iii) The High Court erred by jettisoning section 20(1)(d) of PNDC Law 284 in favour of regulation 8(1) of C. I.127, a piece of subsidiary legislation.

- (d) The High Court erred in law when it refused/failed to proceed to the trial of the issues raised by the pleadings;

Particulars of error of law pursuant to rule 8(4) of C. I. 19:

- (i) The decision of the High Court to determine the suit solely on legal arguments where a matter of foreign law was pleaded, is in breach of Order 38 rule 1 and Order 32 rule 7 of the High Court (Civil Procedure) Rules, 2004 (C.I 47), as amended by sub rule 2 of rule 3B, and rule 7A of the High Court (Civil Procedure) (Amendment) rules, 2014, (C.I. 87) respectively;
- (ii) the High Court breached the *audi alterem partem* rule of natural justice when it determined the petition without allowing for a hearing of the case.

- e) The High Court erred in law, and acted out of jurisdiction, by not referring the interpretation of article 94(2)(a) of the 1992 Constitution to the Supreme Court having regard to the different interpretations of the parties in the suit;

Particulars of error of law pursuant to rule 8(4) of C. I. 19:

- (i) The High Court wrongly assumed jurisdiction in breach of article 130(1) of the Constitution by purporting to enforce article 94(2)(a) thereof against the Appellant on the alleged grounds that he owed allegiance to Canada at the time of his nomination as a candidate for the 7th December, 2020 Parliamentary election;

(ii) The High Court breached article 130(2) of the Constitution when it determined the petition without first staying proceedings and referring article 94(2)(a) of the Constitution to the Supreme Court for interpretation.

(f) The High Court erred in law, and acted out of jurisdiction, when it held that the decision of the 2nd Respondent/Respondent to clear the Appellant for the 7th December, 2020 Parliamentary election, "violates article 92(2)(a) [sic] of the 1992 Constitution, section 9(2)(a) of PNDC Law 284 and CI 127";

Particulars of error of law pursuant to rule 8(4) of C. I. 19:

The High Court has no jurisdiction to interpret any part of the 1992 Constitution

(g) The High Court erred in law, and acted out of jurisdiction, when it failed to differentiate the issue of whether or not the Appellant owed allegiance to another country other than Ghana from the issue of dual citizenship;

Particulars of error of law pursuant to rule 8(4) of C. I. 19:

(i) The High Court was under obligation to determine the issue of whether or not the Appellant owed allegiance to a country other than Ghana;

(ii) The High Court ended up determining the non-issue of whether or not the Appellant held dual citizenship at the time of his nomination.

(h) The High Court erred in law, and acted out of jurisdiction, when it refused and/or failed to refer article 46 of the 1992 Constitution to the Supreme Court for interpretation in the context of conflicting interpretations;

Particulars of error of law pursuant to rule 8(4) of C. I. 19:

(i) Different interpretations were placed by the parties on article 46 of the 1992 Constitution, per the pleadings of the parties in the suit;

(ii) A mandatory stay of proceedings and a referral of article 46 of the Constitution to the Supreme Court for interpretation was necessary, per article 130(2) of the Constitution.

(i) The High Court erred in law when it refused, failed, and/or neglected to appreciate that annulling the 2nd

Respondent/Respondent's decision to clear the Appellant for participation in the 7th December, 2020 Parliamentary election, is a violation of the 2nd Respondent/Respondent's independence under article 46 of the Constitution;

- (j) The High Court erred in law when it held that an election petition in the High Court is a competent procedure for challenging the decision of the 2nd Respondent/Respondent to clear the Appellant for the 7th December, 2020 Parliamentary election;

i.

Particulars of error of law pursuant to rule 8(4) of C. I. 19:

The High Court's nullification of the 2nd Respondent/Respondent's decision aforesaid in the hearing of an election petition is a wrong assumption of supervisory jurisdiction in breach of article 141 of the constitution and Order 55 of C.I 47;

- (k) The nullification by the High Court of the Parliamentary election organized by 2nd Respondent/Respondent in the Assin North constituency in December 2020 and the further order that the 2nd Respondent/Respondent should conduct fresh elections in the said constituency lack any constitutional and/or legal basis;

- (l) The judgment is wholly against the weight of the evidence; and

Further grounds may be filed upon receipt of the record of proceedings from the High Court.

4. RELIEFS SOUGHT FROM THE COURT OF APPEAL

- a) A declaration that the judgment of the High Court, Cape Coast, Coram Kwasi Boakye J., dated 28th July 2021, is void for having being issued out of jurisdiction;
- b) An Order setting aside the judgment of the High Court, Cape Coast, Coram Kwasi Boakye J., dated 28th July 2021;
- c) An Order setting aside the award of costs against the Appellant and in favor of the Petitioner/Respondent and the 2nd Respondent/Respondent;
- d) Costs in favor of the Appellant; and

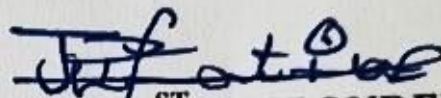
e) Any further or other order(s) as this Honorable Court may deem fit.

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL

NAMES AND ADDRESSES:

1. MICHAEL ANKOMAH-NIMFAH, H/N 65 OB APIATUAA STREET, ASSIN-BERERU; AND
2. THE ELECTORAL COMMISSION OF THE REPUBLIC OF GHANA, HEAD OFFICE, RIDGE, ACCRA.

DATED AT KAPONDE & ASSOCIATES, SUITE 606/607, GHANA SUPPLY CO. BUILDING, REPUBLIC HOUSE, OPPOSITE COCOBOD, CMB – ACCRA
THIS 30TH JULY, 2021.



LAWYER FOR THE 1ST RESPONDENT/APPELLANT
JUSTIN PWAVRA TERIWAJAH, ESQ.
SOLICITOR'S LICENCE NO. eGAR 00031/21
CHAMBER'S REGISTRATION NO. ePP00739/20

JUSTIN PWAVRA TERIWAJAH
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THE REGISTRAR
HIGH COURT
CAPE COAST

AND FOR SERVICE ON:

1. THE ABOVE-NAMED PETITIONER/RESPONDENT; AND
2. THE ABOVE-NAMED 2ND RESPONDENT/RESPONDENT.