

IN THE SUPERIOR COURT OF JUDICATURE  
IN THE HIGH COURT OF JUSTICE  
GENERAL JURISDICTION  
ACCRA – A.D. 2024

SUIT NO:

IN THE MATTER OF ARTICLE 106 (1), (2), (3), (4), (5), (6) and (7) OF THE 1992 CONSTITUTION OF  
GHANA

AND

IN THE MATTER OF THE TRANSMISSION OF THE HUMAN SEXUAL RIGHTS AND FAMILY VALUES BILL BY  
PARLIAMENT TO THE PRESIDENT OF GHANA FOR ASSENT.

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND

THE REPUBLIC

VRS.

**SPEAKER OF PARLIAMENT**

Parliament House  
Accra

**1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL.**

Office of the Attorney General  
And Minister of Justice,  
Ministries, Accra

**2<sup>ND</sup> REESPONDENT**

**EX PARTE: ROCKSON-NELSON ETSE K. DAFEAMEKPOR**

Parliament House  
Accra

**APPLICANT**

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**MOTION ON NOTICE**

**APPLICATION FOR JUDICIAL REVIEW IN THE NATURE OF MANDAMUS UNDER ORDER 55 RULE (4) 1 OF  
THE HIGH COURT CIVIL (PROCEDURE) RULES C. I. 47**

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**PLEASE TAKE NOTICE** that Counsel for and on behalf of the Applicant herein shall move this Honourable Court praying for an Order of Judicial Review in the nature of the following reliefs:

- I. A declaration that the Parliament of Ghana duly complied with all the Constitutional provisions stipulated in Article 106 (1), (2), (3), (4), (5) and (6) of the 1992 Constitution of Ghana in the passage of the Human Sexual Rights and Family Values Bill on the 28<sup>th</sup> of February, 2024.

- II. An Order of mandamus directed at the 1<sup>st</sup> Respondent herein to present the Human Sexual Rights and Family Values Bill to the President of the Republic of Ghana herein in accordance with Article 106 (7) of the 1992 Republic Constitution of Ghana on the basis that the Parliament of Ghana has duly complied with all the Constitutional provisions stipulated under Article 106 (1), (2), (3), (4), (5) and (6) of the 1992 Constitution of Ghana.
- III. An Order directed at the President of Ghana to receive the Human Sexual Rights and Family Values Bill as presented by Parliament in accordance with Article 106 (7) of the 1992 Constitution of Ghana for the purposes of his assent or otherwise.
- IV. An Order directed at the President of the Republic of Ghana to signify to the 1<sup>st</sup> Respondent herein, within seven days after the presentation of the Human Sexual Rights and Family Values Bill, his assent to the Bill or that he refuses to assent to the bill in accordance with Article 106 (7) of the 1992 Constitution of Ghana, unless the Bill is referred by the President to the Council of State pursuant to Article 90 of the Constitution of Ghana.
- V. Any other relief(s) this Honourable Court may deem fit.

#### **GROUNDS OF THE APPLICATION**

- a. The Human Sexual Rights and Family Values Bill has been duly passed by the Parliament of Ghana in compliance with Article 106 (1), (2), (3), (4), (5) and (6) of the 1992 Constitution of Ghana and same must be transmitted to and received by the President of Ghana for assent or otherwise in accordance with Article 106 (7) of the 1992 Constitution of Ghana

**COURT TO BE MOVED** on the day of 2024 at 9 o'clock in the forenoon or so soon thereafter as Counsel for and on behalf of the Applicant may be heard.

**DATED AT ACCRA THIS 22<sup>ND</sup> DAY OF MARCH 2024**

**NII KPAKPO SAMOA ADDO  
LAWYER FOR APPLICANT  
SOLICITOR'S LICENCE NO. eGAR 01025/24**

**THE REGISTRAR  
HIGH COURT**

**GENERAL JURISDICTION  
ACCRA**

**AND FOR SERVICE ON THE ABOVE NAMED RESPONDENTS**

**1. THE SPEAKER OF PARLIAMENT**

Parliament House  
Accra

**2. ATTORNEY GENERAL**

Office of the Attorney General  
And Minister of Justice,  
Ministries, Accra

**IN THE SUPERIOR COURT OF JUDICATURE  
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**2<sup>ND</sup> REESPONDENT**

**EX PARTE: ROCKSON-NELSON ETSE K. DAFEAMEKPOR**

Parliament House  
Accra

**APPLICANT**

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**AFFIDAVIT IN SUPPORT OF THE MOTION ON NOTICE FOR JUDICIAL REVIEW IN THE NATURE OF  
MANDAMUS UNDER ORDER 55 RULE (4) 1 OF THE HIGH COURT CIVIL (PROCEDURE) RULES C. I. 47**

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I **Rockson-Nelson Etse K. Dafeamekpor** of Atawanor Memorial House, Tongo-Tsanakpe in the South Dayi constituency of the Volta Region of Ghana do make oath and say as follows:

1. That I am the Deponent herein.
2. That I am a Member of Parliament for the South Dayi Constituency in the Volta Region of the Republic of Ghana and one of eight sponsors of the Human Sexual Rights and Family Values Bill.
3. That in response to the opening and subsequent closure of an LGBTQQIAAP+ Advocacy Centre in Accra, Ghana, Eight (8) Members of Parliament decided to introduce a Private

Members Bill called the Promotion of Sexual Rights and Ghanaian Family Values Bill to the Parliament of Ghana.

4. That the Promotion of Sexual Rights and Ghanaian Family Values Bill (hereinafter referred to as the "Bill") was introduced to the Parliament of Ghana In July, 2021.
5. That the Bill proscribes the promotion, advocacy, funding and acts of homosexuality, protects and supports children, persons who are victims or accused of LGBTTQQAAP+ and related matters.
6. That Bill was laid before the Parliament of Ghana on Monday the 2<sup>nd</sup> day of August, 2021.
7. That the Bill passed its First Reading by Parliament and was referred to the Committee of Constitutional, Legal and Parliamentary Affairs for consideration.
8. That the Constitutional, Legal and Parliamentary Committee held three public hearing to give individuals and organisations who submitted memoranda on the Bill the opportunity to justify their submissions and offer further explanations on their views on the matter.
9. That the Constitutional, Legal and Parliamentary Affairs Committee sought the opinion of the Attorney-General and Minister of Justice on the Bill and same was duly considered and incorporated same into its report.
10. That on Wednesday the 5<sup>th</sup> day of July, 2023, the Parliament of Ghana unanimously voted to grant the Bill a Second Reading and agreed to proposed amendments by the Constitutional, Legal and Parliamentary Affairs Committee Including the proposal of a short title, Human Sexual Rights and Family Values Bill, 2021.
11. That the Constitutional, Legal and Parliamentary Affairs Committee, by its report, recommended to Parliament to adopt and pass into law the Human Sexual Rights and Family Values Bill, 2021, subject to the amendments proffered by the Committee.
12. That on Wednesday the 28<sup>th</sup> day of February, 2024, the Parliament of Ghana voted unanimously to pass the Human Sexual Rights and Family Values Bill into law awaiting Presidential assent. **(Attached and Exhibited as "Exhibit RNEKD 1" is a copy of the Human Sexual Rights and Family Values Bill)**
13. That on Monday, the 4<sup>th</sup> day of March, 2024, President Akufo-Addo said in a statement to members of the Diplomatic Corps at Peduase that "a challenge has been mounted at the Supreme Court by a concerned citizen to the Constitutionality of the proposed legislation" and that he will therefore await the court's decision before taking action on the Bill.

**(Attached and Exhibited as “Exhibit RNEKD 2” is a copy of the President’s statement to members of the Diplomatic Corps at Peduase)**

14. That on Thursday the 14<sup>th</sup> day of March, 2024, the Clerk of Parliament attempted to submit the Human Sexual Rights and Family Values Bill to the Jubilee House for the President of Ghana to signify his assent or otherwise to the Bill.
15. That the Office of the President officially communicated to the Clerk of Parliament to desist from transmitting the Human Sexual Rights and Family Values Bill, 2024, to the President for his assent.
16. That the formal request by the Office of the President was communicated by a letter dated 18<sup>th</sup> March, 2024, referenced, **Ops 140/1/24/235** and signed by the Secretary to the President, Nana Bediatuo Asante. **(Attached and Exhibited as “Exhibit RNEKD 3” is a copy of the letter of the Secretary to the President)**
17. That in the said letter, the Secretary to the President indicated to the Clerk of Parliament that the Attorney General had by a letter dated 18<sup>th</sup> March, 2024, informed the Office of the President that he had been duly served with two Applications for an Order of Interlocutory Injunction filed at the Supreme Court.
18. That the Secretary to the President further indicated that the pending Applications were for an Order to restrain the Clerk of Parliament and Parliament from transmitting the Bill to the President of Ghana and to restrain the President of Ghana from signifying his assent to the Bill.
19. That Secretary to the President further indicated in the said letter claimed that it would be improper for the Clerk of Parliament to transmit the Bill to the President and equally improper for the Office of the President to receive the Bill until the Supreme Court determines the matters raised in the suits.
20. That I am advised by counsel and verily believe same to be true that Article 106 (1), (2), (3), (4), (5) and (6) of the 1992 Constitution of Ghana imposes a Constitutional duty on the Parliament of Ghana in the manner of consideration and passage of a Bill introduced and laid before it.
21. That I am advised by counsel and verily believe same to be true that Article 106 (1), (2), (3), (4), (5), (6) and (7) of the 1992 Constitution of Ghana imposes a Constitutional duty on the Parliament of Ghana to present a Bill it has passed to the President of the Republic of Ghana for his assent or otherwise.

22. That I am advised by counsel and verily believe same to be true that Article 106 (7) of the 1992 Constitution of Ghana imposes a Constitutional duty on the President of the Republic of Ghana to receive a Bill passed and presented to him by Parliament to signify his assent or otherwise.
23. That I am advised by counsel and verily believe same to be true that the Speaker of Parliament, the Clerk of Parliament and the President of Ghana as public office holders who are subordinate to the 1992 Constitution of Ghana.
24. That I am advised by counsel and verily believe same to be true that an Application may be brought before this Honourable Court to compel a public office holder or an individual on whom a Constitutional or statutory function of a public nature has been imposed upon to perform that Constitutional or statutory function.
25. That I am advised by counsel and verily believe same to be true that Parliament, having complied with all the Constitutional provisions stipulated under Article 106 (1), (2), (3), (4), (5) and (6) of the 1992 Constitution of Ghana, in the consideration and passage of the Human Sexual Rights and Family Values Bill, has a duty to present to Bill to the President of the Republic of Ghana for his assent or otherwise.
26. That I am advised by counsel and verily believe same to be true that the President of the Republic of Ghana has a duty to receive the Human Sexual Rights and Family Values Bill, as presented by Parliament, and signify his assent or otherwise in accordance with Article 106 (7) of the 1992 Constitution of Ghana, unless the bill is referred by the President to the Council of State pursuant to Article 90 of the Constitution of Ghana.
27. That I am advised by counsel and verily believe same to be true that this Honourable Court has the power to grant an Application for Mandamus where there is no other effective alternative remedy to the reliefs sought.
28. That I am advised by counsel and verily believe same to be true that unless the 1<sup>st</sup> Respondent and the President of Ghana are compelled by this Honourable Court through an Order of Mandamus to perform their Constitutional function under Article 106 (1), (2), (3), (4), (5), (6) and (7) of the 1992 Constitution of Ghana, there will be no other effective and alternative remedy under the circumstance.
29. That in the spirit of upholding, safeguarding and defending the supremacy of the 1992 Constitution of Ghana, I humbly pray for a declaration that the Parliament of Ghana duly complied with all the Constitutional provisions stipulated in Article 106 (1), (2), (3), (4), (5) and

(6) of the 1992 Constitution of Ghana in the passage of the Human Sexual Rights and Family Values Bill on the 28<sup>th</sup> of February, 2024.

30. That I pray for an Order of mandamus directed at the 1<sup>st</sup> Respondent herein to present the Human Sexual Rights and Family Values Bill to the President of the Republic of Ghana herein in accordance with Article 106 (7) of the 1992 Republic Constitution of Ghana on the basis that the Parliament of Ghana has duly complied with all the Constitutional provisions stipulated under Article 106 (1), (2), (3), (4), (5) and (6) of the 1992 Constitution of Ghana.

31. That I pray for an Order directed at the President of Ghana to receive the Human Sexual Rights and Family Values Bill as presented by Parliament in accordance with Article 106 (7) of the 1992 Constitution of Ghana for the purposes of his assent or otherwise.

32. That I pray for an Order directed at the President of the Republic of Ghana to signify to the 1<sup>st</sup> Respondent herein, within seven days after the presentation of the Human Sexual Rights and Family Values Bill, his assent to the Bill or that he refuses to assent to the Bill in accordance with Article 106 (7) of the 1992 Constitution of Ghana, unless the bill is referred by the President to the Council of State pursuant to Article 90 of the Constitution of Ghana.

**WHEREFORE** I swear to this Affidavit in Support of the Application.

SWORN this

Day of December, 2023

**BEFORE ME**

**COMMISSIONER FOR OATH**

.....

DEPONENT

**IN THE SUPERIOR COURT OF JUDICATURE  
IN THE HIGH COURT OF JUSTICE  
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**AND**  
**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**  
**AND**  
**THE REPUBLIC**  
**VRS.**

**SPEAKER OF PARLIAMENT**

Parliament House  
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**1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL.**

Office of the Attorney General  
And Minister of Justice,  
Ministries, Accra

**2<sup>ND</sup> REESPONDENT**

**EX PARTE: ROCKSON-NELSON ETSE K. DAFEAMEKPOR**

Parliament House  
Accra

**APPLICANT**

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**CERTIFICATE OF EXHIBITS**  
**ORDER 20 RULE 14 (1) (2) & (3) OF C. I.**

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I, \_\_\_\_\_, hereby certify that the under listed have been exhibited to the affidavit sworn before me.

1. **Exhibit “RNEKD 1” is a copy of the Human Sexual Rights and Family Values Bill)**
2. **Exhibit “RNEKD 2” is a copy of the President’s statement to members of the Diplomatic Corps at Peduase**
3. **Exhibit “RNEKD 3” is a copy of the letter of the Secretary to the President**

**BEFORE ME**

**COMMISSIONER FOR OATH**

**IN THE SUPERIOR COURT OF JUDICATURE  
IN THE HIGH COURT OF JUSTICE  
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**SPEAKER OF PARLIAMENT**

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**1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL.**

Office of the Attorney General  
And Minister of Justice,  
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**2<sup>ND</sup> REESPONDENT**

**EX PARTE: ROCKSON-NELSON ETSE K. DAFEAMEKPOR**

Parliament House  
Accra

**APPLICANT**

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**STATEMENT OF CASE PURSUANT TO ORDER 55 OF THE HIGH COURT CIVIL (PROCEDURE) RULES, 2004  
C. I. 47**

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**A. INTRODUCTION**

1. Respectfully my Lord, this is the Statement of Case in support of the Motion on Notice for Judicial Review in the nature of Mandamus for the following reliefs:

- a. A declaration that the Parliament of Ghana duly complied with all the Constitutional provisions stipulated in Article 106 (1), (2), (3), (4), (5) and (6) of the 1992 Constitution of Ghana in the passage of the Human Sexual Rights and Family Values Bill on the 28<sup>th</sup> of February, 2024.
- b. An Order of mandamus directed at the 1<sup>st</sup> Respondent herein to present the Human Sexual Rights and Family Values Bill to the President of the Republic of Ghana herein in accordance with Article 106 (7) of the 1992 Republic Constitution of Ghana on the basis that the Parliament of Ghana has duly complied with all the Constitutional provisions stipulated under Article 106 (1), (2), (3), (4), (5) and (6) of the 1992 Constitution of Ghana.

- c. An Order directed at the President of Ghana to receive the Human Sexual Rights and Family Values Bill as presented by Parliament in accordance with Article 106 (7) of the 1992 Constitution of Ghana for the purposes of his assent or otherwise.
- d. An Order directed at the President of the Republic of Ghana to signify to the 1<sup>st</sup> Respondent herein, within seven days after the presentation of the Human Sexual Rights and Family Values Bill, his assent to the Bill or that he refuses to assent to the bill in accordance with Article 106 (7) of the 1992 Constitution of Ghana, unless the Bill is referred by the President to the Council of State pursuant to Article 90 of the Constitution of Ghana.

2. The Applicant filed the Mandamus Application on the grounds the Human Sexual Rights and Family Values Bill has been duly passed by the Parliament of Ghana in compliance with Article 106 (1), (2), (3), (4), (5) and (6) of the 1992 Constitution of Ghana and same must be transmitted to and received by the President of Ghana for assent or otherwise in accordance with Article 106 (7) of the 1992 Constitution of Ghana

3. Respectfully my Lord, the facts of this case are as follows:

#### **B. STATEMENT OF MATERIAL FACTS**

4. The Applicant is a Member of Parliament for the South Dayi Constituency in the Volta Region of the Republic of Ghana and one of eight sponsors of the Human Sexual Rights and Family Values Bill.
5. On the 31<sup>st</sup> of January 2021, the opening and subsequent closure of an LGBTQQIAAP+ Advocacy Centre in Accra, Ghana, dominated the news media and drew sharp reactions from an overwhelming number of Ghanaians. **(See Exhibit RNEKD 1)**
6. In response to the growing attempts in advocacy for the acceptance of LGBTQQIAAP+ by both international and domestic collaborators, eight (8) Members of Parliament decided to introduce a Private Members Bill called the Promotion of Sexual Rights and Ghanaian Family Values Bill to the Parliament of Ghana.
7. The Promotion of Sexual Rights and Ghanaian Family Values Bill was introduced to the Parliament of Ghana In July, 2021.
8. The Bill proscribes the promotion, advocacy, funding and acts of homosexuality, protects and supports children, persons who are victims or accused of LGBTQQIAAP+ and related matters.

9. The Bill was laid before the Parliament of Ghana on Monday the 2<sup>nd</sup> day of August, 2021.
10. Following the passage of the Bill by the rank and file of Parliament at First Reading it was subsequently referred to the Committee of Constitutional, Legal and Parliamentary Affairs for consideration.
11. The Constitutional, Legal and Parliamentary Committee held three public hearing to give individuals and organisations who submitted memoranda on the Bill the opportunity to justify their submissions and offer further explanations on their views on the matter.
12. Prominent among these were the National House of Chiefs, Key Watch Ghana, Assemblies of God, Interfaith Diversity Network for West Africa and the Alliance for Equality and Diversity.
13. The Constitutional, Legal and Parliamentary Affairs Committee sought the opinion of the Attorney-General and Minister of Justice on the Bill and same was duly considered and incorporated same into its report.
14. On the 5<sup>th</sup> day of July, 2023, the Parliament of Ghana unanimously voted to grant the Bill a Second Reading and agreed to proposed amendments by the Constitutional, Legal and Parliamentary Affairs Committee including the proposal of a short title, Human Sexual Rights and Family Values Bill, 2021.
15. The Constitutional, Legal and Parliamentary Affairs Committee, by its report, recommended to Parliament to adopt and pass into law the Human Sexual Rights and Family Values Bill, 2021, subject to the amendments proffered by the Committee.
16. The Parliament of Ghana voted unanimously to pass the Human Sexual Rights and Family Values Bill into law awaiting Presidential assent on 28<sup>th</sup> February, 2024. **(See Exhibit RNEKD 1)**
17. President Akufo-Addo in a statement to members of the Diplomatic Corps at Peduase on 4<sup>th</sup> March, 2024, said that “a challenge has been mounted at the Supreme Court by a concerned citizen to the Constitutionality of the proposed legislation“ and that he will therefore await the court’s decision before taking action on the Bill. **(See Exhibit RNEKD 2)**
18. The Clerk of Parliament attempted to submit the Human Sexual Rights and Family Values Bill to the Jubilee House for the President of Ghana to signify his assent or otherwise to the Bill on 14<sup>th</sup> day of March, 2024. **(See Exhibit RNEKD 1)**

19. The Office of the President officially communicated to the Clerk of Parliament to desist from transmitting the Human Sexual Rights and Family Values Bill, 2024, to the President for his assent.
20. This formal request by the Office of the President was communicated by a letter dated 18<sup>th</sup> March, 2024, referenced, **Ops 140/1/24/235** and signed by the Secretary to the President, Nana Bediatuo Asante. **(See Exhibit RNEKD 3)**
21. And in the said letter, the Secretary to the President indicated to the Clerk of Parliament that the Attorney General had by a letter dated 18<sup>th</sup> March, 2024, informed the Office of the President that he had been duly served with two Applications for an Order of Interlocutory Injunction filed at the Supreme Court. **(See Exhibit RNEKD 3)**
22. The Secretary to the President further indicated that the pending Applications were for an Order to restrain the Clerk of Parliament and Parliament from transmitting the Bill to the President of Ghana and to restrain the President of Ghana from signifying his assent to the Bill.
23. The Secretary to the President also indicated in the said letter that it would be improper for the Clerk of Parliament to transmit the Bill to the President and equally improper for the Office of the President to receive the Bill until the Supreme Court determines the matters raised in the suits.

### **C. LEGAL ARGUMENTS**

24. My Lord, the power of judicial review of lower courts, adjudicating authorities and administrative bodies and officials is vested in this Court by articles 141 and 161 of the 1992 Constitution of Ghana.
25. Order 55 rule 1 of the High Court Civil (Procedure) Rules also further highlights the supervisory jurisdiction of this Court:

**"An application for (a) an order in the nature of mandamus, prohibition, certiorari or quo warranto; or (b) an injunction restraining a person from acting in any public office in which the person is not entitled to act; or (c) any other injunction, shall be made by way of an application for judicial review to the High Court."**

26. The power of judicial review vested in the High Court clothes this Court to ensure public office holders and public institutions such as the 1<sup>st</sup> Respondent and the President of the Republic

of Ghana exercise their mandate in accordance with the Constitutional and statutory provisions that created them or their offices.

27. Article 141 of the 1992 Constitution of Ghana vests the power to Supervise lower courts and any lower adjudicating authority in the High Court.

Article 141 provides as follows:

***The High Court shall have supervisory jurisdiction over lower courts and any lower adjudicating authority; and may in the exercise of that jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory powers.***

**Article 161 defines supervisory jurisdiction to mean as:**

**“Supervisory jurisdiction” includes jurisdiction to issue writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto.**

28. In the Ninth Edition of Black's Law Dictionary by Bryan A. Garner at page 1046 defines Mandamus as:

**“Latin [“We Command”] 16 c. Writ issued by a court to compel performance of a particular act by a lower court or a governmental officer or body usually to correct a prior action or failure to act”.**

29. For the right to an order of Mandamus to be recognised by the court, a statute or an enactment must impose a duty of a public nature on a person or an institution to perform.

30. Annan J. in the case of ***Republic v Chieftaincy Secretariat; Ex parte Adansi Traditional Council***<sup>1</sup> delivered himself thus:

***"Generally, an order of mandamus did not lie against the State or servants of the State acting as such to carry out duties laid on the State. Where, however, a person, whether holding office as a State servant or not had a statutory duty of a public nature towards another person, an order of mandamus would lie to compel performance of the duty at the instance of a person aggrieved by the refusal to perform that duty unless another remedy was indicated by the statute. But before a court would make such an order of mandamus, the applicant must satisfy four main conditions, namely:***

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<sup>1</sup> [1968] GLR 7360

- (a) That there was a duty imposed by the statute upon which he relied,**  
**(b) That the duty was of a public nature,**  
**(c) That there was a right in the applicant to enforce the performance of the duty and**  
**(d) That there had been a demand and a refusal to perform that public duty enjoined by statute."**

31. My Lord, the above case shows that a Mandamus Application would be granted where the demand to perform a public duty enjoined by statute, a Constitutional provision or an enactment is refused directly or by necessary implication

32. My Lord, the Applicant's capacity to apply for the thus Mandamus Order stems from his membership of Parliament under Article 94 of the 1992 Constitution of Ghana having qualified and elected as a Member of Parliament for the South Dayi Constituency in the Volta Region of Ghana.

33. My Lord, Article 93(2) of the 1992 Constitution of Ghana vests Legislative Power in the Parliament of Ghana which power is to be exercised in accordance with the 1992 Constitution of Ghana.

Article 93(2) of the 1992 Constitution provides:

**(2) Subject to the provisions of this Constitution the legislative power of Ghana shall be vested in Parliament and shall be exercised in accordance with this Constitution.**

34. It is settled law that Parliament has oversight responsibility for the smooth and accountable running of government through the mandate of the people of Ghana.

35. In the **Republic (No.2) v. National House of Chiefs; Ex parte Akrofa Krukoko II (Enimil VI Interested party No.2)**<sup>2</sup> headnote 4 where the Supreme Court delivered itself thus:-

**".... Indeed the conduct of the respondent in delaying to comply with the demand of the appellant and failing to give a direct answer in the demand was tantamount to a refusal"**

36. Article 106 of the 1992 Constitution of Ghana provides for the mode of exercising legislative power:

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<sup>2</sup> [2010] SCGLR 134



**i. The power of Parliament to make laws shall be exercised by bills passed by Parliament and assented to by the President.**

**ii. No bill, other than such a bill as is referred to in paragraph**

**1. of article 108 of this Constitution, shall be introduced in Parliament unless.**

**2. If is accompanied by an explanatory memorandum setting out in detail the policy and principles of the bill, the defects of the existing law, the remedies proposed to deal with those defects and the necessity for its introduction;; and**

**(b) it has been published in the Gazette at least fourteen days before the date of its introduction in Parliament.**

**(3) A bill affecting the institution of chieftaincy shall not be introduced in Parliament without prior reference to the National House of Chiefs.**

**(4) Whenever a bill is read the first time in Parliament, it shall be referred to the appropriate committee appointed under article 103 of this Constitution which shall examine the bill in detail and make all such inquiries in relation to it as the Committee considers expedient or necessary.**

**(5) Where a bill has been deliberated upon by the appropriate committee, it shall be reported to Parliament.**

**(6) The report of the committee, together with the explanatory memorandum to the bill, shall form the basis for a full debate the bill for its passage, with or without amendments, or its rejection by Parliament.**

**(7) Where a bill passed by Parliament is presented to the President for assent he shall signify, within seven days after the presentation, to the Speaker that he assents to the bill or that he refuses to assent to the bill, unless the bill has been referred by the President to the Council of State under article 90 of this Constitution.**

37. My Lord, the facts of the of the matter does show that the Parliament of Ghana has complied and with and discharged its duty all the Constitutional provisions stipulated under Article 106 (1), (2), (3), (4), (5) and (6) of the 1992 Constitution of Ghana in relation to the introduction, laying, consideration and passage of the Human Sexual Rights and Family Values Bill, 2024, safe that, Parliament is yet to present the same to the President pursuant to Article 106 (7) of the 1992 Constitution. **(See Exhibit RNEKD 1)**
38. My Lord, the attempt by the Clerk of Parliament to submit the Human Sexual Rights and Family Values Bill to the Jubilee House for the President's assent or otherwise on the 14<sup>th</sup> day of March, 2024, is the most overt and direct demand made on the President of the Republic of Ghana to perform his duty under the Constitution pursuant to Article 106 (7) of the 1992 Constitution of Ghana. **(See Exhibit RNEKD 1)**
39. My Lord, even though Parliament can not be said to have directly refused to perform its Constitutional duty of presenting the Human Sexual Rights and Family Values Bill, 2024, because it made an unsuccessful attempt at service of the Bill on the President for his assent or otherwise, it can be said to have done so by necessary implication. **(See Exhibit RNEKD 1)**
40. And the subsequent letter dated 18<sup>th</sup> March, 2024, referenced, **Ops140/1/24/235** and signed by the Secretary to the President, Nana Bediatuo Asante requesting Parliament to desist from transmitting the Human Sexual Rights and Family Values Bill, 2024, to the President for his assent or otherwise constitutes a direct rejection of the demand made on the President to perform his duty under Article 106(7) of the 1992 Constitution of Ghana. **(See Exhibit RNEKD 3)**
41. My Lord, the statement by the President to the Republic of Ghana to the Diplomatic Corps at Peduase on 4<sup>th</sup> March, 2024, as shown by **Exhibit RNEKD 2** and by the letter of the Secretary to the President as shown by **Exhibit RNEKD 3** are further indications of the President's unwilling, neglect and refusal to signify his assent or otherwise.
42. Article 1(2) of the 1992 Republican Constitution of Ghana stipulates that the Constitution of Ghana is the supreme law of Ghana and as such any law, act or omission of a person or an institution that is inconsistent with, or is in contravention of a provision of the Constitution of Ghana shall be declared null and void by the supreme court, if an action on same is brought before it.
43. Article 1(2) of the 1992 Republican Constitution of Ghana

**1(2) This Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void**

44. In the case of **Isaac Agyekum v. Attorney General & 3 ors (2016) JELR 107301 (HC)** the Court held that the Applicant must prove that there is a right vested in him to enforce that duty.

45. My Lord, the courts may in appropriate circumstances, give orders and directions in cases such as this instant one, to ensure prevalence of justice and to uphold the rule of law.

46. My Lord, the attempt by the Clerk of submit the Bill and posture adopted by the President is communication to the Clerk of Parliament to desist from transmitting the Human Sexual Rights and Family Values Bill, 2024, is an affront to the settled doctrine of Separation of Powers as it seems to all well-meaning of Ghanaians that the President is overreaching the scope of his powers.

47. In the case of **Professor Stephen Kwaku Asare v. Attorney General** the Supreme Court delivered itself thus:

***"The doctrine of the separation of powers is a philosophical and political dissertation which seeks to compartmentalise the organs of government into three distinct branches denominated as the executive, the legislative and the judicial branches. The doctrine proceeds to postulate the theory that for efficient governance, and in particular to avoid despotism and tyranny, the three branches of government must remain distinct; for, the concentration of power in the hands of one person or one set of persons has the natural tendency to breed despotism and tyrannical rule because of the fallibility of man."***

48. My Lords, Adinyira JSC in the case of **Okudzeto Ablakwa and Another v. Attorney-General and Obetsebi Lamptey**<sup>3</sup> 986 pointed out that the court have a duty under 1992 Constitution

***"...the duty to measure the actions of both the legislature and the executive against the provision of the Constitution. This includes the duty to ensure that no public officer conduct himself in such a manner as to be in clear breach of the provisions of the Constitution. It is by actions of this nature that gives reality to enforcing the constitution by compelling its observance and ensuring probity, accountability and good governance."***

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<sup>3</sup> [2017] 2 SCGLR

49. My Lords, in the of **Amidu v President Kufour**<sup>4</sup> Acquah JSC opined that

***"There is no doubt that the Constitution, 1992 prescribes a government consisting of three branches: the legislature, executive and the judiciary. Each playing a distinct role. Apart from these three branches of government, the Constitution, 1992 also establishes a number of offices, bodies and institutions. Now each of these branches of government, offices, bodies and institutions is, of course, subject to the Constitution, 1992 and is therefore required to operate within the powers and limits Conferred on it by the Constitution. And in order to maintain the supremacy of the Constitution and to ensure that every individual organ of State, body or institution operates within the provisions of the Constitution, 1992."***

50. My Lord, the above case highlight the need of public officers to conduct themselves in a manner as not to violate the Supreme injunctions of the Constitutional provisions as well as statutory provisions.

51. The law is settled that the mere filing of an Injunction Application does not necessarily tie the hands of Constitutional bodies like the Office of the President and Parliament, and stay them from performing their Constitutional functions contrary to assertion of the President through the letter of his Executive Secretary as seen in **Exhibit RNEKD 3**.

52. Indeed that duty is reserved for the courts alone and not public office holders and institutions to determine. The Courts consider a lot of factors in granting Injunction Applications because they are discretionary in nature. It is the justice of the case which is of paramount consideration in the determination of an application for Interlocutory injunction. An injunction is an equitable remedy which shall be considered in accordance with law.

53. In the case of **Owusu v. Owusu Ansah**<sup>5</sup> the court held as follows:

***"The grant or refusal of an Injunction is at the discretion of the court but that discretion has to be exercised judiciously... The fundamental principle in the application for Interim injunction is whether the applicant has a right in law or equity which the court ought to protect by maintaining the status quo until the final determination of the action on its merits. This could only be determined by the considering the pleadings and affidavit evidence before the court."***

54. The case affirms the position that the court alone has the sole authority to determine an injunctive relief and that public office holders and institutions are bereft of this power. The

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<sup>4</sup> [2001-2002] SCGLR 86

<sup>5</sup> [2007-2008] SCGLR 870

President of Ghana and the 1<sup>st</sup> respondent have a duty, and in the case a constitutional duty to obey and discharge their duties under Article 106 (1), (2), (3), (4), (5), (6) and (7) of the 1992 Constitution of Ghana in particular reference to Parliament transmitting the Human Sexual Rights and Family Values Bill to the President for his assent or otherwise and for the President to receive same.

#### **D. CONCLUSION**

55. And where public office holders such as the President refuse to perform their public duties the courts become the last bastion of hope to compel such public office holders and public institutions to perform their duties.
56. My Lord, an Order for Mandamus, like any other prerogative writ will and must be granted if there is no other effective alternative remedy as well held in **Marbury v. Madison** <sup>6</sup> like in this instant matter.
57. The Constitutional provisions are clear and unambiguous, and they emanate from the Supreme law of Ghana, the 1992 Constitution of Ghana.
58. It is our position and firm assertion that given the attitude of the 1<sup>st</sup> Respondent's failure to transmit the Human Sexual Rights and Family Values Bill and the President's refusal to receive same, a Mandamus Order is the only remedy that can compel these public office holders to perform their public and constitutional duties.
59. My Lord, we humbly pray that this Honourable Court grants the Applicant's Application for the following reliefs:
- a. A declaration that the Parliament of Ghana duly complied with all the Constitutional provisions stipulated in Article 106 (1), (2), (3), (4), (5) and (6) of the 1992 Constitution of Ghana in the passage of the Human Sexual Rights and Family Values Bill on the 28<sup>th</sup> of February, 2024.
  - b. An Order of mandamus directed at the 1<sup>st</sup> Respondent herein to present the Human Sexual Rights and Family Values Bill to the President of the Republic of Ghana herein in accordance with Article 106 (7) of the 1992 Republic Constitution of Ghana on the basis that the Parliament of Ghana has duly complied with all the Constitutional

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<sup>6</sup> 5 U. S. (1 Cranc) 137(1803).

provisions stipulated under Article 106 (1), (2), (3), (4), (5) and (6) of the 1992 Constitution of Ghana.

- c. An Order directed at the President of Ghana to receive the Human Sexual Rights and Family Values Bill as presented by Parliament in accordance with Article 106 (7) of the 1992 Constitution of Ghana for the purposes of his assent or otherwise.
- d. An Order directed at the President of the Republic of Ghana to signify to the 1<sup>st</sup> Respondent herein, within seven days after the presentation of the Human Sexual Rights and Family Values Bill, his assent to the Bill or that he refuses to assent to the bill in accordance with Article 106 (7) of the 1992 Constitution of Ghana, unless the Bill is referred by the President to the Council of State pursuant to Article 90 of the Constitution of Ghana.

We pray accordingly, my Lord.

**DATED AT ACCRA THIS 22<sup>ND</sup> OF MARCH 2024**

**Nii Kpakpo Samoa Addo  
Solicitor for the Appellant  
License No. eGAR 0102t/24**

**THE REGISTRAR  
HIGH COURT  
GENERAL JURISDICTION  
ACCRA**

**AND FOR SERVICE ON THE ABOVE-NAMED RESPONDENTS**