

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF GHANA

AD 2024

SUIT NO:.....

KENNETH KWABENA AGYEI KURANCHIE)

.....PLAINTIFF

H/NO. 5,

RUBY STREET,

ACHIMOTA, ACCRA

GPS ADDRESS: GA-302-0449

VERSUS

1. THE ATTORNEY GENERAL)

.....DEFENDANTS

ATTORNEY GENERAL'S DEPARTMENT

ACCRA

2. OFFICE OF SPECIAL PROSECUTOR

6 HAILE SELASSIE AVE,

SOUTH RIDGE,

ACCRA, GHANA.

PLAINTIFF'S STATEMENT OF CASE

INTRODUCTION

MAY IT PLEASE YOUR LORDSHIPS;

1. The Plaintiff has brought this action to invoke the original jurisdiction of this Honourable Court under Articles 1.(2), 2.(1) and 130. (1)(b) of the 1992 Constitution, as well as Rule 45. (1) of the Supreme Court Rules, 1996, C.I. 16 claiming the following reliefs;
 - (i) A declaration that the Office of the Special Prosecutor Act, 2017 (ACT 957) is contrary to Articles 11, 17. (1),(2) and (3), 88. (3) and (4), 289.(2), 290. (1) (f) and 290. (2) to (4), 12. (2) and 107 (b) of the 1992 Constitution;
 - (ii) A declaration that by the combined effects of Articles 290. (1)(f) and 290. (2) to (6), 93. (2), 107.(b) of the 1992 Constitution, Section 2 of the Office of the Special Prosecutor Act, 2017 (ACT 957) has amended Article 88 of the 1992 Constitution and therefore contrary to Articles 11. (1)(b) of the 1992 Constitution;
 - (iii) A declaration that Section 4. (1) of Act 959 is contrary to Article 58. (1) and (2) of the 1992 Constitution.

- (iv) A declaration that Section 25. (3) of Act 959 is contrary to Article 187. (5) and (6) of the 1992 Constitution.
- (v) A declaration that the true effect of Section 25. (3) of Act 959 is to amend Article 187. (5) and (6) of the 1992 Constitution and therefore contrary to Article 289, 290. (1)(j) and 290. (2) to (6).
- (vi) A declaration that Section 26 of Act 959 is contrary to Article 187. (5) and (6) of the 1992 Constitution.
- (vii) A declaration that the true effect of Section 26 of Act 959 is to amend Article 187. (5) and (6) of the 1992 Constitution and therefore contrary to Articles 289. (2), 290. (1) (j) and 290. (2), (3), (4), (5), and (6).
- (viii) A declaration that Section 28 of Act 959 is contrary to Article 200. (2) and (3) of the 1992 Constitution.
- (ix) A declaration that the true effect of Section 28 of Act 959 is to amend Article 200 of the 1992 Constitution and therefore contrary to Articles 289. (2), 290. (1) (k) and 290. (2), (3), (4), (5), and (6).
- (x) A declaration that Sections 29. (1), (2), (3), and (6), 30. (1) and 31 of Act 959 are contrary to Articles 15. (2), 19. (2)(c) and (10) of the 1992 Constitution.
- (xi) A declaration that Section 32 of Act 959 is contrary to Articles 18, 19. (2)(c) and (d), 15. (2) and 19. (10) and Article 125. (3) of the 1992 Constitution.
- (xii) A declaration that Sections 32 to 37 of Act 959 are contrary to Articles 19. (11), 15. (1) to (3) and Article 125. (3) of the 1992 Constitution.
- (xiii) A declaration that Sections 38 to 43 of Act 959 are contrary to Articles 18. (1), (2), 19. (2)(c) to (h), and (11), and 125. (3) of the 1992 Constitution. (guilty before innocent)
- (xiv) A declaration that Section 23. (2) and (3) of Act 959 is contrary to 176 of the 1992 Constitution.
- (xv) A declaration that Section 3. (1)(d) of Act 959 is contrary to Articles 175 and 176. (1) of the 1992 Constitution.
- (xvi) A declaration that all monies and revenue and recoveries arising out of Sections 65 and 66 of Act 959 constitute public monies and revenue under Article 175 and 176 and properly ought to be paid into the Consolidated Fund.

THE CASE FOR DECLARATION AND ENFORCEMENT

2. It is the case of Plaintiff that although the legislative power of Ghana, under Article 93. (2), is vested in Parliament, that power is circumscribed by the enabling article itself, as well as other articles in the 1992 Constitution.
3. Article 93. (2) of the 1992 Constitution states;
“Subject to the provisions of this Constitution, the legislative powers of Ghana shall be vested in Parliament and shall be exercised in accordance with this Constitution.”
4. As stated on the face of Article 93. (2), the power granted to Ghana’s parliament is not an unlimited power or carte blanche authority, but is

- proscribed by the Constitution itself. The legislative power is not a complete freedom given to parliament to promulgate any and all laws as Parliament wishes. Indeed, Article 93. (2), subsumes the legislative powers of parliament to the Constitution, which presupposes that Parliament shall not promulgate any law that exceeds the powers of the Constitution itself.
5. For instance, with the greatest of respect to Your Lordships, Parliament cannot pass a law intended to create a one-party state.
 6. Article 3. (1) of the 1992 Constitution states;
“(1) Parliament shall have no power to enact a law to establish a one-party state.”
 7. In furtherance of this Article 56 of the 1992 Constitution further provides;
“Parliament shall have no power to enact a law to establish or authorize the establishment of a body or movement with the right or power to impose on the people of Ghana a common programme or a set of objectives of a religious or political nature.”
 8. Thus, it is would be the contention of the Plaintiff in the following statement that even though Article 93. (2) grant the Parliament of Ghana very broad legislative powers, these powers are also proscribed by the Constitution itself; ipso facto, the parliament of Ghana cannot presume to arrogate to itself the right to enact laws that exceed the authority of Parliament and that of the 1992 Constitution itself.
 9. In further illustration of the above, Article 107. (b) of the 1992 Constitution states;
***“Parliament shall have no power to pass any law-
“(b) which operates retrospectively to impose any limitation on or adversely affect the personal rights and liberties of any person or to impose a burden, obligation or liability on any person except in the case of a law enacted under Article 178 to 182 of this Constitution.”***
 10. Similarly, parliament shall pass no laws the effect of which is to amend the 1992 Constitution unless it complies with the specific provisions of Articles 289, 290 and 291.
 11. Your Lordships, it is the contention of Plaintiff that Articles 3. (1), 56 and 107. (b) among others form the necessary boundary/limit of Article 93.(2) of the 1992 Constitution. Plaintiff therefore says that even though parliament can pass laws, it is not at liberty to promulgate/pass any or all laws that it pleases.
 12. Further, Plaintiff says therefore that any law that departs from the provisions of the 1992 Constitution cannot be laws so called, and ought to be struck down.

YOUR LORDSHIPS;

SUMMARY OF FACTS

13. On 2nd January, 2018, the President of Ghana assented and signed into a law a bill passed by Parliament known as OFFICE OF SPECIAL PROSECUTOR ACT, 2017, (ACT 959) (hereon forthwith in this statement unless specifically mentioned would be referred to as The ACT).

14. The ACT in its Preamble states;
“AN ACT to establish the Office of Special Prosecutor as a SPECIALIZED agency to investigate specific cases of alleged or suspected corruption and corruption-related offences involving PUBLIC OFFICERS and POLITICALLY EXPOSED persons in the performance of their functions as well as persons in the private sector involved in the commission or alleged or suspected corruption and corruption-related offences, prosecute these offences on the authority of the Attorney-General and provide for related matters.” (Emphasis provided).
15. It subsequently came to the attention of the Plaintiff that the through the operation of its laws, the Office of Special Prosecutor has been freezing the assets of some citizens before going to court to seek orders to freeze these assets. (EXHIBIT 1- A copy of a motion paper issuing from the Office of Special Prosecutor to court to freeze some assets).
16. It also came to the attention of Plaintiff that the Office of Special Prosecutor in its motions, only asked the courts to confirm its actions of freezing its assets, thus exercising a judicial function. (EXHIBIT 1- A copy of a motion paper issuing from the Office of Special Prosecutor to court asking that its freezing of assets be confirmed).
17. That it also came to the attention of Plaintiff that the Office of Special Prosecutor (OSP) exercised judicial functions by declaring certain properties as ‘tainted’. (EXHIBIT 2 and 7- A copy of a Ghana News Agency Report dated 16th October, 2023, the last paragraph of which demonstrated the OSP demonstrating its power to declare a property as ‘tainted’).
18. That it also came to the attention of Plaintiff that the Office of Special Prosecutor (OSP) exercised its function as a Police Organization with power of arrest of individuals (EXHIBITS 4 AND 8- MEDIA REPORTS ON THE ARREST OF ONE PROFESSOR FRIMPONG BOATENG).
19. That it also came to the attention of Plaintiff that the OSP exercised its power to employ the use of ‘reasonable grounds’ to freeze the property of a citizen (EXHIBIT 5 IS A PRESS RELEASE ISSUED BY THE SPO DATED 3RD SEPTEMBER, 2023, IN THE LAST PARAGRAPH OF WHICH IT CONFIRMS ITS POWERS TO EMPLOY ‘REASONABLE GROUNDS’ AS A BASIS TO SEIZE/FREEZE THE PROPERTY OF A CITIZEN).
20. That it further came to the attention of Plaintiff that in contrast to the stipulations of the 1992 Constitution (Article 58. (2)) the OSP was resisting supervision by the President, who is constitutionally mandated to ensure the enforcement of all laws promulgated in Ghana by Parliament (EXHIBIT 6 IS A LETTER OF RESIGNATION BY FORMER SPECIAL PROSECUTOR MARTIN AMIDU IN WHICH HE STATES AT PARAGRAPH 1 OF PAGE 2 OF THAT LETTER THAT THE OFFICE IS NOT SUBJECT TO DIRECTION BY THE PRESIDENT)
21. That Plaintiff is of the firm believe that these and many more acts by the OSP and the provisions of the OSP Act constitute grave acts of unconstitutionality that must be purged.

LEGAL SUBMISSIONS

JURISDICTION OF THE SUPREME COURT

YOUR LORDSHIPS;

22. Section 13 of the Interpretation Act, 2009 (Act 792) states;

“The long title and preamble form part of an Act intended to assist in explaining the intent and object of the Act.”

23. From the above preamble, therefore, the intendments of the preamble and the enacting provisions of the ACT that bring the force of law and coercion to those intendments, it would be the case of the Plaintiff that the entirety of The ACT breach the limits of the legislative powers of Parliament.

Further, Plaintiff would state in the following statement that based on the preceding paragraph, that The ACT cannot find a root or source itself to Article 11 of the 1992 Constitution, and is therefore ultra vires Article 11 of the Constitution.

YOUR LORDSHIPS;

24. Article 1. (2), of the 1992 Constitution provides as follows;

“This Constitution is 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.”

25. Your Lordships, in the case of *Adofo v Attorney-General and Cocobod* ((2005-2006) SCGLR 42 to 47) the Supreme Court struck out Section 5 of the Ghana Cocoa Board (Re-Organizations and Indemnity) Law, 1985 which attempted to oust the jurisdiction of the court and thereby offended the spirit of the Constitution as well as specifically, Articles 125 (5) and 140 (1) of the Constitution which granted free access of individuals to the courts.

26. Your Lordships, you derive your awesome powers from Articles 1, 2 and 130 of the 1992 Constitution.

27. Article 1.(2) of the 1992 Constitution states;

“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.”

28. Article 2. (1) then provides;

“2. (1) 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 in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.”

29. My Lords, further, Article 130. (1). (a) and (b) provides;

“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 original exclusive 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.”

30. Your Lordships, in *Mensima v Attorney-General and 3 others* (1996-97 SCGLR 676), the Supreme Court amplified its powers vested in Article 2 of the 1992 Constitution and struck out regulation 3. (1) of the Manufacture and Sale of Spirits Regulation, 1962 (LI 239) made under the parent Act, the Liquor Licensing Act, 1970 (Act 331) as unconstitutional. This is where the regulation had made it mandatory for a person to first become a member of a co-operative society before the person can obtain a license to distil akpeteshie, a local liquor.

YOUR LORDSHIPS;

31. Respectfully, Plaintiff says that from the above, it becomes apparent that a person is enabled to bring an action in Your Lordships Court under the following circumstances;

- (i) Where the person believes that an Act or anything done under an enactment or any act or omission of any person is inconsistent with, or in contravention of a provision of this Constitution; or
- (ii) All matters relating to the enforcement or interpretation of this Constitution; and
- (iii) All matters arising as to whether an enactment as made in excess of the **powers conferred on parliament** or any other authority or person by law or under this Constitution.”

YOUR LORDSHIPS;

32. Section 3 of the Courts Act, 1993, states;

“(1). Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms provided in Article 33 of the Constitution, the Supreme Court shall have exclusive original jurisdiction in-

“(a) all matters relating to the enforcement or interpretation of the 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 the Constitution.”

33. In *Ghana Bar Association V. Attorney-General And Another* (1995) JELR 67088 (SC), Supreme Court, 5 Dec 1995, the Supreme Court outlined its powers of interpretation and enforcement in the following words;

“The Constitution, 1992 has vested the Supreme Court with the following original jurisdiction:

“(a). any person who alleges that:

“(i). an enactment or anything contained in or done under the authority of that or any other enactment: see article 2(1)(a);

“(ii). 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: see article 2(1)(b);”

YOUR LORDSHIPS;

34. It is the case of the Plaintiff that The ACT was made in excess of the legislative powers conferred by the Constitution on Parliament, and Your Lordships' Court is the only court in the land vested with the jurisdiction to strike down same.

35. Further, Plaintiff says that his plea is bolstered by the further arguments on the reliefs against several provisions contained in The ACT.

PLAINTIFF'S CAPACITY

36. The Plaintiff is a citizen of the Republic of Ghana of voting age. Article 2 of the 1992 Constitution states;

“2. (1) 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.”

37. It has been held in *TUFFUOR V. ATTORNEY-GENERAL* (1980) GLR 637, SC and in *SAM (No. 2) V ATTORNEY GENERAL* (2000) SCGLR 305 that a person bringing an action under Article 2 of the 1992 Constitution need not demonstrate that he has a personal interest in the outcome of the suit; that he being a citizen of Ghana suffices to entitle him to bring the action. This was affirmed in the case of *BIMPONG-BUTA V GENERAL LEGAL COUNCIL* (2003-2004) SCGLR 1200. Accordingly the Plaintiff is seized with and has capacity to bring the action.

THE CASE FOR DECLARATIONS AND ENFORCEMENT

YOUR LORDSHIPS;

38. Plaintiff says that The ACT must be struck down for the following reasons;

(i) The true effect of some provisions in the ACT is to amend the certain entrenched clauses and articles under the 1992 Constitution. However, Parliament has no power to pass a law the effect of which is to amend an entrenched provision under Article 290 of the 1992 Constitution, unless Article 290(2) to (6) is complied with;

(ii) Parliament cannot pass a law contrary to Article 107. (b) that sets out as its purpose and reason the purpose ***to adversely affect the personal rights and liberties*** or to discriminate against certain named persons and expose them to obstacles that other persons are not regularly exposed to under Article 17. (1) of the 1992 Constitution;

(iii) That an ACT passed in contravention of Article 107(b) of the 1992 Constitution cannot constitute a law under Articles 11(b) of the Constitution.

39. In the following paragraphs, Plaintiff would set out his three reasons above why The ACT is in contravention and expatiate on them.

(A) Parliament has no power to pass a law the effect of which is to amend an entrenched provision under Article 290 of the 1992 Constitution unless Article 290(2) to (6) is complied with.

40. Your Lordships, Article 88. (3) of the 1992 Constitution states as follows; “The Attorney-General shall be responsible for the **initiation and conduct of all prosecutions** in Ghana.”
41. The effect of Article 88. (3) supra is that it is only the Attorney-General who has the power to *on his own authority* to **initiate and conduct prosecutions** in Ghana. Thus, it is only the Attorney-General that can delegate this prosecutorial power to other bodies to exercise.
42. The entirety of Article 88 forms part of Chapter 8 of the 1992 Constitution.
43. The entirety of Chapter 8 of the 1992 Constitution has been identified under Article 290 of the 1992 Constitution (Article 290. (1)(f)) as being entrenched.
44. Plaintiff says that from the above, it becomes clear that any authority that intends to grant original prosecutorial to any other organization (that is to be capable of initiating prosecution without seeking the fiat of the Attorney-General) has first to amend Article 88 of the 1992 Constitution using the tools set out under Article 290. (2) to (6).
45. From the preceding, Plaintiff is saying that by promulgating section 2 of the ACT, Parliament has exceeded the limits of its legislative powers. Thus, Plaintiff is further saying that Parliament, by granting original prosecutorial powers to any organization, as Parliament has done with regard to Section 2 of the ACT, has amended Article 88, and is therefore in contravention of Article 290. (1)(f) and 290. (2) to (6), and further, any such law would be ultra vires Article 93. (2) and therefore in contravention of Article 11. (1)(b) of the 1992 Constitution.
46. In other words, the cumulative and combined effect of Articles 88. (3), 290 and 290. (1)(f) is that any authority seeking to take/assume/adopt/amend prosecutorial powers in Ghana, must first comply with Article 290. (2) to (6).
47. The above is in contrast to Section 2. (a) of The ACT. Section 2. (a) provides; ***“The object of the Office is to (a) investigate and prosecute specific cases of alleged or suspected corruption and corruption related offences.”***
48. It is contrary because **prosecutorial powers** in Ghana is a unique constitutional power granted under the 1992 Constitution to only the Attorney-General and it is only the Attorney-General who may delegate this power.
49. In furtherance of the immediate preceding paragraph, Plaintiff says that this power, even if delegated to another body, must be exercised in the same mode, that is, to initiate prosecutions. So that, even if the Attorney-General gives the opinion that it is not unlawful for another organization to exercise its powers, that organization can only exercise the same powers as that owned by the Attorney-General, and none other. So, if the Attorney-General decides to grant Parliament the fiat to have prosecutorial powers,

Parliament can only use this power to prosecute offenders. In emphasis, the power that the Attorney-General owns, is only prosecutorial power. It cannot grant anything beyond that. Any other thing that is done beyond prosecution by the powers so granted by the Attorney-General, is *ultra vires* the power of the Attorney-General. And therefore it is ultra vires the authority, such as Parliament, to use the prosecutorial powers granted by the Attorney-General and convert same to legislative power.

50. Thus, even though the Attorney-General may grant prosecutorial power to an organization under the 1992 Constitution that exercises a different constitutional power, like Parliament, Parliament will have no authority to change the **prosecutorial authority** granted it, into a **legislative power**.

Parliament has only legislative power.

51. Article 93. (2) of the 1992 Constitution states;

“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.”

52. Plaintiff therefore says that whilst the Attorney General has prosecutorial powers under the 1992 Constitution (Article 88), Parliament has legislative powers under the same Constitution (Article 93). The two powers are unique and distinct.

53. On this point, Plaintiff says that two levels of issues arise, first, that Attorney-General cannot grant its powers to parliament, and two, even if the Attorney-General were to grant its prosecutorial power to parliament, the latter cannot adopt any so-called power granted to it by the Attorney-General, and turn it into another type of power. To be more precise, Parliament cannot take the Attorney General’s prosecutorial power, and through any kind of alchemy, turn it into legislative power by making a law out of it.

54. That would be a breach of Article 290. (2) to (6).

(B) Parliament cannot pass a law contrary to Article 107. (b) that sets out as its purpose and reason the object to adversely affect the personal rights and liberties of a set of people or to discriminate against certain named persons and expose them to obstacles that other persons are not exposed to under Article 17. (1) of the 1992 Constitution;

55. Article 11 provides for the laws of Ghana. What constitutes law or laws in Ghana, are found under Article 11 of the 1992 Constitution. Plaintiff says that any law that cannot find shelter under Article 11 of the 1992 Constitution cannot be classified as a law in Ghana. Of necessity, any law that purports to be a law in Ghana must find protection and fit under Article 11 of the 1992 Constitution.

56. Article 11. (1) states;

“The laws of Ghana shall comprise-

(a) this Constitution;

- (b) enactments made by or under the AUTHORITY OF THE PARLIAMENT established by this Constitution (Emphasis supplied);**
- (c) any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitution**
- (d) the existing law; and**
- (e) the Common Law.”**

57. The authority of the Parliament of Ghana to enact laws under Article 11.

(1) (b) is further enhanced by Article 106. (1), which provides;

“The power of Parliament to make laws shall be exercised by Parliament and assented to by the President.”

58. The authority of Parliament under Article 11. (1)(b) is however proscribed by Article 107 (b).

59. Article 107 (b) states;

“Parliament shall have no power to pass any law-

“(b) which operates retrospectively to impose any limitations on or to adversely affect the personal rights and liberties of any person or to

impose a burden, obligation or liability on any person except in the case of a law enacted under articles 178 to 182 of this Constitution.”

60. Plaintiff states that in accordance with Article 107.(b), Article 17 of the Constitution states;

“(1) All persons shall be equal before the law.

“(2). A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.

“(3) For the purposes of this article, “discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions, colour, gender, occupation, religion or creed, whereby persons of one description are subjected to disabilities or restrictions to which persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description.”

YOUR LORDSHIPS;

61. However, in contrast to the above, the preamble to The ACT declaims as to its purpose as;

“AN ACT to establish the Office of the Special Prosecutor as a specialized agency to investigate specific cases of alleged or suspected corruption and corruption-related offences involving PUBLIC OFFICERS AND POLITICALLY EXPOSED PERSONS in the performance of their functions as well as persons in the private sector involved in the commission of alleged or suspected corruption and corruption-related offences, prosecute these offences on the authority of the Attorney-General and provide for related matters.” (Emphasis supplied).

62. To formalize the Preamble of The Act into law, Section 2. (a) of The Act provides;

“The object of the Office is to

(b) investigate and prosecute specific cases of alleged or suspected corruption and corruption related offences.”

63. Section 3. (1) (a) to (c) further provides;

“3. (1) To achieve the object, the Office shall

“(a) investigate and prosecute cases of alleged or suspected corruption and corruption-related offences under the Public Procurement Act, 2003 (Act 663);

“(b) investigate and prosecute allegations of corruption and corruption related offences under the Criminal Offences Act, 1960 (Act 29) involving PUBLIC OFFICERS, POLITICALLY EXPOSED PERSONS and persons in the private sector involved in the commission of the offence; (Emphasis supplied)

“(c) investigate and prosecute alleged or suspected corruption and corruption-related offences involving PUBLIC OFFICERS, POLITICALLY EXPOSED PERSONS and persons in the private sector involved in the commission of the offence under any other relevant law.”(Emphasis supplied).

64. It is the case of Plaintiff that the Preamble to The Act, which details its entire purpose, and further highlighted by its enforcement (objects and functions) provisions under Sections 2 and 3 are contrary to Articles 17 and 107 and are therefore unconstitutional provisions and therefore ought to be struck down under Article 11. (1), Article 88. (3) and (4) and Article 107 (b) of the 1992 Constitution, for the reasons detailed in the Statement of Case below;

(C) That an Act passed in contravention of Article 107(b) of the 1992 Constitution cannot constitute a law under Articles 11(b) of the Constitution.

65. Article 11 provides for the laws of Ghana, among which are Article 11. (1)(b) which states;

“(b) enactments made by or under the authority of the Parliament established by this Constitution”.

56. As stated supra, Article 11. (1)(b), which provides for the enactment of legislation in Ghana, is guided by Article 107 (b), which states;

“Parliament shall have no power to pass any law-

“(b) which operates retrospectively to impose any limitations on or to adversely affect the personal rights and liberties of any person or to impose a burden, obligation or liability on any person except in the case of a law enacted under articles 178 to 182 of this Constitution.”

57. First, Sections 2 and 3 of The ACT flies in the face of Article 11. (1) (b) and 107 (b) because its sets at its target the intention to adversely affect and attack the **personal rights and liberties of certain persons** or class of Ghanaians or **imposes burdens, obligation or liabilities on such persons** in Ghana to the exclusion of others. The 1992 Constitution frowns on such laws and conducts and proscribes discrimination under Article 17.

58. Article 12. (2) of the 1992 Constitution states;

“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.***
59. Some of these human rights are entrenched under Article 17. Article 17. (1), (2) and (3) further provides;
- “(1) All persons shall be equal before the law.***
- “(2) A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.***
- “(3) For the purposes of this article, “discriminate” means to give different treatment to persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions, colour, gender, occupation, religion or creed, whereby persons of one description are subjected to disabilities or restrictions to which persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description.”***
60. It is the case of the Plaintiff that the Preamble to The ACT, as well as its objects and functions operationalized under Sections 2 and 3, by their consistent reference to “public officers and politically exposed persons” and no other, intentionally intends to subject and target such persons to differential and discriminatory treatment to which others would not be ordinarily subject, and therefore contrary to the powers of what parliament can enact under Articles 11. (1) (b) and 107 (b).
61. It is the case of Plaintiff that if the objects and functions of The ACT fails and falls, then ipso facto, the entire Act must fall.
62. It is the case of Plaintiff that The ACT does not live up what can qualify as a law in Ghana, and must fail.
63. Second, Sections 2 and 4 of The ACT flies in the face of Articles 12. (2) and 17. (1), (2) and (3) because in Ghana, the 1992 Constitution frowns on and proscribes discrimination. Article 12. (2) of the 1992 Constitution states;
- “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.” (Emphasis supplied)***
64. Article 17. (1), (2) and (3) further provides;
- “(1) All persons shall be EQUAL before the law.***
- “(2) A person shall not be DISCRIMINATED against on grounds of gender, race, colour, ethnic origin, religion, cred or social or ECONOMIC STATUS.***
- “(3) For the purposes of this article, “discriminate” means to give different treatment to persons attributable only or mainly to their respective descriptions by race, place of origin, POLITICAL OPINIONS, colour, gender, occupation, religion or creed, whereby persons of one description are subjected to disabilities or restrictions to which persons***

of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description.” (Emphasis supplied).

65. It is the case of the Plaintiff that the Preamble to The ACT, as well as its objects and functions under Sections 2 and 3, by their consistent reference to “public officers and politically exposed persons” and no other, is intentionally **discriminatory** in intent in that it intends to subject and target such persons to differential and discriminatory treatment, as would become apparent further down in this presentation, to which others would not be subject, and therefore should be struck down.
66. Your Lordships, in the case of *Sumeila Bielbiel (No. 1) v Adamu Dramani and Attorney-General (No. 1)* at 145 and 146, the Supreme Court, speaking through Gbadegbe JSC (as he then was) stated;
“...These provisions require the Court to measure acts of the legislature and executive branches against the Constitution and where there is a violation, to declare such acts as unconstitutional provided the act in question does not fall within the designation of a “political question”.
67. Your Lordships, it is the case of Plaintiff that The ACT, through its preamble and the sections specified above, exceeds the powers of what Parliament can enact into law, and further, intends to manifestly operate against certain classes of people to the exclusion of other classes of people and is therefore discriminatory and unconstitutional.
68. Based on the preceding, Plaintiff will now argue for the reliefs sought.

RELIEF ONE AND TWO ARGUED

69. Your Lordships, as stated supra, Article 11 of the 1992 Constitution provides for the laws of Ghana. Every law in Ghana must be able to fit itself into and under Article 11, or it fails to be a proper law recognizable by the Constitution.
70. Act 959 (The ACT) must therefore be able to fit under Article 11 of the 1992 Constitution, specifically, since it is a law passed by the 4th Republican Parliament, Article 11. (1)(b) of the 1992 Constitution
71. Article 11. (1)(b) of the 1992 Constitution states;
***“(1) The laws of Ghana shall comprise-
“(b) enactments made by or under the authority of the Parliament established by this Constitution.”***
72. Your Lordships, the power to enact laws granted to Parliament by the 1992 Constitution can be found under Article 93. (2). It states;
“(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.”
73. Article 93. (2) therefore grants power to Parliament to enact or legislate into law various Acts, such as the Office of Special Prosecutor Act (Act

- 959 (The ACT). This power, however, is proscribed by the very Constitution that grants it. Article 93. (2) says specifically that all laws must be in accordance with the Constitution.
74. It is therefore the case of Plaintiff that any Act that is legislated by Parliament must be in conformity with the 1992 Constitution, otherwise it cannot be a proper law so-called in the intendments of Article 11.(1)(b) of the 1992 Constitution.
75. Plaintiff says that The ACT must be in conformity with Article 12. (2) of the Constitution, before it can be in conformity with Article 11.
76. Article 12. (2) states;
- “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 the rights and freedoms of others and for the public interest.”***
77. It must also be in conformity with Article 17. (1),(2) and (3). Article 17. (1),(2) and (3) of the 1992 Constitution, which states;
78. ***“(1) All persons shall be EQUAL before the law.***
79. ***“(2) A person shall not be DISCRIMINATED against on grounds of gender, race, colour, ethnic origin, religion, creed or social or ECONOMIC STATUS.***
80. ***“(3) For the purposes of this article, “discriminate” means to give different treatment to persons attributable only or mainly to their respective descriptions by race, place of origin, POLITICAL OPINIONS, colour, gender, occupation, religion or creed, whereby persons of one description are subjected to disabilities or restrictions to which persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description.”***
81. In contrast to Article 17. (1),(2) and (3), the preamble of the ACT sets up its purpose thus;
- “AN ACT to establish the Office of the Special Prosecutor as a specialized agency to investigate specific cases of alleged or suspected corruption and corruption-related offences involving PUBLIC OFFICERS AND POLITICALLY EXPOSED PERSONS in the performance of their functions as well as persons in the private sector involved in the commission of alleged or suspected corruption and corruption-related offences, prosecute these offences on the authority of the Attorney-General and provide for related matters.” (Emphasis supplied).***
82. In contrast to Articles 12. (2) and 17. (1),(2) and (3), the ACT specifically targets certain people to the exclusion of certain other people.
83. It states in its preamble that its target is ***‘PUBLIC OFFICERS, POLITICALLY EXPOSED PERSONS and persons in the private sector involved in the commission of the offence’*** and emphasizes at Section 3. (1) (b) and (c) further provides;
- “3. (1) To achieve the object, the Office shall;***

“(b) investigate and prosecute allegations of corruption and corruption related offences under the Criminal Offences Act, 1960 (Act 29) involving PUBLIC OFFICERS, POLITICALLY EXPOSED PERSONS and persons in the private sector involved in the commission of the offence; (Emphasis supplied)

“(c) investigate and prosecute alleged or suspected corruption and corruption-related offences involving PUBLIC OFFICERS, POLITICALLY EXPOSED PERSONS and persons in the private sector involved in the commission of the offence under any other relevant law.”

84. Plaintiff states that Sections 2 and 3 of the ACT is also in contravention of Article 107. (b) of the 1992 Constitution which states;

“Parliament shall have no power to pass any law-

“(b) which operates retrospectively to impose any limitation on or to adversely affect the personal rights and liberties of any person or to impose a burden, obligation or liability on any person except in the case of a law enacted under Articles 178 to 182 of this Constitution.”

85. Plaintiff states that Sections 2 and 3 are in contravention of Article 107. (b) in that it seeks to impose burdens and limitations on an identified set of Ghanaians, to which other citizens would not be generally susceptible.

86. Again, Plaintiff argues that Sections 2 and 3 of the ACT are also in contravention of Article 88. (3) and (4) supra, in that it empowers officers under the ACT to exercise prosecutorial powers. Article 88. (3) and (4) grants prosecutorial powers to only the Attorney-General. Sections (2) and (3) supra of the Office of Special Prosecutor Act takes and assumes a power deliberately granted by the 1992 Constitution to only one specific officer under the 1992 Constitution, the Attorney General, and those that officer delegate for that purpose.

87. Plaintiff argues that the power to initiate prosecution in Ghana is constitutionally granted by an entrenched provision, to only the Attorney-General, under Article 88. (3) and (4) of the 1992 Constitution, which states;

“3. The Attorney-General SHALL be responsible for the initiation and conduct of all prosecutions of criminal offences.

“4. All offences prosecuted in the name of the Republic of Ghana SHALL be at the suit of the Attorney-General or any other person authorized by him in accordance with any law.”

88. In other words, prosecutorial power in Ghana belongs to the Attorney-General, to the exclusion of any other person or authority, including parliament.

89. Your Lordships, Section 42 of the Interpretation Act, 2009 (Act 792) provides;

“In an enactment the expression “may” shall be construed as permissive and empowering, and the expression “shall” as imperative and mandatory.”

90. In effect, it is only the Attorney-General or persons authorized by the Attorney-General who **shall** 'initiate' and 'conduct' all prosecutions in Ghana, and 'all offences prosecuted in the name of the Republic of Ghana shall be at the suit of the Attorney-General or any other person **authorized** by him in accordance with any law."
91. This power granted to the Attorney-General is at the discretion of the Attorney-General and he alone, and to emphasize, to the exclusion of any other power or authority. It is not a power that belongs to Parliament, for instance. In fact it is not a power that Parliament can grant, even by legislation. It is the Attorney-General alone that 'initiates', 'conducts' and 'authorizes' any other person to prosecute. It is a constitutional power. It cannot be taken away by the mere instrumentality of an Act of Parliament. Plaintiff further emphasizes that prosecutorial power belongs to the Attorney-General. Only he can delegate this power, and nobody else, not even the President, Parliament or the Judiciary! Parliament cannot, as it purports to do under the ACT, authorize any other organization to exercise prosecutorial powers, because it does not own prosecutorial powers, and is therefore not in a position to grant it. *Nemo dat quod non habet.*
92. However, with Section 4. (2) of Act 959, Parliament has purported to take this power and granted part of this power by way of legislation to the Office of Special Prosecutor! Section 4. (2) of ACT 959 states; ***"Subject to clause (4) of Article 88 of the Constitution, the Office shall for the purpose of this Act be authorized by the Attorney-General to initiate and conduct prosecution of corruption and corruption-related offences."***
93. In furtherance of the above, Your Lordships, Plaintiff says that the real import and effect of Section 4.(2) supra is to amend Article 88 of the 1992 Constitution.
94. Plaintiff states that whilst the Attorney-General has prosecutorial powers, the very purport and wording of Section 4.(2) supra is that Parliament has taken the prosecutorial power of the Attorney-General and granted it to the Office of Special Prosecutor. This is first in contravention of Article 88. (3) and (4), and secondly, it is, for all purposes, an amendment of Article 88. (3) and (4) and therefore a contravention of Article 289.(2), 290. (1) (f) and 290. (2) to (4).
95. Article 289. (2) of the 1992 Constitution states;
***"This Constitution shall not be amended by an Act of Parliament or altered whether directly or INDIRECTLY unless –
“(a) the sole purpose of the Act is to amend this Constitution
And
“the Act has been passed in accordance with this Chapter.”***
96. In further emphasis to the above, Plaintiff states that Article 88. (3) and (4) falls under Chapter 8 of the 1992 Constitution.
97. Article 290. (1) (f) of the 1992 Constitution states;

“This article applies to the amendment of the following provisions of this Constitution, which are, in this Constitution, referred to as “entrenched provisions”

“(f) The Executive; Chapter 8.”

98. Plaintiff states that effectively, by Section 4. (2) of the ACT, Parliament has amended Article 88. (3) and (4) and is therefore in contravention of Articles 289.(2) and 290.(1)(f).

99. It is the case of Plaintiff that Section 4. (2) contravene Article 88. (3) and (4) of the 1992 Constitution and therefore ought to be struck down by your Lordships’ Court on the authority of ***Sumeila Bielbiel*** (supra).

YOUR LORDSHIPS;

100. Your Lordships, by promulgating Section 4. (2) of The ACT, what Parliament has done, in effect, is also to amend a provision to do with the Executive under Chapter 8 of the 1992 Constitution, which is an entrenched provision, without going through the processes outlined in the 1992 Constitution for the amendment of an entrenched provision.

101. The procedure for the amendment of an entrenched provision can be found at Article 290. (2) to (6), which sets out clear guidelines by which any provision under Chapter 8 should be amended. It states;

“(2) A bill for the amendment of an entrenched provision shall, before Parliament proceeds to consider it, be referred by the Speaker to the Council of State for its advice and the Council of State shall render advice on the bill within thirty days after receiving it.

“(3) The bill shall be published in the Gazette but shall not be introduced into Parliament until the expiry of six month after the publication in the Gazette under this clause.

“(4) After the bill has been read for the first time in Parliament it shall not be proceeded with further unless it has been submitted to a referendum held throughout Ghana and at least forty per cent of the persons entitled to vote, voted at the referendum and at least seventy-five per cent of the persons who voted cast their votes in favour of the passing of the bill.”

“(5) Where the bill is approved at the referendum, Parliament shall pass it.

“(6) Where a bill for the amendment of an entrenched provision has been passed by Parliament in accordance with this Article, the President shall assent to it.”

YOUR LORDSHIPS;

102. Your Lordships, it is the case of Plaintiff, that Article 88. (3) and (4) of the 1992 Constitution grants prosecutorial powers to only the Attorney-General. It is the further case of Plaintiff that it is only the Attorney-General who can delegate this power to a secondary entity. Plaintiff says that Attorney-General, however, is also limited in this power. He can delegate the power, but Plaintiff states that he cannot delegate the

- power to a body like Parliament, which is constitutional bound to exercise a totally different nature of power, that is, legislative power.
103. The Attorney-General, in this instance, exercises prosecutorial powers. Parliament, at the same time, exercises legislative powers. The Attorney-General's power is an entrenched power, and if he wants to grant it to another body to further grant it to a third body, then the only way, is by amending the 1992 Constitution. In any case, if Parliament were to assume the power, it will be a delegated power. In any case, Your Lordships, *Delegatus Non-Potest Delegare*.
104. It is the case of Plaintiff, that even if the Attorney-General advised/told/authorized parliament to cede the Attorney-General's prosecutorial powers, the Attorney-General was only delegating prosecutorial powers, and what Parliament can execute, are similar prosecutorial powers, and in any case Parliament cannot further sub-delegate. In any case, if Parliament assumed that it could further delegate, it was granting a power given to another authority, an entrenched power at that.
105. Your Lordships, it is the case of Plaintiff, therefore, that Section 4. (2) has amended Article 88. (3) and (4) and that a declaration should be made to that effect with the consequential order that it be scrapped as unconstitutional.

RELIEF THREE ARGUED.

106. With the greatest of respect, Your Lordships, Section 4.(1) of Act 959 states;
- “Except as otherwise provided in the Constitution, the Office is not subject to the direction or control of a person or an authority in the performance of the functions of the Office.”***
107. The legal effect of Section 4. (1) of Act 959 is to put the Office of Special Prosecutor beyond the direction or control of the President, the Attorney- General and any other person or authority including Parliament and the President. Plaintiff states that in his opinion this is contrary to the 1992 Constitution.
108. Article 58. (1) of the 1992 Constitution states;
- “The Executive authority of Ghana shall vest in the President and shall be exercised in accordance with the provisions of the Constitution.”***
109. However, Section 4. (1) of The ACT states explicitly that the Office of Special Prosecutor is beyond the direction and control of the Executive, which is the highest form of authority in Ghana.
110. Article 57. (1) of the Constitution states;
- “There shall be a President of the Republic of Ghana who shall be the Head of Government and Commander-in-Chief of the Armed Forces of Ghana.”***
111. Article 57. (2) states;
- “The President shall take precedence over all other persons in Ghana; and in descending order, the Vice President, the Speaker of Parliament***

and the Chief Justice, shall take precedence over all other persons in Ghana.”

112. Section 4. (1) states explicitly that the Office of Special Prosecutor is beyond the direction and control of the President, the Vice President, the Speaker of Parliament and the Chief Justice. None of the above can direct him or control him.

113. Your Lordships, the power of the President under Article 58. (2) is a constitutional power. Article 1. (2) of the Constitution states;
“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.”

114. It is the case of Plaintiff that the Constitution is the supreme law of the land. This Constitution vests the power of enforcement of all laws in Ghana in the President. Therefore, no law, such as an Act of Parliament, can seek to vitiate the power of the President to maintain the Constitution and all laws made under or continued in force by this Constitution, as Section 4. (1) seeks to do.

115. In that sense, Section 4. (1) is void.

116. Again, Article 88 of the 1992 Constitution states with regard to the Attorney-General;

“1. There shall be an Attorney-General of Ghana who shall be a Minister of State and the principal legal advisor to the Government.

“2. The Attorney-General shall discharge such duties of a legal nature as may be referred or assigned to him by the President or imposed on him by this Constitution or any other law.”

117. In spite of Article 88. (1) and (2), Section 4. (1) states explicitly that the Office of Special Prosecutor is not subject to the direction or control of a person or an authority in the performance of the functions of the Office.

118. To the extent that all duties of a legal nature in the government vests in the Attorney-General, Plaintiff states that Section 4. (1) is void and should be so declared.

RELIEF FOUR AND FIVE ARGUED

119. Your Lordships, Chapter 13 of the 1992 Constitution provides for the financial matters of the constitutional entity called the Republic of Ghana. At the end of the financial year, the Auditor-General, under Article 187. (2), audits all public institutions and offices established under the 1992 Constitution.

120. Article 187. (2) of the Constitution states;

“The public accounts of Ghana and of all public offices, including the courts, the central and local government administrations, of the Universities and public institutions of like nature, of any public corporation and other body or organization established by an Act of Parliament shall be audited and reported on by the Auditor-General.”

121. Article 187. (2) is therefore clear that all offices arising out of Acts of Parliament are subservient to it in as far as audits are concerned and

therefore, the entity born out of the ACT comes under Article 187. (2) supra.

122. For the purposes of audit, Article 187. (5) and (6) of the 1992 Constitution states;

“(5) The Auditor-General shall, within six months after the end of the immediately preceding financial year to which each of the accounts mentioned in clause (2) of this article relates, submit his report to Parliament and shall, in that report, draw attention to any irregularities in the accounts audited and any other matter which, in his opinion ought to be brought to the notice of Parliament.

“(6) Parliament shall debate the report of the Auditor-General and appoint where necessary, in the public interest, a committee to deal with any matters arising from it.”

123. Your Lordships, Article 187. (5) and (6) therefore sets out a defined set of steps through which the public accounts and all agencies deriving their powers from Acts of Parliament, are to be taken. These steps are as follows;

- (a) Anytime following six months after the end of each financial year, the Auditor-General or his lawfully appointed representative shall audit the public accounts of Ghana and of all public offices, including the courts, the central and local government administrations, of the Universities and public institutions of like nature, of any public corporation and other body or organization established by an Act of Parliament.
- (b) After the audit, the Auditor-General shall present his report to parliament.
- (c) In that report, the Auditor-General shall draw attention to any irregularities in the accounts audited as well any other matter which in the opinion of the Auditor-General ought to be brought to the notice of Parliament.
- (d) Parliament shall debate the report and appoint a committee to deal with the matters arising from it.

124. Your Lordships, these are the clear, defined steps through which the Auditor-General’s Report is to be taken. Contrary to this, and in a clear departure to steps outlined under Article 187. (2), (5) and (6), Section 25. (3) of The ACT provides as follows;

“(3) The Auditor-General shall, within six months after the end of the immediately preceding financial year, audit the accounts and forward a copy each of the audit report to the Minister and the Board.”

125. To illustrate, these are the steps outlined under Section 25. (3) of The ACT when it comes to the audit of the agency created by the ACT;

- (a) Anytime following six months after the end of each financial year, the Auditor-General or his lawfully appointed representative shall audit the Agency.
- (b) The Auditor-General shall procure two copies of his report, and forward a copy each to the Minister, and the Board of the Agency.

126. It is the strongest conviction and contention of the Plaintiff, your Lordships, that the steps provided under Section 25. (3) are totally anathema and strange to Article 187. (2), (5) and (6) and is a brazen attempt, crafted through the shocking instrumentality of an Act of Parliament, to escape parliamentary censure and oversight and ought not to be countenanced in our democracy and therefore Section 25. (3) should be struck down as unconstitutional and contrary to Articles 187. (2), (5) and (6) of the 1992 Constitution.
127. In furtherance of the above, it is the further argument of Plaintiff, Your Lordships, that the true effect of Section 25. (3) is to amend Article 187. (2), (5) and (6) of the 1992 Constitution.
128. Your Lordships, interestingly, the entirety of Article 187 of the 1992 Constitution, constitutes an entrenched clause in the Constitution.
129. Article 290 (1) (j) states;
“This article applies to the amendment of the following provisions of this Constitution, which are, in this Constitution, referred to as “entrenched provisions”-
“(j) Finance: Article 174 and 187.
130. Your Lordships, once again, Article 290. (2) to (6) sets out clear guidelines by which any provision under it that constitutes an entrenched provision, shall be amended. It states;
131. ***“(2) A bill for the amendment of an entrenched provision shall, before Parliament proceeds to consider it, be referred by the Speaker to the Council of State for its advice and the Council of State shall render advice on the bill within thirty days after receiving it.***
“(3) The bill shall be published in the Gazette but shall not be introduced into Parliament until the expiry of six month after the publication in the Gazette under this clause.
“(4) After the bill has been read for the first time in Parliament it shall not be proceeded with further unless it has been submitted to a referendum held throughout Ghana and at least forty per cent of the persons entitled to vote, voted at the referendum and at least seventy-five per cent of the persons who voted cast their votes in favour of the passing of the bill.”
“(5) Where the bill is approved at the referendum, Parliament shall pass it.
“(6) Where a bill for the amendment of an entrenched provision has been passed by Parliament in accordance with this Article, the President shall assent to it.”
132. Your Lordships, from the above, it is clear and imperative that certain categorical steps are taken anytime constitutional clauses are sought to be amended, whether directly or indirectly. Article 289 of the 1992 Constitution states;
“(1). Subject to the provisions of this Constitution, Parliament may, by an Act of Parliament, amend any provision of this Constitution.

“(2). This Constitution shall not be amended by an Act of Parliament or altered whether directly or indirectly unless-

(a) the sole purpose of the Act is to amend this Constitution;

and

(b) the act has been passed in accordance with this Chapter.”

133. It is the contention of Plaintiff, therefore, that by promulgating Section 25. (3) of The ACT, what parliament has actually done is to amend the true effect of the entrenched clauses constituting Articles 187. (2), (5) and (6) and acted in a manner contrary to Article 289, 290. (1)(j) and 290. (2) to (6) and therefore Section 25. (3) of The ACT ought to be struck down forcefully by Your Lordships’ Court.

RELIEF SIX AND SEVEN ARGUED

134. Your Lordships, in a constitutional democracy, procedural regularity is absolutely crucial in the pursuit of good governance. The application of rules and regulations must be regular for all persons and institutions. It is why Article 187. (5) and (6) supra sets out a defined set of procedural steps through which public audits are to be taken.

PRINCIPLE OF PROCEDURAL REGULARITY

135. Your Lordships, a careful study of the 1992 Constitution would reveal that the entire document thrives on the principle of procedural regularity. Thus, the Constitution is careful, throughout, to set out the do’s and don’ts, by which many of our public systems are to be governed. To demonstrate this principle with several illustrations, the Constitution outlines numerous steps by which various things necessary to be done, must be done. For instance;

- (a) Any person believing that there is a constitutional breach, has to file his case in the Supreme Court, and nowhere else, (Article 2);
- (b) The laws of Ghana (Chapter 4);
- (c) Rights of persons under the law -dos and don’ts (Chapter 4);
- (d) Elections, dos and don’ts (Chapter 7);
- (e) Qualification to Presidential Office (Chapter 8);
- (f) Public Finances (Chapter 13);
- (g) Amending the Constitution (Chapter 25); and many more.

YOUR LORDSHIPS;

136. In *Boyefio v. NTHC Properties Ltd [1996-97] SCGLR 531 at 533*, the Supreme Court held, inter alia, as stated in the headnote: *“The law was clear that where an enactment had prescribed a special procedure by which something was to be done, it was that procedure alone that was to be followed.”*

137. Plaintiff states that the 1992 Constitution is careful to set out these procedures, so that each and every individual and institution knows the necessary limitations that accrue to him or her or it. It is necessary to know the boundaries, so that we would not land back in the jungle.

138. Your Lordships, when it comes to the audit of public finances, Article 187. (5) and (6) sets out a careful set of procedurally regular steps that must be taken. However, Section 26 of The ACT proclaims to depart

from these regular steps of all public agencies governed by Acts of Parliament, and it is the contention of Plaintiff that it is necessary The ACT is brought back within the fold of Procedural Regularity.

139. Your Lordships, above, with reference to Article 187. (5) and (6), Plaintiff outlined the steps and procedural regularities that are constitutionally required under that article for public agencies when it comes to the audit of such agencies. In a clear contrast to this, Section 26 of Act 959 provides;

“(1). The Board shall within 30 days after the receipt of the audit report, submit an annual report to the Minister covering the activities and operations of the Office for the year to which the annual report relates.

“(2). The annual report shall include the report of the Auditor-General.

“(3). The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

“(4). The Board shall submit to the Minister any other report which the Minister may require in writing.”

140. Your Lordships, it is the case of Plaintiff that these requirements are contrary to and are at complete variance with Article 187. (5) and (6) supra, sins against the principle of procedural regularity and therefore ought not to be allowed to stand.

141. Plaintiff says that it is clear that whilst all public agencies created by Acts of Parliament are necessarily and constitutionally amenable to Article 187. (5) and (6), the promulgators and sponsors of Act 959 seek to create a different set of auditing principles and requirements for the agency created under The ACT.

142. Plaintiff states that it is shocking that a body formed with the primary purpose of ensuring accountability, would be statutorily created to evade procedural and constitutional principles on audits and accountability, and through the instrumentality of statute, create for itself a new set of rules to be allowed to rationalize potential financial abuse.

143. Your Lordships, once again, it immediately becomes clear from the immediately preceding paragraphs that the true effect of Section 26 of the Act is to amend Article 187. (5) and (6) of the 1992 Constitution. By this step, Section 26 of the Act is not only in contravention of Article 187. (5) and (6) supra, but also sins against the requirements of Article 289. (2), 290. (1) (j) and 290. (2), (3), (4), (5), and (6) supra.

144. As stated before in this piece, the entirety of Article 187 of the 1992 Constitution, constitutes an entrenched clause in the Constitution as stated under paragraph 81 above.

145. Article 290. (2) to (6) supra sets out clear guidelines by which any provision that constitutes an entrenched provision, shall be amended.

146. Your Lordships, Plaintiff also quoted Article 289 of the 1992 Constitution which makes it imperative that certain categorical steps

are taken anytime constitutional clauses are sought to be amended, whether directly or indirectly.

147. It is therefore, once again, the contention of Plaintiff that by promulgating Section 26 of The Act, parliament has amended the true effect of the entrenched clauses constituting Articles 187. (2), (5) and (6) and acted in a manner contrary to Article 289, 290. (1)(j) and 290. (2) to (6) and therefore Section 26 of The Act ought to be struck down forcefully by Your Lordships' Court.

RELIEF EIGHT AND NINE ARGUED

YOUR LORDSHIPS;

148. The 1992 Constitution provides for the formation of a Police Service in Ghana. This provision is Article 200 of the 1992 Constitution. Article 200. (2) states;

“No person or authority shall raise any police service except by or under the authority of an Act of Parliament.”

149. Your Lordships, Section 28 of The ACT provides;

“The Special Prosecutor and authorized officers shall exercise the powers of a police officer specified in the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) or any other enactment.”

150. Your Lordships, the powers of the police are constitutionally derived from Article 200 of the 1992 Constitution. They are not derived from the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) and 'other enactments'.

151. It is the case of Plaintiff, Your Lordships, that anybody or organization that seeks to vest police powers and create an agency that exercise police powers, ought to go under Article 200 of the 1992 Constitution and not 'any other enactments' such as the Criminal and Other Offences (Procedure) Act, 1960 (Act 30). It is either the Office of Special Prosecutor Agency is a Police Service, liable to all the checks, controls, manuals, operational competences or consequences guaranteed under Article 200, or it is not.

152. Your Lordships, the Agency itself states, however, that it is not liable to all the checks, controls, manuals, operational competences or consequences guaranteed under Article 200 for the Police Service. It does not answer to the Inspector General of Police, or the Police Internal Professional Unit that polices dissident members of the Police Service, or even to the Minister of Interior.

153. Section 4. (1) of The Act states;

“Except as otherwise provided in the Constitution, the Office is not subject to the direction or control of a person or an authority in the performance of the functions of the Office.”

154. Your Lordships, in effect, The ACT has created an agency that has as its operatives men and women about whom there are no guarantees have gone through all the training, checks, controls, manuals, operational competences or consequences guaranteed under Article

200 for the Police Service that ensures safety for policing itself and the public the police deals with, but are totally free from all command, control and supervision, but who are to exercise police powers.

155. Once again, therefore, respectfully, Your Lordships, it is the case of Plaintiff that Section 28 of the Act contravenes Article 200 of the Constitution, and ought not to be allowed to stand.

156. Further, Your Lordships, the 1992 Constitution at Article 1. (2) states that it is the Supreme Law of the land, and any law found to be inconsistent with Constitution or any part of it, shall, to the extent of the inconsistency, be void.

157. Again, Article 200 of the Constitution makes it clear that no person or authority shall raise ANY police service except by or under the Authority of Parliament.

158. It is the contention of Plaintiff, therefore, that Section 28 is in contravention of Article 200.

159. Your Lordships, once again, the entirety of Article 200 of the 1992 Constitution, constitutes an entrenched clause under Article 290. (1)(k) of the Constitution.

160. Under Article 290. (2) to (6), clear guidelines are set by which any provision that constitutes an entrenched provision, shall be amended.

161. Your Lordships, Plaintiff also quoted Article 289 of the 1992 Constitution which makes it imperative that certain categorical steps are taken anytime constitutional clauses are sought to be amended, whether directly or indirectly.

162. It is therefore, once again, the contention of Plaintiff that by promulgating Section 28 of The ACT, parliament has amended the true effect of the entrenched clause constituting Article 200 and acted in a manner contrary to Article 289, 290. (1)(j) and 290. (2) to (6) and therefore Section 28 of The ACT ought to be struck down forcefully by Your Lordships' Court.

RELIEF TEN ARGUED

YOUR LORDSHIPS,

163. The Preamble of The ACT, supra, states that one of the primary purposes of the Agency created by The ACT, is to prosecute people for cases of alleged or suspected corruption and corruption-related offences.

164. Section 79 of The ACT, the Interpretation Section provides the definition for the phrase 'corruption and corruption-related offences' as follows;

"corruption and corruption-related offences" means offences under

"(a) sections 146, 151, 179C, 239, 252, 253, 254, 256, 258 and 260 of the Criminal Offences Act, 1960 (Act 29).

"(b) Section 92 (2) of the Public Procurement Act, 2003 (Act 663); and

"(c) existent offences under enactments arising out of or consequent to offences referred to in paragraphs (a) and (b)."

165. Your Lordships, it becomes immediately apparent, that people who appear before the Agency created by The ACT, have or should have as one of their necessary expectations the fact that they can become the object of criminal investigation, and hence prosecution.

166. Indeed, Section 29. (1) (2), (3), and (6) states;

“The Special Prosecutor or an authorized officer may by notice in writing, require;

“(a) a person WHOSE AFFAIRS are to be investigated by the Office;

“or

“(b) a person who in the opinion of the Special Prosecutor is a proper person to assist with an investigation being conducted by the Office to appear before the Special Prosecutor or an authorized officer at a specified date and place to answer questions or furnish the office with information related to a matter relevant to the investigation.

“(2) Where a person required to furnish the office with a document is or the reason for the inability to produce the document.

(3) Where a person required to furnish the office with a document under the obligation not to disclose, or asserts a right not to disclose, the Special Prosecutor shall apply to the Court for an order for the production of the document.

“(4) Where a document is furnished to the office, the Special Prosecutor or an authorized officer shall make copies or extracts from the document and request the person producing the document to provide an explanation on the contents of the document where necessary.

“(5) A person who appears before the special prosecutor or an authorized officer may be requested by counsel of the choice of that person at any stage of the process.

“(6) Except as provided in subsection (3), where a person refuses, conceals or otherwise fails to produce a document required by the Special Prosecutor or an authorized officer, that person commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or a term of imprisonment of not less than one year and not more than two years or to both.”

167. Your Lordships, to find out the true import of the above, it would be necessary to establish the meaning of the phrase ***‘a person WHOSE AFFAIRS are to be investigated by the Office’*** under Section 29. (1) of The Act.

168. The Oxford Advanced Dictionary defines the word ‘WHOSE’ as a determiner, that is, used to determine or point out a subject. For instance, to say ‘which person or thing you mean, example; ‘He's a man whose opinion I respect’.

169. From the above, it becomes clear that a person referred to under Section 29. (1) is a subject or a person the subject of investigation.

170. It is the case of Plaintiff that ipso facto, once you are asked to appear under Section 29. (1), you are a person whose affairs are the subject of investigation. Secondly, once you are the object of investigation, one of your necessary expectations should be that you may be prosecuted before a court of law on criminal charges identified under Section 79 of the ACT.
171. Secondly, you are required by Section 29 to provide information, and through the coercion of being charged before a court of law for an offence the penalty of which is summary conviction, be coerced to provide documentation, with the very real possibility that the information you yourself have been coerced to provide may end up incriminating you.
172. Your Lordships, the 1992 Constitution, has many provisions to safeguard the rights of people appearing before courts and investigating bodies on criminal charges. One of such safeguards is Article 19. (10) of the 1992 Constitution of the 1992 Constitution. Article 19. (10) states; ***“No person who is tried for a criminal offence shall be compelled to give evidence at the trial.”***
173. Article 19. (10) presumes and in fact it is the case, that not even a Court of Law can compel a criminal defendant to give evidence, even in his own defence.
174. In the case of *Joseph Kojo Dawson v. The Republic (2011) JELR 66199 (CA)*, it was emphasized that the **prosecution must prove its case beyond reasonable doubt. The defense is not bound to give evidence, and the guilt of the accused cannot be presumed solely from the facts proved by the prosecution. The jury should find the accused not guilty if the defense answers the case for the prosecution or raises a reasonable doubt.**
175. Your Lordships, it is the case of Plaintiff that Section 29 is clearly intended to use the force of coercion to compel people to provide testimony and evidence that can be potentially used against the very people providing the testimony and evidence, and therefore sins against Article 19. (10) of the 1992 Constitution.
176. Secondly, Your Lordships, fundamental to the rights of persons appearing before investigatory, prosecutorial and judicial bodies is the principle of ‘innocent until proven guilty’. It has been part of our Common Law since the signing of the Magna Carta, which was signed in the year 1215. It found judicial expression in the 1935 case of ***Woolmington v Director of Public Prosecutions***, which the English Court of Appeal in its judgment would come to describe as 'the golden thread' running through the web of English criminal law. Your Lordships, this position found constitutional expression in Ghana with the promulgation of Article 19. (2)(c), which states; ***“(2) A person charged with a criminally offence shall-
“(c) be presumed innocent until he is proved or has pleaded guilty.”***

177. Your Lordships, it is the case of Plaintiff that Section 29. (6), and Section 29 generally, in their coercive attributes to force potential criminal suspects to divulge information that can be used against them, is also contrary to Article 19. (2)(c) and should be struck down.

178. Your Lordships, using coercion as a means to force information out of witnesses and suspects, amount to torture. The word 'torture' is defined by Black's Law Dictionary (10th Edition) at page 1718 thus; ***"torture- The infliction of intense pain to the body or MIND to punish, to EXTRACT a CONFESSION OR INFORMATION, or to obtain sadistic pleasure."* (Emphasis provided).**

179. Your Lordships, torture is proscribed by the 1992 Constitution. Article 15. (2) (a) of the 1992 Constitution states;

***"(2) No person shall, whether or not he is arrested, restricted or detained, be subjected to-
(a) torture or other cruel, inhuman or degrading treatment or punishment."***

180. Your Lordships, it is the case of Plaintiff that Section 29 of The ACT generally, and Section 29. (6) specifically, amounts to enabling the agency created by the ACT to inflict torture on people who appear before it to provide the evidence by which such individuals can be prosecuted and consequentially convicted and sins against our laws and therefore ought to be struck down with all the force of Your Lordship's Court.

Section 30. (1) of The ACT

181. Your Lordships, on the back of the argument detailed above, it is the case of Plaintiff that Section 30. (1) of The ACT is also unconstitutional. Section 30. (1) states;

***"A production order is made where there is reasonable ground to suspect that, the person specified in the application for the order as being the subject to the investigation;
"(a) has benefited from the commission of corruption or corruption-related offence, in the case of a pending investigation; or
"(b) is suspected of having committed or committing corruption or a corruption related offence."***

182. Plaintiff states that the true import of Section 30. (1) of The ACT is that people suspected of committing crimes for which they should expect to be charged if evidence is found, would be required to produce the evidence by which their conviction would be secured.

183. This position is different, for instance, to the position under Section 31 of The ACT, which enables the Special Prosecutor to go to a court to secure a warrant to enter a premises to take possession of the document or evidence specified in the application.

184. It is the case of Plaintiff that Section 30 flies in the face of Articles 15. (2), 19. (2)(c) and (10) of the 1992 Constitution.

Section 31 of The Act

185. Your Lordships, Section 31. (1) of The ACT states;

“(1) The Special Prosecutor shall apply to the Court, without notice to the person or entity under investigation, to issue a warrant to an authorized officer to enter premises in possession of or under the control of the specified person or entity to search and take possession of a document specified in the application if

“(a) the person or entity required to produce the document to the Office fails or refuses to produce the document.”

“(b) the Special Prosecutor is of the opinion that the service of the notice to produce a document shall prejudice the investigation; or

“(c) it is not practicable to give disclosure notice requiring the production of the document.”

186. Your Lordships, Section 31. (1) should necessarily fail because it is contingent on the impugned Section 30. (1) of The Act.

WARRANTS AND SEARCHES

187. Your Lordships, warrants and searches are judicially sanctioned methods that has been known to our Common Law since antiquity. Thus warrants and searches are not an unknown quantity to our laws. However, they are not powers that are generally available to law enforcement to use as they please. They are tightly and judicially controlled mechanisms for balancing the rights of the individual against the rights of society to ensure a safe and secure existence. For instance, Section 88. (1) of the Criminal and Other Procedure Act, 1960 (Act 30), provides as follows;

“(1) Where a District Magistrate is satisfied, by EVIDENCE on oath, that there is reasonable ground for believing that there is in a building, vessel, carriage, box, receptacle or place ;

“(a) a thing on or in respect of which an offence has been or is suspected to have been committed, for which, according to law, the offender may be arrested without warrant; or

“(b) a thing which there is reasonable ground for believing will afford evidence as to the commission of an offence; or

“(c) a thing which there is reasonable ground for believing is intended to be used for the purpose of committing an offence against the person for which, according to law, the offender may be arrested without warrant,

“the magistrate may at any time personally issue a warrant authorizing a constable to search the building, vessel, carriage, box, receptacle, or place for that thing, and to seize and carry it before the Magistrate issuing the warrant or any other Magistrate to be dealt with according to law.”

188. Section 88. (1) of Act 30, which has been in Ghana’s statute books for close to sixty-three years, is based and can be activated on a number of principles, which are;

i). A District Magistrate must be satisfied, by EVIDENCE on oath, that there is reasonable ground for believing that there is in a building, vessel, carriage, box, receptacle or place;

- ii). A thing on or in respect of which an offence has been committed or is suspected to have been committed, for which, according to law, the offender may be arrested without warrant; or
- iii). A thing which there is reasonable ground for believing will afford evidence as to the commission of an offence; or
- iv). A thing which there is reasonable ground for believing is intended to be used for the purpose of committing an offence against the person for which, according to law, the offender may be arrested without warrant.

189. Your Lordships, Section 88. (1) of Act 30 is markedly different from Section 31. (1) of Act 959. The principles that can be defined from Section 31. (1) are as follows;

- (a) The Court may issue a warrant
- (b) on an application by the Special Prosecutor
- (c) if the specified person or entity required to produce the document to the Office

(d) fails or refuses to produce the document.”

190. Your Lordships, no mention is made of the need for the Special Prosecutor to provide ‘reasonable ground’ or ‘prima facie’ evidence to serve as the basis for the request to the judicial officer to grant the warrant for a search. Thus it is the case that whilst Section 88. (1) of Act 30 can be described as a **fine-tuned surgical tool**, Section 31. (1) can best be described as a **blunderbuss**. 63 years ago, Ghana enacted Section 88. (1) of Act 30. That provision talked about providing evidence on oath, prima facie, and requiring permissions from judicial authority where the targets were impersonal. Sixty-three years later, Ghana promulgates a law that does not provide for evidence or prima facie, but ‘opinions’ (Section 29. (1) (b) and 31. (1)(b) of The ACT) as the basis for going to court to seek warrants to invade the homes of people. The retrogression can only be described as staggering.

191. Your Lordships, as stated before, Article 19. (2)(c) of the 1992 Constitution provides as follows;

“(2) A person charged with a criminal offence shall-
(c) be presumed to be innocent until he is proved or has pleaded guilty.”

192. Your Lordships, it is the contention that Section 31. (1) of The ACT is inconsistent with Article 19. (2)(c) in that the latter assumes that the object of the warrant is already guilty and hiding documents. The impugned section also does not provide the necessity to provide the judicial officer with prima facie or the evidence based on reasonable grounds before seeking the warrant.

RELIEFS ELEVEN AND TWELVE ARGUED

YOUR LORDSHIPS;

193. The definition of the phrase ‘tainted property’ in the present and relevant context can be found under Section 79 of The Act. It defines ‘tainted’ as follows;

“tainted property” means property

- (a) ***used in connection with the commission of an offence; or***

(b) derived, obtained or realized as a result of the commission of a corruption or corruption-related offence.”

194. Your Lordships, in connection with the definition above, Section 32. (1) of The ACT states;

“(1) An authorized officer may seize property if that authorized officer has reasonable grounds to suspect that the property is tainted and

(a) it is necessary to exercise the power of seizure to prevent the concealment, loss or destruction of the property; or

(b) the circumstances are so urgent that the immediate exercise of the power without the authority of a warrant or the order of a Court is required.”

ARTICLE 18- PRESERVATION OF RIGHT TO PROPERTY

195. Your Lordships, it is however the case of Plaintiff that Section 32. (1) of The ACT sins against Article 18 of the 1992 Constitution. Article 18 states;

“(1) Every person has the right to own property either alone or in association with others.

“(2) No person shall be subjected to interference with (sic) 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 and freedoms of others.”

196. Your Lordships, it is the contention of Plaintiff that Section 32. (1) sins against the 1992 Constitution for the following reasons;

197. It is contrary to Article 18. Article 18 specifically proscribes interference with the property rights of citizens.

ARTICLE 125. (3) – EXERCISE OF JUDICIAL POWER

198. Your Lordships, it is the case of Plaintiff that Section 32. (1) of The ACT also sins against Article 125. (3) of the 1992 Constitution. Article 125. (3) states;

“(3) The judicial power of Ghana shall be vested in the Judiciary, accordingly, neither the President nor Parliament nor any organ or agency of the President or Parliament shall have or be given final judicial power.”

199. Plaintiff says however that The ACT is a law passed by Parliament but purports to grant to the officers of the agency created by the ACT the right to declare that certain properties are ‘tainted’, and to take actions based on these decisions. Plaintiff says that such powers can only be described as ‘judicial powers’

YOUR LORDSHIPS;

200. The 1992 Constitution states at Article 58. (2) that all laws enacted by the parliament of Ghana falls under the authority of the Executive (Presidency). The ACT is therefore a part of the operation of Executive Power, ostensibly for the purpose of fighting against corruption. However, Section 32. (1) grants officers of The ACT the right to make a

value judgment or judicial decision as to what is 'tainted' property or not, and to take actions based on such decisions. Your Lordships, it is the case of Plaintiff that such 'value judgment or interpretation or judicial decision' of deciding what is 'tainted or 'not-tainted' falls within the exclusive preserve or jurisdiction or the province of the Judiciary, and therefore ought to be struck down.

201. Otherwise, Your Lordships, it would lead to the danger of an organ of the Executive exercising, suo moto, the power to seize and hold private property, without judicial approval.

202. In so far as Section 32. (1) of The ACT provides that officers of the Special Prosecutor Office can interfere with the property of citizens before they require a Court Order, Section 32. (1) is in conflict with Articles 18 and 125. (3) of the 1992 Constitution.

ARTICLE 19. (2)(C) AND (D)- INNOCENT UNTIL PROVEN GUILTY

203. Thirdly Your Lordships, as demonstrated above, in Ghana, the principle of innocent until proven guilty is an entrenched part of our laws (Article 19. (2) (c).)

204. Article 19. (2)(c) and (d) states;

***“(2) A person charged with a criminal offence shall-
(c) be presumed innocent until he is proved or has pleaded guilty;
(d) be informed immediately in a language he understands, and in detail;
of the nature of the offence charged.”***

205. Your Lordships, Plaintiff states that whether or not a property is 'tainted' and therefore should be seized, should be after the consequence of a criminal trial before a court of law leading to declaration of guilt by such court of law, based on carefully considered facts, evidence and law. It should be a judicial decision taken by a court of law after a careful and diligent perusal of evidence, facts and law, instead of the mere presumption of 'reasonable ground' by an officer of the SPO. Such a decision, that he or she has reasonable ground to suspect that a property is 'tainted property' is an exercise of a judicial power and it is for a court to decide whether 'reasonability' has been established before issuing consequential orders.

206. Your Lordships, Article 125. (3) of the 1992 Constitution states;

“(3) The judicial power of Ghana shall be vested in the judiciary, accordingly, neither the President nor Parliament nor ANY ORGAN or AGENCY of the President or Parliament shall have or be given final judicial power.”

207. Your Lordships, Plaintiff states that in so far as Section 32. (1) of The ACT purports to grant the power of declaring a property as 'tainted' and taking action on such decision, it sins against Article 19. (2) (c) and (d).

208. In spite of pretensions to the contrary, no organ or agency in the nature of the SPO, created by an Act of Parliament, can claim that it is not a creature controlled by the Executive. Your Lordships, Article 58. (1) and (2) of the 1992 Constitution states;

“(1) The executive authority of Ghana shall vest in the President and shall be exercised in accordance with the provisions of this Constitution.

“(2) The executive authority of Ghana shall extend to the execution and maintenance of this Constitution and ALL LAWS MADE UNDER OR CONTINUED IN FORCE IN THIS CONSTITUTION.” (Emphasis provided).

209. Your Lordships, ACT 959 is a law made under this Constitution; under Article 58. (2), it is ultimately responsible to the Executive Branch of Government. It cannot, even by an Act of Parliament, presume and purport to arrogate to its officers the exercise of judicial powers. That province is peculiarly and specially preserved for the judiciary. Your Lordships, that becomes obvious from the definition of “tainted property”, which is given as ‘property used in connection with the commission of an offence; or derived, obtained or realized as a result of the commission of a corruption or corruption-related offence.’ Rhetorically, one can ask; whose discretion is it to arrive at the conclusion that a property is ‘used in connection with the commission of an offence; or derived, obtained or realized as a result of the commission of a corruption or corruption-related offence’, a policeman, or a Court? Plaintiff says that it is the Court of Law, the Judiciary, otherwise, society can be fraught with all kinds of dangers.

YOUR LORDSHIPS;

210. Your Lordships, in Ghana, the nature of **criminal charges** refers to the specific actions or offenses that a person is accused of committing. It is important for the accused to be sufficiently informed of the nature of the charges against them in order to make an answer on the elements of the charges. Accused persons should not be subjected to fishing exercises in the quest to find a charge.

211. Your Lordships, Article 19. (11) of the 1992 Constitution states;

“No person shall be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed in a written law.”

212. For example, the Criminal Offences Act, 1960 (Act 29) (as amended) therefore sets out what constitutes criminal offences in Ghana, defines the elements of each criminal offence, and further, the punishment thereof when one is found guilty of the offence by a duly constituted court of law.

213. To illustrate Article 19. (11) above, Article 19. (2)(c) and (d) states;

***“(2) A person charged with a criminal offence shall-
(c) be presumed innocent until he is proved or has pleaded guilty;
(d) be informed immediately in a language he understands, and in detail; of the nature of the offence charged.”***

214. Your Lordships, Plaintiff earlier defined the expression ‘tainted property’ as used in The ACT at Section 79 as;

***“tainted property” means property
(e) used in connection with the commission of an offence; or***

(f) derived, obtained or realized as a result of the commission of a corruption or corruption-related offence.”

215. Your Lordships, it remains the case of Plaintiff, that whether or not ‘a property was used in connection with the commission of an offence’, or ‘derived, obtained or realized as a result of the commission of a corrupt or corruption related offence’, is a conclusion that can only be arrived at after a judicial examination of each given case. A person must have been arrested on specific charges, a case put before court, the party successfully prosecuted, and then the properties used in the commission of the offence identified. Then the property can be declared as ‘tainted property’. Otherwise, it cannot be described as ‘tainted property’, particularly on the basis of ‘suspicion’ or ***reasonable grounds***.

216. Your Lordships, it is the case of Plaintiff, that The ACT, from Section 32 to 37, liberally employs the term or phrase ‘tainted property’ as a basis to initiate several punitive actions against individuals in this country, all of which are suggestive of such individuals having been found guilty of some criminally liable charge by a court of law, when such is not the case. It is the further case of Plaintiff that this thereby sins against Articles 19. (11), 15. (1) to (3) and Article 125. (3) of the 1992 Constitution.

217. Your Lordships, Sections 32 to 37, of The ACT, under ‘Search and Seizure of Tainted Property’, states;

“32. (1) An authorized officer may seize property if that authorized officer has reasonable grounds to suspect that the property is tainted and

“(a) It is necessary to exercise the power of seizure to prevent the concealment, loss or destruction of the property; or

“(b) The circumstances are so urgent that immediate exercise of the power without the authority of a warrant or the order of a court is required.

“(2) the Special Prosecutor shall apply to the court on notice within seven days to confirm the seizure.

“(3) Where the Special Prosecutor fails to prefer charges within sixty days after the seizure, the Special Prosecutor shall release the seized property to the person from whom it was seized.

“(4) Where the authorized officer returns the seized property to the person from whom the property was seized, the authorised officer is immune from prosecution if the authorised officer acted in good faith and seized the property on reasonable grounds that the property was tainted.

“(5) Where the Special Prosecutor prefers charges, the Special Prosecutor shall on notice apply to the Court to make an order for the continued seizure to renewal until the final determination of the matter.”

Power to Search for suspected tainted property.

“33. (1) An authorized officer shall conduct a search under a search warrant.

“(2) An authorised officer shall

*“a. Search a person in respect of the suspected tainted property; or
“b. Enter any premises and conduct a search in respect of suspected tainted property and seize in the course of the search, the property which the authorised officer believes on reasonable grounds to be tainted property.*

“(3) A search in respect of suspected tainted property includes a search of the

“(a) Body and clothing worn by the person being searched;

“(b) Property in possession of or under the apparent control of the person being searched; and

“(c) Property of the owner of the premises.

“(4) For purposes of paragraph (a) of subsection (3), a female authorised officer shall search a female and a male authorised officer shall search a male.

“(5) An authorised officer may gather forensic evidence in the course of a search.

“(6) The Court shall consider an application without notice which claims that communication in any medium including an article sent by post or through a courier service is likely to contain information that may be relevant to an investigation or prosecution under paragraph (b) of Section 3 and the Court shall, where appropriate, order an authorised officer to

“(a) Intercept, detain and open the article in the course of transmission by postal or courier service;

“(b) Intercept a message transmitted or received by any means of communication;

“(c) Intercept or listen to any conversation by any means of communication; or

“(d) Enter premises and install on the premises a device for the interception and retention of communications of specified description and remove and retain the device.

Searches in emergencies

34. (1) Where an authorised officer suspects on reasonable grounds that

a. A particular property

(i) is tainted property; or

(ii) will provide evidence as to the commission of an offence under paragraph (b) of subsection (1) of section 3.

b. It is necessary to exercise the power of search and seizure in order to prevent the concealment, loss or destruction of property; or

c. The circumstances are so urgent that immediate exercise of the power without the authorised of a warrant or the order of a Court is required,

The authorized officer shall search a person, enter the premises and search for the property and if the property is found seize the property.

(2) if during the course of the search, the authorized officer finds

- a. *Property that the authorized officer believes on reasonable grounds to be tainted property; or*
- b. *Anything the authorized officer believes on reasonable grounds will afford evidence as the commission of another offence,*

The authorised officer shall seize that property;

Property not covered by warrant during the search

35. (1) the provisions on search by the police officer under Part Two of the Criminal and Other Offences(Procedure) Act, 1960 (Act 30) apply for the purpose of this Act where an authorised officer has reasonable grounds to suspect that there may be tainted property on land or in any premises.

(2) if during the course of the search, the authorised officer finds

- a. *Property that the authorised officer believes on reasonable grounds to be tainted property of a type not specified in the warrant, tainted property related to another offence; or*
- b. *Any article the authorised officer believes on reasonable grounds will afford evidence as to the commission of the offence or commission of an offence,*

The authorised officer shall seize that property and the warrant shall be deemed to authorise that seizure.

Record, Custody and management of seized property

36. (1) An authorized officer who seizes property with or without a search warrant shall

- a. *Make and deliver to the person from whom the property is seized a written record of the property; and*
- b. *Hand over a copy of the record and custody of the property to the Special Prosecutor within seventy- two hours from the time of seizure.*

(2) where the property seized is perishable, the Special Prosecutor shall inform the person from whom the property is seized of the intended sale of the property and apply to the court for an order for

- a. *The sale of property; and*
- b. *Payment of the proceeds into an interest-bearing account until the final determination of the matter*

(3)The procedure for the management of assets seized under this section shall be prescribed by Regulations made under this Act,

Return of seized property

37. (1) A person who claims an interest in the property seized under this Act shall apply to the Court within ninety days after the date of seizure for an order that the property be returned to that person.

(2) If the Court is satisfied that,

- a. The person is entitled to possession of the property;**
- b. The property is not tainted property; and**
- c. The person in respect of whose charge, proposed charge or conviction the seizure of the property was made has no interest in the property,**

The court shall order the return of the property to the applicant.

YOUR LORDSHIPS;

218. It is the case of Plaintiff that the phrase 'tainted property' used liberally from Sections 32 to 37 of the ACT cannot, by any stretch of the imagination, be deemed as constituting criminal charges before a court of law in Ghana.

219. Secondly, it is the case of Plaintiff that Sections 32 to 37 in themselves do not constitute charges as defined under Article 19. (11) of the 1992 Constitution.

220. Thirdly, if these provisions in The ACT can be termed as constituting criminal charges, Plaintiff states that the mere preference of criminal charges against the individual, cannot, in this country, be deemed to constitute conviction and sentence.

221. Plaintiff further says that even if these provisions in The ACT can be termed as constituting conviction and sentence, it is only one body in Ghana that can pronounce such conviction and sentence under Article 125. (3) of the 1992 Constitution supra which is the judiciary under Article 125 of the 1992 Constitution. For instance, under Section 14 of the Narcotic Drugs (Control, Enforcement And Sanctions) Law, 1990 (PNDCL 236), the properties used in the commission of an offence can be confiscated to the State, but only by a judgment of a court of law, and not by the mere instrumentality of the provisions of an Act of Parliament. In that sense, The ACT, through Sections 32 to 37, has made an egregious and invidious encroachment on the powers of the Judiciary granted by the 1992 Constitution, and again on all the due procedures known to our laws as a country when it comes to the administration of justice and should be rejected with all the force available to Your Lordships Court.

222. In that sense, Your Lordships, Sections 32 to 37 of The ACT are contrary to Article 125. (3) of the 1992 Constitution.

223. Your Lordships should also note that although not specifically pleaded, these provisions, in their nature, also seek to amend Articles 125. (3), 289 and 290 of the Constitution and constitutes a woeful abuse of the legislative power of parliament.

224. Further, Your Lordships, it is the case of Plaintiff that a declaration that a property is 'tainted', and therefore should be susceptible to seizure, whether temporary or permanent, should be a decision of a court of law, after conviction, or upon the presentation of prima facie or reasonable evidence. It should not be at the discretion of officers empowered under ACT acting upon 'beliefs' and 'suspicions' by officers empowered under The Act.

225. Further, Your Lordships, Plaintiff states that Sections 32 to 37, and all provisions in The ACT making reference to ‘tainted property’ and granting powers to the officers of the agency set up under The ACT to act on such authority, constitutes acts of torture and dehumanizing treatment of the proposed victims.

226. Your Lordships, Article 15. (1) to (3) states;

“(1) The dignity of all persons shall be inviolable.

“(2) No person shall, whether or not he is arrested, restricted or detained, be subject to –

(a) torture or other cruel, inhuman and degrading treatment or punishment;

(b) any other condition that detracts or is likely to detract from his dignity and worth as a human being.

“(3) A person who has not been convicted of a criminal offence shall not be treated as a convicted person and shall be kept separately from convicted persons.”

227. Your Lordships, it is the case of Plaintiff that declaring the properties of people who have not been convicted of any offence, and against whom no prima facie evidence has been procured and presented to a Court as ‘tainted property’, amounts to subjecting them to torture, inhumanity, degrading, punishment and indignity and worth as a person.

228. They would be put to the process of being declared guilty and would further be put to the process of establishing their innocence, instead of the other way round, in contravention of Article 19.(1)(c), and (11) of the 1992 Constitution.

229. In that sense, it is the case of Plaintiff that the entirety of Section 32 to 37 should be declared as unconstitutional.

RELIEF THIRTEEN ARGUED

YOUR LORDSHIPS;

230. Sections 2 and 3 of The ACT refers to the ‘objects’ and ‘functions’ of The ACT. Among these functions are the investigation and prosecution of individuals on specific cases of ‘suspected corruption’ and ‘corruption-related’ offences.

231. Your Lordships, the definition of the term ‘corruption and corruption-related offences’ can be found under Section 79 of The Act. They are listed as follows;

(a) section 146, 151, 197C, 239, 252, 253, 254, 256, 258 and 260 of the Criminal Offences Act, 1960 (Act 29);

(b) section 92 (2) of the Public Procurement Act, 2003 (Act 663); and

(c) existent offences under enactments arising out of or consequent to offences referred to in paragraphs (a) and (b).

232. Your Lordships, from the interpretation of the phrase ‘corruption and corruption-related offences’, it becomes trite that the object and intended function of the body established under The ACT, is to investigate and prosecute for criminal offences. For instance, Section 146 of Act 29 refers to the criminal offence of ‘dishonestly receiving’. It states;

“Whoever dishonestly receives any property which he knows to have been obtained or appropriated by any offence punishable under this Chapter shall be liable to the same punishment as if he had committed the offence.”

233. Your Lordships, it is therefore clear that it is the contemplation and a fact that The ACT intends to investigate people for criminal offences, and to prosecute them for same, on some specific, identifiable charges under the nebulous concept of ‘corruption and corruption-related offences’.

234. Your Lordships, Section 38 of The ACT states;

“(1) Where the Special Prosecutor considers that freezing of property is necessary to facilitate an investigation or prosecution, the Special Prosecutor shall in writing direct the freezing of

“(a) the property of a person or entity being investigated; or

“(b) specified property held by a person or entity other than the person or entity being investigated or prosecuted.

“(2). The Special Prosecutor shall, within fourteen days after the freezing of the property, apply to the Court for a confirmation of the freezing.”

235. Your Lordships, it is the case of Plaintiff that Section 38 is in breach of several constitutional provisions. First, in Ghana, we have what is called the Right to Property, without interference. Article 18. (1) and (2) states;

“(1) Every person has the right to own property either alone or in association with others.”

“(2) No person shall be subjected to interference with (sic) 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 and freedoms of others.”

236. Your Lordships, it is the case of Plaintiff that Article 18 is very clear.

People living in Ghana have the right to own property, and they may not be interfered with in this right, unless it is to prevent the occurrence of several things, including crime.

237. It is the case of Plaintiff that unless it can be stated, prima facie, that a crime has occurred, or is likely to occur, no State agency should be allowed to go about unilaterally, without judicial supervision, issuing freezing orders and depriving people of the right to their property. Of particular concern, is the employment of the phrase ‘***Where the Special***

Prosecutor considers that freezing of property' without the recognition of any judicial supervision over the Special Prosecutor.

238. Secondly, even if the freezing orders to be issued under Section 38 is intended to assist with the investigation and prosecution of criminal charges, the term "suspected corruption' and 'corruption-related' offences relates to a whole number of potential crimes or charges. Your Lordships, under Article 19. (2)(c) and (d), a person charged with a criminal offence shall be presumed to be innocent until proven guilty (19. (2)(c)) and is constitutionally required to be informed immediately and in detail, in a language, of the nature of the offence charged ((19. (2)(d)).

239. Your Lordships, under Section 38 of The ACT, the question may be asked on what charge would the freezing order based on? A defence that the Special Prosecutor is conducting investigations on "suspected corruption' and 'corruption-related' offences under Sections 2 and 3 cannot serve, because they do not meet the test of Article 19.(2)(c) and (d).

240. Your Lordships, Section 38 of The ACT also sins against Article 19. (11), which states that no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed in a written law.

241. Your Lordships, once again, the usage "suspected corruption' and 'corruption-related' offences under Sections 2 and 3 of The ACT, refers to several criminal charges in different laws as defined under Section 79 of the ACT. The term "suspected corruption' and 'corruption-related' therefore lacks specificity and cannot, by any stretch of the imagination, be described as a charge meeting the criteria of Article 19. (11) of the 1992 Constitution. As demonstrated supra, the phrase "suspected corruption' and 'corruption-related' offences encompass an amalgam of several charges ranging through several pieces of legislation. The officer appointed under The ACT, is not required under Section 38 to state exactly which crime is being investigated, firstly, and secondly, the authority on which the officer issues the freezing order.

242. Your Lordships, Plaintiff therefore says first that Section 38 sins against Article 18, and blatantly interferes with the Right to Property. Secondly, it sins against Article 19. (2)(c) and (d), because it sins against the presumption of innocent until proven guilty, as well as Article 19. (11) in terms of the fact that the mere suggestion that an act of "suspected corruption' and 'corruption-related' offences does not mean that an identifiable offence has been committed, for which the State can seek punitive action in terms of freezing.

243. Again, Your Lordships, it is the case that the twin requirements of Article 19. (2)(c) and (d), that a person is innocent until proven guilty and that the person must be informed in a language he/she understands the exact offence of which he or she is suspected, cannot exist without the principle that the it is the duty of the State to procure the evidence

necessary for prosecution. The individual is not under any obligation to assist the prosecuting and investigating officials with information that would be used to seek his/her conviction. A further extension of this principle is that the State can only exercise a right of seizure when it has procured prima facie evidence that supports an identifiable offence and charge at law. It is the case of Plaintiff that since the phrase “suspected corruption’ and ‘corruption-related’ offences cannot, by any stretch of the imagination, be termed as an ‘offence’ under Article 19. (11), any consequential powers arising therefrom, such as ‘freezing orders’ under Section 38 of The Act, must also fail.

244. Further, Your Lordships would note, under Section 38. (2) supra, the use of the phrase ***‘The Special Prosecutor shall, within fourteen days after the freezing of the property, apply to the Court for a confirmation of the freezing’***.

245. Your Lordships, Plaintiff says that Section 38. (2) is quite clear, that the Court has only one option when the Special Prosecutor appears before it, that is to confirm the ‘freezing’ order. Plaintiff suggests that clearly this is an attack on Judicial Independence and contrary to Article 125. (1) of the 1992 Constitution and should be so declared.

RELIEFS FOURTEEN, FIFTEEN AND SIXTEEN ARGUED

YOUR LORDSHIPS;

246. Section 23. (2) and (3) of The ACT states;
“(2) Without limiting subsection (1), the Office shall with the approval of the Controller and Accountant-General open a separate account known as the Office of the Special Prosecutor Assets Recovery Account into which shall be paid moneys derived from the execution of confiscation and forfeiture orders made under this Act.

“(3) The bank accounts opened under this section shall be managed in accordance with the Public Financial Management Act, 2016 (Act 921).”

247. Your Lordships, it is the case of Plaintiff that the clear sense that is derived from Section 23, (2) and (3) of the ACT is that funds and assets recovered under the ACT are to be kept distinct and separate from the assets and funds of the Republic of Ghana.

248. Plaintiff however says that any monies that accrue or come into the possession and control of the Office created by The ACT by way of recovered assets, rightfully, constitute public monies and should immediately be directed to be paid into the Consolidated Fund.

249. Your Lordships, Article 176 of the 1992 Constitution states;

“(1) There shall be paid into the Consolidated Fund, subject to the provisions of this article-

“(a) ALL revenues or other monies raised or received for the purposes of, or on behalf of, the Government (EMPHASIS PROVIDED);

and

“(b) any other moneys raised or received in trust for, or on behalf of, the Government.

“(2) The revenues and other moneys referred to in clause (1) of this article shall not include revenues and other monies-

“(a) that are payable by or under an Act of Parliament into some other fund established for specific purposes; or

“(b) that may, by or under an Act of Parliament, be retained by the department of government that received them for the purposes of defraying the expenses of that department.”

250. Your Lordships, it is the case of Plaintiff that the assets recovered by the office created by The ACT, cannot by any stretch of imagination, be described as revenue raised by the office. As Section 23 itself describes it, it is ‘recovered assets’ and not revenue. It rightfully belongs to the State, and therefore should be paid into the recognized account of the State, the Consolidated Fund. In so far as Section 23 seeks to create a recovery account instead going under the conditions of Article 176, Plaintiff states that Section 23 is unconstitutional.

251. Additionally, it is the case of Plaintiff that the putative purpose of The ACT under the memorandum to The ACT, as well as its objects and functions under Sections 2 and 3, are specific. It is an ACT to establish the Office of Special Prosecutor as a specialized agency to investigate specific cases of alleged or suspected corruption and corruption-related offences involving public officers and politically exposed persons in the performance of their functions. It is not an ACT to gather, hold and manage funds as Section 23 seeks to do. In that sense, Section 23 is contrary to the main aims of The ACT as well as Article 176. The funds that are retrieved, rightfully, constitute public revenue.

PUBLIC REVENUE

252. Your Lordship, Black’s Law Dictionary, at page 1422, defines ‘public’ as follows;

“1. Of, relating to, or involving an entire community, state, or country.

“2. Open or available for all to use, share, enjoy...”

253. Revenue, on the other hand, is defined as follows;

“1. Income from any and all sources, gross income or gross receipts. 2. The total current income or gross receipts, however derived; esp taxes...”

254. Your Lordships, Plaintiff says that when the Office of Special Prosecutor recovers monies, it is money received on behalf of the State and country. It is not money received by the Special Prosecutor in and of itself. It should therefore rightfully, immediately, be conveyed into the coffers of the State under Articles 175 and 176 of the 1992 Constitution.

255. Secondly, Plaintiff states that even if such monies that are recovered constitute ‘revenue’ for the Office of Special Prosecutor in and of itself, the objects of the ACT does not provide that it opens accounts for the management of same and so therefore Section 23. (2) and (3) is contrary to Article 176 and should be so declared.

YOUR LORDSHIPS;

256. Further, respectfully, under the title ‘Functions of the Office’, Section 3. (1)(d) of Act 959 states;
**“(1). To achieve the object, the Office shall
 (a) recover and manage the proceeds of corruption.”**
257. Your Lordships, as advocated above, funds that have been identified as being properly funds derived from corruption, are funds that properly belong to the public and the State.
258. Your Lordships, Article 175 of the 1992 Constitution states;
“The public funds of Ghana shall be the Consolidated Fund, the Contingency Fund and such public funds as may be established by or under the authority of an Act of Parliament.”
259. Your Lordships, as explained previously, all monies recovered under the ACT should rightfully belong to the public and the State. The memorandum to the ACT supra as well as its objects under Section 2 of The Act, are quite clear. The Office created under The ACT is to investigate and prosecute specific or alleged or suspected corruption and corruption-related offences, recover proceeds arising therefrom and also to take steps to prevent corruption.
260. In contrast, Your Lordships, Section 3. (1)(d) turns the Office created under The ACT into the creator and manager of a fund with monies rightfully belonging to the State, and makes The Office into a Fund Manager.
261. It is therefore the case of plaintiff that a careful and diligent reading of Articles 175 and 176 as well as the objects of The ACT (Section 2) demonstrate clearly that the functions granted by the ACT under Section 3. (1)(d) are not in tandem with the constitutional expectation of how public funds are to be treated. It is therefore the prayer of Plaintiff that Section 3.(1) be struck down as contrary to Articles 175 and 176.
262. Further, Your Lordships, Section 22 of The Act, relating to the funds of the Office, states;
**“22. The funds of the Office include
 (a) moneys approved by Parliament;
 (b) internally generated funds; and
 (c) grants approved by the Minister responsible for Finance in consultation with the Attorney-General.”**
263. Further, Sections 65 and 66 of the Act states;
**“65. (1) Where a confiscation order or pecuniary penalty order is made, not discharged and not subject to an appeal, the Court shall, on an application by the Special Prosecutor, direct
 (a) the Special Prosecutor to manage the property;
 (b) the Special Prosecutor to take possession of the realizable property subject to the conditions specified by the Court;
 (c) a person who has possession of the realizable property to surrender possession of the property to the Special Prosecutor;
 (d) the Special Prosecutor to dispose of the realizable property in a manner as directed by the Court; or**

“(e) a person who holds an interest in the property to make payment to the Special Prosecutor in respect of a beneficial interest held by the respondent or the recipient of a gift specified in this Act as the Court shall direct.

“(2) The Court shall transfer, grant, extinguish the interest in the property on payment being made under (e) of subsection (1);

“(3) The Court shall give a person who holds interest in the property reasonable opportunity to make representations to the Court before making an order under paragraphs (b), (c), (d) or (e) of subsection (1) and also under (subsection (2)).”

264. Your Lordships, in furtherance of the objects of Section 65 above, Section 66 then provides;

“(1) The Court shall direct that thirty percent of the amount realized be paid to the Office to be applied to defray the expenses of the Office.

“(2) The Court shall direct the Special Prosecutor to pay ten percent of the amount realized to the Office of the Attorney-General.

“(3) The Court shall direct the Special Prosecutor to pay ten percent of the amount realized for the benefit of persons and institutions of relevance to the action after the full satisfaction of the payment required under subsections (1) and (2).

“(4) The Special Prosecutor shall, after payment is made under subsection (1), (2) and (3), pay the rest into the Consolidated Fund.”

265. Your Lordships, the three provisions above, put together, shows that that 30% of all recoveries of corruption or corruption related funds that are identified and sequestered, is to be treated as ‘internally generated funds’, to be used by the Office of Special Prosecutor at its whim.

266. Your Lordships, it is the case of Plaintiff that such a situation is contrary to Articles 175 and 176 of the 1992 Constitution. The reasons for so stating are as follows;

(a) Section 66. (4) is an involuntary admission that the money belongs to the State and in the Consolidated Fund.

(b) All funds identified under Section 65 and 66 are presumptively dissipated public funds and ought to revert to same.

(c) Secondly, the sources of funding of the Office of Special Prosecutor are clearly identified under Section 22 of the ACT, and do not include those identified under Sections 65 and 66. Indeed under Section 22. (c), the government of Ghana is to make up all shortfalls in funding through the Minister of Finance.

267. Your Lordships, Section 66. (4) of The ACT states;

“(4) The Special Prosecutor shall, after payment is made under subsection (1), (2) and (3), pay the rest into the Consolidated Fund.”

268. Your Lordships, it is the case of Plaintiff that Section 66. (4) is an admission that the funds so identified belong in the Consolidated Fund. Plaintiff therefore says that they should be paid into that fund.

269. Again, Article 176 of the 1992 Constitution states;

“(1) There shall be paid into the Consolidated Fund, subject to the provisions of this article-

“(a) ALL revenues or other monies raised or received for the purposes of, or on behalf of, the Government (EMPHASIS PROVIDED);

and

“(b) any other moneys raised or received in trust for, or on behalf of, the Government.

“(2) The revenues and other moneys referred to in clause (1) of this article shall not include revenues and other monies-

“(a) that are payable by or under an Act of Parliament into some other fund established for specific purposes; or

“(b) that may, by or under an Act of Parliament, be retained by the department of government that received them for the purposes of defraying the expenses of that department.”

270. With reference to Section 22 of the ACT and Article 176. (2)(b) supra, Plaintiff says clearly that (a) the funds necessary for the operations of the Office of Special Prosecutor are clearly identified, and (b) do not include the category of those identified under Sections 65 and 66, and therefore ought to be paid into the Consolidated Fund.

271. On the back of the preceding, Plaintiff therefore pleads with Your Lordships Court to declare that all monies and revenue arising out of Sections 65 and 66 of Act 959 constitute public monies and revenue under Article 175 and 176 and properly ought to be paid into the Consolidated Fund.

RESPECTFULLY SUBMITTED

DATED IN ACCRA THIS.....DAY OF JUNE, 2024

.....
PLAINTIFF

THE REGISTRAR
SUPREME COURT OF GHANA
SUPREME COURT BUILDING
ACCRA

AND FOR SERVICE ON:

1. THE ATTORNEY GENERAL, ATTORNEY GENERAL’S DEPARTMENT
ACCRA
2. OFFICE OF SPECIAL PROSECUTOR, 6 HAILE SELASSIE AVE, SOUTH RIDGE, ACCRA, GHANA.

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF GHANA

AD 2024

SUIT NO:.....

KENNETH KWABENA AGYEI KURANCHIE)PLAINTIFF

H/NO. 5,

RUBY STREET,

ACHIMOTA, ACCRA

GPS ADDRESS: GA-302-0449

VERSUS

3. THE ATTORNEY GENERAL)DEFENDANTS

ATTORNEY GENERAL'S DEPARTMENT

ACCRA

4. OFFICE OF SPECIAL PROSECUTOR

6 HAILE SELASSIE AVE,

SOUTH RIDGE,

ACCRA, GHANA.

CITATIONS AND REFERENCES

1. THE CONSTITUTION OF THE REPUBLIC OF GHANA, 1992

STATUTES

2. OFFICE OF THE SPECIAL PROSECUTOR ACT, 2017 (ACR 959);

3. THE COURTS ACT, 1993;

4. THE CRIMINAL AND OTHER OFFENCES (PROCEDURE) ACT, 1960 (ACT 30);

5. THE CRIMINAL OFFENCES ACT (ACT 29) 1960;

6. NARCOTIC DRUGS (CONTROL, ENFORCEMENT AND SANCTIONS) LAW, 1990
(PNDCL 236)

CASES

7. ADOFO V ATTORNEY-GENERAL AND COCOBOD ((2005-2006) SCGLR 42 TO 47);

8. MENSIMA V ATTORNEY-GENERAL AND 3 OTHERS (1996-97 SCGLR 676);

9. GHANA BAR ASSOCIATION V. ATTORNEY-GENERAL AND ANOTHER (1995)
JELR 67088 (SC), SUPREME COURT, 5 DEC 1995;

10. TUFFUOR V. ATTORNEY-GENERAL (1980) GLR 637, SC AND IN SAM (NO. 2) V
ATTORNEY GENERAL (2000) SCGLR 305;

11. BIMPONG-BUTA V GENERAL LEGAL COUNCIL (2003-2004) SCGLR 1200;

12. SUMEILA BIELBIEL (NO. 1) V ADAMU DRAMANI AND ATTORNEY-GENERAL (NO. 1) AT 145 AND 146;
13. BOYEFIO V. NTHC PROPERTIES LTD [1996-97] SCGLR 531 AT 533;
14. JOSEPH KOJO DAWSON V. THE REPUBLIC (2011) JELR 66199 (CA);
15. WOOLMINGTON V DIRECTOR OF PUBLIC PROSECUTIONS;

AUTHORITIES

16. BLACK'S LAW DICTIONARY, 10TH EDITION, EDITED BY BRYAN A. GARDNER;
17. THE OXFORD ADVANCED LEARNER'S DICTIONARY.

DATED IN ACCRA THIS.....DAY OF..... 2024

.....

PLAINTIFF

THE REGISTRAR
SUPREME COURT
SUPREME COURT BUILDING
ACCRA

IN THE SUPERIOR COURT OF JUDICATURE
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1. THE ATTORNEY GENERAL)DEFENDANTS

ATTORNEY GENERAL'S DEPARTMENT

ACCRA

2. OFFICE OF SPECIAL PROSECUTOR

6 HAILE SELASSIE AVE,

SOUTH RIDGE,

ACCRA, GHANA.

PLAINTIFF'S AFFIDAVIT IN VERIFICATION OF STATEMENT OF CASE

I, KENNETH KWABENA AGYEI KURANCHIE, OF H/NO. 5, RUBY STREET, ACHIMOTA, ACCRA, do make oath and say as follows:

1. That I am the Plaintiff and Deponent herein.
2. That to the best of my knowledge and belief, the facts, exhibits and particulars contained in the Statement of Case prepared by myself are true and are hereby verified.
3. Wherefore I swear to this affidavit in verification of the said Statement of Case.

SWORN IN ACCRA THIS.....)

DAY OF JUNE, 2024)

.....

DEPONENT

BEFORE ME

COMMISSIONER OF OATHS

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF GHANA

AD 2024

SUIT NO:.....

KENNETH KWABENA AGYEI KURANCHIE)

.....PLAINTIFF

H/NO. 5,

RUBY STREET,

ACHIMOTA, ACCRA

GPS ADDRESS: GA-302-0449

VERSUS

1. THE ATTORNEY GENERAL)

.....DEFENDANTS

ATTORNEY GENERAL'S DEPARTMENT

ACCRA

2. OFFICE OF SPECIAL PROSECUTOR

6 HAILE SELASSIE AVE,

SOUTH RIDGE,

ACCRA, GHANA.

LIST OF EXHIBITS

This is to certify that the documents exhibited to the affidavit in verification of facts and documents to be relied upon by Plaintiff and marked exhibits 1 through to 6.

1. EXHIBIT 1- APPLICATION BY THE OFFICE OF SPECIAL PROSECUTOR PRAYING THE HIGH COURT (FINANCIAL DIVISION) FOR AN ORDER OF CONFIRMATION OF THE FREEZING OF THE ASSETS OF ONE MADAM CECELIA DAPAAH (CASE NUMBER FT/0072/2023).
2. EXHIBIT 2- A GHANA NEWS AGENCY REPORT DATED 16TH OCTOBER, 2023, ANNOUNCING THE DEFREEZING OF THE ACCOUNTS OF ONE MADAM CECELIA DAPAAH
3. EXHIBITS 3A AND 3B- AN ANNOUNCEMENT OF A COLLABORATION BETWEEN THE OFFICE OF SPECIAL PROSECUTOR AND THE FEDERAL BUREAU OF INVESTIGATIONS OF THE UNITED STATES INTO THE ASSETS OF MADAM CECELIA DAPAAH
4. EXHIBIT 4- A NEWS REPORT BY DAILYGUIDE NETWORK ON THE ARREST OF ONE PROFESSOR FRIMPONG-BOATENG BY THE OFFICE OF SPECIAL PROSECUTOR DATED JUNE 7, 2023 BY VINCENT KUBI (SOURCE: [HTTPS://DAILYGUIDENETWORK.COM/FRIMPONG-BOATENG-ARRESTED/](https://dailyguidenetwork.com/frimping-boateng-arrested/))

5. EXHIBIT 5- A PRESS RELEASE ISSUED BY THE OFFICE OF SPECIAL PROSECUTOR DATED 5TH SEPTEMBER, 2023
6. EXHIBIT 6- RESIGNATION LETTER OF FORMER SPECIAL PROSECUTOR MARTIN AMIDU IN WHICH HE INSISTS THAT THE SPO IS INDEPENDENT OF PRESIDENTIAL AUTHORITY.
7. EXHIBIT 7- A PRESS REPORT FROM THE GNA DATED 10TH AUGUST 2023 IN WHICH THE OSP DESCRIBES PROPERTY AS 'TAINTED'.
8. EXHIBIT 8 – A REPORT ON THE ARREST OF ONE PROFESSOR FRIMPONG BOATENG BY THE OSP
9. EXHIBIT 9 – A REPORT BY THE CITI FM NEWS DATED SEPTEMBER 5, 2023 IN WHICH THE OSP SEIZES THE ASSETS OF A CERTAIN CECELIA DAPAAH.

BEFORE ME

COMMISSIONER OF OATHS