**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT OF GHANA**

**ACCRA – A.D. 2018**

**SUIT NO:**

**WRIT TO INVOKE THE ORIGINAL JURISDICTION OF THE SUPREME COURT**

**BETWEEN:**

**STRATEGIC THINKERS NETWORK-AFRICA PLAINTIFF**

**HOUSE NO J 1064/1, NUNGUA BEACH ROAD**

**ACCRA**

**AND**

1. **THE ATTORNEY GENERAL**

**MINISTRY OF JUSTICE**

**MINISTRIES, ACCRA  DEFENDANTS**

1. **ELECTORAL COMMISSION,**

**ACCRA, GHANA.**

**TO:**

**1. ATTORNEY GENERAL**

**2. ELECTORAL COMMISSION**

**(PLAINTIFF TO DIRECT SERVICE)**

**IN THE NAME OF THE REPUBLIC OF GHANA**, you are hereby commanded within fourteen (14) days after the service on you of the statement of the Plaintiff’s case, inclusive of the day of service, that you are to file or cause to be filed for you a statement of the Defendant’s case in an action at the suit of:

**STRATEGIC THINKERS NETWORK –AFRICA** of Accra.

The nature of the reliefs sought is as follows:

1. A declaration that upon a true and proper interpretation of the provisions of the Constitution, particularly Articles 4(1), 5(1), 5(2), 5(3), 5(4) and 5(7) of the 1992 Constitution read conjointly, the recommendation by the Justice Alan Brobbey Commission of Enquiry on the Creation of New Regions to the effect that only the registered voters in the yet to be created region are entitled to vote at the referendum to be conducted by the 2nd Defendant is unconstitutional, null and void;
2. A declaration that the purported restriction of the limited voter registration to only the proposed new regions is arbitrary, whimsical and capricious and violates Articles 45(a) and 296 of the 1992 Constitution and therefore unconstitutional.
3. An order directed at the 2nd Defendant not to conduct the referendum limited to only the places so recommended.
4. An interlocutory injunctive order directed at the 2nd Defendant from going ahead with the limited registration exercise in only the proposed new regions until the determination of this matter.
5. Any other order or orders as this Honourable Court would deem fit in the circumstances.

The Capacity in which the Plaintiff is bringing this action is as follows:

The Plaintiff brings this action in its capacity as a citizen of Ghana to seek the interpretation and/or enforcement of the provisions of the Constitution under Articles 2(1) (b) and 130(1) (a) thereof.

The address for service for the Plaintiff is as follows:

**HOUSE NO J 1064/1, NUNGUA BEACH ROAD, ACCRA.**

The address for service of Counsel for the Plaintiff is as follows:

**LAW OFFICES OF AYINE & FELLI,**

**NO.3 MULBERRY STREET, NEAR LION HOUSE,**

**EAST LEGON, ACCRA.**

The names and addresses of persons affected by this writ are as follows:

1. **THE ATTORNEY-GENERAL, MINISTRY OF JUSTICE**

**ATTORNEY-GENERAL’S DEPARTMENT**

**ACCRA**

1. **ELECTORAL COMMISSION OF GHANA.**

**DATED AT ACCRA THIS 31ST DAY OF AUGUST, 2018.**

**……………………………………**

**GODWIN KUDZO TAMEKLO,**

**LIN NO. GAR 15848/18,**

**LAWYER FOR PLAINTIFF.**

**THE REGISTRAR,**

**SUPREME COURT**

**ACCRA.**

**AND FOR SERVICE ON:**

1. **THE ATTORNEY GENERAL,**

**MINISTRY OF JUSTICE,**

**ATTORNEY-GENERAL’S DEPARTMENT,**

**ACCRA.**

**2. ELECTORAL COMMISSION.**

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**MINISTRIES, ACCRA  DEFENDANTS**

1. **ELECTORAL COMMISSION,**

**ACCRA, GHANA.**

**STATEMENT OF CASE OF THE PLAINTIFF**

**A. Facts Giving Rise to the Constitutional Controversy**

1. The Plaintiff is a non-governmental organization registered as Number 201702020602172 at the Registrar General's Department with a primary focus on public interest advocacy.
2. Plaintiff says that, as a corporate citizen, it is obligated to defend the Constitution and laws of Ghana.
3. The 1st Defendant is the principal legal advisor to the Government of Ghana and a proper Defendant in a suit alleging a violation of the Constitution and laws of the Republic of Ghana.
4. The 2nd Defendant is a Commission established under Article 45 of the 1992 Constitution with the sole mandate to conduct and supervise all public elections and referenda and to compile the national register of voters.
5. On the 15th August, 2017, the Council of State advised His Excellency, President Nana Addo Dankwa Akufo-Addo, to appoint a Commission of Enquiry “to inquire into the need and to make recommendations on all the factors involved in the creation of the new regions.”
6. The Chairman of the Council of State, Nana Otuo Siriboe II, disclosed this when the Council of State held its 2nd meeting with the President of the Republic, at the Flagstaff House, after studying the petitions for the creation of new regions which were forwarded to the Council.
7. This was after the Council of State, on the 29th of June, 2017, received communication from the President seeking the Council’s advice on the creation of new regions, as stipulated in the Constitution.
8. On 6th October, 2017, His Excellency, President Nana Addo Dankwa Akufo-Addo, paid a courtesy call on the overlord of Mamprugu, the Nayiri, Naa Bohogu Abdulai Mahami Sheriga, at the commencement of his 3-day tour of the Northern Region and, in the meeting, the President said:

*“The Council of State received my request and their advice was positive. They agreed that there was a demand for the creation of new regions from the Western Region, Northern Region, Brong Ahafo Region and Volta Region.*

*The Constitution states that, once the Council of State has given a positive response to the President, the President would have to establish a Commission of Enquiry to go into the areas which have requested the creation to see whether, indeed, there is a substantial demand.*

*Next week I am going to establish a Commission of Enquiry to examine the petitions for the creation of the regions.”*

*“When the Commission of Enquiry comes into your areas, it is up to you to make it clear to the Commissioners that all of you want a new region.*

*If the President receives the recommendations and they are positive, he will send the matter to the Electoral Commission to organize a referendum in the areas of the demand. It will require that 50% of all those registered in the area of the demand come out to vote, and, after that, 80% of those who come out to vote must vote ‘Yes’ for the new region.*

*If you are determined to have the new region, it is in your hands. The way you respond to the Commission of Enquiry, and the way you vote, that is what will decide if you will have a new region. I am in full support of your demands. I believe that the demand you are making for a new region is a good demand and should be supported. But they say ‘God helps those who help themselves’, so it is in your hands. If you want it you can have it.”*

1. The Commission of Enquiry was established pursuant to Constitutional Instrument, C.I 105 and commenced on 21st November, 2017, in the Western region of Ghana.
2. His Excellency, President Nana Addo Dankwa Akufo-Addo, on the 19th of October, 2017, in accordance with Article 5 of the 1992 Constitution, inaugurated a 9-Member Commission of Inquiry to inquire into the need and substantial demand, and to make recommendations on all the factors involved in the creation of a region or alteration of regional boundaries.
3. The 9-Member Commission is chaired by Justice S.A. Brobbey, a retired Supreme Court Judge, and has Dr. Grace Bediako, Maulvi Mohammed Bin-Salih, Prof. Kwasi Kwafo Adarkwa, Gladys Tetteh, Robert Ajene, David Wellington Essaw, Prof. George Owusu, and Ms. Josephine Hughes as its members.
4. The President, His Excellency, Nana Addo Dankwa Akufo-Addo, pursuant to paragraph 3 of Constitutional Instrument No. 105, gazetted on Thursday, 12th October, 2017, his appointment of Mr. Jacob Saah, a lawyer with great interest in this aspect of our governance, as the Secretary to the Commission.
5. The Commission commenced its public hearing on the 21st November, 2017, in the Western region.
6. The Commission of Enquiry published in the Daily Graphic the timetable for the public consultations and fora to collate the views in the various regions and also the regional capitals.
7. In the specific case of the Volta region, the public hearings happened in the Northern part of the region and Ho, the regional capital.
8. On 27th June, 2018, the Justice Brobbey Commission presented its report to President Akufo-Addo and recommended the creation of six (6) new administrative regions in Ghana and the new regions are to be known as Oti, Ahafo, Brong East, Western North, North East and Savanna.
9. The Commission of Enquiry recommended to the President that the “places where the referendum should be held” be limited to the proposed new regions to the exclusion of all and same forwarded to the 2nd Defendant.
10. The Inter-Party Advisory Committee (IPAC) of the 2nd Defendant, Electoral Commission (EC), met on Wednesday, August 22, 2018, to discuss issues relating to the electoral calendar 2018, including the Limited Voter Registration exercise and the referendum on the creation of new regions.
11. The 2nd Defendant, Electoral Commission, has set December 27, 2018, for the referendum on the creation of six (6) new regions.
12. The new regions are to be known as Oti, Ahafo, Brong East, Western North, North East and Savanna.
13. The Electoral Commission recently announced that it would be undertaking a limited registration exercise of Ghanaians who have never registered as voters or who just turned 18 years and reside in the proposed areas in the Northern Region carved out for the creation of two additional Regions being the Savannah and North Eastern Regions and similarly in the other regions of Volta, Brong Ahafo and Western.
14. The 2nd Defendant has indicated that the limited voter registration will be restricted to the following affected areas from the Sunday 16th September,2018 to 26th September,2018, namely:

 WESTERN REGION

1. Aowin Municipality

2. Bia East District

3. Bia West District

4. Bibiani Anhwiaso-Bekwai Municipality

5. Bodi District

6. Juabeso District

7. Sefwi-Akontonbra District

8. Sefwi-Wiaso District

9. Suaman District

 VOLTA REGION

1. Biakoye District

2. Jasikan District

3. Kadjebi District

4. Krachi East Municpality

5. Krachi Nchumuru District

6. Krachi West District

7. Nkwanta North Municipality

8. Nkwanta South Municipality

9. Sankrokofi, Akpafu, Lolobi and Likpe

 BRONG AHAFO REGION

1. Tano South Municipality

2. Tano North Municipality

3. Asunafo North District

4. Asunafo South District

5. Asutifi North District

6. Asutifi South District

7. Atebubu- Amantin Municipality

8. Nkoranza South District

9. Nkoranza North District

10. Kintampo South District

11. Kintampo North District

12. Pru West District

13. Pru East District

14. Sene East District

15. Sene West District

16. Techiman North District

17. Techiman Municipality

 NORTHERN REGION

1. Bole District

2. Sawla Tuna-Kalba District

3. West Gonja District

4. North Gonja District

5. Central Gonja District

6. East Gonja Municipality

7. East Mamprusi Municipality

8. Bunkprugu-Moagduri District

9. Chereponi District

**B. Constitutional Issue**

1. My Lords, the question presented before this Court is whether upon a true and proper interpretation of the provisions of the1992 Constitution, particularly Articles 4(1), 5(1), 5(2), 5(3), 5(4) and 5(7) read conjointly, the recommendation by the Justice Alan Brobbey Commission of Enquiry on the Creation of New Regions to the effect that only registered voters in the yet to be created regions are entitled to vote at the referendum to be conducted by the 2nd Defendant  contravenes the letter and spirit of the 1992 Constitution?
2. Put differently, the issue is whether or not the Commission of Enquiry can limit the places to conduct the referendum to only the proposed new regions?
3. And whether the 2nd Defendant can decide to restrict the limited voter registration to only the yet to be created new regions?

**C. Arguments of Law**

1. My Lords, the present case is brought under Articles 2(1) (b) and 130(1) (a) of the Constitution for interpretation and enforcement of the Constitution. The kernel of the case is that the actions of the Commission of Enquiry in recommending to the President for the referendum to be conducted by the 2nd Defendant by recommending “places where the referendum should be held” for the proposed new regions contravenes Articles 4(1), 5(1), 5(2), 5 (3), 5(4) and 5(7) of the 1992 Constitution.
2. As succinctly stated by Your Lordships in **Kor v Attorney General, Civil Suit Number J1/16/2015 (unreported**), a cause of action accrues for access to the Supreme Court for enforcement of the Constitution where there is an allegation that the event specified in Article 2(1)(a) and (b) is inconsistent with or in contravention of the Constitution.
3. Also, as noted by Azu Crabbe, CJ, delivering the judgment of the Court of Appeal in **Okorie alias Ozuzu and Another v. The Republic (1974) 2** **GLR 272**, a breach of the Constitution connotes *“not only illegality,* *but also impropriety, arbitrariness, dictatorship, that is to say, the breaking of the fundamental law of the land.”* These run counter to the value system underpinned by the Constitution and should not be tolerated.
4. The jurisdiction conferred on this Court in its original jurisdiction may relate to either its interpretative or enforcement function as was decided in the case of **Sumaila Bielbiel v Dramani [2011] 1 SCGLR 132 at 143-145.**
5. The essence of the jurisdiction conferred on the Supreme Court under the said Articles is to enable it to intervene in appropriate instances to declare and enforce the law regarding the extent and exercise of power by any person or authority. This power includes “judicial review” of executive or legislative actions.
6. The nature of the Court’s obligation is to measure acts of the executive and legislative bodies to ensure compliance with the provisions of the Constitution, but the jurisdiction does not extend beyond the declaration, enforcement of the Constitution and where necessary giving directions and orders that may be necessary to give effect to its decision as contained in Article 2(2) of the Constitution.
7. In the case of **Edusei [No.2] v. Attorney-General [1998-99] SCGLR 753 at pages 771-772,** Kpegah JSC had this to say about the original jurisdiction of the Supreme Court,

**“In determining the scope or extent of this court’s original jurisdiction, we must read together articles 2 (1) and 130 (1) of the Constitution. And in reading the two articles together, “the court's exclusive original jurisdiction can be said to be in respect of the following situations:**

1. **enforcement of all provisions of the Constitution, except those provisions contained in Chapter 5 dealing with Fundamental Human Rights, or**
2. **the interpretation of any provision of the Constitution; or**
3. **an issue whether an enactment is inconsistent with any provision of the Constitution.”** (Emphasis is mine)
4. My Lords, Article 4(1) of the 1992 Constitution provides as follows:

**“(1) The sovereign State of Ghana is a unitary republic consisting of those territories comprised in the regions which, immediately before the coming into force of this Constitution, existed in Ghana, including the territorial sea and the air space.”**

Article 5 provides as follows:

**“(1) Subject to the provisions of this article, the President may, by constitutional instrument –**

**(a) create a new region;**

**(b) alter the boundaries of a region; or**

**(c) provide for the merger of two or more regions.**

1. **If the President, upon a petition being presented to him and, on the advice of the Council of State, is satisfied that there is substantial demand for –**
2. **the creation of a new region;**
3. **the alteration of the boundaries of a region, whether or not the alteration involves the creation of a new region; or**

**(c) the merger of any two or more regions;**

**he shall, acting in accordance with the advice of the Council of State, appoint a commission of inquiry to inquire into the demand and to make recommendations on all the factors involved in the creation, alteration or merger.**

1. **If, notwithstanding that a petition has not been presented to him, the President is, on the advice of the Council of State, satisfied that the need has arisen for taking any of the steps referred to in paragraphs (a), (b) and (c) of clause (1) of this article, he may, acting in accordance with the advice of the Council of State, appoint a commission of inquiry to inquire into the need and to make recommendations on all the factors involved in the creation, alteration or merger.**
2. **Where a commission of inquiry appointed under clauses (2) and (3) of this article finds that there is the need and a substantial demand for the creation, alteration or merger referred to in either of those clauses, it shall recommend to the President that a referendum be held, specifying the issues to be determined by the referendum and the places where the referendum should be held.**
3. **The President shall refer the recommendations to the Electoral Commission, and the referendum all be held in a manner prescribed by the Electoral Commission.**
4. **An issue referred for determination by referendum under clauses (4) and (5) shall not be taken to be determined by the referendum unless at least fifty percent of the persons entitled to vote cast their votes at the referendum, and of the votes cast at least eighty per cent were cast in favour of that issue.**
5. **Where a referendum involves the merger of two or more regions, the issue shall not be taken to be determined unless at least sixty per cent of the persons entitled to vote at the referendum in each such region voted in favour of the merger of the two or more regions; and accordingly, clause (6) of this article shall not apply to the referendum.”(**emphasis is mine**)**
6. After a careful reading of Article 4(1) of the 1992 Constitution, what is discernible is that Ghana is a unitary state. To this end, the state is governed as a single power in which the central government is ultimately supreme and any administrative divisions (regions and districts) exercise only the powers that the central government chooses to delegate without more.
7. The framers of the 1992 Constitution contemplated that the creation, alteration or merger of the regions of the Country must not be an event but a very elaborate process, devoid of unreasonableness.
8. For the purpose of this analysis, my Lords, the procedure for the creation, alteration or merger of the regions can be broken down as follows:
9. Petition for the creation or merger to the President.
10. President presenting the petition to the Council of State for advice.
11. Council of State presents advice to the President that there are substantial demands for the creation, alteration or merger.
12. Establishment of the Commission of Enquiry to inquire into the demand and to make recommendations.
13. Public enquiry through consultations and fora.
14. Commission of Enquiry establishing through the public petitions and consultations that there are substantial demands for the new regions.
15. Commission of Enquiry makes recommendations specifying the issues to be determined by the referendum and the places where the referendum should be held.
16. Referendum.
17. Constitutional instrument to give or create the regions.
18. The issue for determination is whether those entitled to vote should be limited to only registered voters in the proposed new regions to be created?
19. We submit that the entitlement to vote cannot be limited to only the registered voters in the proposed new regions.
20. Under international law, the right of a people to self-determination is a cardinal principle (jus cogens).
21. It states that a people, based on respect for the principle of equal rights and fair equality of opportunity, have the right to freely choose their sovereignty and international political status with no interference.
22. To put it bluntly, it is the right of every people to dispose of itself without interference. This concept of self-determination is broadly used when it comes to the succession or independence of a State, whether in such situations of independence from another sovereign State, the question of independence is should it be determined by the entirety of the people in the existing State or should it be limited to only the people in the new State.
23. The position in international law is to allow only those in the new State to decide the question of independence.
24. However, in the case of the 1992 Constitution, Ghana is a unitary State. The regions are purely administrative blocks without more.
25. Hence the principle around self-determination in international law cannot apply in this case where the issue is not about independence or succession.
26. It is for the Commission of Enquiry so established to determine as part of its recommendations, the place where the referendum should be held.
27. It is discernible from Article 5(7) of the Constitution, that where the referendum involves a merger of the two or more regions, the people to be affected by the regions to be merged must determine the fate of the regions.
28. Clearly, the consideration for determining who is "entitled to vote" at such a referendum is, those who are affected by the decision to alter, merge or split a region.
29. When a region is to be split, would it not affect the entirety of the people living in that region? The answer is in the affirmative.
30. Clearly, if the entire region will be affected by the split, then the people in that region must have a say in the referendum particularly because we have a unitary State.
31. The discernible spirit from the 1992 Constitution is the fact that we have a unitary State and that what affects one affects all and also forbids arbitrariness. It is therefore arbitrary to limit the referendum to “only the proposed new regions”. To the extent that the Commission of Enquiry decided to limit the referendum to only the proposed new regions, its recommendation is unconstitutional.
32. We are fortified in this submission by the fact that when same is run against the Constitution of Nigeria, for instance, it provides an entirely different scenario as to the people who are entitled to vote in the referendum. It is more clear and specific and leaves no room for any arbitrariness. The Nigeria Constitution specifically provides in Article 8:
33. ***an Act of the National Assembly for the purpose of creating a new State shall only be passed if-***
34. ***a request, supported by at least two-thirds majority of members (representing the area demanding the creation of the new State) in each of the following, namely –***
35. ***the Senate and the House of Representatives,***
36. ***the House of Assembly in respect of the area, and***
37. ***the local government councils in respect of the area,***

***is received by the National Assembly;***

1. ***a proposal for the creation of the State is thereafter approved in a    referendum by at least two-thirds majority of the people of the area where the demand for creation of the State originated;***
2. ***the result of the referendum is then approved by a simple majority of all the States of the Federation supported by a simple majority of members of the Houses of Assembly; and***
3. ***the proposal is approved by a resolution passed by two-thirds majority of members of each House of the National Assembly.”***
4. Clearly from the above scenario, one can make a deduction that, even though the referendum is limited to the areas making the demand for a new state in the case of Nigeria, the referendum must be approved by the States of the Federation supported by a simple majority of the members of the Houses of Assembly.
5. This elaborate procedure is strikingly missing in the Ghanaian constitutional architecture where there is no parliamentary oversight in the creation of new regions.
6. It remains the action of the Executive arm of the Government without more.
7. In the international arena, there is a counterbalancing act between utis possidentis and self-determination.
8. At the end of the day, it must be the people to be “affected” who should make that determination.
9. It will be manifestly absurd to say that the persons so affected should only be the people in the proposed new regions and that the affected people are only those who want a new region but not those who want to maintain the status quo.
10. The framers of the Constitution did not intend to allow the alteration of regional boundaries or creation of new regions to be at the whims and caprices of any one but the people so affected and that certainly cannot be said to exclude the people in the existing region.
11. The “people affected” test is the overriding principle in Nigeria such that, after the referendum, the representatives of the entire Nigeria must give approval to that referendum.
12. In India, the test is the same - the State affected by the exercise.
13. In Nigeria, the creation of new States is regulated by their Article 8(supra). The said Article allows the referendum to be conducted in the area where the demand originates. However, it also incorporates the "area affected" test by allowing "all States of the Federation" to approve such referendum.
14. Article 3 of the Indian Constitution provides,

***“Parliament may by law—***

1. ***form  a  new  State  by  separation  of  territory from  any  State  or  by  uniting  two  or  more  States  or parts of States or by uniting any territory to a part of any  State;***
2. ***increase the area of any State;***
3. ***diminish the area of any State;***
4. ***alter the boundaries of any State;***
5. ***alter the name of any State.”***
6. The proviso is that

**“[Provided  that  no  Bill  for  the  purpose  shall  be introduced  in  either  House  of  Parliament  except  on  the recommendation  of  the  President  and  unless,  where  the proposal contained in the Bill affects the area, bound or name of any of the States, the Bill has been referred by  the  President  to  the  Legislature  of  that  State  for expressing  its  views  thereon  within  such  period  as  may be specified in the reference or within such further period as the President may allow and the period so specified or allowed  has  expired.]**

1. Clearly here, the Bill has to be referred to the Legislature of that State to be affected. This is the discernible test across the jurisdictions referred above.
2. The overarching consideration for determining who is **"entitled to vote"** at such a referendum is - who are those affected by the decision to alter, create, merge and split a region? That is what is discernible from the Constitution.
3. For example, we know that the referendum for the merger of two or more regions must be held in each such region. That's because such a merger affects all the regions to be merged.
4. Similarly, to split up a region is, no doubt, a matter affecting the entire region to be split. Accordingly, the question - who is entitled to vote in a referendum for the split-up of a region - should be answered by the entire region (not only those willing to form a separate region).
5. The effect of the decision to split the existing regions affects all persons in that particular region and not only the new regions. In effect, the decision economically, socially and politically affects all persons from the existing region.
6. Economically, revenue base of the region is affected. Economic resources shared jointly on boundaries of adjoining districts of the new region could become potential sources of conflict.
7. Socially, existing conflicts could degenerate on new administrative boundaries. This defeats the spirit of our unitary state.
8. Politically, traditional authority across boundaries of new regions face potential rivalry, if the decision to split is solely determined by some and not all.
9. It is the contention of the Plaintiff that the recommendation of the Justice Brobbey Commission of Enquiry to limit the people entitled to vote to only persons in the proposed new region as unconstitutional, as same does not accord with the letter and spirit of the Constitution.
10. The people to be directly affected by the split are the people in the existing region. It will be arbitrary for the Commission of Enquiry to limit the voting right in the referendum to only people in the proposed new region.
11. My Lords, we summarize our arguments as follows:
12. That the Commission of Enquiry has the power to prescribe where the referendum should be held;
13. That the Commission of Enquiry’s recommendation that the referendum be held in only the areas seeking the creation is unconstitutional; and
14. That the referendum be held in the entire region (since the creation affects the entire region).
15. This construction or interpretation accords with the true meaning of Article 4(1), 5(1), 5(2), 5(3), 5(4) 5(6) and 5(7) of the 1992 Constitution.
16. Whereas the 2nd Defendant has the constitutional duty to register Ghanaians for the purposes for any public elections and referenda, that decision must not be capricious and whimsical.

The decision by the 2nd Defendant to preclude all other regions from the limited registration except the yet to be created regions is not consistent with Article 45(a).

Article 45(a) provides that

“The Electoral Commission shall have the following functions -

1. to compile the register of voters and **revise it at such periods as may be determined by law;”**

The limited registration of voters is a revision of the of the compiled register of voters by way of adding new qualified voters on the register and same cannot be done in a capricious and whimsical manner.

The limited registration exercise should not be limited to only the yet to be created regions.

The power of the 2nd Defendant under Article 45(a) of the Constitution is not one of discretion for the Electoral Commission to apply or exercise as and when it desires based on any formula or recommendation.

It is couched in mandatory terms and so same cannot be applied in some electoral areas only.

Such whimsical arrangement does not ensure equality in terms of voter registration across all electoral areas in the country.

In performing its functions, the 2nd Defendant’s fidelity is only to the Constitution or any law made under it.

Article 296 provides that

“Where in this Constitution or in any other law discretionary power is vested in any person or authority -

(a) that discretionary power shall be deemed to imply a duty to be fair and candid;

1. the exercise of the discretionary power shall not be arbitrary, capricious or biased wither by resentment, prejudice or personal dislike and shall be in **accordance with due process of law;**”

The 2nd Defendant decided to limit the registration exercise to only the proposed new regions and electoral areas within same.

Clearly, that arrangement cannot be deemed to be in accordance with due process of law and therefore unconstitutional.

1. In **Gbedemah v. Awoonor-Williams (1969) 2 G&G 438 at 440**, the Court of Appeal (sitting as the Supreme Court) stated as follows:

***“The pith of the plaintiff’s claim… is that on 5th September, 1969, the defendant took his seat as a Member of the National Assembly, notwithstanding the fact that he was not qualified so to do by virtue of article 71 (2) (b) (ii) and (d) of the Constitution, and that the defendant intends to continue to sit in the said National Assembly. If the matter rests here, then prima facie there has been an infringement of the Constitution, and an alleged threat to continue such infringement. This would constitute a mischief, and it would become the inescapable duty of the Supreme Court to suppress it by enforcing the Constitution.”***

1. The mischief to be suppressed by the Supreme Court is the claim that only those in the proposed new regions will be affected by the split and not the entire existing region.
2. In the circumstances, My Lords, we pray this Court to grant the reliefs sought by the Plaintiff.

**LEGAL AUTHORITIES**

Statutes Cited:

1. The Ghana Constitution, 1992

2. Nigeria Constitution

3. India Constitution

**CASE LAW**

1. Emmanuel Nobel Kor v. Attorney General, Supreme Court (Unreported) 10/03/2016
2. Gbedemah v. Awoonor-Williams (1969) 2 G&G 438
3. Sumaila Bielbiel v Dramani [2011] 1 SCGLR 132 at 143- 145
4. Edusei [No.2] v Attorney-General [1998-99] SCGLR 753 at 771-772

**DATED AT AYINE AND FELLI LAW OFFICES, NO.3 MULBERRY STREET, EAST LEGON, ACCRA THIS 7TH DAY OF SEPTEMBER, 2018.**

**………………………………………**

**GODWIN KUDZO TAMEKLO ESQ**

**LIN NO. GAR 15848/18**

**LAWYER FOR PLAINTIFF**

**THE REGISTRAR**

**SUPREME COURT,**

**CIVIL DIVISION,**

**ACCRA.**

**AND FOR SERVICE ON THE DEFENDANTS OR THEIR LAWYERS.**

**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT OF GHANA**

**ACCRA – A.D. 2018**

**SUIT NO:**

**WRIT TO INVOKE THE ORIGINAL JURISDICTION OF THE SUPREME COURT**

**BETWEEN:**

**STRATEGIC THINKERS NETWORK-AFRICA PLAINTIFF**

**HOUSE NO J 1064/1, NUNGUA BEACH ROAD**

**ACCRA**

**AND**

1. **THE ATTORNEYGENERAL**

**MINISTRY OF JUSTICE**

**MINISTRIES, ACCRA**

1. **ELECTORAL COMISSION  DEFENDANTS**

**ACCRA, GHANA**

**AFFIDAVIT IN VERIFICATION**

I, GIDEON TETTEY TETTEH, of HOUSE NO J 1064/1, NUNGUA BEACH ROAD, ACCRA, in the Greater Accra Region of the Republic of Ghana, make oath and say as follows:

1. That I am the deponent herein.
2. That I am swearing to this affidavit for the purpose of verifying the facts that I have relied upon for the conduct of this case.
3. That the facts and particulars stated in this suit are true to the best of my knowledge, information and belief.

WHEREFORE I depose to this affidavit in good faith.

**…………………………………**

**GIDEON TETTEY**

**(DEPONENT)**

**SWORN AT ACCRA**

**THIS………… DAY OF**

**SEPTEMBER, 2018.**

**BEFORE   ME**

**COMMISSIONER FOR OATHS**

**https://ssl.gstatic.com/ui/v1/icons/mail/images/cleardot.gif**

**THE REGISTRAR**

**SUPREME COURT,**

**CIVIL DIVISION,**

**ACCRA.**

**AND TO:**

1. **THE ATTORNEY GENERAL,**

**MINISTRY OF JUSTICE,**

**MINISTRIES, ACCRA**

1. **ELECTORAL COMMISSION,**

**ACCRA, GHANA.**