

Filed on. 11-02-2021
at 11:20 am/pm
Registrar
SUPREME COURT OF GHANA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA – A.D. 2020

WRIT NO. J1/5/2021

ARTICLE 64 OF THE 1992 CONSTITUTION AND SUPREME COURT RULES, 1996
(C.I. 16) (AS AMENDED BY C.I. 74 AND C.I. 99)

AMENDED PRESIDENTIAL ELECTION PETITION
PURSUANT TO LEAVE GRANTED BY THIS COURT ON 14TH JANUARY 2021
PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER 2020.

JOHN DRAMANI MAHAMA
No. 33 Chain Homes
Airport Valley Drive
Accra

PETITIONER

AND

1. ELECTORAL COMMISSION
National Headquarters
6th Avenue
Ridge – Accra

1ST RESPONDENT

2. NANA ADDO DANKWA AKUFO-ADDO
House No. 02 Onyaa Crescent
Nima - Accra

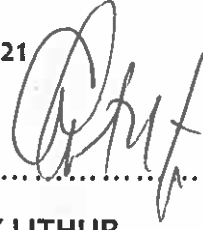
2ND RESPONDENT

MOTION ON NOTICE FOR LEAVE TO RE-OPEN CASE OF PETITIONER TO
ENABLE CHAIRPERSON OF ELECTORAL COMMISSION TO TESTIFY

TAKE NOTICE that Counsel for and on behalf of Petitioner shall seek leave of Court to re-open the case of Petitioner for the purpose of serving a subpoena on the Chairperson of the Electoral Commission to testify; UPON the grounds contained in the accompanying affidavit; and for such further or other orders as the Honourable Court may deem fit.

COURT TO BE MOVED on MONDAY 15TH the 15th day of February, 2021 at 9.30 in the forenoon or so soon thereafter as Counsel for Petitioner may be heard.

DATED IN ACCRA THIS 11TH DAY OF FEBRUARY, 2021



.....
TONY LITHUR

SOLICITOR FOR PETITIONER/APPLICANT

SOLICITOR'S LIC. NO. eGAR 00278/21

LAW FIRM REG. NO. ePP00047/21

LITHUR BREW & COMPANY

No. 110B 1ST KADE CLOSE,

KANDA ESTATES

P. O. BOX CT 3865 CANTONMENTS ACCRA

TEL: 0302208104/05

THE REGISTRAR
SUPREME COURT
ACCRA

AND COPY EACH FOR SERVICE ON THE ABOVE-NAMED RESPONDENTS
OR THEIR SOLICITORS:

1. JUSTIN AMENUVOR, AMENUVOR & ASSOCIATES, NO. 8 NII ODARTEY OSRO STREET, KUKU HILL (FRONTLINE CAPITAL ADVISORS BUILDING) OSU, ACCRA
2. AKOTO AMPAW, AKUFO-ADDO, PREMPEH & CO., 67 KOJO THOMPSON ROAD, ADABRAKA, ACCRA

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House No. 02 Onyaa Crescent
Nima - Accra

2ND RESPONDENT

AFFIDAVIT OF PETITIONER/APPLICANT IN SUPPORT

I, **JOHN DRAMANI MAHAMA**, of House No. 33 Chain Homes, Airport Valley Drive, Accra, make oath and say as follows:

1. I am the Petitioner and Applicant herein. The facts in this affidavit, unless otherwise stated, are within my personal knowledge, information or belief.

2. On 30th December 2020, I caused to be filed at the Registry of the Honourable Court, a Petition against Respondents who were duly served with the Petition and, thereafter, entered appearance.
3. At the hearing of the application, Counsel will crave leave of the Court to refer to all processes filed in the Court up to the date of the hearing of the instant application, as if same were reproduced here *in extenso* and sworn to by me on oath.
4. The case has proceeded to the point where, at the end of the testimony of my third witness on Monday, 8th February 2021, after the witness had been discharged, my Counsel notified the Court that I had closed my case.
5. The Court thereupon called upon 1st Respondent to open its case, at which point Counsel for 1st Respondent notified the Court that the witness of 1st Respondent, Mrs. Jean Adukwei Mensa, whose witness statement had been filed on the 22nd January 2021, was not going to be called to testify.
6. Counsel for 1st Respondent referred to Order 36 rule 4(3) of the High Court (Civil Procedure) Rules, (C.I. 47) as well as the Order 38 rule 3E (5) as the basis for the indication he had given to the Court.
7. My Counsel immediately rose and began to show why Order 36 rule 4(3) of C.I. 47 could not justify the position being taken by Counsel for 1st Respondent, since the pre-condition in that provision, namely that 1st Respondent had elected "not to adduce evidence" had not been met and was not the case here.
8. As my Counsel was proceeding with his argument, His Lordship the Chief Justice indicated that the Court would wish all Counsel to come and address the Court on the legal issues that arose from the step being taken by 1st Respondent, which Counsel for 2nd Respondent indicated was also the position of 2nd Respondent. The Court, therefore, adjourned the case to Tuesday, 9th February 2021.
9. On the said Tuesday, 9th February 2021, the Court heard arguments from Counsel for the parties and adjourned to Thursday, 11th February 2021 to give a ruling.

10. On Thursday, 11th February 2021 the Court ruled that Counsel for Respondents were within their rights not to call any witness even after submitting witness statements from those witnesses.
11. In respect specifically of the witness statement filed on behalf of 1st Respondent by its Chairperson, Mrs. Jean Adukwei Mensa, the Court decided that, since she had not been called as a witness by 1st Respondent for her witness statement to be admitted in evidence she would give under oath, she was not available to be cross-examined as my Counsel had argued before the Court.
12. It is as a result of this ruling of the Court that, I am advised by Counsel and verily believe, it has become necessary in the interest of justice and for fairness in the adjudication of this case, for my Counsel to seek the order herein being sought.
13. In an affidavit sworn to by the Chairperson of the Electoral Commission, Mrs. Jean Adukwei Mensa, in earlier proceedings in connection with an application by Counsel on my behalf to serve interrogatories on 1st Respondent and in the review application related thereto, she had indicated that the interrogatories were not necessary because the questions could be asked of her in cross-examination. I attach herewith copies of the said affidavit, marked as **Exhibit "RECALL 1"**.
14. I also attach herewith the ruling of the Court dismissing the application for leave to serve interrogatories, as well as the ruling of the Court dismissing an application for review of that decision. These are marked, respectively as **Exhibits "RECALL 2"** and **"RECALL 3"**.
15. As a result of the ruling of the Court of Thursday, 11th February 2021, it has become necessary, I am advised and verily believe, that my Counsel use the subpoena powers of the Court under Order 38 rule 10 of C.I. 47 to compel the attendance of the Chairperson of 1st Respondent to appear and testify in court.
16. At the time my Counsel closed my case, the representation that had been made by each Respondent to the Court, and specifically to me, was that the witnesses who had filed witness statements were going to testify. It therefore came as a surprise that both Counsel for Respondents announced, on Monday, 8th February 2021, that this was no longer the case.

17. My Counsel is seeking leave of the Court to re-open my case to enable the subpoena referred to above to be served on Mrs. Jean Adukwei Mensa, so she can appear before the Court to testify.
18. I am advised by Counsel and verily believe that the subpoena documentation to be served on Mrs. Jean Adukwei Mensa is ready for filing once leave is granted to re-open our case.
19. I am advised by Counsel and verily believe that it is in the interest of justice, and of a fair trial as required by the Constitution, that the Court exercise its discretion to allow me to re-open my case in order to have the Chairperson of 1st Respondent and the Returning Officer of the Presidential Election in respect of which this Petition has been filed, to appear and testify in these proceedings.
20. This witness has a unique role under the Constitution in respect of the Presidential Election that took place in Ghana on 7th December 2020, and having her testify is critical for this Court in order to ensure compliance with the Constitution; more so as the witness to be subpoenaed did make a declaration whose constitutional validity I am challenging in this suit.
21. Furthermore, in the proceedings to date, Counsel for 1st Respondent has challenged the testimony on oath of my witnesses, including testimony provided by PW2, Dr. Michael Kpessa-Whyte, that Mrs. Jean Adukwei Mensa had, in a meeting with PW3, Mr. Robert Joseph Mettle-Nunoo, (who also testified as PW3), sent the two witnesses who were serving as my agents at the National Collation Centre (popularly referred to as the "strong room"), to go and deliver a message to me, with the promise that she would have a dispatch rider go and escort them back before she would make a declaration.
22. I am advised by my Counsel and verily believe that Counsel for 1st Respondent, could only challenge the account of PW2 in the manner he did based on the instructions of 1st Respondent, particularly its Chairperson, Mrs. Jean Adukwei Mensa.
23. Indeed, I am advised by Counsel and verily believe that Counsel for 1st Respondent would have professionally misconducted himself if he had no basis from the instructions that he obtained from 1st Respondent,

particularly its Chairperson, Mrs. Jean Adukwei Mensa, to put across to the said PW2 what he put to the witness.

24. It would be fair to all parties if Mrs. Jean Adukwei Mensa testified to what transpired in the meeting between Mr. Mettle-Nunoo and herself so as to settle that important issue, which is relevant to matters before this Court.
25. During cross-examination, Counsel for 1st Respondent put to PW1 evidence of vote padding at certain polling stations contained on a pen drive that is in evidence, in effect an acknowledgment by Counsel that more votes were stated as having been cast for certain candidates than had, in fact, been cast. Counsel could, again, only have put that to the witness on the basis of his client's instructions. In the witness statement of PW1 he provided a sample from 26 constituencies of vote padding (Exhibit "F").
26. The representative of 2nd Respondent in these proceedings has also admitted in a television interview that there was vote padding and indicated that their side would be able to show vote padding that went in favour of Petitioner. A video of this statement by Mr. MacManu was attached to the witness statement of PW1 and marked as Exhibit "G".
27. Vote padding is a serious violation of the right to vote of those eligible to vote, who each has a single vote. The effective admission by both Respondents, through what their respective Counsel put to PW1, is a serious indictment on the electoral process conducted by 1st Respondent. The Chairperson would, in fairness, have the opportunity through the subpoena process to come and testify in court of what the facts are in relation to such serious violations in the electoral process.
28. 1st Respondent and its Chairperson have previously highlighted efforts they made, especially through the biometric verification process for which huge sums of taxpayers' money was spent, to ensure that such vote padding did not occur. The Chairperson would be able, as a witness, to help the Court determine whether, as Counsel for 1st Respondent has put to PW1 in cross-examination, and as the representative of the 2nd Respondent in these proceedings has openly proclaimed, this indeed happened and to what extent.

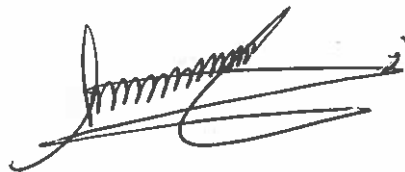
29. Even more fundamentally, there is testimony before the court, especially by PW2 and PW3, that the Chairperson of 1st Respondent, Mrs. Jean Adukwei Mensa, did not in fact even begin to undertake the assembling and collation of results that came in from the Regional Collation Centres, as she was required to do by Regulation 44(10) of C.I. 127.
30. Furthermore, there was evidence from all my witnesses of failures of constitutional duties of fairness and lack of due process by Mrs. Mensa in her conduct in respect of her steps prior to her declaration. It is again in the interest of justice that this Court hears from Mrs. Jean Adukwei Mensa in respect of these important issues.
31. There is also testimony of my witnesses about certain documents which officials of 1st Respondent have put forward as not being authentic documents, a very serious matter in respect of which Mrs. Jean Adukwei Mensa ought to be heard.
32. The testimony of PW2 that the Form 13 which Mrs. Jean Adukwei Mensa had claimed to be what she used to set out the results which she purported to have declared was not, in fact, the form provided for in C.I. 127, is another vital matter in respect of which testimony from Mrs. Jean Adukwei Mensa is required in the interest of justice.
33. In her affidavit resisting our application to have the Court order the production of certain documents for inspection, the Chairperson of 1st Respondent herself again effectively admits what PW1 had stated, namely, that the purported Form 13 was never made available to my agents. I attach a copy of the said affidavit marked as Exhibit "RECALL 4".
34. I am further advised by Counsel and verily believe that this Court itself has power to summon a witness in order to ensure the just determination of this Petition.
35. It is because Counsel for 1st Defendant, on 8th February 2021, acted in a manner contrary to previous representations to the Court and to me, the Petitioner, that it has become necessary for my Counsel to seek leave to re-open my case.

36. Indeed, the Court itself acknowledged that it had not expected that turn of events, hence the Court's decision to have Counsel for all parties come the next day to address the Court on the legal issues arising from the indications given to the Court, first by Counsel for 1st Respondent and then, by Counsel for the 2nd Respondent, that they would not be calling their witnesses, for whom they had previously filed witness statements.
37. My Counsel did also indicate clearly in Court, on Tuesday, 9th February 2021, that prior to that date, relying on the representations made specifically by Mrs. Jean Adukwei Mensa herself in affidavits before this Court, we believed that Mrs. Jean Adukwei Mensa would be testifying under oath. I am advised by Counsel and verily believe that these prior statements constituted an estoppel by own statement and conduct.
38. I am further advised by counsel and verily believe that after a subpoena is served by my lawyers on the Chairperson of the Electoral Commission, if she wishes to invoke, for instance, a witness immunity such as protection against self-incrimination, or any concern about violation of her human rights, she would be entitled to put that forward for the determination of the court.
39. Wherefore I swear to this Affidavit in support of the application herein to re-open our case for the specific purpose of serving a subpoena on the Chairperson, Mrs. Jean Adukwei Mensa, to come and testify before this court.

Sworn in Accra this 11th
day of February, 2021]


DEPONENT

BEFORE ME



COMMISSIONER FOR OATHS

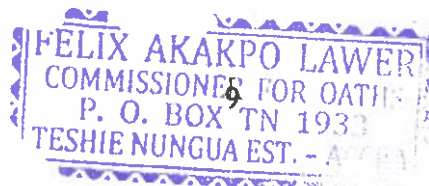


EXHIBIT "RECALL 1"
IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA - A. D. 2021

Filed on 20/12/2021
By [Signature]
Registrar
SUPREME COURT OF GHANA

PETITION No: J7/9/2021

**ARTICLE 64 OF THE 1992 CONSTITUTION AND
SUPREME COURT RULES, 1996 (C.I. 16) (AS
AMENDED BY C.I. 74 AND C.I. 99)**

**AMENDED PRESIDENTIAL ELECTION
PETITION**

**PRESIDENTIAL ELECTION HELD ON 7TH
DECEMBER 2020**

THE PETITION OF:

JOHN DRAMANI MAHAMA
No. 33 CHAIN HOMES
AIRPORT VALLEY DRIVE
ACCRA GL-128-5622

This is The Document
Marked... **RECALL 1** ...
Referred To The Affidavit
The... 11/12/2021 ...
Before Me... [Signature]
Commissioner For Oaths

APPLICANT

AND

ELECTORAL COMMISSION OF GHANA
8TH, RIDGE – ACCRA

1ST RESPONDENT

NANA ADDO DANKWA AKUFO-ADDO
HOUSE No. 02 ONYAA CRESCENT
NIMA – ACCRA

2ND RESPONDENT

**AFFIDAVIT OF 1ST RESPONDENT IN OPPOSITION TO MOTION
ON NOTICE FOR REVIEW**

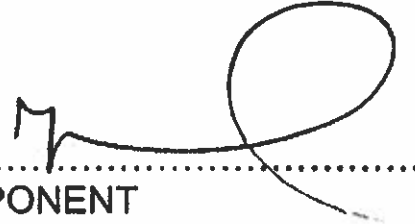
I, JEAN ADUKWEI MENSA of No. E199/2 8th Avenue Ridge, Accra
in the Greater Accra Region of the Republic of Ghana, make oath
and say as follows:

[Handwritten signature]

8. I verily believe that there are no exceptional circumstances or legal basis that warrant the intervention of this Honourable Court in this application for review.
9. Wherefore I swear to this affidavit in opposition to the application herein.

SWORN IN ACCRA THIS
22ND DAY OF JANUARY
2021

DEPONENT



BEFORE ME

COMMISSIONER OF



THE REGISTRAR
SUPREME COURT
ACCRA

AND FOR SERVICE ON THE APPLICANT OR HIS LAWYER,
TONY LITHUR ESQ., LITHUR BREW & COMPANY NO. 110B 1ST
KADE CLOSE KANDA ESTATES, ACCRA

AND FOR SERVICE ON THE 2ND OR HIS LAWYER AKOTO
AMPAW ESQ., AKUFO-ADDO, PREMPEH & CO., 67 KOJO
THOMPSON ROAD, ADABRAKA – ACCRA



**IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA - A. D. 2021**

Filed on 22-01-2021
at 2:55 pm
..... Regist
SUPREME COURT OF GHANA

PETITION No: J7/9/2021

**ARTICLE 64 OF THE 1992 CONSTITUTION AND
SUPREME COURT RULES, 1996 (C.I. 16) (AS
AMENDED BY C.I. 74 AND C.I. 99)**

**AMENDED PRESIDENTIAL ELECTION
PETITION**

**PRESIDENTIAL ELECTION HELD ON 7TH
DECEMBER 2020**

**THE PETITION OF:
JOHN DRAMANI MAHAMA**
No. 33 CHAIN HOMES
AIRPORT VALLEY DRIVE
ACCRA GL-128-5622

APPLICANT

AND

ELECTORAL COMMISSION OF GHANA
8TH, RIDGE — ACCRA

1ST RESPONDENT

NANA ADDO DANKWA AKUFO-ADDO
HOUSE No. 02 ONYAA CRESCENT
NIMA — ACCRA

2ND RESPONDENT

**STATEMENT OF CASE OF THE 1ST RESPONDENT IN
OPPOSITION TO THE APPLICATION FOR REVIEW**

A INTRODUCTION

1. The facts in the application are not in dispute. The Applicant applied to the ordinary bench of this Honourable Court to serve interrogatories on the 1st Respondent. The application was opposed by the 1st Respondent and then refused by the ordinary bench on 19th January 2021.
2. It is against this ruling that the Applicant has filed the present application for a review. It is our contention that the application herein is indeed an appeal in disguise.
3. The Applicant claims that the sole purpose for the proposed interrogatories was to facilitate expeditious trial, the very essence of C.I. 99.
4. The Petitioner does not suffer any injury to his rights if the application for review is refused as he still has the opportunity to solicit the same answers during cross examination unless it is his case that he does not have the full complement of his case and needs the answers to fill in.
5. My Lords the 1st Respondent submits that it would address the Court only on the issues of whether or not the review jurisdiction of the Supreme Court has been properly invoked so as not to burden the court with matters that the ordinary

bench had already heard and determined decisively by a unanimous decision on 19th January 2021.

B SUBMISSIONS OF THE RESPONDENT COMMISSION

Ground (a) The Court fundamentally erred in regarding CI 99 as rendering Order 22 of CI 47 inapplicable.

6. My Lords, the Applicant argues under this ground that: (1) in *Akufo-Addo & Others v John Mahama & Another (No. 2)* [2013] SCGLR (Special Edition) 50, this court held unanimously that CI 47 applied in the Supreme Court, and that the decision is binding on the court; (2) there is nothing to suggest that the Supreme Court (Amendment) (No 2) Rules, 2016, CI 99 does not support discovery processes, including interrogatories in election petitions; (3) interrogatories narrow down the issues for trial and expedite adjudication as required in CI 99. Therefore, Your Lordships erred when you disallowed the application for interrogatories in the name of CI 99.
7. My Lords, the part of your decision that the Applicant impugns is as follows: 'We are strictly bound to comply with CI 99, and we will not apply Order 22 of CI 47 of 2004...' The Applicant contends that Your Lordships dicta in the above decision 'are binding on the court'. My Lords, this is not a fair rendition of stare decisis in Ghana. Article 129 of the 1992 Constitution mandates Your Lordships' Court to 'depart from a previous decision when it appears to it right to do so'.

8. My Lords in 2013 this Honourable Court heard and determined the Presidential Election Petition without the time constraints now imposed in CI 99. Parties therein were permitted to resort to external interlocutory mechanism such as interrogatories, discoveries, inspections and further and better particulars to assist the court speed up the trial. Such interlocutory applications were made under CI 47 and the court entertained them.
9. My Lords, unfortunately, that trial took eight months to reach a decision. A phenomenon which led the Rules of Court Committee to initiate reforms leading to the passing of C.I. 99 setting specific timelines and making provision for only further and better particulars as the only aid the Respondent could resort to in the name of assisting the court to expedite trial. See Rule 69(A) (5) of C.I. 16 as amended by C.I. 99.
10. My Lords, we submit that if the lawmaker had wanted to make provisions for interventions like interrogatories, discoveries, admissions and inspections the lawmaker would have said so expressly.
11. Departure from a previous decision under Article 129 of the 1992 Constitution of the 1992 Constitution is mandatory, not discretionary. This court must depart whenever circumstances necessitate a departure.
12. Your Lordships have held that CI 99 necessitates a departure from its previous decision reported in *Akufo-Addo & Others v*

John Mahama & Another (No. 2) supra; the 1st Respondent invites your Lordships to affirm your decision.

13. Following the change of the law in 2016, Your Lordships' court, as an election court, does not have the time or leisure that the High Court enjoys. CI 99 now demands that Your Lordships conclude election petitions in 42 days, for your Lordships to resolve the outcome of the election for the ship of state to raise anchor. Your Lordships explained that the changes introduced in CI 99 necessitates the application or disapplication of the rules hitherto applicable in CI 47. In *Akufo-Addo & Others v John Mahama & Another (No. 2) supra*, there were no time constrains so interrogatories were *conveniently* made but under CI 99, they cannot be made conveniently. Order 22 of CI 47 empowers the court to grant leave to serve interrogatories on a matter 'in question' between the parties. The service of an application for leave to serve interrogatories, hearing and grant of the application, and the Respondent's answer do not fit conveniently into the timeframe in CI 99. The timelines in CI99 suggest that the need for interrogatories would arise only after the 10th day when the Respondent had appeared and filed an answer. Five days hence the Respondent must be in court for a pre-trial hearing. Order 22 r 6(2) provides that 'if a party against whom an order is made ... fails to comply with it, then, ... he shall be liable to committal for contempt.' Surely, no court would be quick to commit a party under such strict timeline situations.

14. The Respondent submits that the court was within its rights to depart from its decision in *Akufo-Addo & Others v John Mahama & Another (No. 2) supra*. Because of the interventions of CI99.
15. My Lords, the remedy of review is unavailable where the Applicant fails to establish exceptional circumstances resulting in miscarriage of justice. The Petitioner failed to show what miscarriage of justice he has suffered. Your Lordships' ruling is an interlocutory decision made in the case management of this case to respond to the time constraints imposed on the court under CI 99. Your Lordships' order does not preclude the Petitioner from asking the questions in the interrogatories in cross-examination if he so wishes.
16. In paragraph 27 of the application, the Petitioner states that "the facts to be interrogated relate directly to the acts of the 1st Respondent, particularly its Chairperson, Mrs. Jean Adukwei Mensa and could not be answered by any other person." Surely, that cannot be a legitimate ground for seeking an order for interrogatories because as your Lordships noted in the absence of the 1st Respondent's Chairperson any other person who deputises for her, shall prepare the answers to the questions. Interrogatories elicit facts, so does cross-examination. Your Lordships have spoken that time constraints on this court render interrogatories inconvenient.

So, let the Petitioner ask those questions in cross-examination if he so chooses.

17. Additionally the Petitioner in the Notice to Admit facts that he served on the 1st Respondent contravened the provisions of CI 47. This is because the Petitioner arbitrarily ordered the 1st Respondent to provide answers to the questions posed within three (3) days when no rules of either the High Court or the Supreme Court had set such timelines. The Petitioner sets his own imaginary timelines!

Ground (b) The Court fundamentally erred in determining that 'indeed, Rule 69(c)(4) of CI 99 ... implies that even amendments ought not to be sought and granted...' and thus occasioned a grave miscarriage of justice to Petitioner/Applicant.

18. The Petitioner argues under this ground that it is Rule 69A(6), not Rule 69(c)(4) of CI 99 that mentions amendments. Your Lordship's jurisdiction for review is invoked only where the Applicant seeking a review shows exceptional circumstances that resulted in miscarriage of justice to the Applicant. My Lords, the Petitioner seeks a review of your Lordships' decision dated 19 January 2021. The Petitioner does not say what 'grave miscarriage of justice' he has suffered from the pronouncement. Your Lordships are invited to dismiss this ground also.

Ground c) The Court fundamentally erred in failing to appreciate that its discretion ought to be exercised in accordance with Article 296 of the Constitution.

19. The Petitioner argues that Your Lordships 'fell into the fundamental error of misinterpreting the provisions of CI 99' resulting in an arbitrary and capricious exercise of discretionary power (paragraph 31). My Lords, this is the final court of this land; its pronouncements have the force of law. The court must not change its decisions upon a simple allegation by a party that the court is wrong. Your Lordships held that 'several statutory amendments have been made by CI 99 of 2016 which has restricted the practice and procedure of this court as regards an Election Petition. CI 99 states in plain words that a Presidential Election Petition shall be heard and completed in 42 days, also it specifies timelines for each stage of the proceeding. The Petitioner castigates your Lordships for 'fundamental error of misinterpreting the provisions of CI 99' but does not explain the alleged error. The Petitioner's conduct recalls the decision of this court in *Mechanical Lloyd Assembly Plant Ltd v Nartey* [1987-88] 2 GLR 598, SC, per Adade JSC:

"Let me say at once that, for all I know, virtually every judgment on this earth, arrived at as a result of evidence gathered from several sources, can be criticised. A Privy Council judgment put in the hands of any lawyer, along with the evidence grounding it, can be criticised in the same way as a High Court judgment

can be. A person who has lost a case will almost instinctively feel that the judgment must be wrong. And why not? If he had won, the decision would be right; so if he lost, how could the court be right? But the mere fact that a judgment can be criticised is no ground for asking that it should be reviewed. The review jurisdiction is a special jurisdiction to be exercised in exceptional circumstances. It is not an appellate jurisdiction. It is a kind of jurisdiction held in reserve, to be prayed in aid in the exceptional situation where a fundamental and basic error may have inadvertently been committed by the court, which error must have occasioned a gross miscarriage of justice. The review jurisdiction is not intended as a try-on by a party after losing an appeal; nor is it an automatic next step from an appeal; ***neither is it meant to be resorted to as an emotional reaction to an unfavourable judgment.***"

My Emphasis.

20. My Lords this court has held and rightly so that CI 99 had taken away the Court's discretion regarding the process of discovery in view to the strict timelines of the Presidential Election Petition.
21. The Petitioner's grievance in Paragraph 32 of the Statement of Case is unclear obviously because the paragraph totally ignores the context in which the dictum was made. The thrust of Your Lordships' decision is that CI 99 of 2016 has restricted

the practice and procedure of the Supreme Court as a Presidential Election Court, rendering the discovery processes under CI 47 inapplicable.

22. Indeed to borrow from Adade JSC supra, the reaction of the Petitioner to the ruling of 19th January 2021 is one of "***an emotional reaction to an unfavourable judgment.***"

23. My Lords, also in the unreported case of *Charles Lawrence Quist v Ahmed Danawi*; review motion NO. J7/8/2015 dated 5th November 2015, Dotse JSC, reading the lead judgment of the court said:

"The authorities are quite settled that the review application is not a process for which a losing party in the Supreme Court may seek to have another bite of the cheery. Instead, an Applicant in a review application has to point out from the judgment reviewed from the exceptional circumstances which have resulted into a miscarriage of justice. None was however offered by the Applicant in this case.

24. My Lords it is for these reasons that we urge your Lordships to dismiss this application and proceed with the hearing of the Petition filed by the Petitioner in this Court.

25. We pray that the application herein be dismissed.

DATED AT #8 NII ODARTEY OSRO STREET KUUKU HILL (FRONTLINE CAPITAL ADVISORS BUILDING), OSU - ACCRA, THIS 22ND DAY OF JANUARY, 2021.



JUSTIN AMENUVOR #eGAR 01459/21
AMENUVOR AND ASSOCIATES
LAWYERS FOR THE ELECTORAL
COMMISSION OF GHANA



THE REGISTRAR
SUPREME COURT
ACCRA

AND FOR SERVICE ON THE PETITIONER OR HIS LAWYER, TONY LITHUR ESQ., LITHUR BREW & COMPANY NO. 110B 1ST KADE CLOSE KANDA ESTATES, ACCRA

AND FOR SERVICE ON NANA ADDO DANKWA AKUFO-ADDO OR HIS LAWYER AKOTO AMPAW ESQ., AKUFO-ADDO, PREMPEH & CO., 67 KOJO THOMPSON ROAD, ADABRAKA - ACCRA

EXHIBIT "RECALL 2"

**IN THE SUPERIOR COURT OF JUDICATURE, THE SUPREME COURT
(CIVIL DIVISION) SITTING IN ACCRA ON TUESDAY THE 19TH DAY OF
JANUARY, 2021**

**CORAM: YEBOAH (CJ) (PRESIDING), APPAU, MARFUL-SAU,
AMEGATCHER, PROF. KOTEY, OWUSU, TORKORNOO JJ.S.C)**

*This is The Document
Marked... RECALL 2
Referred To in The Affidavit*
**WRIT
NO. J1/5/2021**

**ARTICLE 64 OF THE CONSTITUTION AND SUPREME COURT RULES, 1996
(C. I. 16) AS AMENDED BY C. I. 74 AND C. I. 99)**

**PRESIDENTIAL ELECTION PETITION
PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER, 2020**

JOHN DRAMANI MAHAMA - PETITIONER

VRS

- 1. ELECTORAL COMMISSION - 1ST RESPONDENT**
2. NANA ADDO DANKWA AKUFO-ADDU - 2ND RESPONDENT

PARTIES: PETITIONER PRESENT

1ST RESPONDENT REPRESENTED BY JEAN MENSA, CHAIRPERSON

2ND RESPONDENT REPRESENTED BY PETER MAC-MANU

COUNSEL: TSATSU TSIKATA WITH HIM TONY LITHUR FOR THE PETITIONER

**JUSTIN AMENUVOR FOR 1ST RESPONDENT WITH HIM A. A.
SOMUAH ASAMOAH**

**AKOTO AMPAW FOR 2ND RESPONDENT WITH HIM FRANK DAVIES,
KWAKU ASIRIFI AND YAW OPPONG**

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9/10/2021
REGISTRAR
ACCRA G/R

Counsel for Petitioner moves the application for interrogatories in terms of the motion paper and the supporting affidavit.

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RULING:

The Petitioner/Applicant has prayed this Court to grant the application to serve interrogatories. The basis for the application as argued by learned Counsel for the Petitioner/Applicant is to assist the Court to narrow issues for the trial of this Petition.

Interrogatories under Common Law is discretionary, it should be granted or refused when all the circumstances are taken into consideration. It should be noted that the questions seek to elicit answers to the issues raised by and the reliefs sought in the Petition. Interrogatories must be relevant to the issues and relate to the matters in controversy between the parties, in this case the Petitioner and the 1st Respondent.

The Court is of the opinion that the crucial issue of relevancy has not been established in this application. Reference was made to the 2013 Election Petition titled: **NANA ADDO DANKWA AKUFO-ADDO & 2 ORS VRS JOHN DRAMANI MAHAMA & 2 ORS [2013] SCGLR 50**, in which an application to serve interrogates was granted by this Court. However, subsequent to 2013, several statutory amendments have been made by C.I. 99 of 2016 which has restricted the practice and procedure of this Court as regards Election Petition.

Indeed, Rule 69 (c) (4) of the Supreme Court amendment Rules C.I. 99 directs the expeditious disposal of the Petition and sets timelines for this Court to dispose

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of the Petition. It implies that, even amendments ought not to be sought and granted as well as joinder of parties. Subsequent statutory amendments pointed out after 2013 have provided us with new procedural regime and strict timelines. We are strictly bound to comply with C.I.99 and therefore we will not apply Order 22 of C.I.47 of 2004 in this circumstance. We accordingly refuse to grant the application and same is accordingly dismissed.

BY COURT

Let the issues for determination be filed by tomorrow before 9:30 am. Hearing of the petition is adjourned to 9:30am on 20th January, 2021.

**ANIN YEBOAH
CHIEF JUSTICE**

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9/1/2021
REGISTRAR
SUPREME COURT, ACCRA, G/R

**Y. APPAU
JUSTICE OF THE SUPREME COURT**

**S. K. MARFUL-SAU
JUSTICE OF THE SUPREME COURT**

**N. A. AMEGATCHER
JUSTICE OF THE SUPREME COURT**

**PROF. N. A. KOTÉY
JUSTICE OF THE SUPREME COURT**

**M. OWUSU (MS)
JUSTICE OF THE SUPREME COURT**

**G. TORKORNOO (MRS)
JUSTICE OF THE SUPREME COURT**

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9/10/2021
.....REGISTRAR
.....SUPREME COURT, ACCRA, G/R

EXHIBIT "RECALL 3"

IN THE SUPERIOR COURT OF JUDICATURE, THE SUPREME COURT
(CIVIL DIVISION) SITTING IN ACCRA ON THURSDAY THE 28TH DAY OF
JANUARY, 2021

CORAM: YEBOAH (CJ) (PRESIDING), APPAU, MARFUL-SAU,
AMEGATCHER, PROF. KOTEY, OWUSU, TORKORNOO, AMADU AND
PROF. MENSA-BONSU J.J.S.C

Marked... **RECALL 3**
Referred To... The Affidavit... CIVIL MOTION
This... day Of... NO. J7/9/2021
Before Me... **11/5/2021**

ARTICLE 64 OF THE CONSTITUTION AND SUPREME COURT RULES,
1996

(C. I. 16) AS AMENDED BY C. I. 74 AND C. I. 99)

PRESIDENTIAL ELECTION PETITION
PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER, 2020

JOHN DRAMANI MAHAMA - PETITIONER

VRS

1. ELECTORAL COMMISSION - 1ST RESPONDENT
2. NANA ADDO DANKWA AKUFO-ADDO - 2ND RESPONDENT

PARTIES: PETITIONER/APPLICANT REPRESENTED BY JOHNSON
ASIEDU NKETIA

1ST RESPONDENT/RESPONDENT REPRESENTED BY JEAN
MENSA, CHAIRPERSON

2ND RESPONDENT/RESPONDENT REPRESENTED BY PETER
MAC-MANU

COUNSEL: TSATSU TSIKATA WITH HIM TONY LITHUR FOR THE
PETITIONER/APPLICANT

**JUSTIN AMENUVOR FOR 1ST RESPONDENT/RESPONDENT
WITH HIM A. A. SOMUAH ASAMOAH**

**AKOTO AMPAW FOR 2ND RESPONDENT/RESPONDENT WITH
HIM FRANK DAVIES, KWAKU ASIRIFI AND YAW OPPONG**

BY COURT

Tsikata – We filed an application for review on 20th January, 2021. It is supported by an affidavit and Statement of Case. We rely on those documents. The review is in respect of the ruling delivered on 19th January, 2021 which we have exhibited as Exhibit TL1.

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BY COURT

The Review Jurisdiction of the Supreme Court as conferred by Article 133 (1) of the 1992 Constitution and regulated by Rules 54 - 60 of the Supreme Court Rules 1996 C.I. 16 has set down the threshold that the Applicant has to satisfy in order to succeed in an application for review. It is a special jurisdiction conferred on this Court.

The threshold are:

- (a) exceptional circumstances which has resulted in miscarriage of justice.
- (b) discovery of new and important matter or evidence, which, after the exercise of due diligence was not within the Applicant's knowledge or could not be produced by him at the time when the decision was given.

We have read the processes filed in this application and have listened to Counsel. We are not satisfied that the applicant has met the statutory requirement of Rule 54 (a) of C.I. 16 in order to succeed in the application for review of the ruling of this Court dated 19th January, 2021.

The application fails and it is accordingly dismissed.

The panel will be reconstituted to give further directions for the trial of this petition.

**(SGD) ANIN YEBOAH
CHIEF JUSTICE**

**(SGD) Y. APPAU
JUSTICE OF THE SUPREME COURT**

**(SGD) S. K. MARFUL-SAU
JUSTICE OF THE SUPREME COURT**

**(SGD) N. A. AMEGATCHER
JUSTICE OF THE SUPREME COURT**

**(SGD) PROF. N. A. KOTEY
JUSTICE OF THE SUPREME COURT**

**(SGD) M. OWUSU (MS)
JUSTICE OF THE SUPREME COURT**

**(SGD) G. TORKORNOO (MRS)
JUSTICE OF THE SUPREME COURT**

**(SGD) I. O. TANKO AMADU
JUSTICE OF THE SUPREME COURT**

**(SGD) PROF. H. J. A. N. MENSA-BONSU (MRS)
JUSTICE OF THE SUPREME COURT**

Petition No: J1/5/2021

ARTICLE 64 OF THE 1992 CONSTITUTION AND SUPREME COURT RULES, 1996 (C.I. 16) (AS AMENDED BY C.I. 74 AND C.I. 99)

AMENDED PRESIDENTIAL ELECTION PETITION

PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER 2020

THE PETITION OF:

JOHN DRAMANI MAHAMA
No. 33 Chain Homes
Airport Valley Drive
Accra GI-128-5622

This is The Document
Marked... **RECALL 4**
referred To in The Affidavit
No. 11028231
before Me...
Commissioner For Ghana

PETITIONER/APPLICANT
AND

ELECTORAL COMMISSION OF GHANA
8th, Ridge – Accra

1ST RESPONDENT/RESPONDENT

NANA ADDO DANKWA AKUFO-ADDO
House No. 02 Onyaa Crescent
Nima – Accra

2ND RESPONDENT/RESPONDENT

**AFFIDAVIT IN OPPOSITION TO MOTION ON NOTICE FOR
LEAVE TO INSPECT DOCUMENTS**

I, Jean Adukwei Mensa, of House No. E199/2 8th Avenue, Ridge – Accra make oath and say as follows:

1. I am the Chairperson of the 1st Respondent/Respondent and the Deponent herein and depose to this Affidavit in respect of

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matters which are within my personal knowledge, information and belief.

2. At the hearing of this Application, Counsel for the 1st Respondent/Respondent shall seek leave of the Court to refer to all processes filed and the proceedings in this matter to have full force and effect.
3. That the 1st Respondent/Respondent has been served with the application herein and is opposed to same.
4. The Petitioner claims that the sole purpose for the proposed request is to facilitate expeditious trial. The Petitioner does not suffer any injury to his rights if the court holds the contrary view by refusing the Application herein.
5. The 1st Respondent/Respondent admits Paragraph 3 of the affidavit in support but says that it had been advised by its lawyers that the request was not grounded in the rules of this Honourable Court.
6. Paragraph 6 of the affidavit in support of the Application herein is denied as the Answer filed by the 1st Respondent did not have any Exhibits attached to same.
7. I say that save for forms 13 and 13B which is attached to my Witness Statement filed on 22nd January, 2021 as Exhibit 4, the Petitioner already has in his possession, custody or power, duplicate copies of all the other forms and documents he is requesting to inspect as same were given to his Agents at the various Collation Centres across the country in accordance with law.
8. Form 13 is generated from the summation of all the results in the Presidential Regional Results Summary Sheet (FORM

- 12). The Petitioner has duplicate copies of the Presidential Regional Results Summary Sheet (FORM 12) as admitted by the two witnesses of the Petitioner.
9. Form 13B was generated by the 1st Respondent to aid the declaration of results obtained by all the Candidates by aggregating the results from the Presidential Regional Results Summary Sheet (FORM 12) for the 16 Regions, in a way that does not materially affect the form's substance, and not calculated to mislead any person.
10. The fact that the Petitioner already has the duplicate copies of the relevant forms in his possession, custody or power, been admitted by the Petitioner's witnesses in their evidence before this Court. The Petitioner's witnesses testified in this court as follows:

JOHNSON ASIEDU NKETIA

- Q. *How many agents did the Petitioner appoint for each polling station?*
- A. *Two agents*
- Q. *You trained you agents that at the end of counting and entering of figures, they should collect their copies of Form 8B, whether or not they signed it, is that correct?*
- A. *That is correct, my Lords.*
- Q. *You also appointed agents for each of the 275 Constituency Collation Centres. Is that correct?*
- A. *That is correct, my Lords.*
- Q. *You trained them to expect to receive the duplicate of the Form 8B that had been given to them at the polling stations. Is that correct?*

A. *That is correct, my Lords.*

Q. *You also trained them that once Form 10s were completed, they were entitled to their copies. Is that correct?*

A. *That is correct.*

Q. *So it is right to assume that your agents had all the Form 10s with them. Is that correct?*

A. *Yes my Lords, it could be assumed. But whether that is the case, it is another matter.*

DR. MICHAEL KPESSE-WHYTE

Q: *Each of the representatives of the Presidential candidates present are given copies of the Form 8B is that correct?*

A: *That's correct.*

Q: *The representatives are also there when all the Form 8Bs are put together and entries are made on Form 9 and 10. Is that correct*

A: *That's correct.*

Q: *When your representatives are there, they are given Form 9 and 10 to sign on it.*

A: *That's correct*

Q: *We now move to the Regional Collation Centre. You have representatives there*

A: *That's correct*

Q: *There again the constituency forms are entered on form 11 and 12 and again they go through the process of either signing or refusing to sign and stating reasons. Is that correct*

A: *That's correct*

Q: *And copies again are given to the representatives.
Is that correct.*

A: *That's correct*

11. I say that there were 38,622 Polling Stations, 311 Special Voting Centres, 275 Constituency Collation Centres and 16 Regional Collation Centres.
12. The Petitioner had a cumulative total of at least 78,450 counting agents/representatives, throughout the country, from the polling stations to the National Collation Centre.
13. From the admissions of the Petitioner's witnesses, the Petitioner possesses, has control or has power over as many as 39,225 duplicate copies of the relevant Election Forms.
14. The duplicate copies of the relevant Forms were produced in real time as the originals, and are an accurate reproduction of the original, produced by the same impression on carbonized paper.
15. I say that no question as to authenticity or unfair admission have been raised concerning the duplicate copies that the Petitioner possesses or has under his custody or power.
16. The Petitioner has chosen to tender in evidence, what both he and Asiedu Nketia claims are "samples" of the documents he possesses or has custody of or power over.
17. The Petitioner has effectively concluded his case by calling his only two witnesses, none of whom has shown that the declared results of the election are invalid.
18. The Petitioner has failed to show that the inspection of the documents is necessary and that there are no other ways

to obtain the information sought, to wit, putting in evidence, the duplicate copies that he already has.

19. I am advised by Counsel and I verily believe the same to be true that the previous Request to Inspect of Documents and Request to Admit Facts that the Petitioner filed have no legal basis whatsoever.

20. I say that in response to Paragraph 8 of the Affidavit in support, the 1st Respondent/Respondent has not denied the authenticity of the documents attached to Johnson Asiedu Nketia's Witness Statement as the witness admitted during cross examination that one was an updated version of the other and duly signed by the Agents present.

21. Save as herein before admitted, the 1st Respondent denies each and every allegation of fact contained in the affidavit in support to this application.

22. Wherefore I swear to this affidavit in opposition to the application herein and pray that same be refused.

SWORN IN ACCRA the 3rd

Day of February, 2021


DEPONENT

BEFORE ME


COMMISSIONER FOR OATHS

THE REGISTRAR
SUPREME COURT
ACCRA

AND FOR SERVICE ON THE PETITION OR HIS LAWYER, TONY LITHUR ESQ., LITHUR BREW & COMPANY NO. 110B 1ST KADE CLOSE KANDA ESTATES, ACCRA.

AND FOR SERVICE ON THE 2ND RESPONDENT OR HIS LAWYER AKOTO AMPAW ESQ., AKUFO-ADDO, PREMPEH & CO., 67 KOJO THOMPSON ROAD, ADABRAKA – ACCRA.