

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE HELD AT CAPE COAST IN THE CENTRAL REGION ON WEDNESDAY THE 28<sup>TH</sup> DAY OF JULY 2021 BEFORE HIS LORDSHIP JUSTICE KWASI BOAKYE-HIGH COURT JUDGE

SUIT NO. CRP/E/3/21

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

AND

IN THE MATTER OF SECTION 16 OF THE REPRESENTATION

OF THE PEOPLE LAW, 1992 [PNDCL 284] AS AMENDED

AND

IN THE MATTER OF PARLIAMENTARY ELECTIONS FOR THE ASSIN NORTH CONSTITUENCY HELD ON 7<sup>TH</sup> DECEMBER 2020

AND

IN THE MATTER OF A PETITION BY MICHEAL ANKOMAH-NIMFAH CHALLENGING THE DECLARATION BY THE ELECTORAL COMMISSION OF JAMES QUAYSON a.k.a



**JAMES GYAKYE QUAYSON AS MEMBER OF PARLIAMENT  
ELECT FOR THE ASSIN NORTH CONSTITUENCY  
PURSUANT TO THE PARLIAMENTARY ELECTIONS HELD  
ON 7<sup>TH</sup> DECEMBER 2020.**

**BETWEEN:**

**MICHAEL ANKOMAH-NIMFAH  
H/NO. 65 OB AFIA TUA A STREET ..... PETITIONER  
ASSIN BEREKU**

**VRS**

**1. JAMES QUAYSON a.k.a. JAMES GYAKYE QUAYSON**

**ASSIN-BEREKU ..... 1<sup>ST</sup> RESPONDENT**

**2. THE ELECTORAL COMMISSION OF GHANA**

**HEAD OFFICE, RIDGE ACCRA ..... 2<sup>ND</sup> RESPONDENT.**

---

**JUDGMENT**

---

I begin this judgment with a quotation from Nelson Mandela, Ex South African President at the inauguration of the Constitutional Court on 14<sup>th</sup> February 1995 as follows:

"We expect you to stand on guard not only against direct assault on the principles of the Constitution, but against insidious corrosion".

Again, let me refer to the relevant portion of the introduction to the judgment of the South African Constitutional Court dated 29<sup>th</sup> June 2021 wherein the Constitutional Court convicted and sentenced Jacob Zuma, a former President of that country for contempt of Court as follows:

“It is indeed the lofty and lonely work of the Judiciary, impervious to public commentary and political rhetoric, to uphold, protect and apply the Constitution and the law at any and all costs. The corollary duty borne by all members of South African society-lawyers, lay-people and politicians alike-is to respect and abide by the law, and court orders issued in terms of it, because unlike other arms of State, courts rely solely on the trust and confidence of the people to carry out their constitutionally-mandated function.

The matter before us has arisen because these important duties have been called into question, and the strength of the Judiciary is being tested”.

See the case of Secretary of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State vs Jacob G. Zuma and 2 others. It is with these words of wisdom operating at the back of my mind that I set off the journey of writing this judgment.

It would be recalled that on 30<sup>th</sup> December 2020, one Michael Ankomah-Nimfah, who for ease of convenience shall be called the Petitioner, caused an action to be instituted against James Quayson a.k.a. James Gyekye Quayson and the Electoral Commission of Ghana [hereinafter called the 1<sup>st</sup> and 2<sup>nd</sup>

Respondents respectively]. In the action, the Petitioner claims the following against the Respondents jointly and severally:

- a. a declaration that the filing of Parliamentary nomination forms by 1<sup>st</sup> Respondent when he held a Canadian Citizenship at the time of filing the said nomination form between 5<sup>th</sup>-9<sup>th</sup> October, 2020, violates Article 94 [2] [a] of the Constitution of the Republic of Ghana 1992, Section 9[2] [a] of Representation of the People Act 1992 [PNDCL 284] as Amended, as well as Public Elections Regulations, 2020 [C.I. 127] and same is illegal, void and of no effect whatsoever.
- b. a declaration that the decision of the 2<sup>nd</sup> Respondent to clear the 1<sup>st</sup> Respondent to contest Parliamentary Elections in the Assin North Constituency when the 1<sup>st</sup> Respondent was not qualified as a candidate on account of his holding dual nationality violates Article 94 [2] [a] of the Constitution of the Republic of Ghana 1992, Section 9 [2] [a] of the Representation of the people Act 1992 [PNDCL 284] as Amended as well as the Public Elections Regulations, 2020 [C.I. 127] and same is void and of no effect whatsoever.
- c. a declaration that the decision by the 2<sup>nd</sup> Respondent to allow the 1<sup>st</sup> Respondent to contest Parliamentary Election in the Assin North Constituency when he held a Canadian Citizenship at the time of filing his nomination form, violates Article 94 [2] [a] of the Constitution 1992, the Representation of People Act 1992, [PNDCL 284] as Amended, as well as Public Election Regulations, 2020 [C.I.

127] and same is illegal and of no effect whatsoever.

- d. a declaration that 1<sup>st</sup> Respondent's election as Member of Parliament for the Assin North Constituency is null and void and of no effect whatsoever as same violates Article 94 [2] [a] of the Constitution of the Republic of Ghana 1992, Section 9 [2] [a] of the Representation of the People Act 1992, [PNDCL 284], as Amended, as well as the Public Elections Regulations, 2020 [C.I. 127] being laws regulating Parliamentary Elections in Ghana.
- e. a declaration that 1<sup>st</sup> Respondent at the time of the Parliamentary Elections in the Assin North Constituency was not qualified to contest as a candidate for the Assin North Constituency in accordance with the electoral laws for the time being in force in Ghana.
- f. An order of the Court cancelling the Parliamentary Elections in the Assin North Constituency and further Orders directed at 2<sup>nd</sup> Respondent to conduct fresh Elections in the Assin North Constituency.
- g. an order of Perpetual injunction restraining 1<sup>st</sup> Respondent from holding himself out as Member of Parliament-Elect for the Assin North Constituency or presenting himself to be sworn in as a Member of Parliament".

In the accompanying 20-paragraph Petition, the Petitioner describes himself as a mason and resident of Assin Bereku, a constituent of the Assin North Constituency, and a registered voter with Voter Registration Number 9748001146. He indicates

that the 1<sup>st</sup> Respondent is the Member of Parliament-Elect for the Assin North Constituency in the Central Region of the Republic of Ghana whereas the 2<sup>nd</sup> Respondent is the Constitutional body mandated by article 43 of the Constitution of the Republic of Ghana, 1992, the Electoral Commission Act, 1993 [Act 451] and the Representation of the People Law, 1992 [PNDCL 284] as amended, to conduct and supervise all public elections and referenda in Ghana.

It is his case that the 1<sup>st</sup> Respondent contested the Parliamentary Elections organized by 2<sup>nd</sup> Respondent on 7<sup>th</sup> December 2020 in the Assin North Constituency, supra. The 2<sup>nd</sup> Respondent declared him [1<sup>st</sup> Respondent] as Member of Parliament-Elect for the Constituency.

On 5<sup>th</sup> October 2020, 2<sup>nd</sup> Respondent opened nominations for the filing of Parliamentary forms by candidates who intended to contest the 2020 Parliamentary Elections at the 2<sup>nd</sup> Respondent's offices. The filing of nominations closed on 9<sup>th</sup> October 2020. As part of the contents of his nomination forms, 1<sup>st</sup> Respondent solemnly declared that he is otherwise not disqualified from standing for elections by any law for the time being in force in Ghana.

At all material times, 1<sup>st</sup> Respondent was required to append his signature before a judicial officer in a Statutory Declaration prior to filing his nomination forms with 2<sup>nd</sup> Respondent. The Petitioner avers that 1<sup>st</sup> Respondent held both Canadian Citizenship and Ghanaian Citizenship at the time of filing his nomination forms to contest the Parliamentary Election for the Assin North

Constituency. The Petitioner states categorically that at the close of the filing of Parliamentary nomination forms for the Assin North Parliamentary Elections with 2<sup>nd</sup> Respondent on 9<sup>th</sup> October 2020, 1<sup>st</sup> Respondent had not renounced his Canadian Citizenship.

Consequently, the Petitioner contends that the incidence of non-renunciation of the Canadian Citizenship by 1<sup>st</sup> Respondent prior to the filing of his Parliamentary nomination forms with 2<sup>nd</sup> Respondent, renders 1<sup>st</sup> Respondent not qualified to contest for Parliamentary Elections in Ghana, and same offends article 94 [2] [a] of the Constitution, 1992 as he owed allegiance to Canada at the time of filing his nomination and any subsequent renunciation is of no legal effect whatsoever.

The Parliamentary Elections organized by 2<sup>nd</sup> Respondent is regulated by law i.e. the Constitution of the Republic of Ghana 1992, the Representation of the People Law, 1992 [PNDCL 284] as amended as well as the Public Elections Regulations, 2020 [C.I. 127].

According to him, the 1992 Constitution of Ghana provides for the qualification of a Member of Parliament as set out in article 94 [2] [a], which is also reproduced in PNDCL 284, as amended.

He contends that the process of becoming a Member of Parliament commences with the filing of nomination forms of a prospective candidate with 2<sup>nd</sup> Respondent and terminates with due election and swearing in of the elected candidate as a Member of Parliament. As a result, he argues that the requirement of section 9 [2] [a] of PNDCL 284, supra, kicks in as soon as a person takes the first official step in the Parliamentary

Election process by filing his or her nomination forms with 2<sup>nd</sup> Respondent. The Petitioner repeats that not having renounced his Canadian Citizenship at the time of filing the nomination forms with 2<sup>nd</sup> Respondent, 1<sup>st</sup> Respondent was not qualified to contest for election as a Member of Parliament in the Parliamentary Elections for the Assin North Constituency organized by 2<sup>nd</sup> Respondent on 7<sup>th</sup> December 2020.

Again, he says that 2<sup>nd</sup> Respondent violated the Constitution 1992 and other relevant laws regulating elections in Ghana by allowing 1<sup>st</sup> Respondent to participate in the Parliamentary Elections and proceeding to declare him as Member of Parliament-Elect for the Assin North Constituency and equally gazetting the Notice of Results of the Parliamentary Elections on 22<sup>nd</sup> December 2020 when 1<sup>st</sup> Respondent was not qualified to be elected as a Member of Parliament.

The Petitioner again contends that 1<sup>st</sup> Respondent was not qualified as such on account of his dual nationality and that the Parliamentary Elections organized by 2<sup>nd</sup> Respondent in the Assin North Constituency ought to be cancelled and a re-run of the elections ordered.

Finally, he maintains that by reason of the aforesaid, unless and until restrained by the Court, 1<sup>st</sup> Respondent would hold himself out as the duly elected Member of Parliament for the Assin North Constituency and present himself to be sworn in as such.

On the other hand, 1<sup>st</sup> Respondent filed his Answer to the Petition on 21<sup>st</sup> January 2021 and amended same with leave of Court on 30<sup>th</sup> March 2021. In his Amended Answer to the Petition, he



contends that the Petition lacks any legal basis, it is incompetent and lacks any factual basis. He argues that it is only intended to undermine the sovereign will of the people of the Assin North Constituency who validly voted for him. According to him, the Petition ought to be dismissed.

Further, he says that at the time 2<sup>nd</sup> Respondent opened nominations and he filed his nomination forms, he was not disqualified from standing for elections by any law in force in Ghana. He contends that owing allegiance to another country other than Ghana within the meaning of article 94 [2] [a] of the 1992 Constitution does not and cannot mean that the person is necessarily a dual citizen as the Petitioner seems to suggest and that if the framers of the 1992 Constitution intended that to be the case, they would have expressly stated so in article 94 [2] [a].

Therefore, to him, within the intendment of article 94 [2] [a] of the 1992 Constitution, he is only required not to owe allegiance to any other country other than Ghana which he did by disavowing his allegiance to Canada in 2019 prior to the commencement of the nomination processes. Consequently, he says that at the time of filing his nomination forms to contest the Parliamentary Elections for the Assin North Constituency, he did not hold both Canadian and Ghanaian Citizenship. This is because, according to him, in December 2019, he had renounced his Canadian Citizenship by filing an application to that effect subject to the issuance of the Certificate of Renunciation which constitutes an administrative act and serves as evidence of the fact of renunciation. Therefore, neither the 1992 Constitution, PNDCL

284, as amended, nor Act 451 which the Petitioner heavily relies on and or any other law in Ghana states in what shape or form or manner renunciation of citizenship of another country and or allegiance owed to another country other than Ghana must take or crystalise.

More precisely, he contends that no law in Ghana states that renunciation of citizenship of another country by a Ghanaian or disavowing allegiance owed to another country other than Ghana takes effect only when a Certificate of Renunciation is presented to the person who seeks to renounce the citizenship.

It is his case that prior to the filing of his Parliamentary nomination forms with 2<sup>nd</sup> Respondent, he met the requirement of article 94 [2] [a] of the 1992 Constitution on the basis that he had renounced his Canadian Citizenship. He was only awaiting for the issuance of the Certificate of Renunciation which only constitutes evidence of renunciation. Consequently, at the time 2<sup>nd</sup> Respondent opened the filing of Parliamentary nominations, he was eligible and qualified under the electoral laws of the country to contest as a Member of Parliament.

As part of the application in renouncing his Canadian Citizenship, he was required to provide a reason for the renunciation and to provide proof thereof. Therefore, he obtained a letter of attestation from the Constituency Chairman of the National Democratic Congress [NDC], Assin North Constituency dated 16<sup>th</sup> December 2019 clearly indicating that he had been elected as the Parliamentary Candidate for the NDC in the Assin North Constituency and will be contesting the 7<sup>th</sup> December 2020

Parliamentary Elections. Again, he argues that by attaching the said attestation letter to his application for the renunciation, it clearly shows his intention that he has renounced his Canadian Citizenship and waiting for the evidence of renunciation which is the Certificate of Renunciation.

Admittedly, he says that the Certificate of Renunciation was issued to him in November 2020 before the 7<sup>th</sup> December Parliamentary Elections and that at the time of filing his Parliamentary nomination forms with 2<sup>nd</sup> Respondent, he had renounced his Canadian Citizenship. He adds that as an Applicant renouncing his Canadian Citizenship, he has no control over the process of issuance of the Certificate of Renunciation by the Canadian Authorities since that was their primary duty and not his. Meanwhile, he explains that the delay in the issuance of the Certificate of Renunciation which is an administrative act, was caused by two [2] months lockdown of administrative facilities and that generally, the process of renunciation and the issuance of the Certificate thereof take six [6] to nine [9] months to complete but that was derailed by two [2] months lockdown of administrative facilities world-wide.

It is his case that before the 7<sup>th</sup> December elections, a youth group known as Concerned Citizens of Assin North alleging that he owed allegiance to another country other than Ghana and that he was not qualified to be a Member of Parliament, presented a petition to 2<sup>nd</sup> Respondent seeking his disqualification. Upon receipt of the petition, 2<sup>nd</sup> Respondent in a letter dated 24<sup>th</sup> November 2020, reference No. EC/CR8/VOL.7/41, requested him to respond thereto. He then presented the Certificate of

Renunciation of his Canadian Citizenship. Upon being satisfied, 2<sup>nd</sup> Respondent cleared him to contest the 7<sup>th</sup> December 2020 Parliamentary Elections.

He explains that the filing of nominations is not an event but a process which ends after 2<sup>nd</sup> Respondent is satisfied that the nominee has met all legal requirements. Therefore, if qualification and eligibility criteria for one to become a Member of Parliament only end at the time of filing of nominations, 2<sup>nd</sup> Respondent would not have even entertained the petition from the youth group from the Assin North Constituency.

He forcefully contends that 2<sup>nd</sup> Respondent complied with the Constitution 1992 and other electoral laws in Ghana by allowing him to participate in the said Parliamentary Elections and his subsequent declaration and gazette by the 2<sup>nd</sup> Respondent as Member of Parliament for the Assin North Constituency was lawful, legal, proper and in accordance with law since he was qualified to be elected as such.

He avers that in any event, section 20 [d] of PNDCL 284, as amended expressly states that the election of a candidate be declared void on an election petition only if the Court is satisfied that the candidate was not qualified for election at the time of his election and not at the time of his nomination. He referred to the Cambridge definition of the word 'election' as 'a time when people vote in order to choose someone for a political or official job'. He says that nomination is also an act of officially suggesting someone or something for a job, position or prize.

According to him, the grounds of cancelling results of Parliamentary Elections or declaring same void are expressly and exhaustively provided by section 20 [d] of PNDCL 284, supra. He adds that the Petitioner does not allege any of such grounds in his petition.

Equally, he states that the reliefs that the Court can grant in an election petition are exhaustively and expressly stated in section 19 of PNDCL 284, supra. According to him, however, reliefs 'a', 'b', 'c', 'd' and 'g' as endorsed on the petition do not fall within the scope of section 19 of PNDCL 284, supra.

It is his case that the decision by 2<sup>nd</sup> Respondent to grant him clearance to participate in the December 7<sup>th</sup> 2020 Parliamentary Elections is an administrative act and an exercise of discretion in the performance of its functions. Therefore, any challenge to that discretion or administrative act cannot be entertained in an election petition. Clearly, he contends that the instant matter is not an election petition.

In his amended Answer, he gave notice to raise preliminary objection as follows;

1. That the 'Petition' discloses no reasonable cause of action.
2. That the election petition jurisdiction of the Court is not properly invoked.
3. That the Court lacks jurisdiction to cancel the result of the 7<sup>th</sup> December 2020 Parliamentary Election or any Parliamentary Election for that matter or declare same

- void on any other grounds other than the grounds expressly provided under section 20 of PNDCL 284, supra.
4. That the Court lacks jurisdiction to grant any relief in an election petition other than the reliefs expressly provided under section 19 of PNDCL 284, supra.
  5. That the Court lacks jurisdiction to entertain any challenge to the exercise of 2<sup>nd</sup> Respondent's administrative powers and discretion in an election petition.
  6. That to the extent that the exercise of 2<sup>nd</sup> Respondent's discretion is in the performance of its functions, any attempt by the Court to substitute that discretion with its own discretion would amount to an interference of 2<sup>nd</sup> Respondent's constitutional independence under article 46 of the 1992 Constitution and that would be an excess of the Court's jurisdiction.

Finally, he contends that his election ought to be upheld and the invitation by the Petitioner to cancel his lawful election and to order a re-run of the same must be dismissed for lacking any legal basis.

The 2<sup>nd</sup> Respondent admits that the Petitioner is a registered voter and that C.I. 127 provides that a candidate for Parliamentary Elections shall, at the time of the nomination of the candidate deliver to the Returning Officer, a statutory declaration stating that he or she is qualified to be elected as a Member of Parliament and that he or she is not disqualified as such.

Again, 2<sup>nd</sup> Respondent states that the law requires that the statutory declaration be made before a Judge, a judicial officer, notary public, commissioner for oaths or a person authorized by law to administer an oath who shall certify the statutory declaration under the signature of the candidate. The candidate then submits the nomination forms and other requirements to the 2<sup>nd</sup> Respondent. Thereafter, the candidate is eligible to contest for election as a Member of Parliament.

As regards the issue surrounding the qualification, eligibility or otherwise of the 1<sup>st</sup> Respondent and the role the 2<sup>nd</sup> Respondent played in allowing 1<sup>st</sup> Respondent to contest the Parliamentary Election it conducted on 7<sup>th</sup> December 2020, the 2<sup>nd</sup> respondent's answer is that it adjudged 1<sup>st</sup> Respondent qualified to so contest based on the statutory declaration submitted together with his nomination forms.

Finally, 2<sup>nd</sup> Respondent says that it complied with its constitutional and statutory obligations in the organization and conduct of the Parliamentary Elections in the Assin North Constituency and that the Petitioner is therefore not entitled to any claim against it.

The Court has deliberately taken pains to copiously refer to the parties' pleadings which contain their respective arguments and contentions. This is to enable the Court put the cases of the parties in the right perspective so that the issues involved clearly emerge out in order to promote healthy discussion and resolution thereof.

At the close of pleadings, the Court directed each of the parties to file memorandum of issues for trial. The parties complied and filed issues they consider material for consideration. Out of those issues and the materials contained in the Petition and the Answers to the Petition, the Court, with active participation of the lawyers for the parties, adopted the following as the real issues arising from the pleadings for determination. They are whether or not;

1. at the time of opening of nomination and the filing of 2020 Parliamentary nomination forms by candidates who intended to contest the elections organized by 2<sup>nd</sup> Respondent, 1<sup>st</sup> Respondent who was at all material times, the Parliamentary Candidate of NDC owed allegiance to another country other than Ghana.
2. At the time of filing of nomination forms by the 1<sup>st</sup> Respondent with 2<sup>nd</sup> Respondent and at the close of nomination to contest the Parliamentary Elections in the Assin North Constituency on the ticket of NDC, 1<sup>st</sup> Respondent had renounced his Canadian Citizenship.
3. The election of the 1<sup>st</sup> Respondent as Member of Parliament for the Assin North Constituency is null and void and of no legal effect as same violates article 94 [2] [a] of the Constitution 1992, section 9 [2] of PNDCL 284 and Rule 8 [1] of C.I. 127.



Following the agreement on and the setting down of the above issues for trial, the respective counsel in the matter together with the Court decided to resolve the above issues by legal arguments. This decision was arrived at having taken the liberty to consider the issues at great length such that the irresistible conclusion was that the facts in the matter are not in dispute. The facts as established from the pleadings and which are not disputed are as follow:

1. The 1<sup>st</sup> Respondent once held both Ghanaian and Canadian citizenship.
2. On 19<sup>th</sup> December 2019, 1<sup>st</sup> Respondent through his lawyers wrote to the Canadian authorities to renounce his Canadian citizenship.
3. 1<sup>st</sup> Respondent has had his Canadian Citizenship since 1983 and received Permanent Residence in 1979 and had since worked as an Administrator in social studies.
4. Between 5<sup>th</sup> and 9<sup>th</sup> October 2020 when 2<sup>nd</sup> Respondent opened and closed nominations to contest the Parliamentary Elections, for the Assin North Constituency, 1<sup>st</sup> Respondent filed his nomination forms with 2<sup>nd</sup> Respondent to contest as such.

5. Before the 7<sup>th</sup> December 2020 general elections organized by 2<sup>nd</sup> Respondent, a Youth Group known as Concerned Citizens of Assin North alleging that 1<sup>st</sup> Respondent owed allegiance to another country other than Ghana, presented a petition to 2<sup>nd</sup> Respondent on the grounds that he was not qualified to be a Member of Parliament.
8. 2<sup>nd</sup> Respondent in a letter dated 24<sup>th</sup> November 2020, requested 1<sup>st</sup> Respondent to respond to the petition.
9. On 26<sup>th</sup> November 2020, the Canadian authorities wrote to approve of 1<sup>st</sup> Respondent's renunciation of his Canadian citizenship.
10. 1<sup>st</sup> Respondent honoured 2<sup>nd</sup> Respondent's invitation regarding the petition written by the Youth Group of Assin North and presented the Certificate of Renunciation of his Canadian citizenship.
11. 1<sup>st</sup> Respondent contested the 2020 December 7<sup>th</sup> Parliamentary Elections conducted in the Assin North Constituency.

12. 2<sup>nd</sup> Respondent declared him as the Member of Parliament-Elect following his success at the said elections and gazetted him accordingly.

Now, again, in the considered opinion of the Court, these material facts are not in dispute. It is important to mention, as indicated earlier that learned counsel on both sides were 'ad idem' with the Court's position. That being the case, what then remain to be resolved are matters or issues of law. The stage was then set for legal arguments. Therefore, the Court decided to resort to legal arguments to resolve the matter which is sanctioned by legal authorities in certain cases.

For example, the law is settled that if there is a preliminary legal point which if resolved would determine the case one way or the other, the Court should determine that issue first. On the other hand, if the determination of the legal issues through legal arguments or submissions would give finality to the action, same should be determined without resort to call evidence.

The Court took the above decision having regard to, first of all, the ratio established in the old English case of *Everette vs Ribbands* [1952] 2 QB 198 in which Romer L.J. said;

“where there is a point of law which if decided in one way, is going to be decisive of litigation, advantage ought to be taken of the facilities afforded by the rules of court to have it disposed at the close of the pleadings or shortly afterwards”.

The Court is emboldened by article 11 [1] [e] and [2] of the 1992 Constitution which says that foreign decisions are recognized by the Ghanaian Constitution as part of the laws of Ghana. These decisions are, however, not binding on Ghanaian courts—they are only persuasive. They are applied alongside local decisions.

Back home in Ghana, the Supreme Court in Rev. De Graft-Sefa and Others vs Bank of Ghana, [unreported judgment], Civil Appeal No. J4/51/2014, dated 19<sup>th</sup> November 2015, per Gbadegbe, JSC expressed the sentiments of the Court in the following words:

“The settled practice of the courts is that a declaratory relief cannot be attained by a motion in the cause but after hearing the parties either by way of legal arguments or a full scale trial”.

This was an affirmation of the Court’s earlier decisions in In Re; Nungua Chieftaincy Affairs; Odai Ayiku IV vs The Attorney-General [Borketey Larweh XIV-Applicant] [2010] SCGLR 413 at

416 and The Republic vs High Court, Accra; Ex Parte Osafo [2011] 2 SCGLR 966 which was a re-statement of the procedure stated in the Volume 37 edition of Halsbury's Law of England that;

'A declaratory judgment or order should be final, in the sense of finally determining the rights of the parties, but should not be granted in the course of interlocutory proceedings or by way of an interim declaration''.

See the recent decision of the Supreme Court in The Republic vs High Court, Winneba; Ex Parte Professor Mawutor Avoke-Applicant with Supi Kwayera and 2 Others as Interested Parties, Civil Motion No. J5/45/2018, dated 31<sup>st</sup> October 2018 and Ebusuapanin Kofi Essoun vs Charles Kofi Boham, Civil Appeal No. J4/01/2014, dated 21<sup>st</sup> May 2014.

The Court came to that conclusion because, from the pleadings the main issues are matters of law as indicated earlier. The authorities have defined pleadings as the nucleus around which the whole case revolves. Their very nature and character thus demonstrates their importance in actions for the benefit of the Court as well as the parties. A trial Court can therefore consider the case or evidence of the parties in the light of their pleadings.

The pleadings form the basis of the respective cases of the contestants. The pleadings bind and circumscribe the parties and their case and place fetters on their evidence. It is only an amendment which can free the parties from such fetters. The pleadings thus manifest the true and substantive merits of the case. See the cases of: Hammond vs Odoi [1982-83] GLR 1215, Nyamaah vs Amponsah [2010] 6 MLRG 1, SC, Frabina Ltd Shel Service Station vs Shel Ghana Ltd [2011] MLRG 132, SC. Pursuant to this, the Court directed the lawyers in the matter to file their written submissions in the form of closing addresses for judgment.

It is instructive to note that as at today, the 1<sup>st</sup> Respondent has failed and or refused to file his closing addresses. The Petitioner and the 2<sup>nd</sup> Respondent have dutifully complied. The Court shall, as and when necessary, refer to these written submissions including the 1<sup>st</sup> Respondent's contentions as captured in his amended pleadings before the Court.

At this point, the Court would like to posit that a Court of law which sits to determine an issue, whether civil or criminal in nature, must first of all, ask itself whether it has jurisdiction to determine the issue or whether its jurisdiction has properly been invoked. The invocation of the courts' jurisdiction as this Court

always understands it can be both substantive and procedural. The Courts' jurisdiction can be compared to human blood. This is because without human blood, the person cannot survive. In Bimpong Buta vs General Legal Council [2003-2004] 2 SCGLR 1200, the Supreme Court, per Sophia Akuffo JSC, [as she then was], had this to say:

"Jurisdiction is always fundamental issue in every matter that comes before the court, and even if it is not questioned by any of the parties, it is crucial for a court to avert its mind to assure a valid outcome".

Therefore, like the octopus, the Court would spread its tentacles to find out whether or not the present Petition has invoked the Court's jurisdiction properly.

It is worthy of note that in his Amended Answer to the Petition, the 1<sup>st</sup> Respondent challenges the jurisdiction of the Court. Now, listen to him in paragraph 36 thereof:

"The 1<sup>st</sup> Respondent finally states that the above-named suit is not an election petition'.

He proceeds further to begin paragraph 37 with the heading:

"NOTICE OF INTENTION TO RAISE PRELIMINARY LEGAL OBJECTION" and says that the 'Petition' discloses no reasonable cause of action, the election petition jurisdiction of the Court is not properly invoked, the Court lacks jurisdiction to cancel the result of the 7<sup>th</sup> December 2020 Parliamentary Election or any Parliamentary Election for that matter or declare same void on any other grounds other than the grounds expressly provided under section 20 of PNDCL 284, supra, the Court lacks jurisdiction to grant any relief in an election petition other than the reliefs expressly provided under section 19 of PNDCL 284, supra, the Court lacks jurisdiction to entertain any challenge to the exercise of 2<sup>nd</sup> Respondent's administrative powers and discretion in an election petition to the extent that the exercise of 2<sup>nd</sup> Respondent's discretion is in the performance of its functions, any attempt by the Court to substitute that discretion with its own discretion would amount to an interference of 2<sup>nd</sup> Respondent's constitutional independence under article 46 of the 1992 Constitution and that would be an excess of the Court's jurisdiction.

Now, the Court proceeds to deal with these preliminary matters that the 1<sup>st</sup> Respondent has raised in his Amended Answer in the manner following. So the Court asks, what is a reasonable cause



of action. It must be noted that the term 'cause of action' refers to a set of facts or allegations that make up the grounds to filing a lawsuit. It is therefore, by its very nature essential to a civil suit, since without it a civil suit cannot arise. To pursue a cause of action, the plaintiff pleads or alleges facts in a plaint, the pleadings that initiate a lawsuit. Sometimes, it is said to be the legal wrong the plaintiff claims to have suffered and the remedy or relief the Court is asked to grant. In Ampratwum Manufacturing Company vs DIC [2009] SCGLR 692, a reasonable cause of action was defined as:

"A factual situation the existence of which entitles one person to obtain from the court a remedy against another person".

It is trite that a party such as the Petitioner who initiates an action in Court against another must have an accrued cause of action. A cause of action is the existence of facts which give rise to an enforceable claim or a factual situation the existence of which entitles one to obtain from the Court a remedy against another. Generally, before a party issues a writ, he must first have a right recognized in law, which right has been violated by the defendant. In ascertaining whether the petition the subject of this action discloses a reasonable cause of action, it is important, that the Court critically examines the petition so filed, in particular

the grounds, the reliefs endorsed therein, and the answers filed by the Respondents to enable the Court satisfy itself that on the face of the Petition, triable issues have been raised. They could be issues of fact, law or both law and facts.

In Daasebre Asare Baah II and 4 Others vs Attorney –General [2010] SCGLR 463, the Supreme Court, speaking through Georgina Wood, CJ, [as she then was], stated thus;

“To identify the real substances of actions brought before the court, we have observed that the proper approach is to examine the writ as well as the pleadings, in this type of litigation, the reliefs and the facts verified by affidavit .....”

Now, the question as to whether or not the Petitioner wrongly sued the 1<sup>st</sup> Respondent has to be decided on the basis of the averments made in the Petition. The Petitioner describes himself as a registered voter with Voter Registration Number 9748001146, a mason and resident of Assin Bereku, a constituent of Assin North Constituency. In his Petition, the Petitioner avers that 1<sup>st</sup> Respondent contested the just ended Assin North Constituency Parliamentary Elections and was declared by 2<sup>nd</sup> Respondent as Member of Parliament-Elect. Meanwhile, according to him, at the time of filing his nomination forms to contest the

said elections, 1<sup>st</sup> Respondent was not qualified so to do by reason of the fact that he had not then renounced his Canadian citizenship, literally meaning that he owed allegiance to Canada other than Ghana which is contrary to the electoral laws of Ghana.

Apparently, 1st Respondent's contentions as shown in his amended pleadings are that on 7<sup>th</sup> December 2020 when the people of Assin North Constituency went to the polls at the end of which 2<sup>nd</sup> Respondent declared him Member of Parliament-Elect, he had renounced his Canadian citizenship and was therefore qualified to contest. Again, he contends that his renunciation of his Canadian citizenship took effect from 19<sup>th</sup> December 2019 when he caused his lawyers to put in the application for the renunciation on his behalf. The Petitioner contends otherwise. The argument that the Petitioner may have a weak case is no good reason to summarily dismiss the Petition as 1<sup>st</sup> Respondent contends. On this score, the Court agrees with the oft-quoted case of: Dyson vs Attorney-General [1911] 1KB 410 where Moulton LJ said at page 419 thus;

"The court will not permit a plaintiff to be driven from the Judgment seat without considering his right to be heard,

except in cases where the cause of action is obviously and almost incontestably bad”.

See the case of; John Daramani Mahama vs Electoral Commission and Nana Addo Dankwa Akufo-Addo, Writ No. J1/05/2021, dated 4<sup>th</sup> March 2021.

Indeed, the Court is baffled by 1<sup>st</sup> Respondent’s contention. Simply put, the 1<sup>st</sup> Respondent’s argument does not find favour with the Court and same is hereby over-ruled.

Article 99 [1] [a] of the 1992 Constitution of Ghana confers exclusive original jurisdiction on the High Court to hear and determine any questions concerning whether a person has been validly elected as a Member of Parliament or the seat has become vacant. This point was emphasized by the Supreme Court in the case of; Yeboah vs J.H. Mensah [1993-94] SCGLR 492 at 693 and 494.

The determination of article 99 [1] [a] of the 1992 Constitution of Ghana was previously enacted in section 16 of the Representation of the People Law, PNDCL 284 as amended as follows;

“.....Methods of questioning election

1. The validity of an election to Parliament may be questioned only by a petition brought under sections 17 to 26,
2. An election petition shall be presented before the High Court for hearing”.

The effect of article 99 [1] [a] of the Constitution and section 16 [1] and [2] of PNDCL 284, supra, is that before a person brings a petition against the election of a candidate as a Member of Parliament, the person must show that the Electoral Commission had conducted a parliamentary election and had declared the results of that election. See the case of; The Republic vs High Court, Koforidua; Ex Parte Asare with Baba Jamal and Others as Interested Parties [2009] SCGLR 460. In the present Petition, there is no argument that 1<sup>st</sup> Respondent contested the 7<sup>th</sup> December 2020 Parliamentary Election in the Assin North Constituency. Equally, there is no dispute that 2<sup>nd</sup> Respondent declared him as the Member of Parliament-Elect as such and gazetted notice thereof accordingly. It is also very important to indicate that the Petitioner filed the instant Petition after all these processes have been completed. In the Court’s considered view, on that score, the Petition is competent and properly invokes the Court’s jurisdiction.

The Court has taken pains to look at sections 19 and 20 of PNDCL 284, as amended, to which 1<sup>st</sup> Respondent referred in challenging the Court's jurisdiction to entertain the present Petition. First of all, section 19 thereof which is on the relief which may be granted says;

"After the hearing of an election petition the High Court may make any of the following orders;

- [a] Declare that the election to which the petition relates is void;
- [b] Declare that a candidate other than the member whose election is questioned was duly elected; or
- [c] Dismiss the petition and declare that the member whose election is questioned was duly elected".

Now, the relevant portion of section 20 [1] of the law on grounds of Cancelling Election Results is;

"The election of a candidate shall be declared void on an election petition if the High Court is satisfied that-

- [a] the general bribery, general treating, general intimidation or other misconduct or circumstances, whether similar to those specified in this Law or not, have so extensively prevailed

that they may be reasonably supposed to have affected the result of the election,

[b] That there has been non-compliance with any provision of the Law or of regulations made under the Law and that it appears that the election was not conducted in accordance with the principles laid down by law and that such non-compliance affected the result of the election,

[c] That a corrupt or illegal practice was committed in connection with the election by the candidate or with the knowledge or consent or by any agent of the candidate, or

[d] That the candidate was at the time of his election a person disqualified for election”.

The above law, as the Court always understands same is that the Court has jurisdiction to grant the reliefs sought. Indeed, if the 1<sup>st</sup> Respondent's holds a contrary view thereof, then, in the considered opinion of the Court, it is appropriate to remind ourselves that following the decision in Dam vs Addo [1962] 2 GLR 200, SC which decision was the effect that a Court must not substitute for a party a case contrary to and inconsistent with that which the party himself has put forward in his pleadings and

evidence, the Supreme has reformulated the above principle to be that in appropriate cases, a relief not sought by the party can be granted by the Court provided, it is borne out of the evidence on record and it's fair, reasonable and just to grant same. See the cases of; In Re Gomoah Ajumako Paramount Stool; Acquah vs Apaa and Another [1998-99] SCGLR 312, In Re Asamoah [Deceased] Agyeiwaa and Another vs Manu [2013-14] SCGLR 909, Republic vs High Court, Kumasi; Ex Parte Boateng [2007-2008] 1 SCGLR 404 and recently Kwadwo Atta vs Kwabena Anane [2020] GMJ, PT 160, dated 4<sup>th</sup> May 2020, SC.

The Court has carefully looked at the form and substance of the Petition and comes to the irresistible conclusion that the Petition properly invokes the Court's jurisdiction and that the Court has jurisdiction to grant the reliefs sought in the Petition.

Now, the Court turns its attention to another leg of 1<sup>st</sup> Respondent's issue with the Court's jurisdiction that any challenge to the exercise of 2<sup>nd</sup> Respondent's administrative powers and discretion in an election petition amounts to interference of 2<sup>nd</sup> Respondent's constitutional independence. In the considered opinion of the Court, respectfully, this contention by 1<sup>st</sup> Respondent makes interesting reading if it does not amount to a pedestrian argument.



There is no argument that the Electoral Commission [2<sup>nd</sup> Respondent herein] is an independent constitutional body and that the powers of the Court to review its decisions have been circumscribed and limited to clear cases of unconstitutionality or illegality. Again, the independence of 2<sup>nd</sup> Respondent that is protected relates to electoral matters. On those matters, it is unconstitutional for any direction or control to be exerted over it unless it is acting illegally. See; Abu Ramadan and Another vs Electoral Commission [2015-2016] SCGLR 1 [Abu Ramadan No. 2], National Democratic Congress vs Attorney-General and Another AND Mark Takyi Banson vs Electoral Commission [consolidated] Suit Nos J1/09/2020 and J1/12/2020 [unreported] dated 20<sup>th</sup> June 2020, SC. This means that unless 2<sup>nd</sup> Respondent has done something specific either unconstitutionally or illegally, the Court cannot fault it. Indeed, 1<sup>st</sup> Respondent's argument here is that 2<sup>nd</sup> Respondent decided to grant him the clearance to participate in the 7<sup>th</sup> December 2020 Parliamentary Elections and that amounts to an administrative act and an exercise of discretion in the performance of 2<sup>nd</sup> Respondent's functions. Therefore, any challenge to that discretion or administrative act cannot be entertained in an election petition. Now, if this contention is anything to go by, then the Court asks why then

was Adamu Dramani Sakande, a sitting Member of Parliament charged with a criminal offence, convicted and sentenced accordingly by a competent Court of jurisdiction. We should remember that his case falls on force with the present circumstances.

However, the Court is of the considered opinion that for example where 1<sup>st</sup> Respondent is not qualified to contest the 7<sup>th</sup> December 2020 Parliamentary Elections 2<sup>nd</sup> Respondent conducted last year by virtue of article 94 [2] [a] of the 1992 Constitution, section 9[2] [a] of PNDCL 284, as amended and C.I. 127, such disqualification can be brought to notice anytime such disqualification is discovered. Even if he has contested and won the election, nothing precludes anyone including the Petitioner to challenge his election in Court. Estoppel cannot override a statutory formality where it is required. See the cases of; Re Kwabeng Stool; Karikari vs Ababio I [2001-2002] SCGLR 15 and Attorney-General vs Faroe Atlantic Co. Ltd. [2005-2006] SCGLR 271.

Again, the law is established that any act which violates the Constitution or other statutes cannot be validated on grounds practice, precedent, custom or usage. See the following decided cases; Republic vs Fast Track High Court, Accra; Ex Parte; CHRAJ

[Dr. Anane as Interested Party] 2008] 4 GMJ 1, SC and Attorney-General vs Faroe Atlantic Co. Ltd, supra.

Let it be re-iterated that a party who intends to contest a position must know all the laws, regulations and procedures on the position he or she intends to contest. The law is not machines and judges machine tenders. There never was and never will be a body of fixed and predetermined rules alike to all. See the Supreme Court decided case of; Boakye vs Tutuyehene [2007-2008] SCGLR 970. Indeed, the Court adverts its mind to the dictum of Dr. Date Bah JSC, as he then was, in Republic vs High Court [Fast Track Division], Accra; Ex Parte National Lottery Authority [Ghana Lotto Operators Association and other Interested Parties], supra, when he said;

“.....No judge has the authority to grant immunity to a party from the consequences of breaching an Act of Parliament’.

With the above delivery, the Court is satisfied that the present Petition properly invokes the Court’s original jurisdiction in parliamentary election matters in Ghana. For the reasons above, 1<sup>st</sup> Respondent’s preliminary objection is over-ruled. The Court therefore proceeds to consider the legal submissions filed in terms of the legal issues set down for legal arguments.

The Court begins their discussion in the manner following. A Petition of this nature is a form of civil litigation. Like all civil cases, the standard of proof is one on the balance of probabilities or preponderance of the probabilities. The proof prescribed in civil trials is provided under sections 10, 11 and 12 of the Evidence Act 1975 [Act 323]. These sections on the burden of proof, burden of persuasion and burden of producing evidence, apply equally to election petitions. As was held by the Supreme Court in; Ackah vs Pergah Transport Ltd [20110] SCGLR 728 at page 736 per Adinyirah, JSC:

“It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail”.

Also, see the case of; Aryee vs Shel Ghana Ltd and Fraga Oil Ltd [2017-2020] SCGLR 721 at 733. Cases on election petitions in Africa and other common law jurisdictions give credence to the notion that in such instances where a petitioner seeks a declaration pertaining to an election, he bears the legal burden of proof throughout. See the cases of; Abu-Bakar vs Yar’ Adua [2009] All FWLR [Pt 457] 1 SC, Odinga vs Uhuru Kenyatta [2013]

PETITION [NO. 5] and Besigye vs Museveni Yoweri Kaguta and Electoral Commission of Uganda [2001] UGSC.

It is important to mention that the Supreme Court of Ghana adopted the same principle in the first Presidential Election Petition, titled Akufo-Addo, Bawumia and Obetsebi Lamptey vs Mahama and Electoral Commission [No. 4] [2013] SCGLR [Special Edition] 73.

The first legal issue is whether or not at the time of opening of nomination and the filing of 2020 Parliamentary nomination forms by candidates who intended to contest the Elections organized by 2<sup>nd</sup> Respondent, 1<sup>st</sup> Respondent who was at all material times, the Parliamentary Candidate of NDC owed allegiance to another country other than Ghana.

Over here, there is no dispute that 1<sup>st</sup> Respondent once held a Canadian Citizenship. The uncontroverted available evidence is that on 19<sup>th</sup> December 2019, 1<sup>st</sup> Respondent through his lawyers applied to the Canadian authorities to renounce his Canadian citizenship. 1<sup>st</sup> Respondent has had his Canadian Citizenship since 1983 and received Permanent Residence in 1979 and has worked faithfully for the Canadian government at the provincial level with the City of Toronto since 1991 as an Administrator in social

studies. Between 5<sup>th</sup> and 9<sup>th</sup> October 2020 when 2<sup>nd</sup> Respondent opened and closed nominations for the contest of the Parliamentary Elections for the Assin North Constituency, 1<sup>st</sup> Respondent filed his nomination forms with 2<sup>nd</sup> Respondent to contest as such. Before the 7<sup>th</sup> December 2020 general elections organized by 2<sup>nd</sup> Respondent, a Youth Group known as Concerned Citizens of Assin North alleging that 1<sup>st</sup> Respondent owed allegiance to another country other than Ghana, presented a petition to 2<sup>nd</sup> Respondent on the grounds that he was not qualified to be a Member of Parliament. 2<sup>nd</sup> Respondent in a letter dated 24<sup>th</sup> November 2020, requested him to respond thereto. On 26<sup>th</sup> November 2020, the Canadian authorities approved of 1<sup>st</sup> Respondent's renunciation of his Canadian citizenship. Subsequently, 1<sup>st</sup> Respondent honoured 2<sup>nd</sup> Respondent's invitation regarding the petition written by the Youth Group of Assin North and presented the Certificate of Renunciation of his Canadian citizenship. 1<sup>st</sup> Respondent contested the 2020 December 7<sup>th</sup> Parliamentary Elections conducted in the Assin North Constituency. 2<sup>nd</sup> Respondent declared him as the Member of Parliament-Elect following his success at the said elections and gazetted him accordingly.

Now, the ultimate question is between 5<sup>th</sup> and 9<sup>th</sup> October 2020 when 1<sup>st</sup> Respondent filed his nomination forms with 2<sup>nd</sup> Respondent, did the former owe allegiance to another country other than Ghana.

On this very issue, admittedly, 1<sup>st</sup> Respondent says that the Certificate of Renunciation was issued to him in November 2020 before the 7<sup>th</sup> December Parliamentary Elections and that at the time of filing his Parliamentary nomination forms with 2<sup>nd</sup> Respondent, he had renounced his Canadian Citizenship. He adds that as an applicant renouncing his Canadian Citizenship, he has no control over the process of issuance of the Certificate of Renunciation by the Canadian Authorities since that was their primary duty and not his. Meanwhile, he explains that the delay in the issuance of the Certificate of Renunciation which is an administrative act, was caused by two [2] months lockdown of administrative facilities and that generally, the process of renunciation and the issuance of the Certificate thereof take six [6] to nine [9] months to complete but that was derailed by two [2] months lockdown of administrative facilities world-wide.

Learned Counsel for 2<sup>nd</sup> Respondent says that 1<sup>st</sup> Respondent admits that his Certificate of Renunciation was issued in November 2020 when nominations had closed. That is 1<sup>st</sup>

Respondent filed his nomination forms with 2<sup>nd</sup> Respondent earlier before he was issued with his Certificate of Renunciation. Therefore, he submits that in the circumstances, 1<sup>st</sup> Respondent owed allegiance to Canada other than Ghana at the time.

Learned Counsel for Petitioner on his part alike Counsel for 2<sup>nd</sup> Respondent decided to argue the first two issues together. He submits that obviously when 1<sup>st</sup> Respondent filed his nomination forms for the Parliamentary Elections as such, he eminently owed allegiance to Canada other than Ghana and had not renounced same. It is his case that the law does not take cognizance of the administrative steps and or acts preparatory to the issuance of the Certificate of Renunciation. According to him, the 1<sup>st</sup> Respondent ceases to be a Canadian citizen only after the expiration of the day on which the certificate was issued.

In like manner, in the Court's considered view it is appropriate and the ends of justice would be served all the same if the first two issues are considered and resolved together. This is because the available evidence and the relevant laws on the issues are almost similar. In this direction, the Court finds it very expedient to refer to the Certificate of Renunciation that 1<sup>st</sup> Respondent brought in evidence himself. In fact, at this stage, let it be mentioned that the 1<sup>st</sup> Respondent provided the above evidence



and others first of all in his affidavit in opposition he filed to the Petitioner's application for an order of interlocutory injunction against him and his Amended Answer.

In discussing and resolving the first two issues, the Court has decided to place great premium on the date 1<sup>st</sup> Respondent filed his nomination forms to contest the Parliamentary Elections in the Assin North Constituency and the date of the Certificate of Renunciation. First of all, as clearly and abundantly exposed above, there is no argument that 2<sup>nd</sup> Respondent opened the nominations from 5<sup>th</sup> October through to 9<sup>th</sup> October 2020. It implies that nominations closed on 9<sup>th</sup> October 2020. Therefore, it is reasonably expected that 1<sup>st</sup> Respondent filed his nomination forms within the period otherwise it would not have been possible for him to contest the elections as such.

Now, the Certificate of Renunciation which is partly in French is as follows;

"Certificat de Repudiation de la Citoyenne Canadienne.

Nom; JAMES GYAKYE QUAYSON

Date de naissance; 09/10/1952

Ce certificate atteste que la personne nommee ci-dessus a

formellement repudie la citoyenne canadienne et, selon la Loi sur la citoyenne, cessera d'être citoyen le 26/11/2020. Ministre".

The English translation is as follows;

"Certificate of Renunciation of Canadian Citizenship.

Name; JAMES GYEKYE QUAYSON.

Date of Birth; 09/10/1952.

Place of birth; Ghana.

This is to certify that the person named above has formally renounced Canadian citizenship and pursuant to the Citizenship Act will cease to be a citizen on 26/11/2020.

Minister".

The above information from the Certificate of Renunciation, without more, is completely conclusive. It caused the damage and destroyed 1<sup>st</sup> Respondent's case. Indeed, it settles any ambiguity surrounding when the renunciation of 1<sup>st</sup> Respondent's Canadian citizenship took effect. Therefore, 1<sup>st</sup> Respondent's arguments that before the 7<sup>th</sup> December Parliamentary Elections

and that at the time of filing his Parliamentary nomination forms with 2<sup>nd</sup> Respondent, he had renounced his Canadian Citizenship, that as an applicant renouncing his Canadian Citizenship, he has no control over the process of issuance of the Certificate of Renunciation by the Canadian Authorities since that was their primary duty and not his and that the delay in the issuance of the Certificate of Renunciation which is an administrative act, was caused by two [2] months lockdown of administrative facilities and that generally, the process of renunciation and the issuance of the Certificate thereof take six [6] to nine [9] months to complete but that was derailed by two [2] months lockdown of administrative facilities world-wide, with due respect, are preposterous, untenable, unacceptable, baseless and without merit. Indeed, if the Court is to go by them, it would serve as a dangerous precedent and thereby remain cancerous tumor in our jurisprudence. Is it his case that like Claudio, the hero in Shakespeare's 'Much I Do About Nothing', 'he has borne himself beyond the promise of his age' or the story about a Gabonese national player Guelor Kanga Kaku who was summoned to meet the Confederation of African Football Disciplinary Committee to explain why his mother died in 1986 but he was born in 1990. Is 1<sup>st</sup> Respondent saying that he became an upstanding Canadian

citizen in 1983 the very moment he applied to the Canadian authorities? Absolutely no. This is because it cannot be by the scheme of things.

It is important to mention that many countries have pragmatic policies that recognize the often arbitrary nature of citizenship claims of other countries and negative consequences, such as loss of security clearance, can mostly be expected only for actively exercising foreign citizenship, for instance by obtaining a foreign passport. Consequently, each country sets its own policies for formal renunciation of citizenship. There is a common concern that individuals about to relinquish their citizenship do not become a stateless person, and many countries require evidence of another citizenship or official promise to grant citizenship before they release that person from citizenship. Some countries may not allow or do not recognize renunciation of citizenship or establish administrative procedures that are essentially impossible to complete, such as Argentina.

Now, very importantly, Canada and Australia are signatories to the United Nations Convention on the Reduction of Statelessness, and renunciation is possible only if it will not result in statelessness. Applications for renunciation of citizenship need to be submitted in those countries with a waiting time of several

months until approval. See [Wikipedia.org/wiki/Renunciation-of-citizenship](https://en.wikipedia.org/wiki/Renunciation_of_citizenship).

It is important to indicate that Canada has actualized such policies into a statute and that is precisely the Citizenship Act. This is the relevant legislation. Part II of the Act deals with loss of citizenship. Sections 7 and 9 [1] and [3] are most appropriate in the circumstances herein. Section 7 thereof provides;

“A person who is a citizen shall not cease to be a citizen except in accordance with this Part or regulations made under paragraph 27 [1]”.

Section 9 says;

“Subject to subsection [2.1], a citizen may, on application renounce his citizenship if he

[a] is a citizen of a country other than Canada, or if his application is accepted, will become a citizen of a country other than Canada;

[b] Is not the subject of a declaration by the Governor in Council made pursuant to section 20,

[c] Is a minor;

[d] Is not prevented from understanding the significance of renouncing citizenship by reason of the person having a mental disability;

[e] does not reside in Canada”.

In terms of section 9 [3] thereof;

“if an application under subsection [1] is approved by the Minister, the Minister shall issue a certificate of renunciation to the applicant and the applicant ceases to be a citizen after the expiration of the day on which the certificate is issued or any later day that the certificate may specify”.

Flowing from the above, it is the considered view of the Court that there can be no better understanding and appreciation that 1<sup>st</sup> Respondent’s Certificate of Renunciation of his Canadian citizenship dated 26<sup>th</sup> November 2020, he ceases to be a Canadian citizen after 26<sup>th</sup> November 2020 in simple terms. It should be noted that 1<sup>st</sup> Respondent is bound by this. It is not open to him to argue that by reason of the out-break of COVID-19 Pandemic, he is entitled to be treated differently. With the out-break of COVID-19, the Canadian authorities did not amend their laws on renunciation of citizenship. By his conduct in the circumstances, he put the cart before the horse which is

invariably improper in simple language. In fact, the Court has doubts if the conduct of 1<sup>st</sup> Respondent in the circumstances does not amount to deceit of public officers which is a crime in the Republic.

From the above expose, the Court has no hesitation to find and hold that 1<sup>st</sup> Respondent having filed his nomination forms with 2<sup>nd</sup> Respondent between 5<sup>th</sup> and 9<sup>th</sup> October 2020, when same was opened and closed, and his renunciation of his Canadian citizenship having been approved on 26<sup>th</sup> November 2020, he was still owing allegiance to Canada other than Ghana. Consequently, it is the Court's ruling that he had not renounced his Canadian citizenship when he filed his nomination forms with 2<sup>nd</sup> Respondent to contest the 2020 Parliamentary Elections 2<sup>nd</sup> Respondent organized in the Assin North Constituency.

This brings us to the last issue which is whether or not the election of the 1<sup>st</sup> Respondent as the Member of Parliament for Assin North Constituency is null and void and of no legal effect as same violates article 94 [2] [a] of the Constitution 1992, section 9 [2] of PNDCL 284 and Rule 8 [1] of C.I. 127.

As regards this issue, Learned Counsel for Petitioner argues that Parliamentary Elections organized by 2<sup>nd</sup> Respondent are

regulated by laws and referred to the 1992 Constitution of Ghana, PNDCL 284, as amended and C.I. 127. He says that the relevant provisions in the above laws have received judicial consideration and clarification in the case of Republic vs High Court, [General Jurisdiction], Accra; Ex Parte Zenator Rawlings, [Ashithey and National Democratic Congress as Interested Parties] [No.2], [2015-16] 1 SCGLR 92. Accordingly, he submits that the clear and unambiguous provisions of the electoral laws for the time being in force require that a person who seeks to contest as a candidate for the office of Member of Parliament shall not be qualified if he or she owes allegiance to a country other than Ghana. It is his contention that the incidence of 1<sup>st</sup> Respondent's non-renunciation of his Canadian citizenship at the time of filing his nomination forms to contest the Parliamentary Elections renders him not qualified to contest the Parliamentary Elections in the Assin North Constituency. According to him, in the circumstances, the declaration by 2<sup>nd</sup> Respondent of 1<sup>st</sup> Respondent as Member of Parliament-Elect for Assin North Constituency is null and void.

It is important to emphasise that 1<sup>st</sup> Respondent refused and or failed to address the Court when ordered to do so. That notwithstanding, as indicated elsewhere in this judgment, the Court would do justice to the matter by referring to his



arguments and contentions as captured in his Amended Answer which is on record as and when necessary.

As far as the issue under discussion is concerned, 1<sup>st</sup> Respondent's arguments are that at the time 2<sup>nd</sup> Respondent opened nominations and he filed his nomination forms, he was not disqualified from standing for elections by any law in Ghana. According to him, he met all the requirements of the laws. In substance, he contends that the eligibility and qualification criteria for one to become a Member of Parliament does not end at the time of filing nomination forms with 2<sup>nd</sup> Respondent. By his interpretation of the relevant laws, they end at the time the person is elected and sworn in as a Member of Parliament.

2<sup>nd</sup> Respondent submits that on the strength of the discussions on the first two [2] issues, it is safe to conclude that 1<sup>st</sup> Respondent violated article 94 [2] [a] of the Constitution, section 9 [2] of PNDCL 284, supra and C.I. 127. According to him, 1<sup>st</sup> Respondent was under an obligation to comply with statute and judicial dicta. He referred to the cases of; Attorney-General vs Faroe Atlantic Company Ltd, [2005-2006] SCGLR 271, Boyefio vs NTHC [1997-98] I GLR 768 at 786 and Republic vs High Court [Fast Track Division], Accra; Ex Parte National Lottery

Commission [Ghana Lotto Operators Association and Others as Interested Parties], [2009] SCGLR 390.

The Court wishes to re-iterate that it has carefully looked at all the brilliant submissions urged on it by the respective counsel and 1<sup>st</sup> Respondent. However, the Court is of the considered view that the above issue cannot be fairly resolved without a scrutiny of the electoral laws in Ghana.

First of all, article 94 [2] [a] of the Constitution provides;

“A person shall not be qualified to be a Member of Parliament if he-

[a] owes allegiance to a country other than Ghana”.

It is imperative to note that the same constitutional provision has been reproduced in section 9 [2] of the Representation of People Law, 1992, [PNDCL 284], as amended, as follows;

“A person shall not be qualified to be a Member of Parliament if he-

[a] owes allegiance to a country other than Ghana”.

Now, the Public Elections Regulations, 2020 [C.I. 127], the Constitutional Instrument that regulates Presidential and Parliamentary Elections conducted by 2<sup>nd</sup> Respondent also says;

“A candidate for Presidential and Parliamentary election shall, at the time of nomination of the candidate,

[a] deliver or cause to be delivered to the returning officer

[i] a statutory declaration stating that that candidate is qualified to be elected as President or a Member of Parliament and is not disqualified from being elected as such”.

See Rule 8 thereof.

In the case of; Standard Bank Offshore Trust Company Limited vs N.I.B Limited and 2 Others, Civil Appeal No. J4/63/2016, judgment dated 2<sup>nd</sup> June 2017 which is the unanimous decision of the Supreme Court of Ghana both at the first instance and on review, the Court per Benin JSC, as he then was held:

“Where a rule is mandatory by the use of the expression ‘shall’, it should be so regarded in view of section 42 of the Interpretation Act, 2009 [Act 792]”.

By the above, 1<sup>st</sup> Respondent has no option than to comply with the electoral laws for the time being in force in Ghana when he decided to contest the Assin North Parliamentary Elections on 7<sup>th</sup> December 2020.

No doubt, the jurisdiction to consider references from the courts below the Supreme Court is based on the original jurisdiction of the Supreme Court. Indeed, when a genuine issue of constitutional interpretation arises in a court below the Supreme Court, there is an obligation on the judge or magistrate to refer the matter to the Supreme Court. In the recent case of: Nii Kpobi Tettey Tsuru I vs Attorney-General [Suit No. J6/01/2009] judgment dated 9<sup>th</sup> March 2010, Dotse JSC said;

“It is provided in article 130 [2] of the Constitution 1992 as follows;

Where an issue that relates to a matter or question referred to in clause [1] of this article arises in any proceedings in a court other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination, and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court”.

The Court takes note of the guidance provided by the Supreme Court in: Republic vs High Court [Fast Track Division], Accra; Ex Parte Electoral Commission [Mettle-Nunoo and Others-Interested Parties] [2005-2006] SCGLR 514 to courts which are faced with issues for referrals under article 130 [2] of the 1992 Constitution as follows;

'We offer below, as a practical guide to trial court judges who are faced with requests for referrals under article 130 [2], not the facile and dangerous assumption that most of the provisions of the 1992 Constitution are clear and unambiguous, but rather the following well thought out scheme for determining the existence of an issue of enforcement or interpretation enunciated in; Republic vs Special Tribunal; Ex Parte Akosah [1980] GLR 592, CA.

Notwithstanding the fact that the case involved the 1979 Constitution and not the current 1992 Constitution ..... as follows;

[a] where the words of the provisions are imprecise or unclear or ambiguous. Put in another way, it arises if one party invites the court to declare that the words of the Article have a

double-meaning or are obscure or else mean something different from or more than what they say;

[b] Where rival meanings have been placed by the litigants on the words of any provisions of the Constitution;

[c] Where there is a conflict in the meaning and effect of two or more Articles of the Constitution, and the question is raised as to which provision shall prevail;

[d] Where on the face of the provisions, there is a conflict between the operations of particular institutions set up under the Constitution, and thereby raising problems of enforcement and of interpretation'.

Summing up the received learning from many cases on the issue, Prof. Dateh-Bah, JSC, as he then was, said in Bimpong-Butah vs General Legal Council [2003-2004] SCGLR 1200 at p. 1253 that;

"Lower courts may apply the Constitution, themselves, unambiguous provisions of the Constitution which come before them, but they are obliged to refer to this Court provisions which are unclear for interpretation or enforcement".

The above dicta, as the Court always understands it means that there is no case of enforcement or interpretation where the

language of the article of the Constitution is clear, precise and unambiguous and reasonably where the Supreme Court has already interpreted the provision. In such an eventuality, the aggrieved party may appeal in the usual way to a higher court against what he may consider to be an erroneous construction of those words and he should certainly not invoke the Supreme Court's original jurisdiction. Again, where the submission made relates to no more than a proper application of the provisions of the Constitution to the facts in issue, this is a matter for the trial court to deal with and no case for interpretation arises.

On the strength of the above delivery, it does appear to the Court that the meaning and effect of article 94 [2] [a] of the Constitution are devoid of any ambiguity to warrant a referral. The above constitutional provision has given birth to a statutory re-enactment in section 9 [2] of PNDCL 284, supra. Equally, article 94 [2] of the Constitution has received judicial consideration and clarity by the Supreme Court which is by law, the highest court and the final court of Appeal in Ghana in Republic vs High Court [General Jurisdiction], Accra; Ex Parte; Dr. Zenator Rawlings; [Ashithey and National Democratic Congress as Interested Parties, supra.

But the ultimate question is and as has been the subject of the Petition, did 1<sup>st</sup> Respondent comply therewith. Where it is found that he dutifully complied with the laws, his subsequent election as Member of Parliament for Assin North Constituency cannot be touched or questioned. However, where it is proved that he did not, obviously, he would have himself to blame.

In the considered view of the Court the answer to the issue as to whether the eligibility or qualification to become a Member of Parliament begins from the filing of nomination forms with 2<sup>nd</sup> Respondent or at the time a person is elected and sworn in as such can be found in Ex Parte Zenator Rawlings' case, supra. Why? It is the recent and authoritative decision by the Supreme Court on what point in time the eligibility or qualification criteria as set out in article 94 [2] [a] of the 1992 Constitution come into play.

In Ex Parte Zenator Rawlings, supra, Dr. Zenator Agyemang Rawlings, Hon. Nii Armah Ashithey and Nii John Coleman contested the NDC's parliamentary primaries for the Klottey-Korley Constituency for the 2016 Elections. Dr. Zenator was declared winner of the primaries whereupon Hon. Ashithey and Mr. Coleman commenced proceedings at the High Court to challenge Dr. Zenator Rawlings' election on the grounds, inter



alia, that she was not a registered voter and thus fell short of the eligibility requirements of article 94 [1] [a] of the 1992 Constitution. Dr. Zenator Rawlings after filing her Statement of Defence, filed an application to have the matter dismissed on the basis that it was premature and that the High Court's jurisdiction had not been properly invoked. The High Court refused the application. Subsequently, Dr. Zenator Rawlings invoked the supervisory jurisdiction of the Supreme Court for an order of certiorari and prohibition against the High Court. The Supreme Court granted the application and suo motu set down the following issue for interpretation;

“when can it be properly said that a Ghanaian citizen is by reason of non-registration as a voter ‘not qualified to be a Member of Parliament’ within the meaning of article 94 [1]

[a] of the 1992 Constitution of Ghana”.

It is instructive to note that although the case turned on the registered voter criterium in article 94 [1] [a] of the Constitution, the Supreme Court, in resolving the issue considered article 94 [1] [a] as a whole and at page 103 thereof restated the issue as [a]t what point in time do the eligibility criteria set out in article 94 [1] [a] come into play. The arguments canvassed by the NDC

[2<sup>nd</sup> Interested Party] is reproduced at page 98 of the report as follows;

‘Counsel for the second interested party NDC expressed a similar view and submitted that; ‘..... article 94 [1] [a] becomes operative at the time when the statutory-mandated body [Electoral Commission] commences the statutory processes for nomination and filing of parliamentary candidates for parliamentary elections in the various constituencies and not at any time before this’.

Now, listen to their Lordships through Benin JSC, as he then was, at page 104 thereof as follows;

“Consequently, it is our view that the eligibility criteria set out in Article 94 [1] [a] come into force only when a public election of a member of parliament has been declared by the Electoral Commission and it has set the time to file nominations. Thus a person who qualifies to enter Parliament must be a Ghanaian citizen, of twenty-one years or beyond and a registered voter

AS AT THE DATE HE FILES HIS NOMINATION PAPERS WITHIN THE TIME STIPULATED BY THE ELECTORAL COMMISSION FOR THAT PARTICULAR ELECTION. That is the true intendment of article 94

[1] [a] of the Constitution; the eligibility criteria comes alive from time to time when the Electoral Commission sets the date to file nominations for parliamentary elections”.

In effect, it can be said that the Supreme Court held that the applicability of article 94 [2] [a] of the 1992 Constitution did not deprive the High Court of its jurisdiction. The Court finds the argument coming from 1<sup>st</sup> Respondent to the contrary absolutely shocking. The decision by the highest court and final court of appeal is coming from his own party backyard. It is therefore intriguing as to why he could not take a cue therefrom. This is a decision coming from the Supreme Court of Ghana. This Court comparatively as a lower Court as such, has no option than to enforce same by reason of 'stare decisis' in this judgment. Indeed, the Court endorses the above decision.

In the Court's considered view, the contentions by 1<sup>st</sup> Respondent is akin to a song by a choir which is full of discords and cacophony. Put in ordinary terms, it is like when a dish is made of some spices and ingredients either in excess, others in short supply but all competing with each other to make the dish tasty. Such a dish is unpalatable and must be surely spewed out of the mouth. In military terms, it is like an army on a march with

several soldiers out of step with each other. The result is that there is nothing to be enthused about it.

In Boyefio vs NTHC Properties Limited [1997-98] 1 GLR 763, the Supreme Court decided that the law is clear that where an enactment had prescribed a special procedure by which something is to be done, it is that procedure alone that is to be followed

See also Ex Parte; National Lottery Authority's case, supra.

Finally, Lord Denning M.R. in Macfoy vs United Africa Co. Ltd [1961] 3 All E.R 1169 said;

"..... You cannot put something on nothing and expect it to stay there, it will collapse".

So will the 1<sup>st</sup> Respondent's contentions herein. Therefore, it is the Court's ruling that by virtue of the clear and unambiguous provisions of the electoral laws for the time being in Ghana and in the face of the overwhelming available evidence, 1<sup>st</sup> Respondent herein was not qualified to contest as a Member of Parliament for the 2020 Parliamentary Elections organized by 2<sup>nd</sup> Respondent in the Assin North Constituency.

As usual, in conclusion, let it be said that unlike the protagonist 'Ato' in Ama Ataa Aidoo's book, 'The Dilemma of a Ghost', who did not know whether to follow the wife or the family, in this Petition, the above discussions fortify the Court to grant the Petitioner's reliefs sought for equality is equity.

In the circumstances, 'ex abundant curtela', the Court makes the following declaratory orders;

- a. The filing of Parliamentary nomination forms by 1<sup>st</sup> Respondent when he held a Canadian Citizenship at the time of filing the said nomination forms between 5<sup>th</sup>-9<sup>th</sup> October 2020 with 2<sup>nd</sup> Respondent violates article 94 [2] [a] of the 1992 Constitution, section 9 [2] [a] of PNDCL 284 and C.I. 127.
- b. 2<sup>nd</sup> Respondent's decision to clear 1<sup>st</sup> Respondent to contest the Parliamentary Elections in the Assin North Constituency when the latter was not qualified as a candidate on account of his holding allegiance to Canada other than Ghana violates article 92 [2] [a] of the 1992 Constitution, section 9 [2] [a] of PNDCL 284, as amended and C.I. 127.
- c. The decision by 2<sup>nd</sup> Respondent to allow 1<sup>st</sup> Respondent to contest Parliamentary Elections in the Assin North Constituency when he held a Canadian Citizenship at the

time of filing his nomination forms violates the electoral laws of Ghana and same is of no legal consequence.

- d. 1<sup>st</sup> Respondent's election as Member of Parliament for Assin North Constituency in the 2020 Parliamentary Elections organized by 2<sup>nd</sup> Respondent is null and void and of no legal effect whatsoever as same violates the electoral laws of Ghana.
- e. At the time of the Parliamentary Elections in the Assin North Constituency in 2020, 1<sup>st</sup> Respondent was not qualified to contest as a candidate in accordance with the electoral laws of Ghana.
- f. The Court hereby cancels the Parliamentary Elections in the Assin North Constituency organized in December 2020 and further orders 2<sup>nd</sup> Respondent to conduct fresh Parliamentary Elections in the Assin North Constituency as such.
- g. 1<sup>st</sup> Respondent is hereby restrained perpetually from holding himself out as Member of Parliament-Elect for Assin North Constituency and or presenting himself to be sworn in as a Member of Parliament

The Court commends counsel in the matter [both present and former], for their resilience and industry put into the matter in pursuit of justice for their respective clients.

Before winding down, in the supreme interest of justice, the Court passionately makes the following recommendation to help and or guide the conduct of future proceedings concerning Parliamentary Elections and to a large extent, Election of Council of State Members and District Assembly Elections in Courts. It is strongly recommended that the authorities involved, for example Parliament itself, Electoral Commission or the Rules of Court Committee may come out with a law to conduct the expeditious disposal of such election disputes as we have in the Supreme Court concerning the Presidential Elections so that within a specified time-frame, the matter is disposed off. This, in the Court's considered view, would do away with delays, sometimes, unnecessary, that characterize such matters in Court since C.I. 47 which is the available procedure rules is not, respectfully, enough.

In the circumstances, the Court assesses cost at Thirty Thousand Ghana Cedis [GHC30,000.00] against the 1<sup>st</sup> Respondent in favour of the Petitioner with a further Ten Thousand Ghana Cedis

[GHC10,000.00] cost against 1<sup>st</sup> Respondent and in favour of 2<sup>nd</sup> Respondent to cover the expenses incurred in fighting the matter.

(SGD)  
**KWASI BOAKYE J.**  
**(HIGH COURT JUDGE).**

**COUNSEL**

**Frank Davies Esq. for Petitioner/Respondent.**

**Justin Pawvra Teriwajah Esq. for 1<sup>ST</sup> Respondent.**

**Emmanuel Addai Esq. for 2<sup>nd</sup> Respondent**

