

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE (GENERAL JURISDICTION 8), ACCRA HELD ON MONDAY THE 29<sup>TH</sup> DAY OF APRIL, 2024 BEFORE HER LADYSHIP ELLEN LORDINA SERWAA MIREKU, JUSTICE OF THE HIGH COURT

SUIT NO. GJ/0560/2024

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

AND

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

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND

THE REPUBLIC

VS.

1. SPEAKER OF PARLIAMENT
  2. ATTORNEY GENERAL
- ... RESPONDENTS

EX-PARTE:

ROCKSON-NELSON ETSE  
K. DAFEAMEKPOR

... APPLICANT

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REGISTRAR  
HIGH COURT  
GENERAL JURISDICTION, LCC-ACCRA

25-2024

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# JUDGMENT

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## **INTRODUCTION**

This is a decision on an Application for Judicial Review made to this Court seeking an Order of Mandamus to compel the Speaker of Parliament of the Republic of Ghana to present the Human Sexual Rights and Family Values Bill (hereinafter referred to as “The Bill”) that was passed by Parliament on 28<sup>th</sup> February, 2024 and a further order directed at the President to receive the Bill and perform the duty imposed on him under Article 106 (7) of the 1992 Constitution.

## **BACKGROUND**

On the 25<sup>th</sup> day of March, 2024, the Applicant herein by the present originating motion invoked the Supervisory Jurisdiction of this Court under Order 55 of the High Court (Civil Procedure) Rules 2004, (C. I. 47) for the following reliefs:

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

3. An order directed at the President of Ghana to signify his assent or otherwise within seven days to the Human Sexual Rights and Family Values Bill as presented by Parliament in accordance with Article 106 (7) of the 1992 Constitution of Ghana.
4. An order directed at the President of the Republic of Ghana to signify to the 1<sup>st</sup> Respondent herein, within seven days after the presentation of the Human Sexual Rights and Family Values Bill, his assent to the Bill or that he refuses to assent to the Bill in accordance with Article 106 (7) of the 1992 Constitution of Ghana, unless the Bill is referred to by the President to the Council of State pursuant to Article 90 of the Constitution of Ghana.
5. Any other reliefs this Honourable Court may deem fit.

The ground upon which the present application is sought is that the Applicant who is a Member of Parliament for South Dayi Constituency and one of the eight sponsors of the Bill contends that the Bill has been duly passed by the Parliament of Ghana in compliance with Article 106 of the 1992 Constitution and as such, it must be presented by the Speaker of Parliament to the President of the Republic of Ghana to signify his assent or otherwise in accordance with Article 106 (7) of the 1992 Constitution of Ghana.

The Applicant brought an Application for Abridgment of Time to move the application before the return date of 15<sup>th</sup> April, 2024 which was granted because the Counsel for 2<sup>nd</sup> Respondent was not opposed to the application and the Counsel for the 2<sup>nd</sup> Respondent intimated to the Court that they will to the substantive application for Judicial Review on Points of Law. The application was therefore moved on 9<sup>th</sup> April, 2024 and adjourned to 18<sup>th</sup> April, 2024 for Counsel for 2<sup>nd</sup> Respondent to respond. However, on the 18<sup>th</sup> of April, 2024 Counsel for Applicant had filed a Supplementary Affidavit to exhibit the letter written by the Clerk of Parliament in response to a letter he had received from



the Secretary to the President. Counsel for 2<sup>nd</sup> Respondent had now filed an Affidavit in Opposition to the application which had not been served on the Applicant. The Court granted leave to Counsel for the Applicant to respond to the Affidavit in Opposition when an oral application was made, and adjourned to 29<sup>th</sup> April, 2024 for the Court's consideration of the instant application.

### **FACTS OF THE CASE**

The facts of the case are not in controversy. A summary of the facts of this case is that the Parliament of the Republic of Ghana on 28<sup>th</sup> February, 2024 passed the Bill and per the 1992 Constitution of the Republic of Ghana, particularly, Article 106 (7), the Bill has to be presented to the President for him to either assent to it; or for the President to signify his refusal to assent to the Bill or for him to refer the Bill to the Council of State under article 90 of the 1992 Constitution.

The Applicant contends that the Secretary to the President has written to the Clerk of Parliament informing him not to transmit the bill to the Presidency until the matters before the Supreme Court are resolved. He further stated that the Clerk to Parliament has responded to the letter from the Secretary to the President indicating that he is waiting for an indication in writing from the office of the President on when to present the Bill to the President for his consideration.

It is the Applicant's contention that this is in breach of the provisions of Article 106 of the 1992 Constitution of Ghana which imposes a constitutional duty on the President to receive a Bill passed and presented to him by Parliament to signify his assent or otherwise hence the present application to compel the 1<sup>st</sup> Respondent and the President to act. He attached a copy of the Bill, the letters

from the Secretary to the President and that of the Clerk to Parliament to his application.

The 2<sup>nd</sup> Respondent is opposed to the present application on grounds that there are two separate cases pending before the Supreme Court which affects the substance and effect of the application before this Court; that there are two Injunction Applications pending in respect of those cases seeking to restrain the 1<sup>st</sup> Respondent herein and the President of Ghana from proceeding with the Bill and that due to the pendency of these cases, the 1<sup>st</sup> Respondent and President are unable to proceed with the Bill.

2<sup>nd</sup> Respondent submitted that since the cases are pending before the Supreme Court, if this Court grants this present application, this Court will be overreaching the Supreme Court which is already seised of the two cases.

2<sup>nd</sup> Respondent prayed the Court to dismiss the application because the Applicant failed to prove that he had a legal right to enforce the duties he is claiming against the 1<sup>st</sup> Respondent and the President; and that the Applicant has not requested a performance of a duty which has been refused. 2<sup>nd</sup> Respondent attached the two cases pending at the Supreme Court to his Affidavit in Opposition.

They both relied on their processes before the Court, their Statements of Case which were their legal submissions to the Court and made some oral submissions to convince the Court whether to grant the application or otherwise. From the processes filed in support of the application and in opposition to it, I am of the considered view that a resolution of two main issues listed hereinunder will help the Court reach a just determination of the Judicial Review Application. The two issues are as follows:

- i. Whether or not the Applicant has made a case for the grant of the Order of Mandamus; and

- ii. Whether this is an appropriate case for which an Order of Mandamus should be issued?

**APPLICABLE CASE LAW AND RULES FOR THE GRANT OF AN ORDER OF MANDAMUS**

The Applicant is invoking the Supervisory Jurisdiction of the High Court in the present Application for Mandamus. Article 141 of the 1992 Constitution of Ghana provides the source of power for the High Court to exercise such Supervisory Jurisdiction over Lower Courts and other adjudicating bodies and it provides as follows:

*“The High Court shall have Supervisory Jurisdiction over all Lower Courts and any Lower Adjudicating Authority; and may, in the exercise of that Jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory powers.”*

The Courts Act, 1993 (Act 459) as amended also has the following provisions in Section 16 relative to the Supervisory Jurisdiction of the High Court thus:

*“In accordance with Article 141 of the Constitution, the High Court has Supervisory Jurisdiction over the Lower Courts and a Lower Adjudicating Authority, and may, in the exercise of that Jurisdiction, issue orders and directions including Orders in the nature of Habeas Corpus, Certiorari, Mandamus, Prohibition and Quo Warranto for the purpose of enforcement of its Supervisory Powers.”*

To actualize the powers bestowed on the High Court by these statutes, The High Court Civil Procedure Rules, 2004 (C. I. 47) provides the procedure by which the Supervisory Jurisdiction of the High Court can be exercised. Order 55 Rule 1 of the Civil Procedure Rules, 2004 (C. I. 47) provides as follows:



*“An application for*

- a. An order in the nature of Mandamus, Prohibition, Certiorari, or quo warranto; or*
- b. An injunction restraining a person from acting in any public office in which the person is not entitled to act; or*
- c. Any other injunction*

*Shall be made by way of an Application for Judicial Review to the High Court.”*

Judicial Review is only available against a Public Authority concerning the protection of rights that only arise in Public Law. In the case of **Republic v High Court, Accra; ex-parte Industrialization Fund for Developing Countries [2003-2004] 1 SCGLR 348**, it was stated that “... *Judicial Review is really part of administrative law to control administrative action. Administrative bodies are public bodies and the English Courts have held that Judicial Review is not available in respect of rights and obligations created in the field of private law.*”

Judicial Review, therefore, allows the courts to intervene and / or interfere in the machinery of public administration where circumstances warrant judicial intervention or interference in the declaration and enforcement of law and also to compel the performance of a public duty. To that extent, it is undisputed that the Judicial Review remedies such as mandamus are applicable only to public bodies and that they may only apply to non-public bodies if shown that the said entity, though not a public body, is performing a public function.

The prerogative orders contained in Article 141 have been held to be the mechanism whereby Administrative Law Principles are applied. It is worth mentioning that these prerogative orders are not orders granted as of right, but their grant or refusal is discretionary. The Court can refuse such an application

unless it is shown that there is a clear legal right of the Applicant or statutory duty of the Respondent and there is no alternative remedy available to the Applicant. (See the case of **Republic v High Court, Accra: ex parte Attorney – General (Ohene Agvapong Interested Party) [2012] 2 SCGLR 1204.**)

Mandamus, according to the Black's Law Dictionary, 9<sup>th</sup> Edition is "A writ issued by a Court to compel performance of a particular act by a Lower Court or a Government Officer or Body, to correct a prior action or failure to act." Mandamus is a special remedy that is granted where a person with a right to enforce a public duty is found to be without effective and speedy remedy within the context of the existing law.

The Courts have over the years developed a set of grounds which when proven can found an Application for Mandamus. Apart from the time limit of Six (6) months to institute the action, the grounds to establish are as follows:

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

These grounds were laid down in the case of the **Republic v Chieftaincy Secretariat; ex parte Adansi Traditional Council [1968] GLR 736** which was adopted by the Supreme Court in the case **Republic (No. 2) v National House of Chiefs; ex parte Akrofa Krukoko II (Enimil VI Interested Party) (No. 2) [2010] SCGLR 134.** These conditions must be strictly complied with prior to the grant of the order, thus, before a Court would make such an order of



mandamus to compel a Public Officer to perform a public duty imposed by statute or the Constitution on the said officer, the aggrieved Applicant must satisfy these four conditions stated above.

What the Applicant is seeking in this Court is an order compelling the Speaker of Parliament to present the Bill which was passed on 28<sup>th</sup> February, 2024 to the President of the Republic of Ghana and a further order directed at the President to accept the Bill and comply with Article 106 (7) of the 1992 Constitution of the Republic of Ghana. The law is that the Applicant ought to establish that the Speaker and the President have a public legal duty to act, the duty must be owed to the Applicant and the duty is imposed by a statute or Constitution.

The Applicant contends that the Clerk of Parliament attempted to present the Bill to the President on 14<sup>th</sup> March, 2024 but he received a formal letter dated 18<sup>th</sup> March, 2024 from the Secretary to the President asking him to desist from transmitting the Bill to the President because the Attorney General had by a letter dated the same 18<sup>th</sup> March, 2024 informed the President that it would be improper to receive the Bill from Parliament pending the determination of two Injunction Applications filed at the Registry of the Supreme Court and which had been served on him.

He further contends that the Speaker of Parliament, the Clerk of Parliament, and the President are all Public Office Holders and are subordinate to the Constitution and as such this Court should compel them to perform their Constitutional functions as Parliament has complied with all the provisions of Article 106 of 1992 Constitution and there is no other effective remedy to the reliefs sought.

To discharge the burden placed on him to establish that the Respondents have a public legal duty to act, and that the duty is imposed by a statute or the Constitution, the Applicant brought the application under Article 106 of the

1992 Constitution of the Republic of Ghana. Article 106 (7) of the 1992 Constitution states: *"Where a Bill passed by Parliament is presented to the President for assent, he shall signify, within seven days after the presentation to the Speaker that he assents to the bill or that he refuses to assent to the bill, unless the bill has been referred by the President to the Council of State under article 90 of this Constitution."*

The above article imposes a Constitutional duty on the Speaker and President as they are required by the provisions of the article to perform some functions, i.e., for the Speaker to present the Bill that had been passed and the President to assent or refuse to assent or make a referral under Article 90. This function is an administrative one and this duty is imposed by none other but the Supreme Law of the land, the 1992 Constitution. The Speaker of Parliament and the President of the Republic of Ghana are both Public Office Holders (See Articles 295 and 286(5) of the 1992 Constitution). The act complained of by the Applicant, being an administrative action of a Public Office Holder such as the Speaker and the President and being imposed by the Constitution, this Court has jurisdiction to entertain it.

The provision in Article 106 (7) of the 1992 Constitution means that after the passage of the Bill, the Bill is presented to the President. Parliament having passed the Bill on 28<sup>th</sup> February 2024, the Bill is expected to be sent to the President by the Speaker of Parliament to enable him to perform the duty imposed on him by the Constitution. This presupposes that the presentation is done by Parliament through the Speaker of Parliament as he is the Head of Parliament and acts through the Clerk of Parliament as was stated at paragraphs 14, 21, 22 and 23 in the Affidavit in Support of the application of the Applicant who is a member of Parliament and familiar with the Standing Orders of Parliament. These duties have not been performed because of the letters exchanged between the office of the President and the Clerk of Parliament. This

the Applicant deems as a demand and a refusal to act on their parts. I am of the considered view that these letters are not an act of outright refusal but a request to hold on or postpone the performance of the duty to a later time.

Lastly, for the right to an Order of Mandamus to arise, the Applicant must have inter alia made a demand and same be refused and/or deemed to be refused by the Public Officer before a party could proceed to Court. It should however be noted that the current law in Ghana is that the demand and refusal rule is only applicable to statutes and not the Constitution. (See the case of **Larbie Mensah IV alias Aryee Addoquaye v National House of Chiefs and Another [2011] 2 SCGLR 883.**)

Therefore, the Applicant did not need to make a demand on the Speaker and the President before bringing the present action as the duty complained of is one imposed by the Constitution and not statute.

From the above, it can be seen that the 1<sup>st</sup> Respondent and the President of the Republic of Ghana owe a public legal duty to act and the duty is imposed by the Constitution, therefore, the present Applicant being a member of Parliament and a Ghanaian can bring this present action for the reliefs he is seeking and I am therefore satisfied that issue 1 as raised by the Court, which is, whether or not the Applicant has made a case for the grant of the Order of Mandamus is answered.

I would now turn my attention to Issue 2, which is whether or not this is an appropriate case for which an Order of Mandamus should be issued?

In stating the applicable law, I stated that the issue or order of mandamus is granted not as of right. It is discretionary so though the conditions for its grant



as stated above may be made out by an applicant, the court may refuse to order it for justifiable reasons.

From the processes before me, particularly, the Affidavit in Opposition to the application, the 2<sup>nd</sup> Respondent has exhibited the two cases that are pending before the Supreme Court that they claim affect the substance of this case because the grant of this application will overreach the conduct of those cases before the Supreme Court. The 1<sup>st</sup> case is between one Dr Amanda Odoi and the Speaker of Parliament & the Attorney-General and the 2<sup>nd</sup> one is between Richard Sky and The Parliament of Ghana & the Attorney-General. The 1<sup>st</sup> suit with Suit Number J1/13/2023 was filed in May 2023 and the 2<sup>nd</sup> one with Suit Number J1/9/2024 was filed on 5<sup>th</sup> March, 2024.

Both cases have invoked the original jurisdiction of the Supreme Court under Article 2 of the 1992 Constitution. The Plaintiff in the 1<sup>st</sup> case is claiming that the Speaker of Parliament has breached Article 108 of the Constitution by failing to ensure that the provisions of that article was complied with in the passage of the Bill and thus, the entire process relating to the Bill is unconstitutional and void.

The Plaintiff in the 2<sup>nd</sup> case is claiming that the passage of the Bill by Parliament contravened the Constitution as some constitutional provisions were breached and as such it is to that extent null, void and of no effect among other reliefs. The 2<sup>nd</sup> case in particular also prayed for injunction to restrain the Speaker and the President from acting on the Bill. These two cases are yet to be determined by the Supreme Court and it is a fact that these two cases were initiated before the present one before me as the one before me was initiated on 25<sup>th</sup> March, 2024 whilst the two others were initiated in May 2023 and 5<sup>th</sup> March, 2024 respectively.

It is trite learning that jurisdiction is conferred on a Court by the Constitution and/or statute and the jurisdiction of the courts (Supreme Court and the High Court) in respect of the cases pending before them that affects the Bill are different as the reliefs claimed are also different. The reliefs sought in the Supreme Court affect the constitutionality of the Bill whilst the present one before me is an order to compel the 1<sup>st</sup> Respondent and the President to perform their duties. Each of these Courts has the requisite jurisdiction and competence to deal with the cases before them.

However, the 1<sup>st</sup> relief being sought before me is for a declaration that Parliament complied with the provisions of Article 160 (1 to 6) of the 1992 Constitution in the passage of the Bill but this same issue is being challenged in the 2<sup>nd</sup> suit filed on 5<sup>th</sup> March, 2024 which is pending before the Supreme Court.

In the 2<sup>nd</sup> suit before the Supreme Court, Parliament is accused of breaching provisions of the Constitution in the passage of the Bill and as such the Bill should be declared null and void. I am therefore hesitant to grant the 1<sup>st</sup> relief being sought by the Applicant as these acts of Parliament leading to the passage of the Bill are being challenged in the Supreme Court. In the event that the Supreme Court finds merit in that case and declares the Bill as null and void because some Constitutional provisions were breached, it will cease to exist and have no effect so I am of the considered opinion that it is appropriate to await the outcome of that case before insisting that the Bill should be passed into law by the President when the legitimacy of the Bill is being questioned.

Secondly, the cases before the Supreme Court concern the constitutionality and validity of the Bill itself. Those cases are saying that the Bill is unconstitutional and should not be passed into Law, therefore, it is my considered opinion that this Application for Mandamus is premature as the essence of the very Bill is being challenged at the Supreme Court and it would be peremptory to grant the



application. Apau JSC in the case of Republic v The Registrar & President of National House of Chiefs, Kumasi & 4 others [2019] Ghana Law Time Report Vol 49 held that mandamus would not lie where the demand is premature ...”. The actions challenging the Constitutionality of the Bill being first in time, one would expect that they are dealt with first and depending on the outcome, the Bill can then be presented and assented to or otherwise by the President.

After a careful consideration of the application, even though the Applicant satisfied the Court that there was a duty imposed on the Respondents, per the reasons given above, I am not minded exercising my discretion in the Applicant’s favour as I find that it is not appropriate at this time. Accordingly, the instant Application for Judicial Review in the nature of mandamus is refused.

No order as to cost.

(SGD)  
 H/L ELLEN L. S. MIREKU  
 JUSTICE OF THE HIGH COURT

**NII KPAKPO SAMOA ADDO ESQ. WITH EVELYN ASAMANI NARTEY AND BENEDICTA NAA AYELEY QUAYE FOR THE APPLICANT**

**SYLVIA ADUSU (CHIEF STATE ATTORNEY) WITH GEORGE TETTEH SACKEY (PRINCIPAL STATE ATTORNEY) AND MAAME AMA OWUSU ANSAH (ASSISTANT STATE ATTORNEY) FOR THE 2<sup>ND</sup> RESPONDENT**

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