IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF GHANA

ACCRA- A.D. 2025

Suit No.: **J1/22/2025**

Between

HER LADYSHIP JUSTICE GERTRUDE ARABA ESAABA SACKEY TORKORNOO
Chief Justice's Residence,

Cantonments,

Accra. Plaintiff

And

1. **THE ATTORNEY-GENERAL**
   Office of the Attorney-General and Ministry of Justice,
   Accra
2. **JUSTICE GABRIEL SCOTT PWAMANG**
3. **JUSTICE SAMUEL KWAME ADIBU-ASIEDU**
4. **DANIEL YAO DOMELOVO**
5. **MAJOR FLORA BAZWAANURA DALUGO**
6. **PROFESSOR JAMES SEFAH DZISAH** Defendants

STATEMENT OF PLAINTIFF'S CASE

Pursuant to leave of Court granted on 26th June, 2025

INTRODUCTION

This action has been commenced by the Chief Justice of the Republic, who is the Head of the Judiciary—the third arm of the State and indeed the only independent branch of government, which is not and should never be subject to external control. The Chief Justice seeks redress against multiple constitutional violations inherent in the proceedings initiated for her removal from office. At stake in this action is not mere procedural regularity but the vital preservation and protection of judicial independence, a principle jealously safeguarded throughout the nation's constitutional history and prior compositions of the Supreme Court, and which this current Supreme Court is uniquely and timeously positioned to protect for the future of itself and Ghana's infant democracy.

Through this action, the Plaintiff seeks to defend the Judiciary from undue external control, with the earnest hope that this Supreme Court will recognise and appreciate the significance of this critical moment in the history of the nation and the Supreme Court itself, even as it approaches the sesquicentennial of the Supreme Court Ordinance, 1876.

Furthermore, this litigation presents a rare and critical opportunity for this Honourable Court to advance and clarify significant constitutional doctrines initiated in landmark cases such as **Agyei-Twum v. Attorney-General & Anor** [2005-2006] SCGLR 732 and **Justice Dery v. Tiger Eye P.I. & 2 Others** [2015-2016] 2 SCGLR 812, particularly regarding the required standards for prima facie determinations under Article 146, always mindful that as Ghana's highest court, it is setting a precedent for how current and future Justices of the Court could be treated and signalling to the Executive the extent of likely judicial pushback in future efforts to remove Justices of the Superior Courts.

Jurisprudentially, this moment invites the Honourable Justices of this Court go behind what the famous legal philosopher, John Rawls, called the "**Veil of Ignorance**" - a veil that is to help people envision a just society by temporarily forgetting their own personal circumstances. John Rawls invites you to imagine that you are creating rules for Ghana and future Justices of this Honourable Court from behind a veil that conceals your identity, status, aspirations and other circumstances of your life. John Rawl's "Veil of Ignorance", which is intended to promote impartiality and fairness in decision-making is more important to this Honourable Court than it has ever been. As John Rawls note in his book - **A Theory of Justice**, "*the principles of justice are chosen behind a veil of ignorance*".

As observed by Wiredu JSC (as he then was) in his concurring opinion in the unanimous judgment of the Supreme Court, fending off an attempt to remove the Chief Justice of Ghana through the back door, in **Ghana Bar Association v. Attorney-General & Anor** [1995-96] 1 SCGLR 598, the history of the development of constitutional law in Ghana shows that on some occasions, Chief Justices "*have not been spared the ordeal of having to be engaged in court proceedings either to defend their positions or in having to answer allegations of acts done in contravention of the provisions of the Constitution. In all such cases, the Supreme Court has boldly … determined each case confidently and has courageously proved equal to the challenge posed by those cases* …"

The resolution of this action will have profound, far-reaching historical implications not only for the Judiciary but also for other constitutional and statutory bodies whose terms and conditions of service are intricately tied to Article 146. It thus represents a pivotal moment for constitutional jurisprudence and the safeguarding of institutional independence.

This Statement of Case is presented in the following order:

A. Facts of case
B. Original jurisdiction of this Honourable Court
C. The proper and applicable principles of interpretation
D. Arguments in support of the reliefs sought by the Plaintiff
E. Conclusion
F. List of authorities

For clarity, some of the topics listed above may have subheadings.

A. FACTS OF CASE

1. On Tuesday, the 25th of March, 2025, the Plaintiff, in her capacity as Chief Justice of the Republic of Ghana, was taken by complete surprise upon learning—through various media outlets—that the Spokesperson to the President had issued an official press statement titled "*President Mahama Consults with the Council of State on three*

(3) Petitions for the removal of the Chief Justice." This was the first time the Plaintiff became aware of any suggestion that petitions had been submitted to the President seeking her removal from office. Until that point, she had received no formal communication from any constitutional authority or person in respect of any such petitions.

2. Upon obtaining and reviewing a copy of the said press statement from publicly available sources, the Plaintiff noted, with considerable concern, that the Spokesperson had publicly stated that the President had received three separate petitions seeking her removal from office as Chief Justice and had, pursuant to Article 146 of the Constitution, forwarded them to the Council of State for the commencement of the constitutionally prescribed consultative process.

3. With the utmost respect, the Plaintiff found this deeply troubling, as it demonstrated a blatant disregard for established constitutional principles of due process and judicial independence. The initiation of such consequential constitutional processes without affording the Chief Justice—the subject of the petitions—an opportunity to be notified of the allegations or to respond constitutes a gross procedural anomaly and a fundamental breach of her rights.

4. Consequently, on 27th March 2025, the Plaintiff formally wrote to the President requesting copies of the petitions upon which the consultation with the Council of State had been initiated. By a letter dated 29th March 2025, the President acceded to her request and provided the said petitions. The Plaintiff subsequently submitted comprehensive responses to each of the three petitions, setting out legal and factual grounds upon which she contended that the petitions were devoid of merit.

5. Around this same period, a Ghanaian citizen and Member of Parliament for the Tafo Constituency in the Ashanti Region, Hon. Vincent Ekow Assafuah, alarmed by the unconstitutionality of the developing circumstances, invoked the original jurisdiction of this Honourable Court seeking declaratory reliefs. He also filed an interlocutory application to restrain the President and the Council of State from proceeding with the consultation process under Article 146 until the substantive matter was adjudicated.

6. Notwithstanding the pendency of this application—with which the Attorney-General had been duly served and had responded to—and despite the fact that the matter had been adjourned on two occasions by this Honourable Court, the President, on 22nd April 2025, issued a press release announcing that a prima facie case had been established in respect of the petitions. This development was again conveyed through the media before any direct formal notification was made to the Plaintiff.

7. Later that same day, the Plaintiff received a letter from the Office of the President, signed by the Secretary to the President, which formally informed her that a prima facie case had been established against her. The letter further stated that a five-member committee had been constituted under Article 146(6) to inquire into the petitions, and that, by a warrant issued under Article 146(10), she had been suspended from her office as Chief Justice pending the outcome of the committee's proceedings.

8. It is pertinent to note that prior to the issuance of the warrant of suspension, a purported opinion poll—organised by a pollster known to be closely aligned with the Government—was circulated to the public, alleging that the Plaintiff was unpopular and ought to be removed from office. This lends further credence to the view that the process was not initiated in good faith and raises serious concerns about the political motivation behind the proceedings.

9. In addition, there have been multiple unauthorised leaks to the media of documents purported to be the petitions and the Plaintiff's responses thereto. These leaks, coupled with the pervasive media commentary and reporting across radio, television, and print outlets, have caused significant prejudice to the Plaintiff and the integrity of the entire process. Given these circumstances, in camera proceedings, as contemplated under Article 146(8), would serve no useful purpose. On the contrary, the demands of justice, fairness, and public confidence would be best served by a public hearing of the petitions, particularly where no threat is posed to public morality, public safety, or public order.

10. Furthermore, the President's purported prima facie determination, as communicated in the letter dated 22nd April 2025, contained no reasons or justification and was entirely devoid of the elements of judicial or quasi-judicial reasoning expected under the Constitution. It failed to meet the standard of a judicious and objective assessment and, as such, is arbitrary, capricious, and constitutionally infirm.

11. Compounding the illegality is the composition of the committee itself. Justice Gabriel Scott Pwamang, who was named as the Chairperson, is disqualified from serving on the committee, having previously adjudicated on cases affecting two of the petitioners, Mr. Daniel Ofori and Ayamga Akulgo, in the Supreme Court, and those matters were the subject of some of the allegations in two of the petitions against plaintiff. Justice Gabriel Pwamang had in fact rendered decisions in a case involving Daniel Ofori as part of a panel of which the Plaintiff was also a member. Similarly, Justice Samuel Kwame Adibu-Asiedu had earlier sat on a panel of the Supreme Court that heard an application in a suit challenging the very proceedings now being pursued under Article

146. His participation undermines the principle of judicial impartiality and independence.

12. Moreover, the remaining members of the committee had not taken the requisite oath under Article 156(1) of the Constitution and the Oaths Act, 1972 (NRCD 6), as at the time the committee first convened on 15th May 2025, rendering their participation in any proceedings prior to taking the prescribed oath unconstitutional and unlawful.

B. ORIGINAL JURISDICTION OF THIS HONOURABLE COURT

13. Before turning to the substantive merits of our case, we respectfully seek to address this Honourable Court on the preliminary issue of jurisdiction. This approach accords with established judicial practice and principles, exemplified notably in the decision of this Honourable Court in **Attorney-General (No. 2) v. Tsatsu Tsikata (No. 2)** [2001-2002] SCGLR 620, wherein Acquah JSC (as he then was) stated as follows:

> *"It is therefore trite knowledge that the duty of every judge in any proceedings is to satisfy himself that he has jurisdiction in the matter before him."*

14. The original jurisdiction of this Honourable Court emanates from the Constitution. The explicit terms of Articles 2(1) and 130(1) of the Constitution ground this Court's jurisdiction to entertain actions by which a person either seeks interpretation of the Constitution or an enforcement of same.

15. For the avoidance of doubt, Article 2(1) of the Constitution provides as follows:

> "***2. Enforcement of the Constitution***
> *(1) A person who alleges that*
> *(a) An enactment or anything contained in or done under the authority of that or any other enactment, or*
> *(b) Any act or omission of any person,*
> *is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect."*

16. Article 130(1) further provides that:

*"**130. Original jurisdiction of the Supreme Court***

(1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in

(a) all matters relating to the enforcement or interpretation of this Constitution; and

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution."

17. For more than fifty (50) years, the jurisprudence of this Honourable Court has consistently defined circumstances under which a question of constitutional interpretation may properly arise. Notably, in the seminal decision of **Republic v. Special Tribunal; Ex parte Akosah** [1980] GLR 592, the Court of Appeal, then sitting as the Supreme Court, carefully considered the circumstances under which an issue of interpretation or enforcement arises within the contemplation of Article 118(1)(a) of the 1979 Constitution, which provides as follows:

> *"118. (1) The Supreme Court shall, except as otherwise provided in article 35 of this Constitution, have original jurisdiction, to the exclusion of all other courts,*
> *(a) in all matters relating to the enforcement or interpretation of any provision of this Constitution; and*
> *(b) where a question arises whether an enactment was made in excess of the powers conferred upon Parliament or any other authority or person by law or under this Constitution."*

18. *Anin JA*, delivering the judgment of the Court after reviewing previous decisions of the Court, summarised the position at page 605 thus:

> *"Summary of the Case Law on Enforcement or Interpretation*
>
> *From the foregoing dicta, we would conclude that an issue of enforcement or interpretation of a provision of the Constitution under article 118(1)(a) arises in any of the following eventualities:*
>
> *(a) where the words of the provision 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 otherwise 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 provision 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 operation of particular institutions set up under the Constitution, and thereby raising problems of enforcement and of interpretation.

On the other hand, there is no case of "enforcement or interpretation" where the language of the article of the Constitution is clear, precise and unambiguous...he should certainly not invoke the Supreme Court's original jurisdiction under article 118."

19. The test set out in **Ex parte Akosah** (supra) has been applied with approval by the Supreme Court in the Fourth Republic in relation to its original interpretative and enforcement jurisdiction under articles 2(1) and 130(1) of the Constitution in cases such as **Republic v Special Tribunal; ex parte Forson** [1980] GLR 529, **Republic v High Court (Fast Track Division) Accra; ex parte Electoral Commission (Mettle-Nunoo & Others Interested Parties)** [2005-2006] SCGLR 514, **Republic v Edusei (No. 2) v Attorney General** [1998-99] SCGLR 753; and **Republic v Court of Appeal, Accra; ex parte Tsatsu Tsikata** [2005-2006] SCGLR 612.

20. The Court has adopted the same approach in recent decisions in **Justice Abdulai v. The Attorney-General** - Suit no. J1/07/2022 (Unreported - Judgment delivered on 6 March 2022); **Michael Ankomah Nimfa v. James Gyakye Quayson** - Suit No. J1/11/2022 (Unreported - Judgment delivered on 17 May 2023); and **Alexander Afenyo Markin vrs. 1. Speaker of Parliament 2. Attorney-General** - Suit No. J1/01/2025 (Unreported - Judgment delivered on 12 November 2024).

21. In this case, it is respectfully submitted that a genuine and substantial issue of constitutional interpretation arises upon a careful examination of the relevant constitutional provisions. It must be emphasised that there is no doubt that the language employed in Article 146, particularly clauses (6) and (7), is sketchy and capable of multiple competing interpretations. In their literal and plain construction, clauses (6) and (7) of Article 146 merely mandate the President, in consultation with the Council of State, to establish a committee, as outlined therein, to investigate petitions seeking the removal of the Chief Justice upon receipt of such petitions. However, the jurisprudence of this Honourable Court, specifically in **Agyei-Twum v. Attorney-General & Akwettey** [2005-2006] SCGLR 732, demonstrates that a purely

literal interpretation of Article 146(6) and (7) may significantly undermine and jeopardise the rights of the Chief Justice, who is the subject of the contemplated removal proceedings. In furtherance of the principles of judicial independence and security of tenure of judges, the Court interpreted article 146(6) and (7) to give the Chief Justice greater protection, by requiring that before the establishment of a committee to inquire into a petition against the Chief Justice for his removal, the President in consultation with the Council of State, makes a prima facie determination of the merits of the petition in question.

22. It is however, respectfully submitted that the previous interpretations rendered by this Honourable Court in respect of Article 146(3), (4), (6) and (7) did not directly address the critical question of whether the determination of a prima facie case in relation to a petition for the removal of the Chief Justice necessitates the extension of the constitutional right to be heard to the Chief Justice. Nor did the Court, in its previous pronouncements, examine the standard to be applied in making a prima facie determination.

23. In light of the fact that a prima facie determination under article 146(3), (4), (6) and (7) is a quasi-judicial process, in our submission, such a determination must at the barest minimum, (i) specify which of the charges in the petition(s) have met the yardstick of a prima facie case (ii) be accompanied by clearly stated reasons, reflecting a judicious evaluation of the matters raised. As we would demonstrate below, the need for such judicious evaluation is compelled by the very nature of allegations that may form the subject matter of an article 146 proceeding. The absence of such reasoning fundamentally undermines the fairness and transparency required by the Constitution.

24. For the avoidance of doubt, it cannot be contended that the determination of a prima facie case and effecting of a suspension of the Chief Justice, which affects her rights to exercise authority as the Head of Ghana's Judiciary, is an act immune from this Honourable Court's scrutiny under articles 2 and 130(1) of the Constitution. No organ, arm or authority of state purporting to exercise a power under the Constitution, 1992 can clothe itself with immunity to an action invoking the Court's original jurisdiction under article 2(1) of the Constitution.

25. Furthermore, it is submitted that there is a real issue regarding whether the constitutional stipulation in article 146(8) for proceedings to be *in camera* implies that the subject of an article 146 proceeding cannot waive his right to an *in camera* hearing or excludes the subject's right to apply for the proceedings to be in public. This Honourable Court has previously had occasion to examine the constitutional

requirement for confidentiality in proceedings for the removal from office of constitutional and statutory office holders under Article 146(8), notably in Dery v. Tiger Eye P.I. (supra). Notwithstanding the Court's guidance, the constitutional injunction requiring *in camera* proceedings continues to be disregarded with impunity, with little or no means of monitoring or remedying such violations. Where, however, the person against whom such proceedings are initiated elects to waive the right to confidentiality, particularly in circumstances where details of the proceedings have already been widely publicised and discussed at length in the public domain, it is submitted that such a waiver should be respected in the interest of transparency, fairness, and the public good.

26. The Plaintiff respectfully contends that, having regard to the overarching constitutional principle of judicial independence, there exists a compelling need to safeguard the office of the Chief Justice from the risk of arbitrary, frivolous, or vexatious petitions initiated by an overzealous Executive or any misguided individual or authority seeking, through such processes, to exert improper influence over the Judiciary. The use of the petition mechanism under Article 146 to suspend or remove the Chief Justice, who serves as the head of the only independent arm of government, must not become a convenient tool for executive interference with the Judiciary or institutional destabilisation. The Court thus owes a duty to critically scrutinise actions taken by the President purportedly under article 146(10) of the Constitution.

27. As a corollary, the Court is duty bound to give a listening ear to complaints of executive encroachment on judicial autonomy and attempts to interfere with the independence of the Judiciary through article 146 proceedings, rather than affirming executive authority through a swift disposal of such challenges.

28. It is submitted that the constitutional right to be heard must be accorded to the Chief Justice both prior to and during the process for determining whether a prima facie case has been established. Furthermore, there should be a reasoned decision at the conclusion of a prima facie determination. Such procedural safeguards are necessitated by a purposive and harmonious construction of the Constitution's provisions and underlying values, including Articles 17, 19, 23, 125, 127, 146 and 296 all of which enshrine the ideals of fairness, due process, and judicial autonomy.

29. It is the Plaintiff's respectful submission that, upon a true and proper interpretation of the Constitution, this Honourable Court will find that the observance of the audi alteram partem rule at the threshold stage of prima facie determination is not merely desirable

but constitutionally mandated, particularly in proceedings implicating the tenure and integrity of the Chief Justice.

30. Another basis for the invocation of the Court's original jurisdiction is the composition of the committee to conduct an inquiry into the allegations against the plaintiff under article 146(6) of the Constitution. The thrust of the plaintiff's reliefs and argument herein, is that, merely because the President has the power to set up a committee in the manner specified under article 146(6) does not mean he cannot appoint any two Justices at all. As would be demonstrated in these submissions, the President is required to be mindful of the rules of natural justice, reasonableness, perception of bias or impropriety as well as the potential effect of the appointment of some specific Justices of the Supreme Court on the supreme concept of judicial independence. These principles are the burden of articles 23, 296, 125 and 127 of the Constitution. Thus, a real issue is raised whether the appointment of Justices Gabriel Pwamang and Asiedu to serve on the panel is constitutionally justifiable.

31. Respectfully, considering the well-established jurisprudence of this Honourable Court developed over the past five decades—portions of which have been referenced herein—it is submitted that the invocation of the original jurisdiction of this Court by the Plaintiff is proper and justified. The Plaintiff in the circumstances, rightly invites the Court to pronounce upon the following weighty and constitutionally significant questions:

    a. Whether the Chief Justice who is the subject of proceedings before a committee appointed under Article 146(6) to inquire into a petition for her removal is entitled to a public hearing as part of the right to a fair hearing, or whether the Chief Justice may waive the right to in camera proceedings under Article 146(8) of the Constitution.

    b. Whether the determination by the President of a prima facie case in respect of a petition for the removal of the Chief Justice constitutes a quasi-judicial process requiring a judicious evaluation culminating in a reasoned decision;

    c. Whether the purported prima facie determination and subsequent suspension of the Chief Justice, as conveyed in the letter dated 22nd April 2025, amount to an arbitrary, capricious and unconstitutional exercise of power, in violation of the right to a fair hearing and the constitutional guarantee of judicial independence.

d. Whether the appointment of the 2nd and 3rd Defendants—Justice Gabriel Scott Pwamang and Justice Samuel Kwame Adibu-Asiedu—as members of the committee constituted by the President to inquire into petitions for the removal of the Chief Justice is unconstitutional, by reason of prior judicial involvement in matters relating to the petition or proceedings connected thereto;

e. Whether the continued participation in the committee proceedings of the two Justices of this Honourable Court violates the principles of natural justice, judicial impartiality, and the constitutional guarantee of judicial independence.

f. Whether the 4th, 5th, and 6th Defendants are constitutionally qualified to perform the functions assigned to them as members of the committee constituted by the President to inquire into the petitions for the removal of the Chief Justice due to their failure to take and subscribe to the judicial oath; and whether, in the circumstances, the said committee—comprising the 2nd, 3rd, 4th, 5th, and 6th Defendants—is lawfully constituted and capable of lawfully carrying out the mandate set forth in Article 146(6) of the Constitution.

32. We respectfully submit these arguments in unwavering fidelity to the Constitution of the Republic, and in the earnest pursuit of preserving and upholding the hallowed principles of judicial independence and the security of tenure accorded to Justices of the Superior Courts.

33. It is respectfully submitted that, as affirmed by this Honourable Court in **Tuffour v. Attorney-General** [1980] GLR 637, the sole and paramount consideration in a constitutional action is the proper construction and enforcement of the Constitution itself. The Court's jurisdiction in such matters is strictly confined to giving effect to the dictates of the Constitution.

34. In **Adjei Ampofo (No. 1) v. Accra Metropolitan Assembly and Attorney-General (No. 1)** [2007-2008] SCGLR 611, this Honourable Court reaffirmed its exclusive original jurisdiction under Article 130 of the Constitution, to interpret all provisions of the Constitution, including those enshrined in Chapter Five concerning fundamental human rights and freedoms. The Court emphasised that the mere fact that a constitutional provision relates to human rights does not derogate from its exclusive interpretative mandate.

35. This position was further underscored in **Republic v. High Court (General Jurisdiction), Accra; Ex Parte Dr. Zanetor Rawlings (Ashittey and National Democratic Congress as Interested Parties)** [2015-2016] 1 SCGLR 92, where the Supreme Court reiterated its constitutional authority to pronounce definitively on the meaning and scope of all constitutional provisions, irrespective of their subject matter.

36. The same position was reached by the Court recently, in **Michael Ankomah Nimfah v. Gyakye Quayson & 2 Others**, when speaking through Amegatcher JSC, the Court noted as follows:

> *"However, if parties raise rival positions regarding the meaning and application of the text of the Constitution or the words of a constitutional provision are imprecise, unclear, or ambiguous, then the exclusive jurisdiction of this court is properly invoked for the resolution of the proper interpretation to place on the relevant provision under **article 130**. See the oft-cited decision in **Republic v Special Tribunal; Ex Parte Akosah 1980 GLR 592**. Again, if there is a breach of the Constitution, the enforcement jurisdiction of this court conferred in **article 2** is rightly invoked."*

C. THE PROPER AND APPLICABLE PRINCIPLES OF INTERPRETATION

37. The jurisprudence of this Honourable Court has firmly and consistently established that a purely literal construction of the Constitution, divorced from a consideration of related constitutional provisions and the underlying values, principles, and purposes that animate the Constitution as a whole, does not constitute an appropriate or permissible approach to constitutional interpretation. Rather, a purposive, harmonious, and holistic reading of the Constitution is required to give full effect to its spirit, intent, and framework.

38. It is respectfully submitted that any discourse on the purposive interpretation of the Constitution must begin with the locus classicus of **Tuffuor v. Attorney-General** [1980] GLR, wherein the Court of Appeal, sitting as the Supreme Court, laid the foundational principle for constitutional interpretation in Ghanaian jurisprudence. In his oft-cited dictum at pages 647–648 of the Report, Sowah JSC (as he then was) articulated the interpretive approach that accords with the nature and character of the Constitution, cautioning against rigid or doctrinaire constructions. His Lordship stated as follows:

"*The Constitution has its letter of the law. Equally, the Constitution has its spirit… Its language, therefore, must be considered as if it were a living organism capable of growth and development. A broad and liberal spirit is required for its interpretation. It does not admit of a narrow interpretation. A doctrinaire approach to interpretation would not do. We must take account of its principles and bring that consideration to bear, in bringing it into conformity with the needs of the time.*"

39. This pronouncement has become a guiding principle in Ghanaian constitutional interpretation, affirming the necessity of construing the Constitution holistically, with due regard to its overarching values, evolving context, and enduring purpose.

40. Georgina Wood CJ, in **Brown v. Attorney-General (Audit Service Case)** [2010] SCGLR 183, provided the necessary direction on the most preferred approach to interpreting the Constitution of Ghana.

"*The purposive and literal approach in proper context is commendable; it is the purely mechanical or literal that pays no heed to the legislative purpose or intent, that has no place in this area of the law ... In the proper context, the objective purposive approach would be the preferred approach, if the Constitution must be read as a whole, in terms of both its explicit and implicit language, and read as a living document, with a view to actualising core values and meeting the hopes and aspirations of the people for whom it was crafted. The spirit of the 1992 Constitution, a judicially established aid to interpretation, is embodied not only in the actual texts, under consideration, but also the goals and objectives as captured in the Preamble, the Directive Principles of State Policy, and indeed the entire document.*"

41. In **Agyei-Twum v. Attorney-General & Akwettey** [2005-2006] SCGLR 732, Date-Bah JSC obviously inspired by Sowah JSC's dictum in **Tuffuor v. Attorney-General** (supra), stated thus:

"*The fact that a country has a written constitution does not mean that only its letter may be interpreted. The courts have the responsibility for distilling the spirit of the Constitution from its underlying philosophy, core values, basic structure, the history and nature of the country's legal and political systems,*

etc. in order to determine what implicit provisions in the written constitution would flow inexorably from that spirit".

See also: **National Media Commission v. Attorney-General** [2000] SCGLR 1; **Asare v. Attorney-General** [2003-2004] 2 SCGLR 823; **Omaboe III v. Attorney-General** (2005-2006) SCGLR 579; and **Ghana Lotto Operators Association v. National Lottery Authority** [2007-2008] 2 SCGLR 1088.

42. In light of the foregoing, it is respectfully submitted that the mechanistic and rigidly literal method of constitutional interpretation has long been rendered obsolete and is now wholly inadequate for the fulfilment of the aspirations and foundational objectives enshrined in the Constitution of the Republic. A strict textualist approach, devoid of context and detached from the animating values of the Constitution, fails to give true meaning to the living character of our supreme law.

43. In contrast, the modern purposive approach—consistently embraced by this Honourable Court—recognises the Constitution as a dynamic and evolving charter. This interpretive method enjoins judges to give effect to the spirit, purpose, and historical context of the constitutional text, ensuring that its provisions are applied in a manner that vindicates the core values of justice, equality, rule of law, and democratic governance.

44. This approach also firmly rejects judicial abdication in the face of legislative silence or ambiguity. It acknowledges the interpretive responsibility of the judiciary, where necessary, to fill constitutional or statutory lacunae in a principled and constitutionally faithful manner, always guided by the overarching aims and values of the Republic. The purposive method thus serves as a vital safeguard against interpretations that would produce absurd results, manifest injustice, or retrogressive outcomes inimical to the progress and coherence of our constitutional democracy.

D. ARGUMENTS IN SUPPORT OF THE RELIEFS SOUGHT BY THE PLAINTIFF

45. Respectfully, this Honourable Court is invited to hold, upon a careful and purposive interpretation of the relevant provisions of the Constitution and after due consideration of the submissions herein advanced, that:

a. Of the three coordinate arms of government, the Judiciary is the only institution whose head—the Chief Justice—is not a political appointee. Consequently, the processes governing the potential removal of the Chief Justice must be conducted with utmost circumspection and fidelity to constitutional safeguards, including rigorous adherence to substantive due process and administrative justice.

b. The right to a fair trial is a fundamental and inalienable right guaranteed under the Constitution. This right lies at the core of the principles of natural justice and substantive procedural fairness.

c. The constitutional guarantee of a fair trial assumes even greater importance where the proceedings in question are quasi-judicial in nature, since such proceedings have the potential to affect rights, reputation, and tenure in a manner akin to judicial processes.

d. The process by which the President, in consultation with the Council of State, determines whether a prima facie case exists in respect of a petition for the removal of the Chief Justice is, by its nature and effect, a quasi-judicial function. It must therefore be conducted in a manner consistent with the requirements of procedural fairness and substantive due process.

e. Upon the receipt of a petition for the removal of the Chief Justice, the President is constitutionally required to furnish the Chief Justice with a copy of the petition and to notify her of the specific allegations contained therein.

f. Furthermore, upon a true and proper interpretation of the Constitution, the Chief Justice is entitled to respond to the allegations made in the petition. Such a response must be taken into account by the President and the Council of State in the course of any consultative process undertaken pursuant to Article 146 of the Constitution.

g. The provision of the petition to the Chief Justice and the request for a response may be likened to a constitutionally mandated pre-removal inquiry. It serves to

determine whether sufficient grounds exist to warrant further proceedings for removal. Such a procedure is consistent with constitutional standards and due process requirements in comparative jurisdiction.

h. Where the President fails to notify the Chief Justice of the allegations contained in a petition prior to initiating consultations with the Council of State, such omission constitutes a breach of the Chief Justice's substantive rights, undermines the integrity of the process, reflects bad faith, and renders any action taken thereon null, void, and of no legal effect.

i. Where the contents of a petition and the responses thereto have been disclosed in the public domain—thereby breaching the constitutional injunction of confidentiality under Article 146(8)—the subject of such proceedings, including the Chief Justice, may elect to waive the right to have the proceedings held in camera.

j. The right of the Chief Justice to waive in camera proceedings is distinct and personal, and may be exercised independently of the institutional position of the Judiciary.

k. Upon the Chief Justice exercising the right to waive *in camera* proceedings, the investigative committee established under Article 146(6) is bound to respect such waiver, unless there exists a demonstrable and constitutionally cognisable basis, such as national security concerns, justifying the restriction of public access.

l. Given that the prima facie determination under Article 146 is a quasi-judicial function, it is incumbent upon the President to provide cogent, reasoned justifications for such determination in respect of each petition considered.

m. Moreover, any person, including the Chief Justice, who is the subject of a prima facie determination under Article 146, retains the right to challenge or appeal against such determination, consistent with the broader constitutional principle that final judicial power resides not in the President, but in the Judiciary.

n. A Justice of the Supreme Court who has previously sat on panels and adjudicated matters forming the subject matter of a petition is constitutionally disqualified from serving as a member of a committee constituted under Article

146 to investigate that petition. Their participation would violate the principles of impartiality and fairness.

o. Similarly, a Justice who has been involved in the adjudication of legal challenges to the constitutionality of the removal process itself cannot validly serve on the investigative committee, as doing so would compromise the objectivity and integrity of the proceedings.

p. The failure of any member of the committee to take and subscribe to the prescribed judicial oath prior to the commencement of their functions renders their participation unconstitutional and invalidates the lawful constitution of the committee. Such failure renders the legality of any subsequent proceedings conducted by the committee void.

q. The constitutional standard for establishing a prima facie case under Article 146 must be clearly defined and consistently applied, particularly in the context of removal proceedings against high judicial officers. In this regard, it is imperative that this Honourable Court sets out, with precision, the threshold for what constitutes a prima facie case, as well as the legal meaning and scope of the terms "stated misbehaviour" and "incompetence" within the meaning of Article 146(1) of the Constitution. Absent such clear guidance, there exists a real risk that the removal process may be weaponised for improper purposes, thereby undermining the independence, integrity, and security of tenure of the Judiciary.

46. Respectfully, the constitutional provisions that fall for consideration and are material to the determination of the issues in the instant action are as follows:

Article 17(1) and **(2)**:

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

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

Article 19(13) and **(14)**:

(*13) An adjudicating authority for the determination of the existence or extent of a civil right or obligation shall, subject to the provisions of this Constitution, be established by law and shall be independent and impartial; and where proceedings for determination are instituted by a person before such an adjudicating authority, the case shall be given a fair hearing within a reasonable time.*

(14) Except as may be otherwise ordered by the adjudicating authority in the interest of public morality, public safety, or public order, the proceedings of any such adjudicating authority shall be in public.

Article 23:

Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal.

Article 125 (3) and **(4)**:

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

(4) The Chief Justice shall, subject to this Constitution, be the Head of the Judiciary and shall be responsible for the administration and supervision of the Judiciary.

Article 127 (1) and **(2)**:

(1) In the exercise of the judicial power of Ghana, the Judiciary, in both its judicial and administrative functions, including financial administration, is

subject only to this Constitution and shall not be subject to the control or direction of any person or authority.

(2) Neither the President nor Parliament nor any person acting under the authority of the President or Parliament nor any other person whatsoever shall interfere with Judges or judicial officers or other persons exercising judicial power, in the exercise of their judicial functions; and all organs and agencies of the State shall accord to the courts such assistance as the courts may reasonably require to protect the independence, dignity and effectiveness of the courts, subject to this Constitution.

Quite importantly, **Article 146 (1), (2), (3), (4), (6), (7)** and **(8)**:

(1) A Justice of the Superior Court or a Chairman of the Regional Tribunal shall not be removed from office except for stated misbehaviour or incompetence or on ground of inability to perform the functions of his office arising from infirmity of body or mind.

(2) A Justice of the Superior Court of Judicature or a Chairman of the Regional Tribunal may only be removed in accordance with the procedure specified in this article.

(3) If the President receives a petition for the removal of a Justice of a Superior court other than the Chief Justice or for the removal of the Chairman of a Regional Tribunal, he shall refer the petition to the Chief Justice, who shall determine whether there is a prima facie case.

(4) Where the Chief Justice decides that there is a prima facie case, he shall set up a committee consisting of three Justices of the Superior Courts or Chairmen of the Regional Tribunals or both, appointed by the Judicial Council and two other persons who are not members of the Council of State, nor members of Parliament, nor lawyers, and who shall be appointed by the Chief Justice on the advice of the Council of State.

(6) Where the petition is for the removal of the Chief Justice, the President shall, acting in consultation with the Council of State, appoint a committee consisting of two Justices of the Supreme Court, one of whom shall be appointed Chairman by the President, and three other persons who are not members of the Council of State, nor members of Parliament, nor lawyers.

(7) The committee appointed under clause (6) of this article shall inquire into the petition and recommend to the President whether the Chief Justice ought to be removed from office.

(8) All proceedings under this article shall be held in camera, and the Justice or Chairman against whom the petition is made is entitled to be heard in his defence by himself or by a lawyer or other expert of his choice.

Article 281 (1):

Except as may be otherwise ordered by the commission in the interest of public morality, public safety or public order, the proceedings of a commission of inquiry shall be held in public.

Article 295(1):

"*In this Constitution, unless the context otherwise requires - …*

"commission of inquiry" includes a committee of inquiry."

Article 296 (a) and **(b)** stipulates as follows:

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

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

(b) the exercise of the discretionary power shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law.

I. FAILURE TO CONDUCT A PROPER PRIMA FACIE DETERMINATION IN REMOVAL PROCESSES AFFECTING THE CHIEF JUSTICE IS UNCONSTITUTIONAL

47. Respectfully, a plain and literal reading of Article 146—particularly clauses (6) and (7)—would appear to suggest that there is no express requirement for the President to assess whether a petition for the removal of the Chief Justice discloses a prima facie case before proceeding, in consultation with the Council of State, to appoint a committee to inquire into the petition. On such a reading, once the President receives a petition for the removal of the Chief Justice, the President would be obliged to constitute a committee, in consultation with the Council of State, to investigate the allegations, irrespective of their merit or substance.

48. However, this Honourable Court, in its seminal decision in **Agyei-Twum v. Attorney-General & Another** [2005-2006] SCGLR 732, decisively departed from a literalist approach. The Court adopted an objective and purposive interpretation of Article 146 and held that it is constitutionally imperative for the President, acting in consultation with the Council of State, to first determine that the petition discloses a prima facie case before appointing a committee to further investigate the matter. This reading harmonises with the foundational constitutional principles of fairness, due process, and the protection of judicial independence.

49. It is respectfully submitted that **Agyei-Twum** constitutes this Honourable Court's earliest authoritative affirmation of the indispensable requirement of procedural fairness in proceedings initiated under Article 146 of the Constitution. This interpretation has far-reaching implications, particularly in the context of removal proceedings involving Justices of the Superior Courts and, more significantly, the Chief Justice—the constitutional head of the Judiciary. The Court's reasoning in **Agyei-Twum** is firmly anchored in the need to uphold the sanctity and autonomy of the Judiciary, which is foundational to Ghana's constitutional democracy. It was consistent

with the observation of Wiredu JSC (as he then was) in **GBA v. Attorney-General & Anor** (supra), that, whenever the Chief Justice has had to defend his or her position or answer allegations of contravention of the Constitution, the Supreme Court has "*courageously proven equal to the challenge*" posed in each case. The disposition of the Supreme Court has always been to uphold the principles of judicial independence and security of tenure of the Chief Justice by ably resisting the endeavour to whittle the hallowed principles.

50. Furthermore, it is submitted that the imperative of preserving the independence of the Judiciary—both in its judicial and administrative capacities, subject only to the Constitution—demands strict compliance with the procedural safeguards enshrined in **Articles 23** and **296** of the Constitution. These provisions collectively impose obligations of fairness, transparency, and reasoned decision-making on all public authorities, including the President and the Council of State, particularly in the discharge of functions that carry quasi-judicial characteristics. It is only through adherence to these constitutional safeguards that the Judiciary may be shielded from unwarranted interference, arbitrariness, or executive overreach rooted in improper motives or personal dissatisfaction with the conduct or decisions of a particular Justice.

51. Indeed, there can be no serious dispute that in determining whether a petition seeking the removal of the Chief Justice merits further inquiry under **Article 146**, the President and the Council of State perform a quasi-judicial function. They are called upon to assess, at a critical threshold stage, whether the petition discloses sufficient and credible grounds to warrant a formal investigation. This evaluative function necessitates the exercise of judgment, grounded in constitutional norms, and demands that the process not only be fair in appearance, but also substantively just and reasoned.

52. It is respectfully submitted that the potential effect of a prima facie determination by the President on the status of a Chief Justice necessitates that same be not only accompanied by reasons or through a judicious process, but that same also specifies with clarity which of the allegations in the petition(s) has met the "prima facie standard". As has been seen in the instant case, the making of a prima facie determination by the President can lead to a suspension of the Chief Justice as well as a relieving of her position as Head of the Judiciary. It is just not a simple situation which holds no significant adverse consequences for the Chief Justice. The Chief Justice's rights to administer the Judiciary and the Judiciary itself, can be shaped in a very significant way following the President's decision to suspend the Chief Justice and constitute a committee to inquire into allegations against her. Respectfully, there cannot be an easier way for the President to "**assume control of the Judiciary**", a concept totally

abhorred by the Constitution., than for a petition to be put together calling for the removal of a Chief Justice (regardless of the merits) and for the President to simply state "*I have found a prima facie case against the Chief Justice. The Chief Justice is hereby suspended*". The situation will be the same for an "ordinary" Justice of the Superior Courts of Judicature where removal proceedings are purportedly brought against them. The Chief Justice will just write that a prima facie case has been found. No reasons would be undersigned and the Justice in question would be suspended for as long as possible. It is submitted that this, definitely, could not have been the intendment of the Constitution. This Honourable Court ought not to condone such a proposition.

53. The notion of a prima facie case, by its very nature, implies a process of legal reasoning, supported by discernible standards. The President and the Council of State cannot validly discharge their constitutional responsibilities under **Article 146** without satisfying themselves through a principled and reasoned assessment, that the allegations disclose sufficient cause to warrant further proceedings. Any other interpretation would render the protections accorded to the office of the Chief Justice illusory and expose the Judiciary to improper and potentially destabilising influences.

54. A "*prima facie*" case is defined in **Black Law's Dictionary, 11th Edition**, page 1441 as "*a party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favour*." In other words, there must be enough evidence to establish a fact unless the contrary is proved.

55. This submission is further reinforced by the illuminating dictum of Benin JSC in **Justice Paul Uuter Dery v. Tiger Eye PI & 2 Others** (supra), where His Lordship clarified the constitutional significance of a prima facie determination. In that case, the learned Justice of the Supreme Court observed that a prima facie determination, upon receipt of a petition, entails an assessment of the available evidence to ascertain whether the petition discloses serious issues that merit further investigation. Critically, this evaluative exercise necessitates affording the person named in the petition an opportunity to respond before any such determination is made. This process, according to the Court, constitutes a quasi-judicial act that must be anchored in due process and fairness.

56. Applying this authoritative interpretation to **Article 146** proceedings concerning the removal of the Chief Justice, it is respectfully submitted that the process by which the President, in consultation with the Council of State, determines whether a prima facie case has been made out must be regarded as a constitutionally mandated pre-removal

inquiry. This process is not merely administrative; it is quasi-judicial in nature and involves the careful examination of the allegations set forth in the petition, the supporting evidence, and the preliminary responses submitted by the Chief Justice. This holistic evaluation is what informs whether the allegations are of sufficient gravity to warrant the establishment of a committee under **Article 146(6)** to conduct a full inquiry.

57. It is further submitted that the constitutional logic of this process requires, at a minimum, that the Chief Justice be afforded the opportunity to submit a written response to the allegations contained in the petition. In appropriate cases, the principles of natural justice may even require that the Chief Justice be granted an opportunity to be heard orally before the President and the Council of State make their determination. This procedural safeguard is not merely incidental—it is fundamental to the integrity and legitimacy of the process. Any deviation from it undermines the constitutional principles of fairness, transparency, and judicial independence.

58. Respectfully, this must be regarded as the only constitutionally permissible standard applicable to proceedings seeking the removal of the Chief Justice of the Republic of Ghana. The heightened procedural threshold is necessitated by the foundational doctrines of separation of powers, the independence of the Judiciary, and the constitutional guarantee of security of tenure for Justices of the Superior Courts. These principles have long been recognised as essential bulwarks against executive overreach and political interference in the administration of justice.

59. In our humble submission, the need for the making of a proper prima facie determination of the merits of a petition purportedly for the removal of the Chief Justice is a necessity in view of the provisions of the Constitution clothing judges with immunity in respect of acts arising from the exercise of judicial power. In further protection of judicial independence, **Article 127(3)** of the Constitution provides that:

> "*A Justice of the Superior Court, or any person exercising judicial power, shall not be liable to any action or suit for act or omission by him in the exercise of judicial power*".

60. The effect of the foregoing is to grant a judge absolute immunity for **any act or omission** by him when sitting as a judge. The framers of the Constitution bearing in mind the history of the nation, particularly the occurrences in 1963 when Chief Justice Arku Korsah was not only dismissed by the President, but also detained at the Tesano Police Station for acts related to the performance of his judicial functions, decided to put in the "black and white" of the letter of the Constitution, 1992, this provision

insulating a Justice of the Superior Court, or indeed, any person exercising judicial power from liability for any act or omission.

61. Yet, quite seriously, in 2025, we see petitions requesting the removal of the Chief Justice from office anchored on acts supposedly done by the Chief Justice in her capacity as a Justice of the Supreme Court. The President of the Republic, on receipt of such petitions, also determines that there is a prima facie case in respect of those allegations. It is a situation that calls for judicial scrutiny and intervention, since the decisional independence of the Court is at stake.

62. Respectfully, this Honourable Court should not leave open or countenance a future where Justices of the Supreme Court are hauled before committees set up to remove them based on actions taken in the exercise of judicial power. This spectre is especially ominous and Kafkaesque given that there is ***always*** a losing party and, as a corollary, a dissatisfied party in any case that results in a judgment from this Honourable Court. It is inherent in adversarial litigation and dispute settlement. There can be no greater danger to the decisional independence of the court than the setting up of a committee to probe whether a Justice of this Honourable Court should be removed from office on account of what that Justice allegedly did whilst exercising judicial power.

63. In our submission, this development buttresses the absolute necessity for a prima facie determination of a petition against any Justice of the Superior Court, including the Chief Justice, to be in the nature of a judicious determination. If a Judge has absolute immunity for any act or omission done by him when exercising judicial power, then there is the need for a determination whether a petition against the Judge meets the prima facie standard to indicate the specific reasons for so holding, especially when the petition contains allegations built around acts allegedly committed when exercising judicial power. To fail to do so, will be a direct affront to Article 127(3) of the Constitution. The President, through such omission, will be promoting further assaults on judicial independence as provided for in Article 127.

64. Respectfully, to illustrate the point that the petitions against the Chief Justice contain allegations relating to acts allegedly done when exercising judicial power, we have attached to our affidavit in verification of the facts, copies of the petitions against the Chief Justice in respect of which the President found a prima facie and which have resulted in the instant action. It ought to be noted that we file this not out of a zeal to violate the *in camera* requirement of Article 146(6). We do so to illustrate to the Court the unconstitutionality of the finding that a prima facie case existed for two of the petitions which were substantially anchored on acts done by the Chief Justice when

exercising judicial power. The Constitution prohibits a challenge to such acts and clothes Justices of the Superior Courts of Judicature with immunity for such acts. Therefore, a petition based on such acts, no doubt, is unconstitutional. The only way an unconstitutionality can be determined by the Court is for the Court to see the specific allegations complained of. Thus, a ruling by the Court to the effect that it is wrong to file the petition(s) you claim is/are unconstitutional for the Court to examine, will do grave injustice as same will amount to legislating that proceedings under Article 146 are not subject to judicial challenge. However, **Article 2(1)(b)** of the Constitution provides that "*a person who alleges that any act or omission of any person, is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.*"

65. It is respectfully submitted that it will be a dangerous precedent for this Honourable Court to interpret Article 146(6) in a way as to divest citizens of the country, including Justices of the Superior Courts of Judicature and the Chief Justice of the Republic, of the right to seek judicial remedy in respect of Article 146 proceedings. To do so will imply that when a plain unconstitutionality or illegality is being perpetrated by the President of the Republic in finding that allegations which emanate from the exercise of judicial power meet the prima facie threshold or the proceedings of an Article 146 committee set up by the President are in violation of the rights of the subject, the subject has no recourse to a judicial remedy. Perhaps [because it is not even certain whether it exists], the subject, including the Chief Justice, ought to wait until after having been removed from office before attempting to exercise a right to seek judicial redress.

66. It is further submitted that when an account is taken of the provision in **Article 295(8)**, it becomes clear that both the President's prima facie determination and the committee's work, just like the work of other so-called independent bodies or authorities set up under the Constitution, is subject to judicial control. **Article 295(8)** provides that:

> "*No provision of this Constitution or of any other law to the effect that a person or authority shall not be subject to the direction or control of any other person or authority in the performance of any functions under this Constitution or that law, shall preclude a court from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or the law,*"

67. It is our further respectful submission that in mature constitutional democracies, the removal of a sitting Justice—let alone the Chief Justice—is a measure of last resort,

undertaken sparingly and only in the clearest of cases. The procedure is designed to be rigorous, not expedient. In Ghana, however, the process is triggered and superintended by the President—the head of the Executive branch—who acts in consultation with the Council of State, a majority of whose members are directly appointed by him. This reality calls for the most scrupulous adherence to constitutional safeguards and the highest standards of procedural fairness.

68. It is respectfully submitted that inherent in any quasi-judicial function is the duty to comply with the fundamental elements of a fair hearing. This Honourable Court's jurisprudence and the settled norms of constitutional governance make clear that such a function cannot lawfully be performed without granting the affected person a meaningful opportunity to be heard. The function of the President, in undertaking consultations with the Council of State to determine whether a prima facie case exists for the removal of the Chief Justice, constitutes both a public and quasi-judicial act. It directly impacts not only the rights and reputation of the officeholder but also the institutional autonomy and credibility of the Judiciary itself.

69. The process for removal of judges is one that engages the attention of the international community in view of its great importance for the proper practice of democracy in general. In this regard, it is imperative to note that one of the foremost international instruments - The **Bangalore Principles of Judicial Conduct** – requires that a Judge be removed from office only on account of a very serious act amounting to misconduct. Thus, the conduct must be one that is totally unknown, or criminal or violates a specific law or one that no rational Judge doing their work could have engaged in.

70. The **Commonwealth (Latimer House) Principles on the Accountability of and Relationship between the Three Branches of Government ("Latimer House Principles")** stipulates that "appropriate security of tenure" should be guaranteed for the judiciary in all Commonwealth countries. The "appropriate security of tenure" is to shield judges from external pressure when their actions "irritate" powerful individuals or Government bodies, which is an essential element of the rule of law.

71. The Latimer House Principles provide that judges "*should be subject to suspension or removal* ***only for*** *reasons of incapacity or* ***misbehaviour that clearly renders them unfit to discharge their duties***". It is submitted that "misbehaviour" or "incompetence" in Article 146 should be applied in this context.

72. Recognising that suspension of a Judge raises important issues for the rule of law in a healthy democracy and may be deployed as a tool for executive control of the Judiciary, the Latimer House Principles permit suspension of a Judge only where the

Judge faces credible allegations of serious misconduct and it is determined that public confidence in the administration of justice requires that the Judge should no longer take part in the administration of justice. This in view of the acknowledgement that the power to suspend a judge may be abused to penalise or intimidate some judges as a way of controlling the Judiciary.

73. It is instructive to note that Ghana is in the process of enacting Regulations to statutorily mandate the making of a prima facie determination, particularly, the provision of reasons for a prima facie determination and the specification of the particular charges the subject of an Article 146 proceeding is to face in an inquiry by a committee set up. Thus, in **2024**, pursuant to instructions from the Judicial Council, the Office of the Attorney-General drafted a constitutional instrument to lay before Parliament to regulate Article 146 proceedings. A copy is attached to the affidavit in verification. Stakeholder consultations regarding the draft Regulations could not be completed before the lapse of the term of the last Government. Thus, the Regulations could not be laid in Parliament before the term of the last Parliament. It is noteworthy, however, that the current Majority Leader in Parliament recently signalled the readiness of the Attorney-General to lay the said Regulations in Parliament soon.

74. Accordingly, it is submitted that strict compliance with all the constitutional prescriptions and procedural safeguards—including the audi alteram partem rule and justification for finding the existence of a prima facie case in petition(s) brought against the Chief Justice as well as the decision to suspend her —is not optional, but imperative. Any process undertaken in breach of these principles is inherently flawed and constitutionally untenable.

Violation of constitutionally prescribed procedure constitutes an infringement of substantive rights

75. Respectfully, this Honourable Court will be invited to hold that the requirement for the President to provide cogent and reasoned grounds for a prima facie determination is a substantive constitutional right. It enables the affected party—in this case, the Chief Justice—to exercise her constitutional right to challenge the legality of such a determination, particularly where such a decision affects her power to function as the head of an independent arm of government. It also ensures accountability of the decision maker to ensure that his decision is in good faith and complies with the requirements of legality, rationality and reasonableness.

76. Furthermore, where the contents of the petition and associated responses have already entered the public domain through various unauthorised disclosures, the Chief Justice's election to waive her right to in camera proceedings under **Article 146(8)** of the Constitution must be considered as the exercise of a substantive right grounded in principles of fairness, transparency, and accountability. In such circumstances, this Honourable Court is respectfully urged to draw a clear distinction between procedural due process and substantive due process. It is submitted that where, as in the present case, the failure to observe due process results in a direct violation of a constitutional provision and adversely affects the rights of a constitutionally significant officeholder such as the Chief Justice, such a breach transcends mere procedural irregularity and amounts to a substantive constitutional violation, incapable of waiver or cure by subsequent compliance.

77. This submission finds a constitutional anchor in **Articles 23** and **296** of the Constitution. **Article 23** provides that:

> "*Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal*."

78. Similarly, **Article 296** provides that:

> "*Where in this Constitution or in any other law, discretionary power is vested in any person or authority —*
> *(a) that discretionary power shall be deemed to imply a duty to be fair and candid;*
> *(b) the exercise of the discretionary power shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law*."

79. It is respectfully submitted that **Articles 23** and **296** must be read together as mutually reinforcing provisions that elevate the principles of administrative fairness, reasonableness, and legality to constitutional imperatives. These provisions impose binding obligations on administrative authorities, particularly when exercising quasi-judicial powers, to act transparently, impartially, and in accordance with due process of law. These obligations are especially heightened where the decisions in question have far-reaching consequences for the rights, status, and institutional role of individuals entrusted with constitutional office.

80. This Honourable Court has had occasion to interpret the import of **Articles 23** and **296** in the context of quasi-judicial and administrative decision-making. In **Awuni v. West African Examinations Council (WAEC)** [2003–2004] 1 SCGLR 471 at 514, Sophia Akuffo JSC (as she then was, and now a member of the Council of State) explained the scope and effect of **Article 23** in the following terms:

> *"Thus, by this article (i.e., Article 23) the right to administrative justice is given constitutional force, the objective being the assurance to all persons of the due observance and application of the principles of natural justice which foster due process and the stated qualities, in the performance of administrative activities that affect them. In my view, the scope of Article 23 is such that there is no distinction made between acts done in exercise of ordinary administrative functions and quasi-administrative functions. Where a body or officer has an administrative function to perform, the activity must be conducted with, and reflect, the qualities of fairness, reasonableness and legal compliance… At the very least, however, it includes probity, transparency, objectivity, opportunity to be heard, legal competence, absence of bias, caprice or ill-will."*

See also **TDC & Musah v. Atta Baffour** [2005–2006] SCGLR 121.

81. It is therefore respectfully submitted that a violation of **Articles 23** and **296** of the Constitution amounts to a breach of a substantive constitutional right. These provisions impose constitutional obligations on all administrative and quasi-judicial decision-makers—including the President and the Council of State—to act fairly, reasonably, and in accordance with due process of law. A failure to comply with these standards, particularly in proceedings initiated for the removal of the Chief Justice, is not a mere procedural irregularity but a substantive infraction with far-reaching implications for the rule of law and the independence of the Judiciary.

82. The obligation to make a proper prima facie determination (judicious reasoning) assumes even greater constitutional significance in this context. As this Honourable Court recognised in **Agyei-Twum v. Attorney-General & Another (supra)**, strict adherence to procedural fairness is critical to safeguarding the integrity of removal proceedings under Article 146. The Constitution does not permit frivolous or vexatious petitions to be used as a basis for removing the Chief Justice, an office that stands at the apex of the Judiciary and symbolises its independence and impartiality.

83. The President and the Council of State are better placed to assess the credibility and merit of the petition by considering the responses of the Chief Justices in light of

materials available to them. A true and proper assessment of whether a prima facie case exists—based on a balanced and reasoned consideration of both the petition and the Chief Justice's response—will uphold the integrity of the constitutional process and preserve public confidence in the Judiciary.

84. This Honourable Court will further be invited to hold that, while all persons are indeed equal before the law as enshrined in **Article 17** of the Constitution, the context of this case calls for heightened constitutional scrutiny. The removal of the Chief Justice—a non-political constitutional officeholder and head of an independent arm of government—engages weightier constitutional considerations than would ordinarily apply. Any violation of the procedural safeguards governing such removal proceedings has broader institutional ramifications, as it directly implicates the independence of an arm of Government - the Judiciary - and the security of tenure of its leadership.

85. The undue haste and lack of procedural fairness exhibited by the President in commencing consultations with the Council of State, without notifying the Chief Justice or providing her with an opportunity to respond to the petitions, constitutes a clear violation of Articles 23 and 296 of the Constitution. This Honourable Court, in **Awuni v. West African Examinations Council (WAEC)** [2003–2004] 1 SCGLR 471 and **TDC & Musah v. Atta Baffour** [2005–2006] SCGLR 121, has laid down binding principles regarding the constitutional obligations of administrative bodies and public officials. In **Awuni**, Sophia Akuffo JSC (as she then was) observed that **Article 23** elevates the right to administrative justice to constitutional force and mandates that all administrative actions—whether ordinary or quasi-judicial—must be conducted with fairness, reasonableness and legal compliance. These requirements include probity, transparency, objectivity, an opportunity to be heard, and the absence of bias, caprice, or ill-will.

86. It is respectfully submitted that the failure of the President to adhere to these constitutional prescriptions renders the entire process initiated for the removal of the Chief Justice null, void, and of no legal effect. Given Ghana's constitutional history, where prior political administrations have sought to control the Judiciary through questionable removal proceedings, this Honourable Court is respectfully urged to insist on strict and faithful compliance with the procedural and substantive safeguards contemplated by **Articles 23, 146**, and **296**. Any deviation from these provisions undermines the constitutional architecture and must be declared unconstitutional and invalid.

87. The requirements of due process under **Articles 23** and **296** are not optional or discretionary; they are mandatory constitutional imperatives designed to uphold the rule of law, fairness, and the independence of the Judiciary. **Article 23** obliges all administrative officials to act fairly and reasonably and to comply with all requirements imposed by law. **Article 296**, in turn, mandates that discretionary power—such as the President's discretion under **Article 146**—must be exercised fairly, candidly, and in accordance with due process, and must not be arbitrary, capricious, or motivated by personal bias or resentment.

88. In this case, the President's failure to conduct a proper prima facie determination known to a quasi-judicial or judicial process before suspending the Chief Justice clearly violated these provisions.

89. **Article 19(13)** of the Constitution provides that any adjudicating authority tasked with determining the existence or extent of a civil right or obligation shall be independent, impartial, and must afford a fair hearing within a reasonable time. By extension, the President, in performing the quasi-judicial function of assessing whether a prima facie case exists under **Article 146**, is bound by these standards. Where the President fails to adhere to these principles from the outset, the constitutional process is vitiated, and any subsequent compliance is constitutionally immaterial.

90. It is thus respectfully submitted that the denial of a proper prima facie determination to the Chief Justice fundamentally undermined the legality of the entire removal processes under article 146. This Honourable Court is therefore invited to hold that, once the constitutionally prescribed procedural safeguards were violated, the process stood nullified and cannot be salvaged by any subsequent procedural compliance. To hold otherwise would defeat the very purpose of the procedural protections enshrined in the Constitution and open the door to abuse of power and institutional destabilisation.

91. It is respectfully submitted that in the context of proceedings initiated under **Article 146** of the Constitution for the removal of the Chief Justice, the President, in consultation with the Council of State, exercises a quasi-judicial function when determining whether a prima facie case has been established. As such, the President is under a constitutional obligation to provide cogent, well-reasoned grounds for any such determination. In addition to this, the President is required to specify which of the allegations against the Chief Justice have actually met the standard of a prima facie case and the reasons therefor. The terse and conclusory statement from the

Presidency announcing the establishment of a prima facie case, without more, fails to meet this constitutional standard and renders the entire process legally void.

92. **Article 125(3)** of the Constitution makes it clear that "*the judicial power of Ghana shall be vested in the Judiciary; accordingly, neither the President nor Parliament nor any organ or agency of the President or Parliament shall have or be given final judicial power*." It follows that any exercise of a quasi-judicial function by the President—especially one that affects the rights, tenure, and independence of the Chief Justice, who is the head of an independent arm of government—must be subject to judicial review and must satisfy the minimum standards of fairness, transparency and rationality required under **Articles 23** and **296** of the Constitution.

93. In this regard, **Article 23** mandates all administrative officials to act "*fairly and reasonably and comply with the requirements imposed on them by law*". **Article 296** further provides that where discretionary power is vested in any authority, including the President, such discretion "*shall be deemed to imply a duty to be fair and candid*," and "*shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law*." The decision to conclude that a prima facie case has been made out, without articulating any basis for that conclusion, is inherently arbitrary and offends these constitutional provisions.

94. The right to be furnished with reasons for an adverse administrative or quasi-judicial decision is not merely procedural; it is a substantive due process right embedded in the combined effect of **Articles 19(13), 23,** and **296**. This right becomes particularly significant where, as in this case, the affected person is the Chief Justice—the head of an independent constitutional organ—whose removal has grave implications for the separation of powers and the independence of the Judiciary.

95. It is respectfully contended that the Chief Justice has a right to challenge the validity of the President's prima facie determination, particularly where that determination is the foundation upon which further consequential actions such as suspension and the establishment of a disciplinary committee are based. In order to exercise such a right meaningfully, the Chief Justice must be provided with reasoned grounds that disclose the factual and legal basis for the prima facie conclusion. The failure of the President to provide these reasons constitutes a violation of the Chief Justice's right to a fair hearing and undermines her right to seek redress, thereby contravening **Articles 23** and **125(3)** of the Constitution.

96. It is respectfully submitted that a prima facie determination devoid of any reasoning is no determination at all. The terse statement from the Presidency announcing that a prima facie case had been established does not amount to a constitutionally compliant decision. It neither enables the Chief Justice to understand the basis for the determination nor allows her to assess whether the threshold for setting up a committee under **Article 146(6)** has been properly met.

97. Further, an argument that the President is under no obligation to provide reasons for a prima facie determination is respectfully misconceived and constitutionally flawed. Such a position contradicts the core principles of administrative justice, disregards the constitutional requirement for candour and fairness in the exercise of discretionary power under **Article 296**, and dangerously insulates executive action from judicial scrutiny, in clear contravention of **Article 125(3)**.

98. In **Kwabena Fosu v The Republic**, Suit No: H2/16/2024, Judgment of 23rd May 2024 (Unreported), Ackaah-Boafo, JA highlighted the importance of giving reasons. Although this was in the context of a criminal trial, and this was a decision of the Court of Appeal which is by no means binding on this Honourable Court, the underlying rationale is still apposite in such a consequential prima facie determination. He held as follows:

"***[35]*** *The desirability of giving reasons was elucidated many years ago by the venerable and celebrated Lord Denning when he observed in* ***"The Road to Justice (1955)****, at page 29, that "by so doing, [the judge] gives proof that he has heard and considered the evidence and arguments that have been adduced before him on each side: and also, that he has not taken extraneous considerations into account".*

[36] *The Supreme Court of Canada eloquently and succinctly put it as follows in its seminal decision in* ***R v. Sheppard****, 2002 SCC 26 at paragraph 22;*

"There is a general sense in which a duty to give reasons may be said to be owed to the public rather than to the parties to a specific proceeding. Through reasoned decisions, members of the general public become aware of rules of conduct applicable to their future activities. An awareness of the reasons for a rule often helps define its scope for those trying to comply with it. <u>The development of the common law proceeds largely by reasoned analogy from established precedents to new situations</u>". [Emphasis Mine].

[37] *My Lords, before Sheppard Supra, the Court of Appeal for Ontario in Canada in the case of* ***R. v. Morrissey 22 O.R. (3d) 514*** *also reported in* ***[1995] O.J. No. 639,*** *established the object for giving reasons by a trial judge. Doherty J.A. in Morrissey, at p. 525, puts it this way: "In giving reasons for judgment, the trial judge is attempting to tell the parties what he or she has decided and why he or she made that decision" (Emphasis Mine). In effect, what is required is a logical connection between the "what" — the decision — and the "why" — the reasons/basis for the decision. In my respectful opinion therefore, the premise or the underpinning of a judge's decision must be discernible, when one considers the context of the evidence proffered and the submissions of counsel. This allows not just for transparency but also, for appellate bodies to be able to reverse engineer why and how a decision was arrived at.*"

99. Accordingly, it is submitted that the failure of the President to provide cogent reasons for the prima facie determination and to specify which of the allegations made against the Chief Justice in the three petitions, vitiates the lawfulness of every subsequent step taken pursuant to that determination, including the suspension of the Chief Justice and the purported establishment of a committee under Article 146(6). These actions, being rooted in a constitutionally defective process, are null, void, and of no legal effect.

II. THE CHIEF JUSTICE HAS A CONSTITUTIONAL RIGHT TO WAIVE IN CAMERA PROCEEDINGS UNDER ARTICLE 146(8)

100. It is respectfully submitted that under **Article 146(8)** of the Constitution, a Justice or Chairman against whom a petition is made is entitled to be heard in their defence by themselves or through counsel or other expert of their choice. **Article 146(8)** further stipulates that *"[a]ll proceedings under this article shall be held in camera…*". This provision was designed to safeguard the integrity of the Judiciary by insulating it from unnecessary public spectacle that could arise from the mere lodging of a petition, especially if such a petition is without merit.

101. However, the constitutional injunction in **Article 146(8)** must be read in conjunction with other constitutional provisions that protect the principles of transparency, accountability, and natural justice—specifically, **Articles 19(14), 23**, **281** and **296**. **Article 19(14)** requires proceedings to be held in public unless otherwise ordered in the interest of public morality, public safety, or public order. **Article 23** obligates all administrative authorities to act fairly and reasonably. **Article 296** mandates that all discretionary power be exercised fairly, candidly, and not arbitrarily or capriciously.

102. In the present case, it is a matter of public record that both the petitions and the responses of the Chief Justice were unlawfully published and disseminated widely through the media. *Adjei-Frimpong JSC* sitting on an interlocutory injunction application in the instant case (**28th May, 2025**), held that the disclosure or leakage of petitions for the removal of the Chief Justice and responses by the Chief Justice was "a plain illegality".

103. It is submitted that this unauthorised public disclosure has undermined the confidentiality contemplated by **Article 146(8)**, thereby frustrating its protective purpose. The Supreme Court in **Agyei-Twum v. Attorney-General and Akwettey** [2005-2006] SCGLR 732, rightly warned of this danger, holding that:

> "*The constitutional requirement in article 146(8) that the impeachment proceedings be held in camera would be defeated if the petitioner were allowed to publish his or her petition to anyone other than the President…That would lead to grave adverse public relations consequences for the Judiciary. The institution of the Judiciary could be undermined without any justification*."

104. In light of this, it is respectfully submitted that the Chief Justice—being the one whose rights, reputation and office are directly at stake—must be deemed to have the constitutional right to waive the in-camera requirement. This waiver would not only be a valid exercise of the Chief Justice's right under **Article 146(8)** but also an essential step to restore public confidence in the Judiciary by allowing the inquiry to proceed transparently and in the public eye, consistent with the values enshrined in **Articles 19(14), 23**, and **281(1)** of the Constitution.

105. The Supreme Court's admonition in **Agyei-Twum** is particularly instructive. Prof. Ocran JSC, at page 802, underscored the dual imperative to "*insulate the Chief Justice from frivolous petitions while insisting on transparency and accountability in the exercise of his functions.*" Once the protective purpose of **Article 146(8)** has been eroded by the public release of the petitions and responses, the Chief Justice's right to transparency through a public hearing must take precedence, not only to uphold her right to a fair hearing, but also to preserve the institutional credibility of the Judiciary.

106. It is further submitted that where the unauthorised disclosure of the petition has compromised the confidentiality of the proceedings, the continuation of the inquiry in camera would serve no constitutional purpose and would risk further erosion of the legitimacy and impartiality of the process. On the contrary, holding the inquiry in public, following a waiver by the Chief Justice, would align with the constitutional imperative

for openness in proceedings that affect civil rights and obligations, as articulated in **Article 19(13)** and **(14)**.

107. In these circumstances, it is respectfully prayed that this Honourable Court affirms that the Chief Justice has a constitutional right to waive the requirement for in camera proceedings under **Article 146(8)**, and that upon such waiver, the inquiry must be conducted publicly unless compelling national security, public safety, or public morality considerations dictate otherwise. The denial of this right would constitute a violation of substantive due process and a further infringement on the independence and dignity of the Judiciary.

III. THE APPOINTMENT OF THE 2ND AND 3RD DEFENDANTS TO THE COMMITTEE VIOLATES THE CONSTITUTION, NATURAL JUSTICE, AND THE PRINCIPLES OF JUDICIAL IMPARTIALITY AND INDEPENDENCE

108. It is respectfully submitted that the appointment of the 2nd and 3rd Defendants—Justice Gabriel Scott Pwamang and Justice Samuel Kwame Adibu-Asiedu, respectively—as members of the Committee established by the President under Article 146(6) of the Constitution to inquire into the petitions against the Chief Justice, is unconstitutional and manifestly contrary to the principles of natural justice, judicial impartiality, and the entrenched constitutional guarantee of judicial independence.

109. As a matter of fact and record, Justice Gabriel Scott Pwamang, who has been designated as Chairperson of the said Committee, previously sat on a panel of the Supreme Court in matters in which two of the petitioners, Mr. Daniel Ofori and Mr. Ayamga Akulgo were parties, and where the Chief Justice—the subject of the instant petitions—was also a member of the bench in both cases.

110. In the Daniel Ofori case, Justice Pwamang rendered decisions in favour of the petitioner, Daniel Ofori. This factual matrix creates a reasonable apprehension of bias and a clear conflict of interest. His involvement in the present committee is, therefore, disqualifying. As is clear from the petition by Daniel Ofori, he alleges interference by the Chief Justice in an execution of a judgment rendered by the Supreme Court in his favour. The record shows that Justice Pwamang was a member of the Supreme Court which ruled in favour of Daniel Ofori. Justice Pwamang actually authored a judgment in favour of Daniel Ofori. Plaintiff submits that it is completely incongruous and indeed, unconscionable for Justice Pwamang to preside over processes to remove the plaintiff

as Chief Justice ostensibly for interfering with the execution of the judgment the same Justice Pwamang had given in favour of Daniel Ofori.

111. Further, in the petition by Mr. Ayamga Akulgo, the petitioner alleges that the Chief Justice had treated him discourteously in the courtroom while sitting as part of a panel over an action filed by the petitioner. Justice Pwamang was a member of the Supreme Court panel that heard the "Ayamga case". He even made comments supporting the Chief Justice in her chastisement of the behaviour of Mr. Ayamga which led to the comments by the Chief Justice. Respectfully, it goes without saying that one judge sitting in the Supreme Court cannot be singled out for removal on account of treatment allegedly suffered by a litigant while conducting his matter in the Supreme Court. Assuming this can be done, what is the rational justification for appointing Justice Pwamang who was a member of the Supreme Court panel which heard Mr. Ayamga's matter as a member of the committee to inquire into the petition for the removal of the Chief Justice based on Ayamga's experiences in the conduct of his case in the Supreme Court? The membership of the committee of inquiry, it is respectfully submitted, is offensive to the rules of natural justice and good conscience. It clearly contravenes Articles 23 and 296 of the Constitution.

112. Similarly, Justice Samuel Kwame Adibu-Asiedu previously participated in a Supreme Court panel that heard an application challenging the legality of the very proceedings now being pursued under Article 146 of the Constitution. His inclusion on the investigative committee offends the rule of *nemo judex in causa sua.* It undermines the judicial obligation to maintain impartiality and objectivity in proceedings that affect fellow members of the Judiciary.

113. It is further submitted that the participation of the 2nd and 3rd Defendants on the committee violates the constitutional safeguard contained in Article 127(2), which prohibits any form of interference with judges or judicial officers in the exercise of their judicial functions. If a sitting Justice of the Supreme Court, who has been involved in prior related proceedings or decisions involving the petitioners or the constitutionality of the process, is permitted to serve on an investigative committee into the Chief Justice, the resulting appearance of bias compromises the integrity of the committee and the independence of the Judiciary as a whole.

114. The principle is well established that justice must not only be done, but must manifestly and undoubtedly be seen to be done. The participation of the said Justices, given their prior involvement, offends this cardinal tenet and gives rise to a

constitutionally impermissible appearance of bias. If Justice Pwamang, for example, is permitted to continue as Chairperson of the Committee, despite being implicated in the very conduct that forms the basis of the petitions, it creates an intolerable and scandalous situation where he sits in judgment over a matter in which his impartiality is irreparably compromised.

115. Indeed, it is respectfully submitted that should the petitions ultimately result in adverse findings against the Chief Justice, then by the same logic and evidence, adverse findings ought to extend to Justice Pwamang. It is constitutionally untenable and repugnant to fairness and natural justice that he should be allowed to chair a committee investigating conduct to which he himself is connected.

116. Furthermore, the participation of Justice Asiedu raises serious structural concerns. If the Executive—either acting through the President or the Attorney-General—is permitted to appoint a judge to a disciplinary or investigative body in a manner that disqualifies that judge from adjudicating a pending or related judicial matter, then the Judiciary becomes vulnerable to manipulation. Such a precedent would enable the Executive to disqualify judges from sitting on sensitive matters by merely appointing them to ad hoc committees under Article 146. That would constitute executive interference with the Judiciary and would be inconsistent with Articles 125(3) and 127(1)-(2), which vest judicial power solely in the Judiciary and guarantee its institutional independence.

117. The impropriety of the appointments is further compounded by the troubling fact that the Attorney-General, a member of the Executive and principal legal adviser to the President, appears as counsel for the 2nd to 6th Defendants. This includes representing Justices of the Supreme Court in a matter that directly implicates the independence and integrity of the Judiciary. The Attorney-General's dual role—as legal adviser to the President and representative of the Committee—creates a conflict of interest that undermines the integrity of the investigative process. **The committee is an integral part of the Judiciary's constitutional disciplinary framework; it cannot be subject to executive control or direction**, not an extension of the Executive.

118. It is respectfully submitted that merely because the committee is set up by the President in consultation with the Council of State, does not transform it into an executive body. Neither does it render their functions executive. As stated above, an Article 146(6) committee of inquiry undertakes a judicial inquiry as part of the

constitutional framework for discipline in the Judiciary. The framers of the Constitution in prescribing this process for removal of Justices of the Superior Courts of Judicature had nothing but judicial accountability, independence and the security of tenure of judges in mind, and **not** a conflation of executive functions with judicial work. They did **not** intend executive supervision over the Judiciary. It will be extremely dangerous for any person to conceive an Article 146 committee as a political body or an agency of the executive.

119. In light of the above, it is submitted that it is incongruous for the Attorney-General to act as counsel for the committee of inquiry. This Honourable Court in Amegatcher v. Attorney-General [2012] 1 SCGLR 679, per Dr Date-Bah JSC at 686 – 687, held as follows:

"***One of the fundamental principles of the 1992 Constitution is that of separation of powers between the Executive, the Legislature and the Judiciary. Although the separation is not absolute, it is one of the cornerstones of the Constitution. Another fundamental principle is that of checks and balances, according to which certain bodies created by the Constitution are given relative autonomy to enable them to maintain oversight responsibility over other organs of State. It follows that the Constitution should be so construed as to preserve and not undermine these fundamental principles****. Yet the plain meaning of article 88(5) has the potential to undermine these principles. Article 88(5) provides that "all civil proceedings against the State shall be instituted against the Attorney-General as defendant". Does this mean that every civil action against any organ or institution of the State has to be brought against the Attorney-General, who is in fact a member of the Executive? Does this not compromise the principle of separation of powers? What happens if the Attorney-General wants to sue the Speaker or the Chief Justice? Must he sue himself? If a member of the Attorney-General's political party sues the Chief Justice, can the Attorney-General compromise the suit since he is the nominal defendant, irrespective of the wishes of the Chief Justice? These are but a few of the troubling issues that arise from a literal reading of article 88(5). …*

The plain meaning of article 88(5) is given effect through the interpretation that the presumptive rule is that the Attorney-General is to be the defendant in all civil proceedings against the State. ***However, there are exceptions to this presumptive rule, necessitated by the core values of the Constitution and the overriding constitutional need to avoid conflict of interest. The exceptions are meant to buttress the autonomy of the independent organs of the State.***"

120. It is respectfully submitted that if the committee's work is construed as the constitutional mechanism for exercising discipline over the Judiciary, then same is incompatible with a perception that the committee is part of, or an organ of the executive. It is an organ of the State which is required to be independent irrespective of the source of its appointment, to the extent that it deals with the Judiciary. It is actually a very vital part of the Chapter of the Constitution on the Judiciary. The requirements of its independence, particularly from executive or parliamentary control, will not permit representation of its legal interests by the Attorney-General. The Committee and its individual members ought to be represented by independent counsel, and not the Government's legal adviser, the Attorney-General. This is not to say that the committee members should bear legal expenses privately. All legal expenses of the committee or its members arising from the discharge of their official duties, ought to be borne by the State, just like other expenses of the committee.

121. It is respectfully contended that no adequate safeguards have been demonstrated to ensure that the Executive's influence—whether directly through appointments or indirectly through legal representation—is excluded from the workings of the Committee. In the absence of such safeguards, the entire process is tainted by a presumption of executive interference, which violates the Constitution and threatens the delicate balance of power between the Executive and the Judiciary.

122. For these reasons, the appointment and continued participation of the 2nd and 3rd Defendants on the committee renders the proceedings constitutionally flawed. The process violates the foundational principles of natural justice, the constitutional architecture of judicial independence, and the guarantee of impartiality essential to the fair administration of justice. It is respectfully submitted that this Honourable Court must nullify the appointments and declare the proceedings of the Committee as constituted null, void, and of no legal effect.

123. For the avoidance of doubt, it is not being contended that no Justice of the Supreme Court may serve on a committee appointed by the President pursuant to Article 146(6) of the Constitution. Rather, the principle being urged upon this Honourable Court is that only those Justices who are in no way directly or indirectly connected to the petitions presented against the Chief Justice—or to any proceedings that challenge the constitutionality of the processes commenced by the President—may lawfully serve. The need for impartiality, both in fact and in appearance, requires that any Justice whose prior judicial conduct or involvement creates a reasonable apprehension of bias must recuse themselves. The integrity of the disciplinary process, and the public confidence in the independence and fairness of the Judiciary, demand no less.

IV. FAILURE OF THE 4TH, 5TH AND 6TH DEFENDANTS TO TAKE AND SUBSCRIBE TO THE JUDICIAL OATH RENDERS THE COMMITTEE IMPROPERLY CONSTITUTED

124. It is respectfully submitted that the failure of the 4th, 5th and 6th Defendants to take and subscribe to the Judicial Oath prior to participating in the proceedings of the Committee constituted under Article 146(6) of the Constitution is a fatal breach of a constitutional and statutory requirement, rendering their participation unconstitutional and the Committee improperly constituted. The requirement to take the appropriate oath prior to the assumption of public or quasi-judicial office is not a mere formality or procedural nicety, but a substantive precondition to the validity of one's membership and actions within the contemplated office.

125. **Article 156(1)** of the Constitution stipulates that:

> "*A Justice of a Superior Court, the Chairman of a Regional Tribunal, and also a person presiding over a lower court or tribunal, and any other judicial officer* ***or person whose functions involve the exercise by him of judicial power shall, before assuming the exercise of the duties of his office****, take and subscribe the oath of allegiance and the Judicial Oath set out in the Second Schedule to this Constitution.*"

126. Sections 1 and 2 of the **Oaths Act, 1972 (NRCD 6)** also make it mandatory for persons appointed to specified offices, including quasi-judicial or disciplinary bodies established pursuant to constitutional authority, to take and subscribe to the oaths set out in the Second Schedule to the Act. By the nature of the Committee established under Article 146(6), its members are enjoined to take the Judicial Oath. This oath binds the member to uphold the Constitution, dispense justice impartially and without fear or favour, and perform their functions with fidelity and integrity—standards essential to maintaining public confidence in the fairness and impartiality of proceedings concerning the possible removal of the Head of the Judiciary.

127. Section 4(1)(a) and (b) of the Oaths Act is unequivocal in its effect: a person who refuses to take the prescribed oath, or fails to do so prior to entering the functions of that office, shall be deemed either to have vacated that office (if they had already entered it), or to be disqualified from assuming it (if they had not). While the statutory language uses "refuses" to take the oath, it is submitted that a "failure" to take the oath within the required timeframe is legally indistinguishable in effect from a "refusal," given that both result in the absence of valid authority to perform the duties of the office.

128. On this basis, the 4th, 5th and 6th Defendants, who had not taken and subscribed to the Judicial Oath as at the date of the Committee's first meeting on 15th May 2025, cannot be deemed to have validly assumed office as members of the Committee. Their participation in any proceedings prior to taking the oath is constitutionally defective and taints the legitimacy of the Committee from the outset. The mandatory language of both Article 156(1) and section 4 of the Oaths Act admits of no exception or indulgence in such a constitutionally sensitive context.

129. Furthermore, while section 4(2) of the Oaths Act provides that the failure to take an oath does not by itself invalidate acts performed by a public officer, that provision must be interpreted in the light of its context and purpose. It cannot be extended to cure violations in cases where the office is not merely administrative, but constitutional and quasi-judicial in character, especially when the action of the Committee may result in the removal of a sitting Chief Justice, the head of an independent arm of government. To hold otherwise would permit a direct affront to the institutional integrity and constitutional safeguards surrounding the Judiciary.

130. Accordingly, it is submitted that the Committee, as presently constituted with members who failed to satisfy a mandatory legal requirement, lacks lawful authority to conduct any inquiry under Article 146. The President's failure to ensure that the persons appointed had validly assumed office prior to exercising such significant powers amounts to a breach of constitutional process. Consequently, all acts undertaken by the Committee in such capacity are null, void and of no legal effect.

E. CONCLUSION

F. It is respectfully submitted that the grave constitutional infractions and procedural improprieties outlined herein support an invocation of this Honourable Court's

jurisdiction under Article 2 of the Constitution for a grant of the reliefs sought by the Plaintiff in the Writ filed on 21st May 2025. The failure of the President to provide the bases or grounds for his prima facie determination is a gross constitutional violation. The terse statement made by the Presidency does not satisfy the requirement for a reasoned quasi-judicial decision, particularly when such a determination is subject to potential appellate review and carries the weight of initiating the removal of the head of an arm of government. This failure undermines the hallowed principles of judicial independence and security of tenure of judges contained in Articles 127 and 146(1) of the Constitution. It also undermined the concept of final judicial authority reserved to the Judiciary, not the Executive, under Article 125(3).

G. Moreover, the composition of the Committee established by the President is fatally defective. The participation of Justices who had previously adjudicated matters directly related to the petitions or legal challenges concerning the process, and the inclusion of lay members who had not taken and subscribed to the requisite judicial oaths in accordance with **Article 156(1**) of the Constitution and the Oaths Act, 1972 (NRCD 6), render the Committee improperly constituted and its proceedings a nullity. As argued, the constitutional requirement to take the Judicial Oath is mandatory and goes to the root of one's authority to sit in such a quasi-judicial capacity.

H. The argument is not that no Justice of the Supreme Court may serve on such a Committee, but rather that only those Justices who are not in any way directly or indirectly connected to the subject petitions or related proceedings may lawfully do so. The sanctity of impartial adjudication and the institutional integrity of the Judiciary require no less.

I. Respectfully, the unauthorised public disclosure of the petitions and responses, contrary to Article 146(8) and the holding in Agyei-Twum, has undermined the protective cloak of confidentiality that was designed to shield the Judiciary from undue public speculation and ridicule. In such a context, the Chief Justice retains the right to waive in-camera proceedings and request that the inquiry be held in public, consistent with Articles 19(14) and 281(1) of the Constitution and in defence of the institutional dignity of the Judiciary.

J. In the circumstances, it is respectfully submitted that the Honourable Court is enjoined to uphold the supremacy of the Constitution, affirm the inviolability of due process, and protect the independence of the Judiciary by declaring the entire process initiated by the President null, void and of no effect. The Court must not allow constitutional infractions of such gravity to be overlooked or excused by

subsequent compliance. Once the constitutional safeguards are breached at inception, the taint is incurable, and the process must fail.

K. For the foregoing reasons, the Plaintiff humbly prays this Honourable Court to grant all the reliefs endorsed on the Writ and to uphold the constitutional integrity of the Judiciary as a bulwark of democratic governance and the rule of law in the Republic of Ghana.

Respectfully submitted.

F. LIST OF AUTHORITIES PLAINTIFF INTENDS TO RELY ON

Plaintiff shall at the hearing, rely on the following reported cases:

1. **Tuffuor v. Attorney-General** [1980] GLR, C.A sitting as SC.
2. **Agyei-Twum v. Attorney-General & Akwettey** [2005-2006] SCGLR 732
3. **R v Special Tribunal Exparte Akosah** [1980] GLR 592 at 605
4. **Justice Paul Uuter Dery v Tiger Eye PI & 2 Others** [2015-2016] 2 SCGLR 812
5. **Awuni v. West African Examinations Council (WAEC)** [2003 – 2004] 1 SCGLR 471 at 514
6. **TDC & Musah v. Atta Baffour,** [2005 -2006] SCGLR 121.
7. **National Media Commission v. Attorney-General** [2000] SCGLR 1
8. **Justice Abdulai v. The Attorney-General** – Suit no. J1/07/2022 (Unreported – Judgment delivered on 9th March, 2022).
9. **Michael Ankomah Nimfa v. James Gyakye Quayson** Suit No. J1/11/2022 (Unreported – Judgment delivered on 17th May, 2023).
10. **Alexander Afenyo Markin vrs. 1. Speaker of Parliament 2. Attorney-General** - Suit No. J1/01/2025 (Unreported – Judgment delivered on 12th November, 2024)
11. **Adjei Ampofo (No. 1) v. Accra Metropolitan Assembly and Attorney-General (No. 1)** [2007-2008] SCGLR 611
12. **Asare v. Attorney-General** [2003-2004] 2 SCGLR 823

13. **Brown v. Attorney-General (Audit Service Case)** [2010] SCGLR 183
14. **Omaboe III v. Attorney-General** [2005-2006] SCGLR 579
15. **Ghana Lotto Operators Association v. National Lottery Authority** [2007-2008] 2 SCGLR 1088
16. **Republic v. High Court (Fast Track Division) Accra; Ex parte Commission on Human Rights and Administrative Justice (Richard Anane interested Party** [2007-2008] 1 SCGLR 213
17. **Ghana Bar Association v. Attorney-General & Anor** [1995-96] 1 SCGLR 598

The plaintiff shall at the hearing seek to rely on the following laws:

- **The Constitution of the Republic of Ghana, 1992.**
- **Oaths Act, 1972 (NRCD 6)**
- **Supreme Court Rules, 1996 (C.I.16)**

DATED AT DAME & PARTNERS, CANTONMENTS, ACCRA THIS 27TH DAY OF JUNE, 2025

Godfred Yeboah Dame

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Lawyer for Plaintiff

The Registrar,

Supreme Court,

Accra.

AND FOR SERVICE ON: THE ABOVE-NAMED DEFENDANTS, ACCRA.