

FILED ON 28-11-22
TIME 10:10 am/pm
REGISTRAR
HIGH COURT, SOGAKOPE

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
SOGAKOPE
A.D 2022

E11/01/2023

SUIT NO.

1. WILLIAM KOFI GLEKU
Newtown, Sogakope
2. ROMEO AMEMORNU
Kpekpo, Sogakope Senior High School
3. HARRISON RICHARD GLEKU
Joy Ablordepey's house
Kpekpo
4. AGBEMADI GODSON
Sogakope, Newtown
GPS-VU-0025-2291

PLAINTIFFS

VRS

NATIONAL DEMOCRATIC CONGRESS
Hse. No. C 10/2 Adama Avenue
ADABRAKA – ACCRA

DEFENDANT

PLAINTIFFS TO DIRECT SERVICE

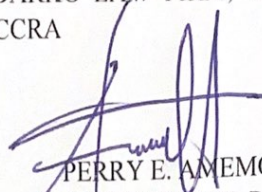
MOTION ON NOTICE FOR INTERLOCUTORY INJUNCTION
PURSUANT TO ORDER 25 RULE 1 OF THE HIGH COURT (CIVIL
PROCEDURE) RULES, 2004 C.I 47

MOTION ON NOTICE by counsel for and on behalf of the Plaintiffs/Applicants praying this Honorable court for an order of interlocutory injunction against the purportedly elected South Tongu constituency executives of the Defendant Political Party restraining them and/or their agents, lawful attorneys proxies, from participating in the upcoming National Party elections scheduled for 17th December 2022, pending the determination of this suit.

AND for such further order or order(s) as the Honorable Court may deem fit just, fair and equitable to make.

COURT TO BE MOVED on the ^{8th} Day of ^{Dec} 2022 at 9 o'clock in the forenoon or so soon thereafter as Counsel for the Plaintiffs/Applicants herein may be heard.

DATED THIS 6TH DAY OF NOVEMBER 2022 AT DARKO LAW FIRM, 72 PAPAPIO STREET, NANAKROM, CLOSE TO THE MELCOM, ACCRA



PERRY E. AMEMORNU, ESQ
SOLICITOR FOR PLAINTIFFS
eGAR02474/22

DARKO LAW FIRM
24 FORETAIL ACHIMOTA GOLF HILLS
ACCRA
0246025597

THE REGISTRAR
HIGH COURT
SOGAKOPE

AND FOR SERVICE UPON THE DEFENDANT UPON WHOM THE PLAINTIFFS WILL DIRECT SERVICE.

Motion - 50.00
Certificate - 10.00
Exh - 50.00
S/case - 10.00

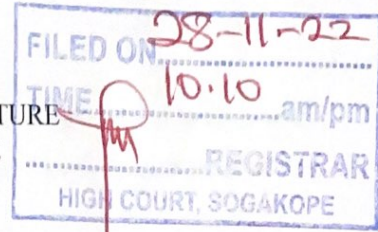
Total 120.00

Serv - 20.00

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AFFIDAVIT IN SUPPORT

I **WILLIAM GLEKU** of Sogakope, Newtown make oath and say as follows;

1. That I am the Applicant/Deponent herein
2. That I have the authority of all the Applicants herein to depose to this affidavit of facts which are within my personal knowledge and believe and I have been advised by my counsel and I verily believe same to be true.
3. That the Plaintiffs-Applicants are members of the National Democratic Congress formed sometime in 1992 with Social Democratic ideals and underpinnings. *Exhibits 1 series*

1. The President appointed as members of the Legislative Council High School graduates who are not in the service of the Government and the Legislative Council High School and the Secondary Education Board High School graduates. Article 1
2. The President is the convener of the Legislative Council, which shall also be officer in chief executive and the chief executive, provided that any member of the Council shall be bound to give evidence and
3. The functions of the Legislative Council shall be to advise the Government and to advise the Executive Council.
4. The members of the Council shall be appointed by the President and shall hold office for the term specified in the President's written order. A member of the Council shall be eligible for re-appointment. The President may remove a member of the Council if he is satisfied that the member is incapable of performing his duties or if he is otherwise disqualified to hold office as a member of the Council.
5. The President may, in exceptional circumstances, direct a member of the Legislative Council to resign his office as a member of the Council. Article 2 is a copy of the President's constitution.
6. The President may, from time to time, provide, subject to the law, financial assistance for the Council and other such matters and shall exercise powers for the benefit of the members of the Council.
7. The President may, for the members of the Council, use the services of such persons as he may think fit to employ in connection with the Council's business and shall exercise powers for the benefit of the members of the Council.
8. The President may, with the approval of the Council, provide for the members of the Council to participate in the Council's business and shall exercise powers for the benefit of the members of the Council.
9. The President may, with the approval of the Council, provide for the members of the Council to participate in the Council's business and shall exercise powers for the benefit of the members of the Council.
10. The President may, with the approval of the Council, provide for the members of the Council to participate in the Council's business and shall exercise powers for the benefit of the members of the Council.
11. The President may, with the approval of the Council, provide for the members of the Council to participate in the Council's business and shall exercise powers for the benefit of the members of the Council.
12. The President may, with the approval of the Council, provide for the members of the Council to participate in the Council's business and shall exercise powers for the benefit of the members of the Council.


13. That the applicants wrote a report and served same on the Regional Chairman on what transpired at the constituency conference.
14. That the applicants were subsequently informed by the constituency chairman that, the national office was going to address their concerns on Monday 24th October 2022 but they received no further communication thereafter.
15. That on Friday 28th October 2022, the applicants saw messages circulating on various WhatsApp platforms with members affiliated to the Defendant Party within the constituency that the party was organizing the constituency elections on Sunday, 30th October 2022.
16. That the applicants contacted the constituency chairman, who according to the constitution of the Defendant Political Party, has the sole right to convene the constituency conference at which the elections can be held, to ascertain the veracity or otherwise of the information they had seen on various WhatsApp platforms.
17. That the said constituency chairman denied knowledge of any such election and further said the he was awaiting the resolution of the problems that arose at the disrupted conference and that he has not sanctioned any election.
18. That after their phone conversation with the constituency chairman, the applicants received formal written communication from him, addressed to all delegates in the constituency confirming his position that he has not sanctioned any election to be held on Sunday 30th October, 2022 and further called on all delegates to disregard the messages making rounds on social media. Communication from the constituency chairman is attached and marked as ***Exhibit 5***
19. That the constituency chairman took a further step to announce on "Freedom FM" a local radio station that there was not going to be any election on Sunday.
20. That according to the Defendant's constitution, a 3 days' notice is required prior to the conduct of the constituency elections.
21. That at about 11am on Sunday, the applicants noticed that the electoral commission purported to conduct the said election, with majority of the delegates absent including the 44 members of the Plaintiffs' branches.
22. That the applicants later found out that, the elections were organized by the constituency secretary with the assistance of the constituency director of elections, without the approval of the constituency chairman.

23. That without the constitutionally mandated three-day notice prior to the elections, from the constituency chairman and the participation of all branches within the constituency the constituency elections cannot be deemed to have been validly conducted.
24. That the Defendant Political Party, intends to conduct national party elections on the 17th of December, 2022 and the South Tongu constituency executives who were elected on the basis of constitutional breaches and invalidly conducted elections, intend to participate in the said elections and cast votes.
25. That I am advised and verily believe same to be true that allowing the said constituency executives who were elected on the basis of constitutional breaches to participate in the national elections would invariably be permitting them perpetuate further illegitimacy and would not represent views and interests of the members of the South Tongu constituency
26. That if this honorable Court does not set a precedent where constituency elections properly conducted, form the basis of the regional and national elections, miscreants in the defendant political party will deliberately sabotage elections in the constituency not favorable to them and thus stifle interests not favorable to them and then proceed to participate in national elections.
27. That I pray that the honorable Court restrains the Defendant Political party from allowing the purportedly elected constituency executives of the South Tongu constituency from participating in the national elections.

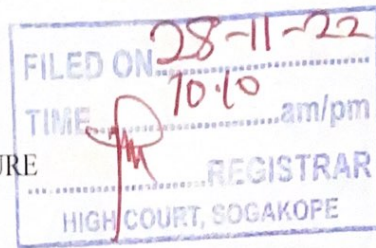
WHEREFORE the Plaintiff-Applicants pray this Honorable court

SWORN AT SOGAKOPE THIS
2nd DAY OF NOVEMBER 2022


.....
DEPONENT

BEFORE ME

COMMISSIONER OF OATHS
REGISTRAR
HIGH COURT
SOGAKOPE

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
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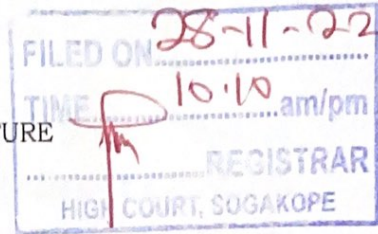
CERTIFICATE OF EXHIBITS

I, Mabel Fryee Commissioner for Oath hereby certify that the
Following exhibits have been annexed to the affidavit.

- 1) **Exhibit 1** series membership cards of the Plaintiffs
- 2) **Exhibit 2** copy of the membership of the Sogakope Senior High School branch
of the National Democratic Congress
- 3) **Exhibit 3** a copy of the constitution of the Defendant Political party.
- 4) **Exhibit 4** a letter from the constituency Chairman of the Defendant Political
Party inviting them to the constituency conference
- 5) **Exhibit 5** another letter from the constituency chairman of the Defendant
Political Party

Before me
Commissioner for oaths
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HIGH COURT
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**PLAINTIFFS' STATEMENT OF CASE IN SUPPORT OF
APPLICATION FOR INJUNCTION**

I. INTRODUCTION

1. If it pleases my Ladyship, this is the statement of case of the Plaintiff/Applicant herein in support of the application for interlocutory injunction restraining its purportedly elected constituency executives within the South Tongu constituency from participating in the upcoming national party elections pending the determination of this suit.

2. My Lady this application is brought pursuant to order 25 rule 1 of the High Court Civil Procedure, 2004 (C.I 47) which vest this honorable court with discretionary powers to grant an injunction when it is just or convenient to do so. It is the humble prayer of the Plaintiffs that in the overall circumstances of the case, the instant application is granted.
3. Reliance is placed on the facts contained in the affidavit in support of the application.

II. LEGAL BASIS FOR THE GRANT OR REFUSAL OF AN APPLICATION FOR INJUNCTION

4. Despite an injunction being a discretionary remedy, the courts have over the years fashioned out important principles to guide them in order to ensure that the discretion that they have in injunction applications are judicially and judiciously exercised – **Owusu v. Owusu (2007/2008) SCGLR 870**. The exercise of discretion is also guided by article 296 of the constitution, 1992.
5. The Supreme court in the unreported case of Michael Ankomah-Ninfah vs. James Gyakyee Quayson & 2 others Writ. No. J1/11/22, dated 13th April 2022 summarized the basis for the grant or refusal of an injunction application in the following grounds;

From the litany of judicial decisions, it has also long been settled that in considering an application for injunction, a court ought to consider inter alia the following factors;

- 1) Whether the case of the Applicant is not frivolous. That is to say whether the Applicant prima facie, has demonstrated a legal or equitable right that ought to be protected by the court.
- 2) Whether hardship would be occasioned if the application is granted or refused and which of the parties will suffer greater hardship.
- 3) Whether on the facts, it is just and convenient for the preservation of the status-quo.

- 4) Whether the loss, damages or injury can be quantified in money and whether damages could afford adequate compensation if the application was refused.
6. On the first requirement of there being a serious question to be tried, the Applicant has demonstrated on the face of the pleadings and affidavit evidence that there is a serious question to be tried. The matter centers on the rights of the applicants to vote and participate in the electoral process of the defendant/ respondent political party. It further dovetail into issues of compliance with the constitution the defendant/ respondent Political party. Article 15 of the Defendant Political party stipulates that;

1. There shall be a constituency conference held every four (4) years to elect Party officers at a venue within the constituency.
2. The constituency conference shall be convened by the **chairman** of the constituency executive committee in consultation with the constituency executive.
3. Where the chairman fails to convene a constituency conference the General Secretary shall direct as to the convening of such conference giving venue, time and agenda.

Section 5(a) further states branch executives in the constituency as one of the categories of persons eligible to attend the constituency conference and vote at the elections of the constituency executives.

The 2022 constituency conference and elections were purportedly organized by the constituency secretary and director of elections and not the constitutionally mandated person, that is the constituency chairman. It is humbly contended that the various constituency offices of the defendant political party are a creature of the constitution of the defendant political within the meaning of **article 16** of the defendant's constitution and thus no person can occupy it in disregard of the law. As subscribers to the constitution of the defendant, they do not only have the legal rights

to ensure its compliance, but also to assert their rights under the said constitution.

7. On whether hardship would be occasioned if the application is granted or refused, and which of the parties will suffer greater hardship, it is respectfully submitted that Applicants, 44 members of their branch and the whole of the Defendant Political party will suffer greater hardship and inconvenience should the purported elected executives of the defendant Political party are allowed to participate in the national elections of the Defendant political party. The respect for rule of law and other tenets of democracy like legitimacy of elected persons are the bedrock of the democracy within which the Defendant Political party operates. To the extent that the constitution of the defendant is subservient to the 1992 constitution of the Republic of Ghana by the operation of article 1(2), any violation of its constitution leading to the election of the constituency executives of the South Tongu constituency of the defendant political party would amount to an affront to the democracy within which the defendant operates. Additionally irreparable damage would be occasioned to the members of the party within the South Tongu constituency as well as the larger population of the party, if illegitimate persons are allowed to participate in the elections of the party's national officers and eventually vote for the presidential candidate of the party. Their participation would not only deepen their illegitimacy but would not represent the views of members of the party within the constituency. Their rights of the purportedly elected constituency executives in the South Tongu constituency to participate in the national elections is dependent upon the validity of their elections. It is humbly contended on behalf of the applicants that because the constitution of the defendant was gravely breached in the elections of the said constituency executives, they cannot be allowed to exercise their right to vote in the national elections on the basis of an illegitimately conducted election.

8. On the issue of balance of convenience, as already stated, the nub of the issue before this court is about the legitimacy of the elections of the constituency executives of the defendant political party within the South Tongu constituency within the meaning of article 15 of the defendant political party especially when there is ample evidence before this court that the said election and the constituency conference was convened by the constituency secretary and the director of elections without the approval of the constituency chairman who according to the constitution is the legally mandated person to organize the constituency conference and elections. The balance of convenience without doubt tilts in favour of the members of the defendant political party within the South Tongu constituency whose community of interest in the defendant party's constitution is sought to be vindicated if the applicant's complaint is eventually upheld by this court.

Whether damages would be inadequate

9. In the very likely event that this court is of the view that the applicant has a good and arguable claim to the right we seek to protect, this court must next consider whether damages will be adequate to compensate the applicant if the application is not granted. In other words, will the applicants suffer irreparable damage if the respondent is not restrained from taking actions that overreaching the applicants and the applicants ultimately succeed in its action. In the Cyanamid case, Lord Diplock stated at page 4 that;

the normal rule of English litigation is that a party gets no relief till he has gone to trial and persuaded the court that he has a right which has been infringed. He is not entitled to an interlocutory injunction just because he has a strong case. He is only so entitled if it is shown that there could be injustice if the defendant is left unfettered and that there is a serious risk of irreparable damage to the plaintiff. In the first place the plaintiff should show that there is some serious need for the defendant to be restrained. The law recognizes that there are

situations in which the property in dispute has some special quality of its own, e.g., cases where there is the danger of the collapse of a party wall... The question is whether the plaintiff would suffer irreparable injury or only an injury which could be compensated in damages. One must look at the facts of each case to see whether irreparable damage would be caused.

10. My Lord, based on the evidence before this court and the law, it is submitted that if this application is not granted and in the very likely event that the applicant succeeds in his claim, damages would not be an adequate compensation. My lord the right to vote is an inalienable right that cannot be compensated by damages.

11. Given the overall circumstances of the matter before this court, it is just and convenient that the elected constituency executives of the defendant political party in the South Tongu constituency are restrained from participating in the upcoming national party elections. This is necessary to preserve the sanctity of the constitution.

DATED AT ACCRA THIS 22ND DAY OF NOVEMBER 2022

DATKO LAW FIRM
26 FORT TAIL + CHINACTA CREEK HILLS
ACCRA

024602759
COUNSEL FOR THE APPLICANTS

PERRY E. AMEMORNU, esq

eGAR02474/22

THE REGISTRAR
HIGH COURT
SOGAKOPE

AND FOR SERVICE ON THE ABOVE NAMED-DEFENDANT