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Registrar
GHANA

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

PETITION No: J1/5/2021

**ARTICLE 64 OF THE 1992 CONSTITUTION AND
SUPREME COURT RULES, 1996 (C.I. 16) (AS
AMENDED BY C.I. 74 AND C.I. 99)
PRESIDENTIAL ELECTION PETITION
PRESIDENTIAL ELECTION HELD ON 7TH
DECEMBER 2020**

THE PETITION OF:

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

PETITIONER

AND

ELECTORAL COMMISSION OF GHANA
8TH, RIDGE – ACCRA

1ST RESPONDENT

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

2ND RESPONDENT

ANSWER OF THE 1ST RESPONDENT

1. Save as hereinafter admitted 1st Respondent denies each and every allegation contained in the Petition as if same has been set out in extenso herein and denied seriatim.
2. 1st Respondent admits paragraphs 1 to 4 of the Petition.
3. 1st Respondent, in general answer to the Petition, says that Petitioner is one (1) of twelve (12) candidates who took part in the 7th December 2020 Presidential Election and that the 1st Respondent has no prejudice or bias against any of the candidates.
4. 1st Respondent says further that the 7th December 2020 Presidential Election was regulated by the Fourth Republican Constitution, 1992 and the Public Elections Regulations, 2020 (CI 127).
5. 1st Respondent adds that CI 127 sets out a four-stage procedure for collating the Presidential Election Results as detailed below;

PRIMARY STAGE

- i. After voting ends at the various polling stations, the Presiding Officer (PO) in the presence of the general public with the assistance of the candidates or their agents breaks the seals to the ballot box and opens the ballot box.
- ii. The PO then sorts out the ballots for validity and counts them in the presence of the candidates or their agents. At this stage candidates or their agents can request for a recount of their ballots.
- iii. After counting, the PO fills out the Statement of Poll and the Polling Station Results Form for the Office of President (**FORM 8B** in the Schedule to CI 127) to be signed by the PO and the candidates or their agents present.
- iv. Where the candidates or their agents for some reason refuse to sign Form 8B the law grants them the

opportunity to state the reasons for their refusal to sign on the Form 8B.

- v. Where a request for a second recount is turned down by the PO, that request is referred to the Constituency Returning Officer (CRO) for redress and any other request is referred to the CRO for redress.
- vi. A carbon copy of the completed **FORM 8B** is given to each candidate or agent after which the **FORM 8B** is submitted to the CRO.

SECONDARY STAGE

- vii. The CRO collates all **FORM 8Bs** received from all polling stations within the Constituency in the presence of the candidates or their agents, and then fills out the Presidential Election Collation Form (**FORM 9**) and the Presidential Election Summary Sheet (**FORM 10**). Collation is done by aggregating all the **FORM 8Bs** received. At this stage all issues that are still outstanding concerning ballots and ballot boxes and referred from the polling stations by the POs are addressed.
- viii. The candidates or their agents present may call for re-collation of Form **8Bs**.
- ix. The CRO and candidates or their agents present are then required to sign **FORM 9** and **FORM 10**.
- x. The candidates or their agents who for some reason refuse to sign the Forms are granted the opportunity by the law to state reasons for their refusal to sign on the Forms.
- xi. **FORM 9** and **FORM 10** are then submitted to the Regional Collation Officer ('RCO') through the District Electoral Officer.

TERTIARY STAGE

- xii. The RCO collates the **FORM 10s** received from all constituencies within the region, again in the presence of the candidates or their agents, and then fills out the Presidential Regional Results Collation Form (**FORM 11**)

and the Presidential Regional Results Summary Sheet (**FORM 12**). The collation is done by aggregating the **FORM 10s** as received.

- xiii. The RCO then requests the candidates or their agents present to sign the **FORM 12**.
- xiv. Again, at the Regional level, candidates or their agents who for some reason refuse to sign Form 12 are granted the opportunity by the law to state reasons for their refusal to sign on the Form.

QUATENARY STAGE

- xv. The **FORM 12s** are then submitted to the Returning Officer for the Presidential Election, (Chairperson of the 1st Respondent) at the National Collation Centre. The results are shown to the candidates or their agents present for review. Thereafter the Returning Officer for the Presidential Election collates the results of all the Form 12s and fills out the Presidential Results Declaration Form (**FORM 13**) and then requests the candidates or their agents present to sign.
 - xvi. The presidential election results as captured on **FORM 13** is declared and subsequently published at the Head Office of the 1st Respondent.
6. 1st Respondent states further that CI 127 provides for the candidates to appoint polling and counting agents for the various stages and that the respective candidates in the just ended election, including the Petitioner, appointed agents who represented them at all the stages of the electoral process as set out above.
 7. 1st Respondent confirms that Petitioner indeed appointed agents and stationed them at all the polling stations and collation centres (constituency, regional and national) throughout the country.
 8. 1st Respondent says that the Petitioner's agents signed 13 of the 16 Regional Election Results Summary Sheets (Form 12) while the agents of the 2nd Respondent signed 15 of the regional Election Results Summary Sheets (Form 12).

9. 1st Respondent says it also engaged officers to work as Regional Collation Officers, Constituency Returning Officers and Presiding Officers to enable it carry out its constitutional mandate of organising the 7th December 2020 Presidential Election.
10. 1st Respondent adds that the relevant and applicable Forms indicated in the four stages above are to be signed by the officers of 1st Respondent together with the candidates or their agents, where the latter are available and have no objections or challenges.
11. 1st Respondent avers further that where the candidates or their agents are available and have objections or challenges the same is noted on the applicable Forms before the Forms are submitted to the next stage of collation.
12. 1st Respondent adds that where the candidates or their agents are absent or fail to comply with the law, the process is not stalled or obstructed; the collation process continues.
13. 1st Respondent says further that at each stage, the candidates or agents present are given a duplicate, carbonised copy of the Summary Sheets, namely **FORM 8B**, **FORM 10** and **FORM 12**.
14. 1st Respondent adds that there is therefore one original of each Summary Sheet with as many carbonised duplicates as are issued out by the officer in charge at each stage.
15. 1st Respondent adds that during the process and as the collation proceeds from stage to stage, any outstanding objections are addressed, paving the way for the candidates or their agents to sign the Forms where they are present and are satisfied with the resolution.
16. 1st Respondent adds that prior to the 7th December 2020 Presidential Election, it put in place a system to help it deliver a seamless and timely collation of results. It therefore announced to the public that it would declare the results of the Presidential Election within 24 hours after the close of polls.

17. 1st Respondent says that numerous requests for recounts at the Polling Stations and re-collation at the Constituency and Regional Collation Centres raised by candidates and agents that were attended to in accordance with the rules governing the election did not allow for the prompt tallying and collation of the results as expected.
18. 1st Respondent adds that a heavy downpour in some parts of the country halted the polls in those areas and further delayed the process making it impossible for the 1st Respondent to meet its 24-hour deadline.
19. 1st Respondent says that when these developments occurred, it informed the general public that it had to call off the declaration of the results without giving a new deadline as to when the results would be declared.
20. 1st Respondent admits paragraph 5 of the Petition, only to the extent that it declared results at a press conference on 9th December 2020, and that it declared that the winner of the 7th December 2020 Presidential Election was Nana Addo Dankwa Akufo-Addo, 2nd Respondent herein.
21. 1st Respondent in further answer to paragraphs 5, 6 and 7 of the Petition, admits that in reading out the results on 9th December 2020, its Chairperson inadvertently read out the figure representing the **total number of votes cast** as the figure representing the **total number of valid votes**, and the percentage of 2nd Respondent as 51.59% instead of 51.295%.
22. 1st Respondent states that on the 10th December 2020, it made a correction and clarification of the results declared on the 9th December 2020 through a press release, but adds that, that correction and clarification did not affect the overall results as declared and captured on the **FORM 13**.
23. 1st Respondent in further answer to paragraph 12 of the Petition avers that on Petitioner's own showing, a tabulation of all the valid votes obtained by the candidates in the declaration of 9th December 2020 was **13,121,111** and not **13,434,574**, which represented the total votes cast and Petitioner was therefore well aware that **13,434,574** declared as the total valid votes was an error.

24. 1st Respondent says below is the total of the valid votes obtained by each candidate at the time of the declaration on the 9th December 2020 and which total number is correctly stated in paragraph 12 of the Petition:

Candidate	No of Valid Votes	Percentage
Akufo-Addo	6,730,413	51.295%
Mahama	6,214,889	47.366%
Andrews	105,565	0.805%
Greenstreet	12,215	0.093%
Donkor	5,575	0.042%
Lartey	3,574	0.027%
Ayariga	7,140	0.054%
Akpaloo	7,690	0.059%
Apasera	10,887	0.083%
Dzogbenuku	6,848	0.052%
Agyeman-Rawlings	6,612	0.050%
Walker	9,703	0.074%
Total	13,121,111	100%

25. 1st Respondent denies paragraph 13 of the Petition and says the same is disingenuous and false.
26. 1st Respondent, in answer to paragraph 14 of the Petition, says that at the time 1st Respondent declared the results, although the Summary Sheet (**FORM 10**) from the Techiman South Constituency, one of the constituencies in the Bono East Region, had not been received, 1st Respondent declared that any statistical computation that even ascribed or allotted the total number of registered voters in that Constituency to Petitioner, would not have materially affected the results.
27. 1st Respondent avers that the Presidential Election Declaration Form (**FORM 13**), which is a tally of the sixteen **FORM 12s** transmitted, without the results from the Techiman South Constituency, and showing the total votes cast and the total valid votes, shows that 2nd Respondent won the 7th December 2020 election.
28. 1st Respondent avers that the figures converted into percentages showed that 2nd Respondent had obtained more than 50% of the valid votes, which met the constitutional threshold for the Election of President under Article 63(3) of the Constitution.

29. 1st Respondent in further denial of the averments in paragraphs 14 to 17 of the Petition, says that as at the date Petitioner filed the Petition, he knew that the results of the Techiman South Constituency had been released and that it showed that Petitioner obtained 52,034 of the votes while 2nd Respondent obtained 46,379 of the votes.
30. 1st Respondent adds that as at the date of the Petition, Petitioner knew that when those votes were factored into the results as declared on 9th December 2020 and as corrected and clarified on 10th December 2020, 2nd Respondent had won the election in accordance with Article 63 of the Constitution.
31. 1st Respondent therefore says that Petitioner's simulation of the results which deliberately uses and relies on the **total number of votes cast**, which was inadvertently mentioned as the **total number of valid votes** at the Press Conference, to arrive at the conclusion that the percentage of valid votes for 2nd Respondent would not meet the Article 63(3) threshold is misleading, untenable and misconceived.
32. 1st Respondent adds that the averments in paragraphs 14 to 17 of the Petition are hypothetical and speculative and must not be entertained by this Honourable Court.
33. 1st Respondent further avers that the full results of the 7th December 2020 Presidential Election was known to the Petitioner and that the claims in the Petition are contrived, have no legal basis and ought to be dismissed in limine.
34. 1st Respondent avers further that it posted a copy of the **FORM 13** at the Head Office of the 1st Respondent as required by law.
35. 1st Respondent denies paragraphs 31, 32, 33, 34 and 35 of the Petition, puts Petitioner to strict proof thereof and says further that the said averments by the Petitioner are misleading and self-serving and do not meet the requirement of law and fact for challenging the validity of the Election held on 7th December 2020.
36. 1st Respondent denies all allegations of 'vote padding' contained in the Petition.


37. 1st Respondent states that notwithstanding all the resources and training deployed and the facilities put in place, there is a possibility of minor discrepancies as a result of computational and mathematical errors made in the course of the collation of results; but these did not have a material effect on the overall results as declared.
38. 1st Respondent states that after the declaration of 9th December 2020, four (4) constituencies in the Greater Accra Region reported an update in the results announced in those constituencies, a net difference of 1,651 votes. That update was factored into the 10th December 2020 Press Release, but it did not have a material effect on the overall results as declared.
39. 1st Respondent in further denial of paragraph 32 of the Petition contends that a tally of those constituencies referred to does not yield a difference of 5,662 as alleged by the Petitioner.
40. In further denial of the Petitioner's claims, 1st Respondent says that it complied with all the processes and procedures laid down by law for the conduct of the 7th December 2020 Presidential Election with fairness to every candidate and without malice, ill will or bias against anyone.
41. 1st Respondent maintains that in a bid to enhance transparency and public participation in the electoral process, it published all the Regional Election Summary Sheets (Form 12) on its website. A simple tabulation of the same would show that the 2nd Respondent indeed won the election as declared.
42. 1st Respondent repeats that the results of the 7th December 2020 Presidential Election as declared on 9th December 2020 did not breach the Constitution and that the Petition has no merit whatsoever.
43. 1st Respondent states that the Petition ought to be dismissed, also because Petitioner does not challenge the validity of the election conducted throughout all the **38,622** polling stations and the **311** special voting centres in the country, or contest the lawfulness of votes obtained by any of the parties to the Election.

44. 1st Respondent adds that Petitioner has failed to indicate the exact number of votes and percentages that he or the other candidates ought to have obtained in comparison to the number of votes and percentages declared by 1st Respondent.

NOTICE OF PRELIMINARY OBJECTION

45. The 1st Respondent accordingly raises a preliminary legal objection to the Petition as being incompetent and not, as required by Article 64(1) of the Constitution and Rule 68(1) of the Supreme Court Rules, 1996 (C.I. 16) as amended, amounting to a challenge to the validity of the Presidential Election conducted by the 1st Respondent Commission on 7th December 2020.
46. Wherefore the 1st Respondent prays that the Petition and all the grounds in support thereof be summarily dismissed by this Honourable Court for not disclosing any reasonable cause of action.

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


JUSTIN AMENUVOR ESQ #eGAR 01459/21
AMENUVOR AND ASSOCIATES
LAWYERS FOR 1ST RESPONDENT

THE REGISTRAR
SUPREME COURT
ACCRA



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

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

LIST OF AUTHORITIES

1st Respondent intends to rely on the following authorities:

A. Fourth Republican Constitution, 1992.

B. Legislation:

1. Evidence Act, 1973 (NRCD 323)
2. Interpretation Act, 2009 (Act 798)
3. The Supreme Court Rules, 1996 (C. I. 16 as amended by C.I. 74 & C.I. 99).
4. Public Elections Regulations, 2020 (C.I. 127).
5. High Court (Civil Procedure) Rules, 2004 (C.I. 47).

C. Case law

1. *Nana Akufo Addo & Others v John Mahama & Others* [2013] SCGLR Special Edition 73
2. *Mettle-Nunoo & Others v. Electoral Commission* [2007-2008] 2 SCGLR1250.

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PETITION NO J1/5/2021

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

PRESIDENTIAL ELECTION PETITION

PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER 2020.

THE PETITION OF:

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

PETITIONER

AND

ELECTORAL COMMISSION OF GHANA
8th, Ridge – Accra

RESPONDENT

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

RESPONDENT

AFFIDAVIT IN VERIFICATION

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

1. I am the Chairperson of the Electoral Commission and the deponent herein.
2. I depose to this affidavit for the purpose of verifying the facts that the Electoral Commission of Ghana a respondent in the above matter is relying upon in Answer to the Petition before this Honourable Court.

3. The facts and particulars stated in the Answer of the Electoral Commission of Ghana are true to the best of my knowledge, information and belief.

WHEREFORE I swear to this affidavit in verification.

SWORN AT ACCRA THIS
8TH DAY OF JANUARY 2021


.....
DEPONENT

BEFORE ME

COMMISSIONER OF OATH



THE REGISTRAR
SUPREME COURT
ACCRA

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

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