

Filed on 9/11/21
at 11:20 am/pm
Registrar
SUPREME COURT OF GHANA

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

Writ No. J1/5/2021

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

Presidential election held on the 7th day of December, 2020

BETWEEN

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

Petitioner

AND

- | | |
|--|----------------------------|
| 1. ELECTORAL COMMISSION
National Headquarters, Accra | 1 st Respondent |
| 2. NANA ADDO DANKWA AKUFO-ADDO
H/No. 2, Onyaa Crescent,
Nima, Accra | 2 nd Respondent |

ANSWER OF 2ND RESPONDENT

1. 2nd Respondent denies each and every allegation of material fact contained in the Petition, save as expressly admitted, as if same were set out in extenso herein and denied seriatim.
2. 2nd Respondent in general answer to the Petition says that same is incompetent, devoid of substance and does not measure up to the

legal criteria for an action invoking this Honourable Court's jurisdiction under article 64(1) of the Constitution.

3. 2nd Respondent says that the election was conducted across 38,622 polling stations in Ghana and 311 special voting centres, and that in each polling station and special voting centre, the votes were counted and the results declared in the presence of representatives of the candidates, counting agents, voters, the general public and in most instances, the media and local and international observers.
4. Upon the declaration of results, copies are posted at the various polling stations in accordance with the law governing the elections.
5. 2nd Respondent states that the Petition does not disclose any attack on the validity of the election held throughout the 38,622 polling stations and 311 special voting centres, or any of the processes set out in the paragraphs 3 and 4 (supra).
6. In point of fact, Petitioner only devotes an overwhelming portion of the Petition (30 out of 35 paragraphs) to weak and inconsistent complaints about the "*declaration of the winner*" of the election by 1st Respondent, and the remaining five (5) paragraphs to empty allegations of "*wrong aggregation of votes*" and "*vote padding*," which collectively involve about 6,622 votes - an amount patently insignificant to materially affect the outcome of an election in which 2nd Respondent defeated Petitioner by well over 500,000 votes.
7. 2nd Respondent avers that even though Petitioner, from reliefs sought, claims that no candidate obtained more than 50% of valid votes cast in the election, and therefore seeks a "*second election with Petitioner and 1st Respondent as the candidates...*", Petitioner does **not** indicate the number of valid votes or percentage thereof that he should have obtained in the election, or the number of votes or percentage thereof that 2nd Respondent should have obtained in the election to support the allegations and request for the so-called "*second election with Petitioner and 1st Respondent as the candidates*".
8. 2nd Respondent further avers that the failure to plead this supremely material allegation of fact and provide particulars therefor in the Petition completely divests Petitioner of a cause of action.

9. 2nd Respondent, in the circumstance, says the Petition is merely conjectural and borne out of Petitioner's unfounded imagination, and further that the material facts in the Petition do not support the reliefs sought and, therefore, same should be dismissed in limine as incompetent.
10. 2nd Respondent also contends that the attack mounted by Petitioner on parts of the "*declaration of the results*" of the election rather than the **validity of the election itself**, renders the instant action incompetent in terms of article 64(1) of the Constitution because an alleged inaccuracy with the declaration of election results on 9th December, 2020 does not mean that the election of 2nd Respondent as President of Ghana on 7th December, 2020 is invalid.
11. 2nd Respondent says that Petitioner's deliberate failure or calculated refusal to recognise these simple, logical and self-evident matters has led Petitioner erroneously to seek a "*second election*" based on mere suppositions such as those contained in paragraphs 10, 15 and 16 of the Petition.
12. In specific answer to paragraphs 6, 7, 8, 9, 10 and 11 of the Petition, 2nd Respondent says that Petitioner has no reasonable cause of action based on the statement annexed by Petitioner as Exhibit "A", as same is not an instrument made by 1st Respondent under article 63(9) of the Constitution.
13. 2nd Respondent adds that corrections of the errors by 1st Respondent in her statement on 9th December, 2020, annexed by Petitioner as Exhibit A, were made within the authority of 1st Respondent and do not infringe any law.
14. 2nd Respondent further says that the correction effected by 1st Respondent on 10th December, 2020, provides a proper reckoning of the percentage of votes obtained by 2nd Respondent using the "*valid votes cast*" rather than "*total votes cast*" and shows that 2nd Respondent obtained more than 50% of valid votes cast, as required under article 63(3) of the Constitution.

15. 2nd Respondent adds that the persistent reliance by Petitioner on errors contained in the 9th December, 2020 statement by 1st Respondent further confirms the lack of any cause of action in the Petition.
16. 2nd Respondent contends that, in any event, the statement of 9th December, 2020 not being an instrument cognisable under article 63(9) of the Constitution, alleged inaccuracies contained therein cannot give rise to a reasonable cause of action.
17. 2nd Respondent further says that the evidence of the election is the declaration of results at all the 38,622 polling stations and the 311 special voting centres, used for the conduct of the election, which Petitioner, unmistakably, does not question in the Petition.
18. 2nd Respondent denies paragraph 13 of the Petition and says that the bold assertion that "*a total of one hundred point three percent (100.3%)*" is yielded from the percentages announced by 1st Respondent on 9th December, 2020, is doggedly based on the error 1st Respondent made in inadvertently reading the percentage of votes secured by 2nd Respondent as 51.595% instead of 51.295% and that, when a proper reckoning is done based on the correct percentage of "51.295%" secured by 2nd Respondent, the total percentage is 100%.
19. 2nd Respondent vehemently denies paragraphs 15, 16 and 17 of the Petition and says that Petitioner's claims therein are mischievously anchored on an innocuous mistake by 1st Respondent in interchanging "*total votes cast*" for "*total valid votes*", when announcing the various percentages obtained by each candidate on 9th December, 2020.
20. 2nd Respondent says that the endeavour by Petitioner at paragraphs 15 and 16 of the Petition to generate his own percentage as well as that of 2nd Respondent's from total votes cast, smacks of mischief, as Petitioner very well knows or ought to know that within the context of article 63(3) of the Constitution, it is only "**total valid votes**" that is used in determining the results of an election.
21. 2nd Respondent adds that when the total valid votes cast are used as the yardstick, 2nd Respondent will still be the outright winner of the

election by more than 50%, even if by statistical projection, the votes of all the 128,018 registered voters in Techiman South were to be added to Petitioner's votes.

22. 2nd Respondent asserts, in further answer to paragraphs 15, 16 and 17 of the Petition that, in any event, the addition of all the votes of the total registered voters in Techiman South constituency to the valid votes of Petitioner (resulting in an alleged reduction of 2nd Respondent's valid votes to 49.624%) is a deliberately misleading exercise in futility, as the exact number of votes obtained by each candidate in the Techiman South election was known as at the time of filing the Petition, and same is set out in Petitioner's own "Exhibit E."
23. 2nd Respondent adds that Petitioner therefore cannot legitimately make any extrapolations from all the votes in Techiman South, because the Petition ought to be based on facts and not extrapolations and suppositions.
24. 2nd Respondent says that when the number of votes obtained by each candidate in Techiman South is factored into the results declared by 1st Respondent on 9th December, 2020, 2nd Respondent's share of the valid votes cast is still well over 51%, a fact that Petitioner has not questioned in the Petition.
25. 2nd Respondent says that Petitioner's persistent and strange claim to being entitled to all the votes of registered voters in Techiman South, contrary to Petitioner's knowledge that the actual results from that Constituency were declared shortly after 1st Respondent's statement in Exhibit A, is not only mischievous but a deliberate attempt to mislead this Honourable Court.
26. 2nd Respondent denies the allegations of violation of articles 23 and 296 of the Constitution contained in paragraphs 19, 20, 21, 22, 23 and 24 of the Petition as misconceived, and says 1st Respondent conducted the elections in compliance with provisions of the Constitution and relevant law.

27. 2nd Respondent asserts that, assuming without admitting that Petitioner's allegation concerning the supposed abuse of discretionary power by 1st Respondent can properly be adjudicated by this forum, 2nd Respondent contends that the Petition does not disclose any specific provisions of the **Public Elections Regulations, 2020 (C.I. 127)**, the statutory framework governing the discretionary powers of 1st Respondent that have been breached by 1st Respondent.
28. 2nd Respondent denies paragraphs 25, 26 and 27 of the Petition, and says in further answer thereto that the averments therein are misconceived since an alleged unconstitutionality of a declaration or gazette notification of an election does not constitute a challenge of the validity of an election of a person as President, a point this Honourable Court has already decided.
29. 2nd Respondent repeats emphatically that Petitioner has neither challenged the conduct of the election itself nor the validity of the election. The instant action is not an election petition properly so-called and same ought to be dismissed in limine.
30. 2nd Respondent does not admit paragraphs 28 and 29 of the Petition and says in further answer thereto, that, in any event, the margin of 1,001 votes contained in the alleged error, cannot, under any circumstance, affect the outcome of the election, even if added to Petitioner's votes.
31. 2nd Respondent adds that Petitioner, thus, cannot maintain a reasonable cause of action in respect of this alleged error which fails the "*materiality*" threshold needed to warrant a challenge of the validity of the results of a regularly conducted election.
32. 2nd Respondent denies paragraph 30 of the Petition, puts Petitioner to strict proof thereof, and says that, the allegation contained therein (like all others), even if proven, has no material effect on the outcome of the election regularly conducted throughout the country.
33. 2nd Respondent denies paragraphs 31, 32, 33, 34 and 35 of the Petition, puts Petitioner to strict proof thereof and says that, on the face of Petitioner's own "Exhibit E", the difference between the National Democratic Congress (NDC)'s calculation and 1st Respondent's

calculation, as per the allegation of “wrong aggregation” of votes, is a paltry 960 votes. A careful scrutiny of the Petitioner’s Exhibit E shows that the 960 votes was not credited to any of the candidates in the election and thus, did not affect the results of the election.

34. 2nd Respondent states that the total number of votes involved in Petitioner’s wild claim of “vote padding” is a negligible 5662 votes.
35. 2nd Respondent avers that the instant action is a ruse and a face-saving gimmick by Petitioner, after Petitioner and many senior members of his NDC party had prematurely claimed outright victory in the election, only to be badly exposed by results of 1st Respondent, corroborated by all media houses of note in the country as well as many independent local and international observers.
36. 2nd Respondent says that Petitioner’s conduct and that of other leading members of the NDC in proclaiming outright victory with an alleged percentage of over 51%, only to now come to this Honourable Court and pray for “*a second election with Petitioner and 1st Respondent as the candidates*”, was contrived to deceive the people of Ghana, and shows that from the outset, the Petitioner and his party leaders knew that they had lost the presidential election.
37. 2nd Respondent relies on the foregoing to state that the Petition is incompetent, frivolous and vexatious, discloses no reasonable cause of action, and does not meet the threshold for invoking the jurisdiction of this Honourable Court; and 2nd Respondent hereby serves notice of his intention to raise a preliminary objection.

NOTICE OF INTENTION TO RAISE PRELIMINARY OBJECTION

38. On the strength of the foregoing, 2nd Respondent hereby serves notice of his intention to raise a preliminary objection to the Petition on the following grounds:
 - i. that the grounds upon which the Petition is based do not meet the requirement imposed on a petitioner under article 64 (1) of the Constitution, 1992;

- ii. that the reliefs claimed by Petitioner, particularly reliefs (b), (c), (d) and (f), which purport to declare as unconstitutional the declaration of the results of the presidential election by 1st Respondent and consequently claim an order for annulment of the **Declaration of President-Elect Instrument, 2020 (C I 135)**, are not supported by facts pleaded in the Petition;
 - iii. that paragraphs 6 through to 30 of the Petition recount allegations of mathematical errors contained in parts of the declaration made by Chairman of 1st Respondent, and that at law, a challenge of the declaration of results of an election does not amount to an attack on the validity of an election;
 - iv. that Petitioner has **not**, in the Petition, challenged the validity of the elections conducted throughout the **38,622** polling stations and **311** special voting centres in the country, and has therefore not challenged the lawfulness of the election;
 - v. that even though Petitioner claims a relief for "*a second election with Petitioner and 1st Respondent as the candidates*" he fails to indicate the number of valid votes (or percentage thereof) that he should have obtained in the election as well as the number of votes (or percentage thereof) that 2nd Respondent should have obtained in the election, to support such a relief;
 - vi. that Petitioner's allegation of "*vote padding*", assuming same to be valid, put in issue a meagre **5662** votes, which cannot affect the outcome of the election; and
 - vii. that in the circumstances, the Petition is incompetent, frivolous and vexatious, and discloses no reasonable cause of action in terms of article 64(1) of the Constitution.
38. 2nd Respondent accordingly invites the Honourable Court to determine that the Petition is incompetent, frivolous and vexatious, and discloses no reasonable cause of action in terms of article 64(1) of the Constitution and set the issue down for legal arguments.

LIST OF AUTHORITIES:

2nd Respondent intends to rely on the following:

LAW

1. The Constitution, 1992.
2. Evidence Act, 1975, (NRCD 323)
3. Interpretation Act, 2009 (Act 798)
4. Supreme Court Rules, 1996 (C. I. 16) as amended
5. Public Elections Regulations, 2020 (C. I. 127)
6. The High Court (Civil Procedure) Rules, 2004 (C. I. 47)

DECIDED CASES

1. **In Re Presidential Election Petition, Akufo-Addo, Bawumia & Obetsebi-Lampsey (No. 1)** [2013] SCGLR (Special Edition) 1
2. **In Re Presidential Election Petition, Akufo-Addo, Bawumia & Obetsebi-Lampsey (No. 2)** [2013] SCGLR (Special Edition) 50
3. **In Re Presidential Election Petition, Akufo-Addo, Bawumia & Obetsebi-Lampsey (No. 3)** [2013] SCGLR (Special Edition) 61
4. **In Re Presidential Election Petition, Akufo-Addo, Bawumia & Obetsebi-Lampsey (No. 4)** [2013] SCGLR (Special Edition) 73
5. **Mettle-Nunoo vrs. Electoral Commission** [2007-2008] 2 SCGLR 1250.
6. **In re Election of First President; Appiah v. Attorney-General** [1970] 2 G & G2d 1423.
7. **Barclays Bank Ghana Ltd. Vrs. Sakari** (1996-97) SCGLR 639 at page 650.
8. **Hammond Vrs. Odoi** 1982-83 GLR 1215 act 1234.
9. **Dam v. Addo** [1962] 2 GLR 200.
10. **Opitz v. Wrzensnewskyj** (2012) SCC 55-2012-10.
11. **Woodward v. Sarsons** (1875) 32 LT(Ns) 867 **Luguterah v. Interim Electoral Commissioner** [1971] 1 GLR 109.
12. **Islington West Division Case; Medhurst v. Laugh and Casquet** (1901) 17 TLR 210.
13. **McCavitt v. Registrars of Voters of Borckton** 434 NE 2d 620.
14. **Attorney-General, ex rel; Miller v. Miller** 253 NW 241 (Mich. 1934).
15. **Pyron v. Joiner** 381 So 2d 627 (Miss 1980) (*en banc*).
16. **Luguterah v. Interim Electoral Commissioner** [1971] 1 GLR 109

17. Dim C. O. Ojukwu v. Alhaji Umaru Yar'Adua & Ors. (2009) 12 NWLR Part 1154, 50.
18. Muhammadu Buhari & Anor V. Chief Olusegun Obasanjo & Ors 23 NSCQR 442.
19. Alhaji Yusuf Ibrahim Na-Bature v. Alhaji Isa Aliyu Mahuta & Ors (1992) 9 NWLR Part 263, 85.
20. Awolowo v. Shagari (1979) 6-9 SC 511.
21. INEC v. Oshiomole (2008) CLR 11(a).
22. Catheline v. Akufu-Addo [1984-86] 1 GLR 183.
23. Osman v. Kaleo [1970] 2 G & G 1246.
24. Ransford France (No.3) v. Electoral Commission & Attorney-General [2012] 1 SCGLR 705.

**DATED AT KWAKWADUAM CHAMBERS, ACCRA THIS 8TH DAY
OF JANUARY, 2021**



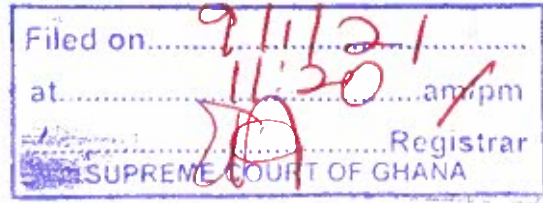
Lawyer for 2nd Respondent
Akufu-Addo, Prempeh & Co.

Solicitors Licence No. GAR Lawyers eGAR = 01391/21

The Registrar,
Supreme Court,
Accra.

AND TO THE ABOVE-NAMED:

1. PETITIONER OR HIS LAWYER, TONY LITHUR, ESQ, LITHUR-BREW & CO, KANDA, ACCRA
2. 2ND RESPONDENT OR ITS LAWYER, JUSTIN AMENUVOR, ESQ, AMENUVOR & ASSOCIATES, NII ODARTEY OSRO STREET, OSU, ACCRA.



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

Writ No. J1/5/2021

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

Presidential election held on the 7th day of December, 2020

BETWEEN

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

Petitioner

AND

- | | |
|--|----------------------------|
| 1. ELECTORAL COMMISSION
National Headquarters, Accra | 1 st Respondent |
| 2. NANA ADDO DANKWA AKUFO-ADDO
H/No. 2, Onyaa Crescent,
Nima, Accra | 2 nd Respondent |

AFFIDAVIT IN VERIFICATION OF 2ND RESPONDENT'S ANSWER

I, **NANA ADDO DANKWA AKUFO-ADDO**, of House No. 02, Onyaa Crescent, Nima, Accra, make oath and say as follows:

1. That I am the 2nd Respondent herein and a citizen of Ghana.

2. That the facts contained in my Answer to this Petition are true to the best of my knowledge, information and belief.

WHEREFORE I swear to this affidavit in verification of the facts deposed to in my answer.

SWORN IN ACCRA THIS *8th*)
DAY OF JANUARY 2021)

Nananne...
DEPONENT

BEFORE ME



The Registrar,
Supreme Court,
Accra

AND TO THE ABOVE NAMED:

1. THE PETITIONER OR HIS LAWYER, TONY LITHUR ESQ., LITHUR BREW & CO, NO. 110B, 1ST KADE CLOSE, KANDA ESTATES, ACCRA.
2. 1ST RESPONDENT OR ITS LAWYER, JUSTIN AMENUVOR ESQ., AMENUVOR & ASSOCIATES, NO. 8 NII ODARTEY OSRO STREET, KUKU HILL, OSU, ACCRA.