

14TH FEBRUARY, 2025
HIS EXCELLENCY
THE PRESIDENT OF THE REPUBLIC OF GHANA
FLAGSTAFF HOUSE
ACCRA

Dear Mr. President,

PETITION FOR THE REMOVAL OF THE CHIEF JUSTICE OF THE REPUBLIC
OF GHANA HER LADYSHIP GERTRUDE SACEY TORKORNOO CJ

PREAMBLE

1. We, the Shining Stars of Ghana, citizens of the Republic of Ghana, humbly submit our petition to your Excellency the President of the Republic of Ghana, praying for the removal of Her Ladyship Gertrude Sackey Torkornoo, the Chief Justice of the Republic of Ghana.

Our petition is initiated as a result of the Chief Justice's demonstration of

- i. Stated Misbehaviour; and
- ii. Incompetence.

LEGAL BASIS OF OUR PETITION

2. Legally, our petition is grounded on Article 146 (1) of the 1992 Constitution of the Republic of Ghana which reads: "A Justice of the Superior Court or a Chairman of a 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."

MEANING OF STATED MISBEHAVIOUR

3. According to Black's Law Dictionary (revised 4th edition). 1968: misbehaviour means "conduct: improper or unlawful behavior".

Again, with reference to Cambridge Advanced Learner's Dictionary (2nd edition): misbehaviour means "bad behavior or behavior that breaks a rule". Considering the above meanings in relation to our petition, misbehavior is an abuse of office when exercising administrative powers in a manner that brings administration of justice into disrepute by undermining public confidence in the judiciary.

MEANING OF INCOMPETENCE

4. Although, incompetence is not explicitly defined in the 1992 Constitution of the Republic of Ghana, its meaning is explained by some authorities. Reference from Cambridge Advanced Learner's Dictionary indicated that, incompetence is 'lack of ability to do something successfully or as it should be done.' However in the context of our petition, incompetence means inability to maintain high judicial standards as a result of improper administration of judicial procedures.

CAUSE OF ACTION OF OUR PETITION

Acts of Stated Misbehaviour by the Chief Justice

5. On 30th May, 2024, the Chief Justice of the Republic of Ghana officially wrote a proposal to the then president Nana Addo Dankwa Akufo-Addo to appoint five (5) judges to the Supreme Court. In her proposal, she added that: "I write to respectfully request that the following judges be appointed to the Supreme Court of Ghana:

- (1) Her Ladyship Justice Angelina Mensah Homiah, JA
- (2) His Lordship Justice Eric Kyei Baffour, JA
- (3) His Lordship Justice Edward Amoako Asante, JA
- (4) Her Ladyship Justice Cyra Pamela CA Koranteng, JA
- (5) Her Ladyship Justice Afia Asare Botwe, JA

6. The above action taken by the Chief Justice was in breach of Article 144 of the 1992 Constitution of Ghana. It is pertinent to cite the entire provision of Article 144 at this moment. They thus read:

144(1) The Chief Justice shall be appointed by the president acting in consultation with the Council of State and with the approval of Parliament.

144(2) The other Supreme Court Justices shall be appointed by the president acting on the advice of the Judicial Council in consultation with the Council of State and with the approval of Parliament.

144(3) Justices of the Court of Appeal and of the High Court and Chairmen of Regional Tribunals shall be appointed by the president acting on the advice of the Judicial Council.

144(4) Panel members of the Regional Tribunals other than the Chairmen shall be appointed by the Chief Justice in consultation with the Regional Coordinating Council for the region and on the advice of the Judicial Council.

7. A cursory look at Article 144 clearly indicates that the Chief Justice is not mandated by any provision to officially make a request to the president regarding appointment of Justices to the supreme court.

8. Clearly, the action taken by the Chief Justice breaches Article 144 of the 1992 Constitution of the Republic of Ghana and meets the threshold of stated misbehaviour hence our humble prayer that Her Ladyship the Chief Justice of Ghana is removed from office to restore some dignity and public confidence at that high office.

ACTS OF INCOMPETENCE BY THE CHIEF JUSTICE

9. On 15th October 2024, Honourable Alexander Afenyo Markin invoked the original jurisdiction of the Supreme Court under Article 2(10 (b) of the 1992 Constitution of the Republic of Ghana. The plaintiff's invocation was activated by a dispute surrounding the filing of nominations by some Members of Parliament (MPs) intending to contest the impending December

7, 2024 general elections either under the tickets of different parties or as independent candidates.

10. Among the issues set down by the plaintiff for determination (emphasis on issue 7 for the purpose of this petition) is :

`whether or not the Speaker of Parliament was in breach of the rules of natural justice (i.e. audi alteram partem rule) in declaring these four parliamentary seats vacant without giving the four affected Members of Parliament a hearing.”

11. In our opinion, the Chief Justice who presided over the suit to determine whether or not the Speaker of Parliament was in breach of the rules of natural justice rather breached same rules in the process of making such determination which amounts to incompetence.

12. Our claim is substantiated by the ruling of *Afenyo v Speaker of Parliament and Attorney General* (Writ No. J1/02/2025) dated 12 November 2024 in which the court stated that

“Notably the 1st Defendant filed no processes in answer to this action.” Our understanding is that at the time of ruling on the above suit, the court had no affidavit from the Speaker of Parliament, being the 1st Defendant

13. The Court also stated that: “However, a further step taken two days after the issuance of this writ, the 1st Defendant issued a statement captured in the Official Report on Parliamentary Debates of October 17, 2024. In the first ten pages of that official report, the 1st defendant elaborately delivered a response to a statement made by the Honourable Minority Leader in which he recognized that he was making a formal response in relation to a matter of significant, Parliamentary and Constitution importance. He said that he had been called on to follow precedent and declare vacant, the seats of four Members of Parliament pursuant to Article 97(1) (g) and (h) of the Constitution because certain members of Parliament had taken actions that contravene the provision of article 97(1)(g) and article 97(1)(h)”. The above statement by the court confirms our claim that, the court had no affidavit from the 1st defendant before ruling on the matter.

14. Our opinion is further substantiated by another statement by the court in the same ruling that; “Both the Plaintiff and 2nd Defendant filed their Statements of Case which in essence aligned with the reliefs sought by the

Plaintiff in the writ:” with reference to the above statement, there was no Legal Argument made by the 1st Defendant during court proceedings pursuant to the ruling.

15. The 1st Defendant filed an Application on the same writ on 30th October 2024. In his application, he stated that: “The Supreme Court breached the rules of natural justice³ and rule prescribing the manner for exercising discretion in the orders made on 18th October 2024 in hearing the application ex parte and granting orders to stay execution of the Speaker’s ruling pending the resolution of this suit”.

16. Interestingly, the court ruled that: “It is very basic and primary principle of law that an order of stay of execution must be made on consideration of exceptional circumstances that can affect the parties which exceptional circumstances include the wreaking of irreparable harm if an order of stay of execution is not granted.”

17. Regarding the court’s ruling on the 1st Defendant’s application, the court admitted that the order of stay of execution were granted without hearing the Speaker of Parliament.

18. The Court premised the reasons behind the ruling on “exceptional circumstances that can affect the parties which exceptional circumstances include the wreaking of irreparable harm”.

19. We are of the view that the Speaker’s decision does not meet the threshold of irreparable harm upon which orders of stay of execution are granted by the court without hearing him. We hold on to that view because those Members of Parliament who might have been affected by the Speaker’s ruling could seek legal redress and reverse whatever privileges and rights denied them.

20. We further express our opinion on the ruling of the Speaker’s application that, The Chief Justice who presided over the above Application breached the rules of natural justice which has been raised to a constitutional right in Article 23 of the 1992 Constitution of Ghana. However, such a major breach by the Chief Justice in our opinion amounts to incompetence.

PROMINENCE GIVEN TO HEARING IN COURT.

21. In the case of *R v Chancellor of the University of Cambridge* (1723) 1 Str. 557, 567 per Fortescue J, the Court of King's Bench ruled that: "The University of Cambridge acted unlawfully by depriving Dr. Bentley of his degrees without giving him a chance to defend himself." The ruling continued that: "...even God himself did pass sentence upon Adam before he was called upon to make his defense."

22. Again, Dr. Date-Bah JSC delivering his opinion in the unanimous decision of the Supreme Court in the case of *Republic v High Court, Denu* (ex parte Agbesi Awusi III)(No. 2) Nyonyo Agboada (Sri III) interested party (2003-2004) SCGLR 907 at 924-925 stated that "Natural justice or procedural fairness demands not only those affected by a decision should be given prior notice and an opportunity to be heard (*audi alteram partem*) rule, but also that there should be an entitlement to an unbiased decision maker (*nemo iudex in causa sua* and allied ideas)"

23. In the *Republic v High Court, Accra, ex parte Salloum & Ors* (Coker interested party), Suit NO. J5/4/2011, unreported judgment of the Supreme Court rendered on 16th March 2011, Anin Yeboah JSC delivering the majority opinion of the Court, said: "the Courts in Ghana and elsewhere seriously frown upon breaches of the *audi alteram partem* rule to the extent that no matter the merits of the case, its denial is seen as a basic fundamental error which nullify proceedings made pursuant to the denial".

24. Moreover, in *Aidoo v Commissioner of Police* (No 3) 1964 GLR 354 at 359 SC, Ollenu JSC delivering the Judgement of the Court said: "Every discretion given to a court or judge must be judiciously exercised in such a manner, to use the oft repeated expression, so that justice must not only be done, but that it must manifestly be seen to have been done."

25. Finally, in the case of *Republic v High Court, Accra, ex parte Salloum and others* (Senyo Coker interested party)(2011) 1 SCGLR 574 and the case of *Awuku-Sao v Ghana Supply Co. Ltd* (2009) SCGLR 710 at 722, Adinyira JSC delivering unanimous opinion of the court said: "it is trite law and a cardinal principle of natural justice that no man shall be condemned unless he has been given prior notice³ of the allegation against him and a fair opportunity to be heard."

26. We believe and agree that all Courts of competent jurisdiction worldwide including the Supreme Court of Ghana uphold the rule of natural

justice (*audi alteram partem*) rule in high esteem and accord it with all the prominence it deserves.

PRECEDENT OF REMOVING JUSTICES FROM OFFICE ON GROUNDS OF INCOMPETENCE AND STATED MISBEHAVIOUR.

27. On 16th December 2018, Eugene Arhin (former Director of Communications), Communication Directorate, Jubilee House, Accra, Ghana, issued a press release which stated that: "The President of the Republic, Nana Addo Dankwa Akufo-Addo, has by this letter dated 6th December 2018, removed Mr. Justice Ayisi Addo, Mr. Justice Uuter Paul Dery and Mr. Justice Mustapha Habib Logoh from office as Justices of the High Court". The release continues that: "The president in accordance with the provisions of Article 146(9) of the Constitution had acted on the recommendations of the Committee as the Constitution enjoins him to do, and has accordingly removed the three Justices of the High Court from office on the grounds of bribery and corruption.

28. Again, a Federal Grand Jury in the United States of America indicted Judge Alcee I. Hastings (Judge, Federal District Court) pursuant to his removal from office in 1989 by the US Senate on grounds of conspiracy and obstruction of justice.

29. The former president of Philippines, Benigno Aquino removed the Chief Justice of Philippines, Justice Renato C. Corona in 2012 on grounds of failure to declare his Two Million Four Hundred Thousand US Dollars (\$2.4 million) in foreign currency deposit.

30. Bearing in mind the above precedence, there is no doubt that those affected Justices who were removed from office, behaved in a manner that met the threshold of stated misbehaviour and incompetence.

CONCLUSION

31. It is said that, he who comes with equity must come with clean hands. Therefore, it is strange for the Chief Justice of Ghana Her Ladyship Gertrude Sackey Torkornoo to preside over a suit to determine breach of natural justice but rather breaches same rules in the process of the determination.

32. However, restoring public confidence in the judiciary of Ghana greatly relies on the perception of acceptable behaviour and competence of the

Chief Justice in the delivery of justice. We therefore humbly submit that the Chief Justice Her Ladyship Gertrude Sackey Torkornoo's continuous service at the office of Chief Justice would not restore public confidence in the judiciary as a result of her demonstration of incompetence and stated misbehaviour and therefore must be removed from that high office.

33. Attached are copies of the Chief Justice's proposal to the President and Eugene Arhin Press Release.

Humbly and Respectfully submitted

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