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SUPREME COURT OF GHANA

IN THE SUPREME COURT OF GHANA
ACCRA – AD 2020

SUIT NO J1/9/2020

NATIONAL DEMOCRATIC CONGRESS
H/No 12, Adama Street, Adabraka
Accra

Plaintiff

VRS.

- 1. THE ATTORNEY GENERAL**
- 2. THE ELECTORAL COMMISSION**

Defendants

**SUPPLEMENTARY STATEMENT OF CASE OF THE 2ND DEFENDANT
PURSUANT TO THE ORDER OF COURT DATED 4TH JUNE 2020**

Your Lordships;

1. On Thursday, 4th day of June, 2020 this Honourable Court directed the 2nd Defendant to file a supplementary Statement of Case to offer legal bases for not allowing the existing voter identification card to be used for the upcoming compilation of the new voter's register.

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2. In this Supplementary Statement of Case the 2nd Defendant will seek to show that the compilation of a new register that does not depend on the existing voter's identification cards will give the register to be compiled more credibility than the existing register.

I. Summary of Case;

3. The Supreme Court has asked the 2nd Defendant to provide the legal basis for not including previous or old voter ID cards as proof of qualification in the upcoming voters registration exercise. The 2nd Defendant would want to establish first of all that there are three Voters ID Cards obtained under three different Constitutional Instruments; C.I 12, C.I 72 and C.I. 91 and would proceed to show this honourable Court why as a matter of law all three of them should not be included in the upcoming voters registration exercise.

4. The first legal basis is that the 2nd Defendant has the sole exclusive constitutional responsibility to compile a voters register and to determine how that compilation will be effected and it is not subject to the direction or control of any other person or body Article 45(a) and Article 46 of the Constitution and as enunciated by *Abu Ramadan & Anor (No.2) v EC & AG (No. 2)* [2015 -2016] 1 SCGLR 1.

5. The second legal basis is that in exercising its exclusive constitutional duty the 2nd Defendant has placed before Parliament a Constitutional Instrument that does not include the use of the existing or old voters ID Cards, exercising its constitutional discretion to do so.

II. Review of the existing Voter ID Cards

A. Public Election (Registration of Voters) Regulations, 2012 (C.I 12).

6. The 2nd Defendant through its own internal review and due diligence mechanism has realized that C.I. 12 did not require any proof of qualification to register as a voter. It means that anyone who registered under C.I 12 cannot be said to have satisfied the constitutional test of proving qualification since no proof was required even though the criteria for qualification under Article 42 was set out therein.
7. A review of C.I 12 shows that what was provided in it was a challenge mechanism to enable a person's registration to be challenged but again an applicant for registration did not have to prove first that he or she actually qualified. This clearly shows that the Voters ID Card derived from the CI 12 registrations are legally and constitutionally doubtful and therefore cannot be relied upon as the basis for meeting the constitutional qualification test.

B. Public Election (Registration of Voters) Regulations, 2012 (C.I 72)

8. With respect to C.I 72 the Supreme Court found in Abu Ramadan No. 1 that the use of the NHIS Card to register was unconstitutional because it did not prove qualification. An anecdotal evidence provided by registration officials during the compilation of the voters register under C.I 72 showed that a majority of applicants used the NHIS to register as it was the most widely accessible card at the time. This led the Supreme Court

to conclude as a matter of law that the 2012 voters register procured under C.I 72 was neither reasonably credible nor accurate as it constitutionally required; ipso facto if the register was not reasonably accurate and credible then the card derived thereunder cannot not constitutionally tenable.

9. Secondly the Supreme Court in *Abu Ramadan and Anor v Electoral Commission and Anor; and Kwasi Danso Acheampong v Electoral Commission and Anor (Consolidated)* [unreported; Writ No. J1/11/2014 (Abu Ramadan No. 1) went further to perpetually injunct the use of the NHIS Card and the voters ID Card procured pursuant C.I 72.
10. In reviewing the internal documents of the 2nd Defendant, the 2nd Defendant has found that not only did applicants use the NHIS Cards to register, the registration officials were not even required to ask for proof of eligibility before registering applicant. In fact, at page 16 of the 2nd Defendant's own Training Manual used for teaching its Registration Officials in 2012, it was stated that "**proof of eligibility was not required**". Indeed to make it impossible to require proof of eligibility, the Form 1A which is required to be filed out before an applicant may register did not provide any place on the form that the registration officials could record proof of eligibility except the National ID Card. Furthermore, the training manual referred to set out a list of acceptable documents to proof eligibility which included documents like the birth and baptismal certificates which C.I 72 had not sanctioned. Indeed the 2nd Defendant simply has no way of identifying either in its database or the source forms who used

the NHIS Card so its unable to clean the register of such registrations at all.

C. Public Election (Registration of Voters) Regulations, 2016 (C.I 91)

11. The voters registrations made under CI 91 are constitutionally and legally doubtful for the reason adduced for the voters ID Cards procured pursuant to C.I 12 and C.I 72. This is because even though the Supreme Court had injuncted the use of the voters ID Card under CI 72 the voters ID Cards procured under C.I 12 could still be used to register under C.I 91. We have already demonstrated above that the provenance of the voters ID Cards under C.I 12 is legally and constitutional doubtful and cannot be relied upon as credible proof of qualification to register.
12. In addition, it is noteworthy, that even though you could not use either the C.I 72 voters ID Card to register holders of voters ID cards under C.I 12 and CI 72 could still guarantee the registrations of those who had none of the forms of identification that proved qualification. In effect we have the problem of the fruit of the poisonous tree on our hand. If the tree is poisonous the fruit is poisonous.
13. Finally, it is important to state that the exclusion of previous or old voters ID Cards, quite apart from being unconstitutionally permissible and lawful will not in anyway disenfranchise any prospective registrants. It is not always the case that prospective registrants possess existing or old voters ID Card to be used to register and yet such persons are able to register. For example,

first time applicants for voters registration will never have an existing or voters ID Card and yet are able to be registered even when they do not have other acceptable forms of identification. We respectfully remind the Court that the issue is not whether Ghanaians are on the register or not. Not every Ghanaian is qualified to be on the register. It is the duty of the 2nd Defendant to ensure that only Ghanaians who meet the constitutional qualification test are registered.

III. ANALYSIS AND ARGUMENTS

14. My Lords, the 2nd Defendant is a constitutional body charged with the conduct of public elections and referenda. This mandate imposes a duty on it to ensure that all qualified voters have the opportunity to register and exercise their franchise wherever necessary. It is the 2nd Defendant's contention that this mandate also imposes a duty on the 2nd Defendant to always keep a reasonably credible register at all times; a duty to conduct a limited registration, clean up an existing register or compile a new voter register when it deems it necessary for the purpose of keeping a credible register.

15. Article 42 of the Fourth Republican Constitution captures the right of a person to vote in Ghana's elections as qualified by the following eligibility criteria:
 - (i) 'citizen of Ghana;'
 - (ii) 'of 18 years and above;' and
 - (iii) 'of sound mind.'

16. Based on article 6 of the Constitution on who qualifies to be a citizen, proof of citizenship is absolutely critical and essential in compiling not just any register, but one that is credible. And without a credible register, there will be doubts about whether elections are indeed and truly free and fair.
17. In 2012 the 2nd Defendant undertook the compilation of a new biometric voter register. That registration exercise was regulated by the Public Elections (Registration of Voters) Regulations, 2012 (CI 72).
18. Regulation 1 of CI 72 restated the eligibility criteria in line with article 42 of the Constitution and provided the proof of identification required of prospective voters as follows:
 - (1) A person is entitled to have the name of that person included in the register of voters of an electoral area, if that person is
 - (a) a Citizen of Ghana;
 - (b) eighteen years of age or above;
 - (c) of a sound mind;
 - (d) resident or ordinarily resident in an electoral area;and
 - (e) not prohibited by any law in force from registering as a voter.
 - (2) For the purpose of paragraph (d) of sub-regulation (1), a person who is confined in a penal institution located in an electoral area is resident in that electoral area.

(3) A person who applies for registration as a voter **shall provide as evidence of identification** one of the following:

(a) a passport;

(b) a driver's license;

(c) a national identification card;

(d) a National Health Insurance card;

(e) an existing voter identification card; or

(f) one voter registration identification guarantee form as set out in Form One of the Schedule that has been completed as signed by two registered voters

(4) Despite paragraph (f) of sub regulation (3), a registered voter shall not guarantee the identity of more than five persons [**emphases added.**]

19. Regulations 1(3)(d) and 1(3)(e) of CI 72 became the subject matter of a series of suits now popularly referred to as the *Abu Ramadan cases*.

20. In *Abu Ramadan and Another v The Electoral Commission and Another*; and *Kwasi Danso Acheampong v The Electoral Commission and Another (Consolidated)* [unreported; Suit No J1/11/2014; 30 July 2014] (*Ramadan*), the plaintiffs claimed the following reliefs:

1. A declaration that upon a true and proper interpretation of Article 42 of the Constitution of the Republic of Ghana, 1992 (hereinafter, the "Constitution") the use of the National Health Insurance Card (hereinafter, the Health ID

Card) as proof of qualification to register as a voter pursuant to the Public Elections (Registration of Voters) Regulation 2012, (CI 72) is unconstitutional, void and of no effect.

2. A declaration that upon a true and proper interpretation of Article 42 of the Constitution the use of the so called “existing voter identification card” as proof of qualification to register as a voter pursuant to CI 72 would be tantamount to an applicant registering twice or more and is therefore unconstitutional, void and of no effect.

3. An order of perpetual injunction restraining the Electoral Commission from using the Health ID Card, the so-called “existing voter identification card” or any other document that does not prove or establish qualification to register to vote under Article 42 in any public election and referenda held in Ghana [**emphasis added.**]

21. This Honourable Court after hearing the parties held as follows;

BY COURT:

We hereby unanimously grant the following reliefs

1. Relief (1) granted; a declaration that upon a true and proper interpretation of Article 42 of the 1992 Constitution, the use of the National Health Insurance Card to register a voter pursuant to Regulation 1(3)(d) of the Public Election (Registration of Voters) Regulations, 2012 (CI 72) is inconsistent with Article 42 of the 1992 Constitution, and is to the effect of this inconsistency void. Accordingly, by virtue of the power conferred on this Court by Article 2(2)

of the 1992 Constitution, the said Regulation 1(3)(d) of CI 72 is struck down.

2. Relief (2) is denied to the extent that upon true and proper interpretation of Article 42 of the 1992 Constitution the use of the existing voter registration card under regulation 1(3)(e) of CI 72 is referable to voter identification card acquired before the coming into force of CI 72.

3. An order of perpetual injunction restraining the Electoral Commission from using the National Health Insurance Card in its present form and a voter identification card other than as explained under relief (2) for the purposes of registering a voter under Article 42 of the 1992 Constitution.

22. My Lord's by ease of reference we attach a copy of the judgment of this Honourable Court marked as Exhibit "NVR 1." The reasons for the decision were made available to the parties later and this is what is reported in the law reports.
23. The register of voters used in the last presidential and parliamentary elections was the one compiled in 2012 using the CI 72 and there has been limited registration exercises since using the Public Elections (Registration of Voters) Regulations, 2016 (CI 91).
24. My Lords, it is the 2nd Defendant's respectful understanding of this Honourable Court's decision in respect of relief (2) in *Ramadan*, as reproduced above that the credibility of the register compiled pursuant to CI 72 remains in doubt save the

registrations done with the voter identification cards acquired before the coming into effect of CI 72.

25. My Lords, it is our submission that even if that understanding is challenged, there is still no doubt that per Regulation 1(3)(e) of CI 72, the cards acquired under CI 12 were used to register under CI 72 and have remained an integral part of the existing register. The credibility of the existing register as compiled under CI 72 therefore hinges to some degree on that of the register compiled under CI 12.
26. Your Lordships, this Honourable Court per Wood CJ speaking for the Court held of the cards acquired before the coming into effect of CI 72 thus:

It may indeed be legitimately argued that for all practical purposes, the old voter card is the best prima facie evidence of an applicant's eligibility under the CI 72. Certainly, if the holder were not qualified for registration as a voter, how did he or she come by a voter registration card under...[the Public Elections (Registration of Voters) Regulations, 1995 (CI 12)], the law then in force?

27. This reasoning raises a presumption of credibility in favour of the voter cards issued before CI 72. It is this reasoning that the plaintiffs rely on heavily to argue that that the existing voter cards are the best prima facie evidence of citizenship. Interestingly, this reasoning requires of the 2nd Defendant to find an answer as it

ends with a question. The answer to which question can be found in Article 6 of the 1992 Constitution.

28. My Lords, this is not a rhetorical question. It is one that requires an answer, because there is a presumption that in becoming a voter under CI 12, the voter showed proof of the eligibility criteria established under article 42.
29. The true and full import of the Court's reasoning above is lost the moment the question at the end is treated as rhetorical. It should and need not be treated as such. That question has an answer and the answer is revealing of the credibility of our existing register of voters and its cards. The answer to that question is even more damning than the findings made by this Honourable Court in respect Regulation 1(3)(d) of CI 72 in the *Ramadan* case.
30. The answer to that question, as rightly stated by Wood CJ, is found in CI 12, the public voter registration law that preceded CI 72. The requirement for identification for registration under CI 12 was provided for under Regulation 1(1) as follows:
A person who—
 - (a) is a citizen of Ghana;
 - (b) is of 18 years of age or above;
 - (c) is of a sound mind;
 - (d) is resident or ordinarily resident in an electoral area;and
 - (e) is not prohibited by any law in force from registering as a voter

is entitled to have his name included in a register of voters for the electoral area during a period set aside for the registration of voters.

31. Your Lordships, what is blindingly obvious is that unlike CI 72 which made specific identification requirements, one of which was struck down by this Honourable Court as being unconstitutional, CI 12 had no identification requirement. This meant that all it took a person to be registered, is showing up before the electoral officer, and then his or her name was entered into the register of voters and would remain on it as long as no objection is raised.
32. If it is ever claimed that the voters' register in Ghana, is bloated, this could be the cause – what happened under CI 12's 'no identification required' compilation. There was no proof of citizenship and no proof of age. The 2nd Defendant respectfully contends that the 'grand-parenting' of the voters' identification procured under CI 12's 'no identification required' compilation would carry into every subsequent register, ineligibilities, breaches and excesses that can never be remedied.
33. The ineligibilities, breaches and excesses in the register of voters compiled pursuant to CI 12 in 1995 were then transferred into the one compiled in 2012 pursuant to Regulation 1(3)(e) of CI 72, through the use of the then existing voter identification card. That doubtlessly imported the ineligibilities, breaches and excesses of the past into that new register, and will carry them into any new register that allows the use of previous voters' identification. The

2nd Defendant therefore has excluded through the CI now before Parliament, the existing voter cards from the upcoming registration exercise to address this fundamental breach of Article 42 and its effect on the credibility of the existing register.

34. My Lords it needs to be pointed out that the issue of the constitutional validity of the total lack of any form of identification under CI 12 for registration as a voter was never raised, argued and decided by this Honourable Court in any of the *Ramadan* cases hence this Court is being invited to make a pronouncement on the matter.
35. The issue then was that to use the voter cards acquired under CI 12 to register under CI 72 would amount to double registration and this Honourable Court disagreed with the argument of the Plaintiff then and held that those cards as the best prima facie evidence of qualification to register as a voter.
36. Since the decision of this Honourable Court in *Ramadan*, the 2nd Defendant has done a lot of work by an internal review of the existing register with the sole objective of improving the credibility of the register of voters to continue to deliver a credible, free and fair elections for Ghanaians.
37. In his concurring opinion in *Abu Ramadan & Anor v. The Electoral Commission & Anor* [J/14/2016] dated 5th May, 2016, unreported, Benin JSC said of the 2nd Defendant's mandate under Article 45(a) as follows;

“As explained in the lead opinion, this involves the compilation of a reasonable and credible register. It also means that where for some legal reason there is cause to believe that the register is not credible and therefore does not satisfy the provisions of Article 45(a) of the Constitution, the 1st Defendant has a duty cast upon it to rectify the situation’

38. The above reasoning supports the position that the 2nd Defendant is mandated on its own, without litigation and court orders to correct all legal defects it finds with the existing register through means within the scope of the law. The 2nd Defendant seeks to remedy the breaches and make the existing register credible by compiling a new one.
39. My Lords, this is necessary because the 2nd Defendant needs to be proactive in executing its mandate and keeping a credible register for free and fair elections. It did not need to wait for another lawsuit to live up to its constitutional mandate.
40. In addition to the above, an in-house review of the Training Manual for the compilation of the new register of voters in 2012 pursuant to CI 72 showed a fundamental omission that the 2nd Defendant needed to correct without being prompted. A copy of the Training Manual is attached as Exhibit “**NVR 2.**”
41. On page 16 of the Training Manual [**Exhibit NVR 2**] and under the sub-heading “Proof of Eligibility” in addition to the

requirements for identification under CI 72 appeared the telling words:

*...**presenting a proof of eligibility is however not mandatory** even though will help speed up the process.
(With the "not mandatory" boldened) [emphasis added.]*

42. My Lords, this was the manual that was used to train officers and then relied upon by them in operations while compiling the new register of voters in 2012 pursuant to CI 72. With great restraint, the 2nd Defendant respectfully submits that what this manual did was to claw back the identification requirement mandatorily provided in CI 72. Thus on the ground and in operations, it was not mandatory to demand any proof of eligibility. If the prospective voter presented one, it would be accepted. But if the prospective voter did not present one, that person would not be turned away because the "proof of eligibility" mandatorily required under regulation 1(3) of CI 72 was removed by a provision in the training manual that was used for operations.
43. Your Lordships an operational manual cannot provide that "**presenting... proof of eligibility is... not mandatory**," when the law that was passed to regulate the operations said the prospective voter "**shall provide... evidence of identification**."
44. The effect of this is that the manual removed the legal requirement. Every requirement mentioned in regulation 1(3) of CI 72, and which this Honourable Court upheld in *Ramadan*, was effectively removed by a mere manual. Thus the 'no identification requirement' of CI 12 was effectively imported into the

compilation of the register under CI 72. This is what the 2nd Defendant wishes to address.

45. Your Lordship, apart from removing the identification requirement, the manual on its own at page 16 thereof introduced alternative proof of eligibility, birth and baptismal certificates, which are not in the list set out in Regulation 1(3) of CI 72.
46. The reality therefore is that the manual introduced changes to CI 72 without the amendment required by article 11, and by so doing, tainted the entire register with not just lack of credibility, but unconstitutionality.
47. In *Professor Stephen Kwaku Asare v Attorney-General & Another* [unreported; Writ No. J11/1/2016; 22/6/2017], this Honourable Court addressed the unconstitutionality of a statutory body effectively introducing changes to a statutory instrument by administrative action without seeking the formal amendment of the instrument. In the lead judgment, Gbadegbe JSC rendered himself of the following:

Since the Constitution has made elaborate provisions for making changes to statutory instruments, the failure by the Council to employ the constitutional mode in the introduction of the new requirements is an instance of a failure to act with the requirements imposed on them by law. By side stepping the procedure provided for in article 11(7), as authorised by article 297(b) and (d), there is a clear violation of the relevant provisions which is an instance of inconsistency of an act or conduct within the contemplation of article 2(1) of the Constitution.

48. His Lordship, Gbadegbe JSC in *Asare v Attorney General supra* rendered himself further thus:

"....it is settled law that administrative directions or fiat cannot override statutory provisions. By the making of LI 1296, the clear position regarding admissions into the School is that from the date of its making the admission of students who had graduated in law from UG and other approved institutions to be good must be derived from the said legislative instrument. Therefore, it is wrong for the Council without utilizing the appropriate mechanism provided by law in article 297 of the Constitution to purport to bring about a change in the admission requirements. The introduction of the new criteria which came into effect in 2015 is thus not only in violation of article 297 of the constitution but devoid of any force at all. It is observed that while the provisions of LI1296 are enforceable those issued administratively are without effect in the eyes of the law."

49. Your Lordships, based on the above, the 2nd Defendant agrees with this Honourable Court's finding in the *Abu Ramadan No. 2* that the existing voter register is not reasonably credible and so is its existing voter identification cards. Most of the ineligibilities, breaches and excesses found by this Honourable Court and complained of right from CI 12 through CI 72 to the Training Manual of the 2nd Defendant are in breach of Article 42 of the Constitution and touches on the credibility of the existing register and its issued cards.

50. It is important to state that, this honourable Court on 5th May, 2016 made the underlisted declarations and orders and even clarified same on 5th July 2016:

1. That upon a true and proper interpretation of article 45 (a) of the Constitution, the mandate of the Electoral Commission to compile the

register of voters implies a duty to compile a reasonably accurate and credible register.

2. A declaration that the current register of voters which contains the names of persons who have not established qualification to be registered is not reasonably accurate or credible.
3. A declaration that, the current register of voters which contains the names of persons who are deceased is not reasonably accurate or credible.
4. Reliefs 4(a) and (b) are dismissed in their entirety.

In the exercise of the powers conferred on us under article 2 (2) of the constitution, we make the following orders:

- a. That the Electoral Commission takes steps immediately to delete or as is popularly known "clean" the current register of voters to comply with the provisions of the 1992 Constitution, and applicable laws of Ghana,
- b. That any person whose name is deleted from the register of voters of the Electoral Commission pursuant to order (a) above be given the opportunity to register under the law.

51. We regretfully submit that the 2nd Defendant was unable to comply with the orders of this Court given the manner in which the repealed of C.I 72 was crafted. The Form 1A in the C.I 72 which is the form a prospective applicant filled to be registered to vote did not make provision for recording the type of document used to prove qualification save the National Identification Card.

52. A review of the Form 1A would show that the only column for filling in one's identification number is the column with the initial NID. And by the instructions contained in the 2nd Defendant's 2012 Registration Officials' Training Manual, the 2nd Defendant stated clearly at page 24 thereof as follows: "This will be filed in

by persons who have received their national ID Cards from the National Identification Authority”.

53. By instructing the 2nd Defendant's Registration Officers and Registration Assistants not to use any other form of ID Number except NID issued by the National Identification Authority, they could therefore not have put an applicant's NHIS number, passport number or drivers license number. We submit that even if a few Registration Officers did so, they did so in error and against the express instructions given to them and their mistake could not by any means be stretched to represent what the Registration Officials were trained to do in 2012. The Data Entry Clerks were also trained per page 11 of the 2012 Training Manual to enter the exact information captured on the Form 1A unto the Form 1C on the computer. Among the personal data provided on the Form 1C was the NID Number. Accordingly, the Form 1C (database), which was a reproduction of the Form 1A did not and could not have a column indicating that a registrant used the NHIS Card to register.

54. This is the reason why the 2nd Defendant were only able to file a list of 56,772 in the registry of this Court when it was ordered to file the full list of all NHIS registrants. My Lords, with respect, this figure did not reflect the broad section of persons who registered with the NHIS Card in 2012. It is indeed a fact that the majority of people who registered to vote in 2012 used the NHIS Card as a form of identification and this was why the 2nd Defendant fought the Plaintiffs in the Abu Ramadan No. 1 Case because the NHIS

Card was the only documents among the list in Regulation 1(3) of C.I 72 that was widespread and the most popularly used by millions of the registered voters according to anecdotal evidence from the 2nd Defendant's registration officials.

55. In effect the 2nd Defendant has still not complied with the order which was directed at the 2nd Defendant to delete the names of the NHIS registrants to make the current register reasonably accurate and credible because it simply has no way of doing so. The 2nd Defendant seeks to fully comply with this Court's clear orders by excluding the existing voters ID as qualification document in its bid to comply a fresh voters roll as that is the only way through which the 2nd Defendant can give effect to the Court's orders of 5th May 2016 and 5th July 2016 and for that matter Article 42 of the Constitution.
56. Your Lordships, it is beyond controversy that all person who registered in 2012 were issued the existing Voters ID Card irrespective of the documents they tendered as qualification to be registered. It is a fact that people who used the NHIS Card to register also have this same existing Voters ID Card. Allowing people to continue to use the existing Voters ID Card to register on a fresh Voters Roll will amount to pouring old wine from an old bottle into a new empty wine bottle. This will certainly lead the country nowhere as the inaccuracies in the current voters register which the 2nd Defendant is seeking to cure will still find themselves on the roll and definitely haunt us in the near future as it is likely to birth series of needless litigations.

57. The concurring opinion of Benin JSC in Abu Ramadan No. 2 is apposite here. His Lordship rightly said:

“it is sad to recall that the Public Elections (Registration of Voters) Regulations, 2016 (CI 91), has been published without this important information. It is good to draw lessons from court decisions in order to inform future conduct of State actors. Regulations 22 of C.I 91 headed: “Compilation of provisional register of voters” did not improve upon C.I. 72. If this Court’s decisions do not guide the future conduct of State actors, then problems of needless litigation would never be stopped and the country would be poorer for it. An offshoot of court decisions is to provoke and influence change or reform in the law to prevent or reduce future litigation and conflict.”

58. It is provided under Article 129(3) that “that Supreme Court may, while treating its own previous decisions as normally binding, depart from a provision decision when it appears to it right to do so”. However, the 2nd Defendant has no evidence to the effect that this Court has departed from its decision that led to the striking down of Regulation 1(3)(d) of the repealed C.I 72 nor has the Court revoked the perpetual injunction it placed on the use of the NHIS Card in its decision. See Exhibit “**NVR 1**.”

59. We humbly submit that as long as the declarations and orders in all three Abu Ramadan judgments subsist the 2nd Defendant has no reason to disobey them or not to give effect to them. Given that these orders were made pursuant to powers given this honourable Court under Article 2(2), the 2nd Defendant’s failure to obey or carry out the terms of the orders and directions by ensuring that the NHIS Card registrants bearing the existing

Voters ID Cards are not allowed to register in any registration exercise would constitute a high crime under the Constitution.

60. This is another reason why the existing Voters ID Card was excluded in from the Constitutional Instrument currently before Parliament else Parliament would have a passed a law that would alter the decision of the honourable Court in clear violation of Article 107 of the Constitution.
61. Considering all the credibility issues discussed above, the 2nd Defendant decided to compile a new register of voters rather than engaging in the near impossible exercise of cleaning the existing register of all the concerns identified.
62. To compile the new register of voters using the existing voter identification card would simply import wholesale, the ineligibilities, breaches and excesses all the way from CI 12 through CI 72 into the new register of voters all in continuous breach of article 42 as found by this Honourable Court in *the Ramadan Cases*.
63. It bears emphasizing that no law in Ghana mandates the 2nd Defendant to use the Voters ID Card as proof of qualification for voters registration exercises. The Supreme Court in several cases including Abu Ramadan No. 2 made it clear that the Courts has made it clear that the courts have been careful not to impose themselves on other institutions of State as to how they should perform their functions. This caution according to Benin JSC:

“is important to observe because the law determines the extent of each institution’s mandate; it is not the court which determines that. However the Court has a duty to bring other institution to order if they stray from the path of legality.”

64. My Lords, respectfully it is our submission that the 2nd Defendant has not violated any law in its exclusion of the Voters ID Card in the current Constitutional Instrument before Parliament as there is no law whether by way of Statute, Judge-made or Constitution that mandates the 2nd Defendant to at all times include the Voters ID Card as a form of establishing qualification under Article for voters registration purposes.

65. Your Lordships, the 2nd Defendant agrees with this honourable Court’s statements in Abu Ramadan No. 2

“that having fashioned a Constitution unto ourselves to govern our actions and direct our path to liberty and progress, it is the duty of every person, human as well as corporate, to keep in mind that the rule of law is indispensable in all our actions and behaviour. And when a person is acting within the confines and limits of the law, none can compel him to act in a particular way to suit that person’s desire. That explains the oath of office that notable state actors take on assumption of office to perform the functions attributed to them without fear or favour, affection or ill-will. Article 46 of the 1992 Constitution has reinforced these principles by granting the first defendant Electoral Commission independence in the performance of its function, subject only to the Constitution and to any other law for the time being in force. And once they are acting within the law, no authority or power can compel them to act in a different way”.

66. First of all, the 2nd Defendant has never had a cast in stone process of registering voters and this has been the trend from the inception of this Fourth Republic. In fact the C.I 12 which

regulated 3 elections never made the voters ID Card an option or a mandatory document to presented at registration centres to proof qualification to be registered. Although the criteria for voting under Article 42 was clearly stated.

67. It was the 2nd Defendant who by its discretion inserted Regulation 1(3) in C.I 72 to allow prospective registrants to provide identification documents so as to give effect to Article 42. So given the avalanche of issues with the existing voters ID Cards which have been elaborately brought to the fore herein the adoption of same for purposes of any future elections will defeat the purpose and import of Article 42 and by extension violate Article 45(a) of the Constitution. We submit that our exclusion of the voters ID Cards from the new Constitutional Instrument is within the confines of the law and that the 2nd Defendant has exercised that discretion in accordance with law. When considered in context of Article 296 the 2nd Defendant would have been in violation of use of arbitrary discretion if they had applied the discretion to include the voters ID Card in disregard of the law.
68. In Abu Ramadan No. 2 Benin JSC right observed thus:
"However efficacious the system of validation may be, even the first defendant Electoral Commission cannot employ unless it is sanctioned by the law or regulations. That is the more reason why such issues should not be brought before a court without the legal basis. The first defendant may introduce the validation process by constitutional instrument under Article 51 if need be. The plaintiffs have not told this court that the first defendant Electoral Commission has taken any step contrary to law, nor has it been accused of breaching its discretionary

power. In the absence of such breaches, the court has no power to compel or even to direct the first defendant as to how to exercise its constitutional mandate to produce a credible register; it is the end that will justify the means. I must emphasize here that even if there is provision in the law and/or regulations for validation, the court cannot compel the first defendant to follow that method unless it is the only mode that is sanctioned by the law or regulations. If the law provides for alternative ways of performing the task, the discretion is vested in the actor in declining within the limits imposed by article 296 of the Constitution as to which one of them would best suit the task on hand. It is certain the path embarked upon by the plaintiffs is not supported by the law because the first defendant has not been found to be acting contrary to law, whichever way one decides to characterize its actions. As long as the process it has chosen to clean up the voters register is authorized by the law or regulations, they cannot be faulted, even if it is considered that a more efficient mode exists”.

69. Since there is no law that says that the voter ID Card is a mandatory document that must be captured in every regulation for registering voters, the 2nd Defendant cannot be compelled to adopt it. As long as the mode of proof of qualification currently being used by the 2nd Defendant is within the legal confines of Article 42, it cannot be said that the 2nd Defendant is acting contrary to law. By adoption of the voters ID Card, the 2nd Defendant runs the risk of importing previously unqualified persons into the register just as the 2nd Defendant followed the “widespread availability” factor of the NHIS Card and disregarded the fact that it was not exclusive to Ghanaians only and that it was the only document among the lot under Regulation 1(3) which did not on its face show one’s citizenship. The fact that a document is widespread should not be the sole reason why the

2nd Defendant should rope it in our voters registration exercises. The key factor to consider is whether it is consistent with the Constitution. The painful history we have had with the NHIS registrations must not be repeated howsoever and in whatever manner. Truth be told, the existing voters ID Card is an NHIS Card in disguise.

70. My Lords, no qualified voter under the law is to be denied the right to register and exercise her or his franchise for this reason hence every qualified citizen is being given the opportunity to start afresh. This opportunity to register must be given within the requirements of the law.
71. In addition to the concerns raised about the constitutionality and credibility of the existing voter cards, there is now in existence The National Identity Register Act, 2008 (Act 750) as amended which provides for the compilation of a national identity register. The 2nd defendant feels bound by Act 750 as amended. The national identity register provides some immediate and reliable data and the law provides guidance. This law was passed by the people's representatives purposely for identification.
72. Section 8(1) of Act 750 as amended provides;
 - "The Authority shall require an individual who applies for an entry to be made in the register to submit any of the following identity documents;
 - (a) a birth certificate
 - (b) a valid passport
 - (c) a valid residence permit

- (d) a valid certificate of acquired citizenship; and
- (e) any other information as may be required by the authority.

73. Based on the long held interpretation of maxim "*expressio unius est exclusio alterius*", the 2nd Defendant strongly believes and understands that it is for all the credibility concerns found by this Honourable Court and those raised by the 2nd Defendant itself that the lawmakers, the representatives of the people, thought it prudent to exclude the existing voter identification card from the requirements of proof of citizenship or otherwise for the purpose of the compilation of the National Identity Register. This is more so because the existing voter identification cards were in existence when this law was passed by the people's representatives being the parliament of Ghana.
74. Your Lordships, we submit that what Section 8(1) of Act 750 (as amended) has done is to effectively exclude the existing voter identification card as a form of identification for the purposes of proving citizenship which is the first and foremost qualification required of an individual applying to be registered as a voter.
75. It is the considered opinion of the 2nd defendant that to accept any form of identification, including the existing voter identification cards, which is not provided for under Section 8(1) Act 750 (as amended) as a means of proving identification for the compilation of the new register will be in contravention of statute.

76. In summary, the following are the legal reasons why the 2nd Defendant is not allowing the existing voter identification cards to be used in the upcoming voter registration exercise.

- i. the existing voter register which was compiled in 2012 pursuant to CI 72 and revised since by limited registration exercises has been held by this Honourable Court as not being reasonably credible. By implication, the cards issued pursuant to it are also not reasonably credible.
- ii. in respect of the cards issued pursuant to CI 12, the 2nd Defendant has found that those voter identification cards were issued without any form of identification at all and its ineligibilities, breaches and excesses were imported into the 2012 register pursuant to CI 72 in breach of Article 42 and displacing the credibility of the CI 12 cards.
- iii. The 2nd Defendant itself found a fundamental omission in its training manual and the manner in which the voter registration exercise was carried out in 2012 partly in breach of its own binding CI 72 and also in breach of Article 42 of the constitution.
- iv. The 2nd Defendant wants a break from the past to remedy all the carried on ineligibilities, excesses and breaches of Article 42 as the existing cards have become fruits of a "poisoned tree".
- v. It will be in continuous breach of article 42 of the constitution, total disregard this Honourable court's own judgment to continue using the existing cards.

vi. It is in contravention of Section 8(1) Act 750 (as amended) for the 2nd Defendant to accept the existing voter identification cards as a means of proving citizenship for the compilation of the new register.

77. We humbly submit.

AUTHORITIES RELIED ON

Cases

Abu Ramadan and Another v The Electoral Commission and Another; and Kwasi Danso Acheampong v The Electoral Commission and Another (Consolidated) [unreported; Suit No J1/11/2014; 30 July 2014].....	3, 4, 6, 7, 8
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Abu Ramadan & Anor (No.2) v EC & AG (No. 2) [2015 -2016] 1 SCGLR 1	

Statutes

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National Identity Register Act, 2008 (Act 750)	9, 10

Regulations

Public Elections (Registration of Voters) Regulations, 1995 (CI 12).....	4, 5, 6, 7, 8, 10
Public Elections (Registration of Voters) Regulations, 2016 (CI 91)	4
Public Elections (Registration of Voters) Regulations, 2012 (CI 72)..	2, 3, 4, 5, 6, 7, 8, 10

Constitutional Provisions

Fourth Republican Constitution	2, 3, 4, 8
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DATED AT AMENUVOR & ASSOCIATES, NO. 8 NII ODARTEY OSRO STREET, KUKU HILL, OSU – ACCRA (FRONT LINE CAPITAL ADVISORS BUILDING) THIS 5TH DAY OF JUNE, 2020.



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AMENUVOR & ASSOCIATES
LAWYERS FOR THE 2ND DEFENDANT

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