

## **V. AKOTO-BAMFO (MRS) JSC:**

On the 9<sup>th</sup> of December 2012, Dr. Kwadwo Afari Gyan, the Returning Officer for the December 2012 Presidential Elections, and who represents the 2<sup>nd</sup> respondent in these proceedings, returned the 1<sup>st</sup> Respondent herein John Dramani Mahama, as having been validly elected President of the Republic of Ghana.

Thereafter, on the 11<sup>th</sup> of December 2012, the Declaration of President-elect Instrument 2012, C.I. 80 was published under the hand of the said Returning Officer.

Being naturally aggrieved, the Petitioners herein, Nana Addo Dankwa Akuffo, Addo Dr Mahamudu Bawumia and Mr. Jake Obetsebi- Lamptey; the Presidential Candidate, his running mate and the Chairman respectively, of the New Patriotic Party filed the instant petition praying, inter alia, that the election be declared invalid and for a further order declaring the 1<sup>st</sup> Petitioner the validly elected President of Ghana.

According to the petitioners, there were a number of constitutional and statutory violations, malpractices and irregularities in the conduct of the elections which affected the outcome.

The alleged violations were categorized under these heads:

1. Over voting.
2. Voting without biometric verification.
3. Absence of signatures of Presiding Officers.
4. Duplicate serial numbers on Pink Sheets.
5. Widespread instances of polling stations where different results were strangely recorded on different pink sheets bearing the same polling station codes.
6. Instances where voting took place in certain locations which could not be identified as part of the official list of 26,002 polling stations created by the Electoral Commission.

On the 2<sup>nd</sup> of April 2013, these issues were set down for determination;

- (1) Whether or not there were violations, omissions, malpractices and irregularities in the conduct of the

presidential elections held on the 7<sup>th</sup> and 8<sup>th</sup> of December, 2012.

- (2) Whether or not the said violations, omissions, malpractices and irregularities, if any, affected the results of the elections.

Black's Law Dictionary the 8<sup>th</sup> edition, defines the term irregularity as an act or practice that varies from the normal conduct of an action. In the Canadian Supreme Court case of *Ted Opitz v Borys Wrzesnewskyj* 2012 SCC 55, a contested election application, it was stated, 'the term 'irregularities' should be interpreted to mean failures to comply with the requirements of the Act, unless the deficiency is merely technical or trivial. For "irregularities" to have "affected the result of the election", they must be of a type that could affect the result of the election and impact a sufficient number of votes to have done so. Votes cast by persons not entitled to vote are irregularities that can affect the result of the election, because they are votes that should not have been cast. If the number of such votes equals or exceeds the winner's plurality, then the result of the election is affected and the election should be annulled.'

A malpractice, on the other hand, connotes a wrong or illegal practice per the Oxford Advanced Learner's Dictionary.

According to Black's Law Dictionary, a violation is an infraction or breach of the law; the act of breaking or dishonouring the law; the contravention of a right or duty.

Before proceeding to consider the issues, I must commend Counsel for the industry, the tremendous amount of documentary evidence placed before us; the professional manner they were dealt with and the high standard of advocacy evidenced by the extensive oral and written submissions.

I am acutely aware of the national importance of this petition and the far reaching consequences this decision could have for this country.

Government, in a democratic system of governance, derives its life from the people and that sacred nexus is made manifest in the electoral system. Among the fundamental precepts in a democracy is the ability to hold periodic free

and fair elections together with an effective judicial oversight, bearing in view however, that, as a basic principle, it should not be for the court to determine who occupies the highest office of the land, the presidency; it is the preserve of the citizens,

Elections therefore offer the citizenry the opportunity to express their satisfaction or otherwise with an incumbent leader or a political party, it is no wonder that this challenge, arising out of the exercise of those rights, has caught the imagination of all Ghanaians.

### **THE BURDEN**

The petitioners must lead evidence on the balance of the probabilities. In other words, they bear the burden of producing sufficient evidence from which a reasonable mind could conclude that the irregularities and violations did occur. It is only then that they could be said to have adduced evidence to the requisite degree, or that they had discharged the evidential burden borne by them. Sections 10, 11, 12 and 13 of the Evidence Act 1975, NRC 323.

In *Opitz v. Wrzesniewskys*, supra, the Supreme Court held that an applicant who seeks to annul an election bears the legal burden of proof throughout.

In *Buhari V Obasanjo* 2005 CLR 7K, a Nigerian case, the Supreme Court stated: "The burden is on petitioners to prove that non-compliance has not only taken place but also has substantially affected the results.....There must be clear evidence of non-compliance, then that the non-compliance has substantially affected the election."

The Nigerian Supreme Court further said:

"He who asserts must prove such fact by adducing credible evidence. If the party fails to do so, its case will fail. On the other hand, if the party succeeds in adducing evidence to prove the pleaded fact it is said to have discharged the burden of proof that rests on it. The burden is then said to have shifted to the party's adversary to prove that the fact established by the evidence could not on the preponderance of evidence result in the court giving judgment in favour of the party."

Those principles were affirmed in these cases:

1. Abubakar v. Yar' Adua 2009 All FWLR (pt-451 1 SC.
2. Col. Dr. **Kizza Besigye v. Museveni Yoweri Kagutai** & Electoral Commission, Election Petition NO. 1 of 200 It must be stated that these authorities are of persuasive effect only.

Generally, it is presumed that election results are valid; therefore the parties contesting the election have the burden of showing an irregularity or illegality sufficient to change or place in doubt the result of the election. Supreme Court of Georgia in Banker v. Cole 278 G.A 532

In Macraine v. Mullis 276 G.A 416, another decision of the Supreme Court of Georgia, it was held that in order to set aside an election “the Court required evidence to show that a sufficient number of persons voted illegally, or, were illegally recorded in the contest being challenged to change or cast doubt on the election.

Having regard to the fact that an election petition is essentially a civil matter, the commencement of which is by the filing of a petition, the normal civil rules of procedure, with the necessary legislative modifications, do apply. The system of pleadings, therefore, forms an integral part of any civil litigation.

Pleadings are written statements of the parties in the action. They are served by each party on the other, setting out the material facts on which each party relies.

Pleadings therefore do not only operate to define and delimit with clarity and precision the real issues in controversy between the parties upon which they can prepare and present their respective cases; and, upon which the court will be called to adjudicate between them, but serve the purpose of informing each party what is the case of the opposite party which he will have to prepare to meet before and at the trial. In Esso Petroleum Co. Ltd. V. Southport Corporation, (1956) A. C. 218 at 238, Lord Normand said “The function of pleadings is to give fair notice of the case which has to be met so that the opposing party may direct his evidence to the issue disclosed by them”

In Hammond v Odoi V.C.R.A.C. Crabbe JSC pronounced on the function of pleading thus:

“Pleadings are the nucleus around which the case- the whole case- resolves. Their very nature and character thus demonstrate their importance in actions, as for the benefit of the court as well as for the parties. A trial judge can only consider the evidence of the parties in the light of their pleadings. The pleadings form the basis of parties and place fetters on the evidence that they would lead. Amendment is the course to free them from such fetters. The pleadings thus manifest the true and substantive merits of the case. And the reply is very much a part of the pleadings.”

Thus, in situations where there are deletions and reclassifications of the facts in dispute, in the course of the hearing, without the leave of the Court to amend; the party could be said to have breached some cardinal rule of pleadings.

I now proceed to consider the grounds raised.

### **OVER-VOTING**

In the amended petition filed on 8-2-13, paragraph 20 Ground 2(a); the petitioner stated thus:

The results declared and recorded by the 2<sup>nd</sup> Respondent contained widespread instances of over-voting in flagrant breach of the fundamental constitutional principles of adult suffrage, to wit one man one vote.

On the Table provided under Ground 3, the figure of 128, 262, was set down as the number of ballots affected and therefore to be annulled.

In Paragraph 37 of the affidavit of Dr. Bawumia filed pursuant to the directions of the Court, appear the following:

“That while over-voting occurred in 2,065 polling stations representing 85%, over-voting took place along with NBV, DS, NS, and DP. It is only in 320 polling stations that the sole irregularity was over-voting.”

In Paragraph 44 of the same affidavit however, 130,136 votes were said to have been vitiated by the over-voting phenomenon.

The KPMG Report, however, put the total of pink sheets counted in that category at 318.

Clearly in circumstances that the total number of polling stations under the category had been reduced by at least 2 by virtue of the KPMG Report; neither the 128,262 nor the 130,136 could have remained unchanged.

In Court Dr. Bawumia testified that there had been a number of deletions. He tendered various lists of deleted polling stations. Under Exhibit C-C1-C11, he listed 44 polling stations under this category as having been deleted.

These deletions would certainly have affected the number of votes to be annulled. Subsequent thereto another list of 704 polling stations was tendered as Exhibit D.

Included in that list were 48 more polling stations under the over-voting category.

Clearly the number of polling stations to be affected, and more importantly, the numbers of votes to be affected would see a reduction. One has to bear in mind that numbers are of the essence since they must be used to measure the effect of the irregularity, if any. In this instance however, one cannot determine with precision the number of votes in issue.

It bears stating that whereas the 2<sup>nd</sup> respondent denied that there was over-voting; the 3<sup>rd</sup> Respondent did not only deny but went further to assert that there were patent, clerical and sometimes arithmetical errors in the recording which had no material effect on the actual votes publicly cast, sorted counted and recorded (Paragraph 15(iii) of the affidavit of Johnson Asiedu filed on 15<sup>th</sup> April 2013).

#### WHAT IS OVER-VOTING?

The petitioners gave 2 definitions:

1. Where the total votes in the ballot box as recorded on the face of the pink sheets exceeds the voters' register at the polling station as recorded on the pink sheet.

2. Where the total votes in the ballot box as recorded on the pink sheets exceeds the total ballots issued to voters as recorded on C 1 and 2.

3.

For the Respondents however, the phenomenon occurs where the ballot cast exceeded the number of persons eligible to vote at the polling station or numbers of persons on the polling station register.

Even though, in the main, both definitions placed emphasis on the Register and ballot paper; the Petitioners limit themselves exclusively to what appears on the face of the pink sheet, i.e. the Declaration Form,

Although it is not disputed that the pink sheet was the basic document for the elections it cannot, however, be said to be conclusive. It is important to note that an election is not an event, but a process and that the pink sheet derived its source from the Biometric Voters Register. It should therefore be the reference point for a discussion of any issue under this category.

I am fortified in this view by the fact that all the political parties were given copies of the voters register which the various polling agents of the major political parties carried to the polling stations on the days the elections were held. These pieces of evidence were not challenged.

Indeed it is common knowledge that the polling agents who were at the polling stations checked the names of persons who were verified and issued with the ballots. Having regard to their role as watchdogs to check impersonation, multiple voting and certification of the results (they had the right to protest by refusing to sign the pink sheet) as provided for under C. I. 75 Regulation 19 (3) coupled with the voting procedures, publicly sorting and counting etc; it would not be safe to rely solely on the entries on the face of the pink to establish the incidence of over-voting. Should any dispute arise as to whether persons who cast the ballot did exceed the number on the voters register, disregarding the register, the genesis of the pink itself will result in an error.

Indeed there was ample evidence that several errors were made by the presiding officers in making the entries. Many of the entries were made in error.

In some cases, columns were wrongly filled, others were left blank; while yet in others, the figures and words hardly matched. It was evident that some of the errors could simply be corrected by entering the figures in the right columns. Others were sheer were errors in the arithmetic.

Dr. Bawumia left the Court in no doubt that the petitioners were relying solely on the pink sheet to establish cases of over-voting, for, he averred that there were neither protests nor complaints lodged, in terms of the complaints procedures laid out in the governing statute at the polling stations.

In the proceedings of 7<sup>th</sup> May 2013, to the question by learned counsel for the 3<sup>rd</sup> Respondent

**QUESTION:** Was there any evidence of misconduct provided to you by any of the polling agents at the polling stations?

The 2<sup>nd</sup> Respondent delivered of himself thus:

**ANSWER:** The only evidence we have brought to Court is the over-voting on the face of the pink sheet.

He significantly admitted that they had no record of any person voting or attempting to vote twice.

Having regard to the fact that credible evidence was led to show that statistics of ballots issued by the 2<sup>nd</sup> Respondent to each Region, Constituency and Polling Station were provided to all the political parties whose agents were at the polling station and ticked the names of those verified (in these elections) I am of the view that over-reliance on the pink sheet in the face of errors detected clearly led to a dead end, for one cannot use wrong assumptions or data to arrive at the right conclusions. Certainly such multiple inaccuracies cannot be the basis for a finding that there was over-voting. Owing to the mistakes, the pink was manifestly unreliable as a basis for establishing the phenomenon of over voting.

The petition and the affidavit of Dr Bawumia carried 2 different sets of numbers. Deletions were made in the course of the hearing; the KPMG Report had a different figure.



Again, in Court Dr. Bawumia admitted that some errors were made in the computation. All these factors would have an effect on the numbers which, as already mentioned, are vital.

None of the polling agents made a report of any irregularity; no evidence was led on ballot box stuffing. And more importantly the ballots were cast and their polling agents attested to the results.

While the presiding officers obviously did make some mistakes and clerical errors, no mischief or advantage can be attributed thereto. Substantially the voting, counting and tallying of votes were carried to a high degree of accuracy.

**Which polling stations were affected?**

**How many results have to be annulled?**

These are questions that the petitioners failed to answer under this category. I would therefore decline the invitation to annul any votes under this category.

### **ABSENCE OF SIGNATURES**

In paragraph 20 Ground 1(f) of the petition, the petitioners averred that there were widespread instances of the absence of the signatures of presiding officers or their assistants on the Declaration form.

The figure of 117, 670 were put down as the number of votes to be annulled as a result of this irregularity.

In the affidavit of Dr. Bawumia filed in pursuance of the directions of the Court, he averred in paragraph 39 that it was only in 310 polling stations that the sole irregularity was the absence of the requisite signatures. In paragraph 76 he testified that if this were the only irregularity, the 1<sup>st</sup> petitioner would have obtained 49.03% of the valid votes whereas the 1<sup>st</sup> respondent would have obtained 49%.

Essentially the respondents did not deny that in some cases the Presiding Officers failed to sign the pink sheets. Indeed the 2<sup>nd</sup> respondent tendered Exhibit SA4, a National Summary by Region Results of sheets not signed by the Presiding Officers. According to the said Exhibit, 905 of the pink sheets were

indeed not signed by the Presiding Officers. Of the 2009 of the pink sheets the petitioners claimed were not signed by the presiding officers, 1, 989 were signed by the agents of the candidates.

Having admitted that there were at least, 905 polling stations in which presiding officers failed to append their signatures, the petitioners were relieved of the duty to call further evidence on the issue.

Article 49 of the Constitution 1992 provides:

1. *At any public election or referendum, voting shall be by secret ballot.*
2. *Immediately after the close of the poll, the presiding officer shall, in the presence of such of the candidates or their representatives and their polling agents as are present, proceed to count, at the polling station, the ballot papers of that station and record the votes cast in favour of each candidate or question.*
3. *The presiding officer, the candidates or their representatives and, in the case of a referendum, the parties contesting or their agents and the polling agents if any, shall then sign a declaration stating*
  - (a) the polling station; and*
  - (b) the number of votes cast in favour of each candidate or question;**and the presiding officer shall, there and then, announce the results of the voting at the polling station before communicating them to the returning officer.*

Article 49 is couched in mandatory terms. Undoubtedly it is an entrenched provision, which can properly be amended in accordance with the procedure set out under Article 290 of the Constitution. Article 49 sets out in detail the duties of the presiding officers and the polling agents immediately after the close of the poll in any public election or referenda. Under Article 45(c) of the Constitution, the Electoral Commission is vested with the power to conduct and supervise all public elections and referenda.

Article 51 stipulates that the 2<sup>nd</sup> respondent shall make regulations for the effective performance of its functions; particularly for the conduct of public elections among others.

It is evident that even though Article 51 vests the power in the E.C to make regulations for the conduct of the elections; it is only under Article 49 that the

steps to be followed by the presiding officers and the polling agents, after the close of the polls, are set out in detail.

Since the provision is couched in mandatory terms, clearly where the signature of the presiding officer fails to appear, it does not admit of any argument, on a literal interpretation, of the said article, that there has been a breach and therefore the results ought to be nullified.

However, it has been held in a long line of decisions that a strict, narrow, technical and legalistic approach to interpretation of the Constitution, the embodiment of our hopes and aspirations, must be avoided. In *Danso-Acheampong v. AG and Abodakpi* 2009 SCGLR 353, at 358 this Court, speaking through Prof. Date-Bah, stated:

“These days, a literal approach to statutory and constitutional interpretation is not recommended. Whilst a literal interpretation of a particular provision may, in its context, be the right one, a literal approach is always a flawed one, since even common sense suggests that a plain meaning interpretation of an enactment needs to be checked against the purpose of the enactment, if such can be ascertained. A literal approach is one that ignores the purpose of the provision and relies exclusively on the alleged plain meanings of the enacted in question”.

In *Tuffour V Attorney Gen.* (1980) GLR 63 it was held that a national constitution must be given a benevolent broad, liberal and purposive construction so as to promote the apparent policy of its framers. See *Asare V Attorney General* 2003-2004 SCGLR 823 and *Apaloo V Electoral Commission of Ghana* 2001- 2002 SCGLR 1.

The right to vote is enshrined in the Constitution in Article 42 thereof. Universal Adult suffrage is, without a doubt, one of the pillars of our democracy. Significantly, article 42 is equally an entrenched provision. Article 290 (1) e

Was it the intention of the framers of the Constitution that persons who have exercised their rights under art. 42 by going through the electoral procedures, registered as voters, had their names on the register, participated in the

election by casting their votes which have been publicly counted, recorded and announced, should have such votes not 'counted' on account of the sins of one public officer?

We have freely chosen the democratic form of governance in which sovereign power resides in the people as a whole. Under that system each citizen must be afforded a genuine opportunity, through the conduct of free and fair elections, to determine who his leaders or representatives should be.

An election being a process as opposed to it being an event, where all the stages have been gone through and therefore the elections could be said to have been substantially held in accordance with the regulations, to nullify the results on this ground per se, would amount to putting in the power of some unscrupulous presiding officer in some polling station to nullify the solemn act of the whole constituency by his single act of omission.

The right to vote is at the heart of our democracy; Tehn-Addy V A G and Ors, 1997-98 1GLR 47 and Ahumah-Ocansey V Electoral Commission and Ors 2010 SCGLR575.

One would ask what the purpose is for Article 49(3) in the Constitution.

Article 51 of the Constitution vests the power in the Electoral Commission to enact regulations for the conduct of the elections. Pursuant to the said power, C.I. 75 came into force. Regulation 19 thereof defines the role of a polling agent in these terms:

*“an appointment under sub-regulations (1) and (2) for the purpose of detecting impersonation and multiple voting and certifying that the poll was conducted in accordance with the laws and regulations governing the conduct of elections”*

That the polling agent plays a vital role in the process is not in doubt. In this regard the certification that the poll was conducted in accordance with the laid down procedures is crucial for the integrity of the process. As a representative of a candidate or a party, by appending his signature to the Declaration; he serves notice to his principal and the generality of the citizenry that the presiding officer has complied with the rules;

there has been the casting of the ballot, counting, recording and the declaration of the results. Since the Constitution requires that both the Presiding Officers and polling agents sign, looking at their duties; and obviously the reason for signatures in terms of the credibility of the process i. e. the polling agent vis a vis the presiding officer, in the event of the presiding officer's failure to sign, a purposive interpretation would not defeat the objectives of Article 49(3) in that even though the Presiding Officer had failed to sign, the polling agent's signature, to my mind, is a bold declaration for the integrity of the whole electoral process. Where he therefore certifies the results, which is essentially about the ballot; the absence of the presiding officer's signature should not result in an annulment. Of the two, the polling agent was obliged to protest should he take the view that there was a violation of some statute, he could refuse to sign and give reasons; however the presiding officer had no such option.

Furthermore there was no evidence that the persons who voted in the election ought not to have voted, neither is there any evidence that some people voted more than once. Indeed there was no evidence that any of the voters or the respondents engaged in any fraudulent acts. In other words, there was a real election by ballot.

Undoubtedly the competing provisions guaranteeing the right to vote under Article 42 and Article 49(3) which imposes a duty on the presiding officer to sign the Declaration Form should be resolved by purposively interpreting them so as to ensure that those who have exercised their right to vote shall have their votes counted.

In my view, visiting the sins of some public official on innocent citizens who have expressed their choice freely would run counter to the principle of universal adult suffrage, one of the pillars of our democracy, and perpetuate an injustice.

The omissions of a presiding officer should not disenfranchise the voter.

I would therefore decline the invitation to invalidate the votes cast on account of the absence of the signature of the presiding officers.

#### A general comment

The notion that polling agents are ornamental pieces adorning the polling stations must be discarded. Their roles are clearly defined by the Constitution and other statutes governing the elections. A vigilant polling agent would detect some of the wrongful acts at the polling station. He could then set in motion the complaint mechanism in the governing statute, designed at addressing the complaints, at the polling stations or collation centers' with minimum delay. This costly exercise of combing through a mountain of election materials, with a view of unearthing irregularities, well after the declaration of the results, would be greatly reduced. Sadly, many a time, the crucial duties of polling agents are left in the hands of persons who hardly appreciated the reasons for their presence at such fora. The need to recruit a group of committed and dedicated persons with a certain level of education cannot be overemphasized.

#### **DUPLICATE SERIAL NUMBERS**

It is the petitioners' case that "there were widespread instances where there were same serial numbers on pink sheets with different poll results when the proper and due procedure established by 2<sup>nd</sup> Respondent required that each polling station have a unique serial number in order to secure the integrity of the polls and the will of the lawfully registered voters.

Under this head the petitioners request that 3,508,491 votes be invalidated. In answer the respondents asserted that the serial numbers had nothing to do with the Declaration Form; that its unique features were the name of the polling station and its unique code.

I must say that the pieces of evidence offered by both Mr. Johnson Asiedu Nketiah and Dr. Afari Gyan shredded into pieces the petitioners'

case under this head. It became evident that Dr. Bawumia was not too familiar with the processes and procedures leading to the conduct of the presidential elections.

The exact nature of the malpractice under this head was not clear from his testimony, how the serial numbers affected the recording of the results, but more importantly how the alleged opportunity offered by the duplicate series got exploited so as to result in any irregularity was never established.

It is trite learning that an election cannot be overturned on the basis of mere speculation, for it is not about what could have happened; but what did take place. I do not therefore feel able to grant the prayer of the petitioners under this category.

### **VOTING WITHOUT BIOMETRIC VERIFICATION**

As per paragraph 20 Grounds (1) and (d) of the amended Petition, the petitioners alleged:

- (a) That 2<sup>nd</sup> respondent permitted voting to take place in many polling stations across the country without prior biometric verification by the presiding officers of 2<sup>nd</sup> respondent or their assistants, contrary to Regulation 30(2) of C.I. 75.

According to the 2nd Petitioner as per paragraph 52 of his affidavit; 137,112 of the votes should be annulled.

In his evidence before the Court, Dr. Bawumia in answer to a question as to how the petitioners arrived at the conclusion that persons voted without biometric verification

**ANSWER:** “My Lords, evidence is on the face of the pink sheet. Section C3 of the pink sheet asks the question how many voters voted with the use of form 1 C were verified to vote by the use of form 1C and not by biometric verification device that is filled in Sec C3, and so, my Lords, what we did was to aggregate for each polling station where voting

without biometric verification took place. We aggregated all the numbers in Sec C3 and my Lords if I may refer to my tables we have a total of 535, 723 people who voted without biometric verification in the polling stations under contention”

It is obvious that the petitioners simply went through the pink sheets and totaled all the figures in Form C3. The issue is whether that sole exercise discharges the burden placed on the petitioners, in terms of Sections 10 and 11 of the Evidence Act, 1973.

Dr. Afari Gyan in his testimony stated that the column C3 was not required to be filled by the presiding officers.

According to him that column was created to take care of those voters who had been registered during the biometric registration exercise that preceded the voting, but whose biometric data had been lost.

He stated however that upon discussions with the political parties some of them vehemently opposed the idea and insisted that the only means of verification should be through the machines. It was therefore agreed that the form 1. C. was not to be used. This, according to him, was at a time the forms had already been printed and that since C3 column could not be taken off, the presiding officers were asked to leave that column blank. He tendered in evidence E. C. 5 the Form 1. C. and added that the said Form C1 was therefore not taken to the polling stations.

Regulation 30(1) of C.I. 75 provides:

- (1) A presiding officer may, before delivering a ballot paper to a person who is to vote at the election, require the person to produce
  - (a) a voter identification card or
  - (b) any other evidence determined by the Commission in order to establish by fingerprint or facial recognition that the person is the registered voter whose name and voter identification number and particulars appear in the register.



**(2) The voter shall go through a biometric verification process.**

The procedure to be followed under Regulation 30 presupposes that there must be a ballot paper; a voter's identification card and biometric verification equipment. The latter has been defined in Regulation 47 as a device provided at the polling station for the purpose of establishing by fingerprint the identity of the voter.

Therefore where a dispute arises as to whether a voter had been verified, the best evidence should be the verification machine. Even if the pink sheet were the primary document, it is not conclusive; for it is my respectful view that prints out from the verification device would have put to rest any arguments as to whether those persons went through the verification process or not.

It is to be noted that when the petitioners made the allegation which was denied by the 2<sup>nd</sup> respondent, it was not enough for the 2<sup>nd</sup> petitioner to have mounted the witness the box and repeated the averments since those facts are capable of proof by some other means i.e. producing the prints out of the machine as a form of proof. *Majolagbe V. Larbi*(1959)1 GLR190.

It could be argued that since the evidence led was documentary, parole evidence was inadmissible to vary or contradict same.

That there are exceptions to the rule is beyond doubt. Dr. Afari Gyan tendered the form 1.C. With the introduction of the said document the question in C3 became meaningful. It became obvious, that one could not answer the question in that column without any reference to E. C. 5 which were not taken to the polling stations, in other words, E, C. 5 was consistent with the contents in C.3, Again the 2<sup>nd</sup> was emphatic that no person voted without being verified and, that, while admitting that there challenges with the equipment, voting in those areas were adjourned to the next day in those areas.

It is a notorious fact that the poll was adjourned in some areas and therefore there were two days of voting. If persons were allowed to vote

without verification would there have been any need for the adjournment? I think not. In the absence of any credible evidence to the contrary (some polling agent or voter testifying) I would prefer the pieces of evidence of the respondent's on this issue to the bare assertions of the petitioners based on the face of the pink sheets, It became obvious that the attack mounted under that category was premised on a misconception and therefore impossible to stand.

I would accordingly decline the petitioner's invitation to annul the votes under that category.

### **UNKNOWN POLLING STATIONS**

In paragraph 20 Ground 2(a) the petitioners complained that "there were 28 locations where elections took place which were not part of the twenty-six thousand and two (26002) polling stations created by the 2<sup>nd</sup> respondent."

In Court however, on the issue, Dr. Bawumia testified thus "we could not match the names and the polling stations. Again as with the duplicate numbers category, this category is insignificant;"

The petitioners had a duty to establish that those polling stations did not exist.

Exhibit EC 3 showed that the petitioners knew about the existence of those polling stations and had indeed appointed agents to thereto.

If they did not know of the existence of those polling stations, they obviously could not have sent their agents there.

I must say that no evidence was led on when those polling stations were created.

I would in the circumstances, find that the petitioners have failed to lead evidence sufficient for a finding in their favour on this ground.

I accordingly decline to annul the votes stated there under.

## **SAME POLLING STATION CODES ON DIFFERENT PINK SHEETS**

Under this category even though the petitioners took the view that votes under that category were insignificant, I would only find the explanation by the 2<sup>nd</sup> respondent credible; that some were polling stations were so large as to be divided into sections A and B; while the others, constituted polling stations where special voting took place, I would so find and dismiss the petitioners' case under this ground as well.

For the foregoing reasons I would dismiss the petition in its entirety. I must say that on paper, we seem to have a transparent electoral system which has evolved over the years. The political parties have been active participants. Even though the IPAC is not backed by law, it has played a pivotal role at every stage of the process. The registration of voters, printing of ballot papers, training of polling agents, the sorting and counting done publicly, the transparent ballot boxes and the photo identification cards raise the level of transparency to a very high degree. It became evident however that the myriad of errors and blunders were committed by the election officials. Such errors did no credit to the system. It is therefore recommended the caliber of persons recruited for the exercise.

**(SGD) V. AKOTO-BAMFO(MRS)**

**JUSTICE OF THE SUPREME COURT**

### **COUNSEL**

**PHILIP ADDISON (WITH STEPHEN DAPAAH, MS. GLORIA AKUFFO, FRANK DAVIS, ALEX QUAYNOR, AKOTO AMPAW, NANA ASANTE BEDIATUO, KWAME BOAFO AKUFFO, KWAKU ASIRIFI, GODFRED YEBOAH DAME, EGBERT FAIBILLE, JNR. AND PROF. KEN. ATTAFAUAH) FOR THE PETITIONERS.**

**TONY LITHUR (WITH HIM DR. ABDUL AZIZ BAASIT BAMBA) FOR THE 1<sup>ST</sup> RESPONDENT.**

**JAMES QUASHIE IDUN (WITH HIM ANTHONY DABI, STANLEY AMARTEIFIO, STEPHANY AMARTEIFIO AND FREDA BRUCE-APPIAH) FOR THE 2<sup>ND</sup> RESPONDENT.**

**TSATSU TSIKATA (WITH HIM SAMUEL CODJOE) FOR THE 3<sup>RD</sup> RESPONDENT.**