

GHANA / JUDGMENT

REPUBLIC VRS. TETTEVI AND OTHERS (CR/0619/2021) [2025] GHAHC 68 (27 March 2025)

[2025] GHAHC 68

COURT

High Court

CASE / FILE NUMBER

CR/0619/2021

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IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, LAW COURT COMPLEX (CRIMINAL DIVISION “2”) HELD IN ACCRA ON THURSDAY, 27TH DAY OF MARCH, 2025 BEFORE HER LADYSHIP JUSTICE MARIE-LOUISE SIMMONS (MRS.), JUSTICE OF THE HIGH COURT CASE NO.: CR/0619/2021 THE REPUBLIC VRS.

1. RAPHAEL TETTEVI

2. JASPER MAWULOLO AGUDOGO

3. DANIEL YEVUGAH - APPLICANT

4. HOPE MOTTEY ===== RULING ON REFERENCE
TO THE SUPREME COURT ===== The Accused
persons were therefore arraigned before this Court per a charge sheet filed on the 15th July
2021 for the offences of: COUNT ONE RAPHAEL TETTEVI & JASPER AMULOLO AGUDOLO -
BEING A MEMBER OF A PROHIBITED ORGANISATION, contrary to Section 2 (1) (i) of the
PROHIBITED ORGANISATIONS ACT, 1976 (SMCD) 20) Page 1 of 18 COUNT TWO DANIEL
YEVUGAH - BEING A MEMBER OF A PROHIBITED ORGANISATION, contrary to Section 2 (1)
(i) of the PROHIBITED ORGANISATIONS ACT, 1976 (SMCD) 20) COUNT THREE HOPE
MOTTEY - BEING A MEMBER OF A PROHIBITED ORGANISATION, contrary to Section 2 (1) (i)
of the PROHIBITED ORGANISATIONS ACT, 1976 (SMCD) 20) COUNT FOUR HOPE MOTTEY -
ACCEPTING CONTRIBUTIONS FOR THE BENEFIT OF A PROHIBITED ORGANISATION
contrary to Section 2 (1) (g) of the PROHIBITED ORGANISATIONS ACT, 1976 (SMCD) 20) THE
FACTS OF THE CASE Witnesses and Complainants in this case are officers of the Criminal
Investigation Department (CID) at the Headquarters of the Ghana Police Service in Accra.
These officers in September 2020 embarked on an exercise to identify and cause the arrest of
any person or persons who were members of the group, Western Togoland Restoration
Front (WTRF) said to be a prohibited group who on the 25th September 2020 blocked the
road to Juapong and Sogakope in the Volta region and set fire to two (2) State Transport

vehicles. The facts indicate that on that same day some members of this group attacked Page 2 of 18 two (2) Police Stations at Mepe and Aveyime also in the Volta region and freed inmates in cells, locked up Policeman on duty into the cells and stole ammunition from the Armory of the Police Station and bolted away. Investigations by the CID led to the arrest of the Accused persons herein who are said to be members of the Homeland Study Group Foundation (HSGF), United Freedom Fighters (UFF), Concerned Citizens of Western Togoland (CCWT) and the Western Togoland Restoration Front (WTRF). The last three (3) groups are all said to be splinter groups from the Homeland Study Group Foundation (HSGF) and the main objective of these groups is to secede some parts of this country from the Republic of Ghana and form a new sovereign State. According to the facts, their new State is to cover the entire Oti and Volta Regions and parts of the Eastern and Northern Regions of Ghana. Investigations further showed that the UFF and CCWT as well as the WTRF were formed after the founder of the main group, HSGF went into hiding after his arrest and release, with these other groups continuing from where he left off. The 1st Accused person is Accused as being the co-founder and President of the UFF and is assisted by the 2nd Accused. The 3rd Accused according to the facts is also the co-founder and President of the CCWT. The 4th Accused is the Financial Secretary of the HSGF. Again, the facts provided indicate that Police investigations led to the fact that as the Financial Secretary, the 4th Accused received financial contributions from members of the HSGF for the operations of the Organization. The Accused persons are said to have Page 3 of 18 admitted being members of these various organizations whose alleged objectives are prohibited by law. The 4th Accused admitted receiving funds on behalf of the HSGF for the running of its operations. The trial begun on 29th March 2021 before the Court differently constituted and all Accused persons including the Applicant herein were represented by counsel. However by the close of the Prosecution's case on the 29th July 2024, the 1st to 3rd Accused persons were unrepresented and were still so as at the time of filing their submission of No Case Applications. Ruling was delivered on 15th October 2024 with the Accused persons asked to open their defence. 2nd and 3rd Accused persons opened their defence without the services of a counsel. The 4th Accused person now on bail on medical grounds has not been attending Court for some time and a bench warrant has been issued for his. It is the turn of the 1st Accused to open his defence. It was not until the 7th February 2025 when A1 was to open his defence that a lawyer appeared in Court now representing A3 informed the Court that his senior counsel had filed this present application pursuant to Article 130 (2) of the 1992 Constitution on behalf of A3 challenging the constitutionality of the Act under which the Accused persons are being prosecuted. THE APPLICATION Counsel for A3 filed before this Court on 7th February 2025 an application for reference to the Supreme Court under Article 130 (2) of the 1992 Constitution. The Application was served on the Republic/ Respondent on 14th February 2025 and an affidavit in opposition was filed on 10th March 2025. The relevant depositions in the application are that he has been charged for offences under the Prohibited Organizations Act, 1974 (SMCD 20) which Act is unconstitutional. Page 4 of 18 He explains that the Act offends and is inconsistent with the fundamental protections guaranteed under the Constitution specifically under Articles 17, 21, 21 (1) (a), 21 (1) (d), 21

(1) (e), 26, 40, 55, 56 and 73. 3rd Accused/Applicant asserts that the SMCD 20 violates the freedom of expression guaranteed therein. It is further deposed that SMCD 20 explicitly criminalizes slogans, labels and campaigns associated with certain organizations. Thereby effectively gagging individuals and depriving them of their constitutionally protected rights to freedom of speech and expression. Again, his affidavit expresses the fact that the Prohibited Organizations Act also suppresses the freedom of assembly and demonstration as under Article 21 (1) (d). According to him, the Act criminalizes political activism suppressing law and peaceful public gathering that advances political or social objectives. He goes on to state that the Act is unconstitutional as it directly undermines democratic principles of pluralism, public debate and civic engagement which are essential for a free society. Again, in explaining why the Act contravene Article 21 (1) (e), he asserts that the Act offends the fundamental rights to freedom of association which includes rights to form or join any organization of one's choice. He further explains that it prohibits the formation of organizations advocating for self-determination, particularly those linked to the former British Togoland. Even when their advocacy is peaceful and conducted through democratic processes. Page 5 of 18 On Article 55, the affidavit in support states that SMCD criminalizes organizations that may have political objectives thereby disenfranchising certain groups from fully participating in Ghana's political process. SMCD 20 is also stated to offend Article 17 of the Constitution, which states that all person shall be equal before the law and shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, etc. According to the Applicant, this Act disproportionately targets individuals and organizations advocating for self-determination of only the former British Togoland and not any other part of the country. Thereby singling out specific ethnic and regional groups for suppression. In relation to Article 26, it has been deposed that the right of every person to enjoy, maintain and promote any culture, language, tradition or heritage in accordance with law has been stifled by SMCD 20 which criminalizes the use of slogans, labels, etc. connected to the "so called prohibited organizations". This according to him undermines the cultural identity of affected communities whose heritage, culture and history is linked to the Togoland Trust Territories. Also deposed to the fact that SMCD 20 is contrary to Article 40 and 73 of the constitution which requires Ghana to respect and uphold international obligations including those in the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and People's Rights (ACHPR) and other such organizations. Page 6 of 18 In addition, it has been stated that SMCD 20 contravenes Article 56 of the Constitution because of its effect to impose a singular national political ideology by criminalizing alternative political movements, views and organizations. Finally, it has been deposed that it is within the jurisdiction of this Court to refer the matter of the alleged unconstitutionality of SMCD 20 to the Supreme Court under Article 130 (2) of the Constitution. The basis for the application for this Reference is that the said Article mandates that any questions relating to the enforcement or interpretation of the Constitution, all validity of an enactment must be determined by the Supreme Court. The Affidavit goes on to state that given that SMCD 20 raises serious constitution questions regarding fundamental human rights and freedoms, this Court is duty bound to stay proceedings and refer the matter to the Supreme Court for

determination. THE RESPONSE In a sharp rebuttal, the Republic has responded that SMCD 20 is a valid and existing enactment forming part of the laws of Ghana. That the offences outlined therein comply with the requirements of the Constitution. It has been stated by the learned State Attorney that no question of interpretation of the constitution arises to warrant a Reference from this Court to the Supreme Court. The Respondent contents that assuming that the Applicant has any such valid ground to challenge the unconstitutionality of this Act, he Page 7 of 18 ought to file an originating motion to the Supreme Court instead of asking the High Court to refer the entire enactment to the Supreme Court. The Respondent again states that it is absurd for the 3rd Accused/Applicant who has already closed his defence in this trial to ask the Court to stay proceedings for him to engage in a constitutional exercise to declare the offence he has already defended himself against as unconstitutional. It has been deposed on behalf of the Republic/Respondent that the rights and freedoms that the Applicant claims are being infringed upon by SMCD 20 are not absolute. And that, chapter 5 of the Constitution and from decided cases, rights and freedoms may be reasonably restricted by legislation. In the interest of National Security, public order, public morality and for the protection of the rights and freedoms of others, it has been opposed that SMCD 20 is a discriminatory act which targets specific groups or region in the Republic of Ghana. That a group of individuals who rise and engage in activities to secede from Ghana constitutes a threat to national security, public order and the territorial integrity of the sovereignty of the Republic of Ghana. It has finally been deposed by the learned State Attorney on behalf of the Republic that this application is merely a delay tactics to delay the trial by A3 who has consistently done so. The Republic urges this Court to reject the Applicant's application to refer the entire enactment to the Supreme Court but rather to continue the trial for other Accused persons to proceed with their defence. Page 8 of 18 THE WRITTEN SUBMISSIONS In support of his case, the Applicant through his counsel has filed a written submission in support of his case. It was filed on the 20th March 2025. The Republic filed its submissions on the 25th March 2025, that is two (2) days ago, clearly five (5) days after the deadline set by this Court for filing submissions had elapsed. I will therefore not consider same. Back to the submission of the Applicant's counsel, it mainly serves to respond to the affidavit in opposition of the Republic/Respondent. The relevant portions of the submission are paragraphs 21- 52. These paragraphs clearly and succinctly makes reference to several case law such as: REPUBLIC VS. MAIKANKAN & OTHERS [1971] 2 GLR 473-478 AFENYO MARKIN VS. SPEAKER OF PARLIAMENT & AG [2024] GHASC 43 REPUBLIC VS. COURT OF APPEAL, CAPE COAST, EX-PARTE: JAMES GYAKYE QUAYSON [2022] GHASC REPUBLIC VS. HIGH COURT, CRIMINAL DIVISION, ACCRA, EX-PARTE: OLIVER BARKER-VORMAWOR [2024] GHASC 60 REPUBLIC VS. HIGH COURT GJ 6, ACCRA, EX-PARTE: ZENATOR RAWLINGS

[2016] DATED 19TH MAY 2016 and others. Page 9 of 18 All these cases emphasized the laid down principle by the Apex Court as to the circumstances when a Court whether trial or Appellate lower than the Supreme Court is to refer a matter before it to the Supreme Court for interpretation In the determination of this ruling, I will first make reference to Article 2 (1) of the Constitution states: “(1) a person who alleges that:

- (a) an enactment or anything contained in or done under the authority of that or any other enactment; or
- (b) any act or omission of any person Is inconsistent with or in contravention of a provision of this constitution may bring an action in the Supreme Court for a declaration to that effect." In relation to the aforementioned Article, Article 130 of the Constitution also states: “(1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in Article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in –
 - (a) all matters relating to the enforcement or interpretation of this Constitution; and
 - (b) All matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution.
- (2) where an issue that relates to a matter or question referred to in clause (1) of this article arises in any proceedings in a Court other than the Supreme Court, Page 10 of 18 that Court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the Court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.” It is to be borne in mind that these constitutional provisions afore stated allow individuals and citizens of this country through the administration of justice to seek the protection of their rights and freedoms and also to seek to safeguard the Constitution whose sovereignty resides in the people of Ghana. To this end, the structure of the administration of justice requires that any matter to be resolved by the Courts is resolved through legitimate, regulated and structured processes and procedures. One cannot on the basis of the rights guaranteed under any of the constitutional provisions simply go to any Court with or under any form of procedure and expect to be heard or have their cases resolved. It is the duty of the Courts to ensure that this process of the use of proper and legitimate procedures at adjudicating are adhered to. In this regard, the Supreme Court Rules, 1996 (C. I. 16) has set out the procedural and jurisdictional arrangements for appearing before the Supreme Court under Article 130
 - (1) and (2). Under these rules, when a party initiates proceedings pursuant to Article 130
 - (2) as in this case, he must do so in accordance with Rule 67 of C. I. 16 and there must be the prevailing circumstances under these rules to enable such a reference. Rule 67 of C. I. 16 states: “(1) a reference to the Court for the determination of any question, clause or matter pursuant to any provision of the Constitution or of any other law shall be by way Page 11 of 18 of a case stated by the Court below, or by the person or authority making reference.

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- (2) A case stated under sub-rule (1) of this rule shall contain –
- (a) A summary of the action or matter before the Court below or the person or the authority from which the reference is made;
 - (b) The issue involved in the matter before the Court or that person or authority;
 - (c) The matter or question referred for determination by the Court;
 - (d) Any findings of fact relevant to the matter or question referred to the Court;
 - (e) The arguments of counsel, if any;
 - (f) The ruling or decision of the Court below or of that person or authority; and
 - (g) A statement by the Court below that the determination of the constitutional matter or question is necessary to a decision of the action, where the reference is made under clause (2) of Article 130 of the Constitution.
- (3) Each party may, with the consent of the Court below or that person or authority, and shall, when so ordered by the Court, state his case or jointly state a case containing arguments of law and a list of the decided cases and the statute law in support of the case. Page 12 of 18
- (4) The Court may call for the record of the proceedings before the Court below or before the person or authority making the reference
- (5) The provisions of rule 53 of these Rules shall, with such modifications as may be necessary apply to a reference before the Court.” The combined effect of Article 130 (2) afore stated and Rule 67 as also reference above, in my considered opinion gives an indication that before a Court, whether trial or Appellate, lower than the Supreme Court can make such a reference to the Supreme Court there should have been some existing circumstances. These circumstances have been held to be where rival meanings have been placed on a constitutional provision by parties before such a trial or Appellate Court or where there is ambiguity as to the meaning of a constitutional provision. It has also been re-emphasized that a reference to the Supreme Court is not mandatory simply because a mere reference has been made by a party to a constitutional provision. That it is not in every case where the constitution or a provision of it is mentioned that a reference must be made. But it is when a real, genuine and substantial issue concerning the proper meaning and application of the constitution arises. In the EX-PARTE: ZANETOR RAWLINGS case cited by counsel for the Applicant, the Supreme Court through Atuguba JSC made a profound statement by distinguishing between the criteria for making reference by Courts lower than the Supreme Court to the Supreme Court for interpretation before the promulgation of this present 1992 Page 13 of 18 Constitution and afterwards. The learned judge stated inter alia at pages 8 and 9 of the judgment as follows: “It has to be realized that the initial stance of the Supreme Court, exemplified by cases such as REPUBLIC VS. MAIKANKAN [1972] 2 GLR 473 S. C, REPUBLIC VS. SPECIAL TRIBUNAL, EX-PARTE: AKOSAH [1980] GLR 592, CA. ADUAMOA 11 VS. ADU TWUM 11 [2000] SCGLR 165 ... which laid emphasis on the plain meaning of a
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statute preceded the new era of constitutional interpretation based on the now dominant principle of purposive construction of statutes, particularly the constitution. Indeed beginning with REPUBLIC VS. HIGH COURT (FAST TRACK DIVISION) ACCRA, EX-PARTE: ELECTORAL COMMISSION (METTLE NUNOO AND OTHERS PARTIES) [2005-2006] SCGLR, the tide against ready referral for interpretation begun to change. In that case, apparently very clear and unambiguous provisions were held to be referable ambiguities. Thus in REPUBLIC VS. HIGH COURT, (FAST TRACK DIVISION), ACCRA, EX-PARTE: CHRAJ, (RICHARD ANANE INTERESTED PARTY) [2007-2008] SCGLR, this Court held that the word, 'compliant' in Article 218 (a) of the constitution was ambiguous and was referred to this Court for interpretation. Indeed, in that case, the Court held that a lower Court ought not to readily assume that a constitutional provision is plain and unambiguous." This in my opinion clearly distinguishes between cases on reference to the Supreme Court before the 1992 Constitution and afterwards. It also cements the principle that a lower Court should not be quick to make a reference to the Supreme Court on every and any issue coming before it on a constitutional provision but must only do so on principles as stated above Page 14 of 18 The Supreme Court in the case of THE REPUBLIC VS. COURT OF APPEAL, CAPE COAST; EX-PARTE: GYAKYI QUAYSON AND MICHAEL ANKOMAH-NIMFAH AND THE ELECTORAL COMMISSION, CIVIL MOTION NO. J7/15/2022 quoted supra by counsel with the Court speaking through Honourable Chief Justice, Torkornu JSC stated as follows: "Thus when the Constitution provides for any position or activity as found under Article 130 (2), the Constitutional direction must be executed within the due process, mechanisms provided in other sources of law authorized by the same constitution." It also stated: "When the operation of law in our jurisdiction is properly understood this way, it is easy to appreciate that Article 130 (2) anticipates that for its directions to be activated, there will be properly regulated proceedings before a Court in which the Court has to decide on a question or matter relating to the interpretation of a Constitutional provision before the Court's duty to refer the matter to this Court under Article 130 (2) can arise." Again, in the case of REPUBLIC VS. HIGH COURT, CRIMINAL DIVISION 3, ACCRA; EX-PARTE: OLIVER MAWUSE BARKER-VORMAWOR cited by the counsel for Applicant where he was the Applicant, heard by the Supreme Court with reference number J5A/01/2024 dated 11th December 2024, the Applicant invoked the supervisory jurisdiction of the Supreme Court under Article 132 for an Order of Certiorari to be issued Page 15 of 18 against the High Court, Criminal Division 3 to quash its decision which purported to interpret Article 3 (3) of the 1992 Constitution instead of referring it to the Supreme Court. The question before that Court was whether Section 182 of Act 29 was inconsistent with Article 3 (2) of the Constitution. The apex Court presided over by the learned Professor H. J. A. N Mensah Bonsu JSC stated as follows: "It became apparent that the Applicant and the State had put rival meanings" The trial Court whose ruling was the subject of the application went ahead to give its ruling and determined that there was no need for a reference to the Supreme Court with the High Court seemingly adopting the position urged on it by the Republic. The Supreme Court by a majority decision of 4:1 held that: "The High Court was right to refuse the referral in the ruling of 27th May 2024 as no Constitutional issue arose as to the meaning of Article 3(3) in respect of Section

182 (b) of Act 29” As I have stated, counsel for the Applicant have ably quoted several decisions of the Supreme Court including urging upon this Court the dissenting opinion in the case of Ex-parte: Oliver Barker-Vormawor and not that of the majority decision. No doubt that dissenting opinions are equally worth considering and may one day be the voice of the majority, however, as it is trite, this Court is not bound by such a decision. To my surprise, none of these cases stated by counsel supports the case of the Applicant that this Court must make a reference to the Supreme Court because the Applicant seeks to challenge the constitutionality of the law under which he is being tried. The cases Page 16 of 18 rather clearly lay it bare that this present situation is not the kind for which a reference must be made to the Supreme Court by this Court. In this particular trial of the Applicant and others, and as enumerated above, the trial has proceeded with the Applicant himself having opened and closed his case, there has been no issue, ambiguity, question, reference to or controversy regarding the determination of any constitution provision in this trial. No issue has arisen in relation to any rival meanings placed on a constitutional provision and or any statute, no issue that will warrant a referral of this Court as required under Article 130 (2) and the C. I. 16 to the Supreme Court. Indeed, the first and only time the present counsel for A3 appeared in this case was for the announcement to be made that he had filed this application. There is no doubt that under Article 2 (1) of the Constitution and 130 (1) afore stated, the 3rd Accused/Applicant has the right to challenge the constitutionality of any enactment including SMCD 20 under which he is being tried. This is notwithstanding the fact that he has already opened his defence in this case especially as he did so without the services of a counsel. However, I would seek to reiterate the fact that having the right to enforce a provision of the Constitution or protect one’s right and freedoms is dependent on the processes or procedures or channel through which that the person takes or goes through in order to be rightly heard by a Court. In our traditional setting, notwithstanding how good ones case or story may be, one cannot see a chief or king ordinarily, unless he passes through the right person or body. In this case, the right article to invoke and follow may be Article 130 (1) and 2 (1) and not Article 130 (2) of the Constitution. Page 17 of 18 It is my candid opinion that no issue has arisen from any matter or question of law relating to the Constitution in this trial to warrant a reference to the Supreme Court for determination. As rightly stated by the learned State Attorney, the 3rd Accused/Applicant has his remedy in going under the original jurisdiction of the Supreme Court and issue a Writ in the procedure as required under the C. I. 16. With no application before me for Stay of Proceedings and no order of same from a Higher Court, I will dismiss this application and continue the trial by requesting A1 to open his defense. (SGD) JUSTICE MARIE-LOUISE SIMMONS (MRS) (JUSTICE OF THE HIGH COURT) COUNSEL: ABENA KONADU ADJEI (STATE ATTORNEY) FOR THE REPUBLIC. OLIVER BARKER VORMAWOR WITH EDEM TUSAH FOR THE 3RD ACCUSED/APPLICANT 1ST ACCUSED DEFENDS HIMSELF 2ND ACCUSED DEFEND HIMSELF 4TH ACCUSED ABSENT (ON BENCH WARRANT) Page 18 of 18

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