

GHANA / JUDGMENT

DR. AMANDA ODOI VRS THE SPEAKER OF PARLIAMENT (J1/13/2023) [2024] GHASC 20 (17 July 2024)

COURT
ghascDECIDED
17 July 2024

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IN THE SUPERIOR COURT OF JUDICATURE IN THE SUPREME COURT ACCRA- A.D. 2024
CORAM: SACEY TORKORNOO (MRS.) CJ (PRESIDING) OWUSU (MS.) JSC PROF. MENSA-BONSU
(MRS.) JSC GAEWU JSC DARKO ASARE JSC WRIT NO. J1/13/2023 17TH JULY, 2024 DR. AMANDA
ODOI PLAINTIFF/APPLICANT VRS 1.THE SPEAKER OF PARLIAMENT 1ST
DEFENDANT/RESPONDENT 2.THE ATTORNEY GENERAL 2ND DEFENDANT/
RESPONDENT

RULING

DARKO ASARE JSC (READ BY SACEY TORKORNOO CJ): By this application, the Plaintiff/
Applicant prays for an order of interlocutory injunction to restrain the 1st Defendant/
Respondent, the Clerk of Parliament and their respective agents, servants and assigns from
forwarding the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill
which was passed by Parliament on Wednesday February 28th, 2024 as the Human Sexual Rights
and Family Values Bill, 2024 (“the Bill”) to the President for his assent, pending the final
determination of this present suit. Page 1 of 8 This application rests on a writ which the Applicant
caused to be issued against the Respondents invoking the original jurisdiction of this Court for a
number of reliefs summed up at paragraph 22 of Applicant’s Statement of Case In Support of An
Application For The Interlocutory Injunction filed on the 7th of March 2024. Paragraph 22 reads
as follows:-

22. On 1st June 2023, the Applicant caused a Writ of Summons, suit no. J1/13/2023 (“the Suit”) to
be issued against the Respondent seeking orders of this Honourable Court to compel the 1st
Respondent to comply with the constitutional requirements in Article 108” To the extent
relevant for our decision, we shall distill the background facts into a brief narrative,
focusing on the essential elements that will inform our consideration and resolution of the
issues raised in this application. The gravamen of the application herein is set out in
Applicant’s supporting affidavit filed on the 7th of March 2024. Briefly stated, the Applicant’s

case is that prior to the introduction of the Private Member's Bill known as the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill into Parliament, the 1st Respondent contrary to the provisions of Article 108 of the 1992 Constitution, failed to provide an opinion on whether the Bill had the likely effect of imposing a charge on the Consolidated Fund or other public funds of Ghana. According to the Applicant, this constitutional aberration on the part of the 1st Respondent tainted the Bill with grave illegality, and rendered it incapable of being transmitted to the President for his assent. Applicant further averred that even though an initial similar application for an injunction had failed on the grounds that the Applicant had failed to make a prima facie case to restrain the work of Parliament in its "uncompleted form", this present application related to a completed Bill. Contending that the parliamentary processes governing the introduction and passage of the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill was Page 2 of 8 irredeemably tainted by grave constitutional breaches, the Applicant seeks by this instant application, an interim restraint on the 1st Respondent from presenting the Bill to the President for assent, to prevent the further constitutional violations. In his affidavit in opposition filed in response to this application, the 1st Respondent contended that the application was incompetent, an earlier application on the same facts and circumstances having been dismissed by this Court. 1st Respondent further deposed to the fact that all constitutional requirements governing the introduction and passage of the Bill had been fully complied with by Parliament, and that the Applicant was not vested with any right, either at law or in equity to seek to restrain Parliament from performing a constitutional duty. The 1st Respondent again denied that the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill contained any provision that would have resulted in a charge on the Consolidated Fund and further asserted that the necessary constitutional requirement for a prior opinion on potential charges was fully met. The application was further attacked by the 1st Respondent on the ground that it was a call on this Court to perpetuate an illegality by seeking to interfere with the President's exclusive constitutional discretion to decide whether or not to refuse to assent to the Bill. In the end, the 1st Respondent contended that the instant application was completely devoid of any merits as the Plaintiff had failed to satisfy any of the grounds on which the Court will grant such applications. The 2nd Defendant/Respondent filed an affidavit in opposition in which he essentially raised a number of legal issues he intended to canvass at the hearing of the application, including (i) whether this Court's jurisdiction had been properly invoked, (ii) whether there had been a violation of any constitutional provisions regarding the processes leading to the passage of the Bill and finally (iii) whether there had been any real allegations of constitutional violations of fundamental human rights. Page 3 of 8

ANALYSIS

In the case of Michael Ankomah-Nimfah v James Gyakyere Quayson & 2 Ors [Unreported; Writ No. J1/11/2022; 13th April 2022], this Court speaking with one voice through our brother Kulendi JSC asserted its jurisdiction to grant an injunction in deserving cases where the original jurisdiction

has been invoked. This is what he said:- “It is beyond dispute that this Court has jurisdiction to entertain injunction applications whenever its original jurisdiction is invoked.” It has also been well settled by a host of authorities that an injunctive order is a discretionary equitable remedy which will not be granted by the court, unless it is just and convenient to do so. Reference is made to the case of *Ekwam v Pianim* [No.1] [1996-97] SCGLR 117. It is also trite that an interlocutory injunction may be granted unconditionally or upon such terms and conditions as the court shall think just. Order 25 of the High Court Rules C.I. 47, which we apply, provides that:- “the court may grant an injunction by an interlocutory order in all cases in which it appears to the court to be just or convenient so to do, and the order may be made either unconditionally or upon such terms and conditions as the court considers just”. The principles upon which this Court will grant an injunction to restrain an alleged violation of a constitutional provision are also established and may not require any detailed re-statement in this delivery. In the case of *Welford Quarcoo v. Attorney-General* [2012] 1 SCGLR 259 at 260, this Court per Date Bah JSC stated as follows:- Page 4 of 8 “Where the relief sought relates, as here, to a public law matter, particular care must be taken not to halt action presumptively for the public good, unless there are very cogent reasons to do so, and provided also that any subsequent nullification of the impugned act or omission cannot restore the status quo.” It is also now well settled that the basic purpose of an interim order is to preserve the status quo, and as much as possible, to hold the balance evenly between the Parties pending the final resolution of matters in difference between them. The objective is to ensure that at the end of the day, the successful Party did not find that his victory was an empty one and further that the order does not work greater inconvenience to either Party than is reasonably or absolutely necessary. Reference is made to the case of *Odonkor v Amartei* (1987-1988) 1 GLR 578 and also the very instructive case of *18th July Ltd v Yehans International Ltd* [2012] 1 SCGLR 167. Turning now to relate the above legal principles to the facts on record, our first observation is that the crux of this application boils down to the resolution of two questions. First, whether prima facie, and at this stage at which the substantive action has not been heard, the case is sufficiently made that the procedures accompanying the introduction of the Human Sexual Rights and Family Values Bill, 2024 in Parliament reflected an egregious constitutional transgression warranting this Court's intervention; and second, whether the invitation for this Court's interference in the parliamentary processes regarding the passage of the said Bill and presentation for Presidential assent, would improperly encroach on the constitutional prerogatives of the legislative and executive branches. Now, given the questions raised for our resolution in this instant application, there is little doubt that they are substantially coterminous with the core issues arising from the reliefs endorsed on the Plaintiff's writ, demonstrating a shared identity of facts and legal considerations. Page 5 of 8. Meanwhile, Order 25, rule 5 (1) of C.I. 47 provides that where an application for an injunction or the appointment of a receiver or the making of orders under rules 2, 3, and 4 of the Order is heard before the trial of the cause or matter and it appears to the Court that “the matter in dispute can be better dealt with by an early trial than by considering the whole merits for the purposes of the application”, the Court may consider ordering an early trial. We have thoroughly reviewed all the material processes on the record in this application and we are convinced that the matters raised in this application can be better dealt with by obtaining all the facts through an early trial, than by

considering the peculiar merits of the purposes of this application at this time. We also hold the view that an early trial of the action will serve the cause of justice, in view of the fact that it will render a clearer view of the constitutional issues raised, than a sustained dispute over interlocutory matters. The presentation that the Parties are committed to completing the filing of processes in the substantive suit, bolsters our decision to consider both the interlocutory application and the substantive suit together, enabling this Court to deliver a more informed, comprehensive, and just decision that accounts for all relevant circumstances and factors in this important matter. Such a unified approach will further provide context and clarity and also afford a clearer understanding of the issues raised in this interlocutory matter and their impact on the main suit. Having therefore diligently analysed all the material processes on the record in this instant application and listened to oral submissions by learned Counsel for the Parties, our decision is to reserve our verdict on the interlocutory application until the final determination of the substantive suit, at which point we will render a comprehensive judgment that addresses all aspects of the case, including the current interlocutory application. Page 6 of 8 In conclusion, the decision of this Court on this instant application for an interlocutory injunction is hereby deferred to abide the outcome of the determination of the substantive suit. (SGD) Y. DARKO ASARE (JUSTICE OF THE SUPREME COURT) (SGD) G. SACEY TORKORNOO (MRS.) (CHIEF JUSTICE) (SGD) M. OWUSU (JUSTICE OF THE SUPREME COURT) (SGD) PROF. H.J.A.N. MENSA-BONSU (MRS.) (JUSTICE OF THE SUPREME COURT) (SGD) E. Y. GAEWU (JUSTICE OF THE SUPREME COURT) Page 7 of 8 COUNSEL DR. ERNEST ARKO ESQ. FOR THE PLAINTIFF/ APPLICANT WITH HIM, JULIA ARYEE & BENEDICT NII KRAKU. THADDEUS SORY ESQ. FOR THE 1ST DEFENDANT/RESPONDENT WITH HIM, RAPHAEL BANAANGMEN & NANA BOAKYE MENSAH-BONSU. GODFRED YEBOAH DAME (ATTORNEY-GENERAL) FOR THE 2ND DEFENDANT/RESPONDENT WITH HIM, YVONNE ATTAKORA OBUOBISA (DIRECTOR, PUBLIC PROSECUTION), RICHARD GYAMBIBY (PRINCIPAL STATE ATTORNEY) & GEORGE SACEY (PRINCIPAL STATE ATTORNEY). Page 8 of 8

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Prepared on 26 October 2026 · Esheria