**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**GHANA**

**CORAM: AKUFFO JSC (PRESIDING)**

**BROBBEY JSC**

**DATE-BAH JSC**

**ANSAH JSC**

**ADINYIRA [MRS] JSC**

**ANIN YEBOAH JSC**

**ARYEETEY JSC**

**GBADEGBE JSC**

**AKOTO-BAMFO [MRS.] JSC**

**WRIT NO. J1/3/2010**

**6TH APRIL, 2011**

**COMMISION ON HUMAN RIGHT AND ADMINISTRATIVE JUSTICE } PLAINTIFF**

**VRS.**

**1. THE ATTORNEY GENERAL }**

**2. BABA KAMARA } DEFENDANTS**

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**J U D G M E N T**

**SOPHIA A. B. AKUFFO, JSC**

On February 8th 2011, we overruled the preliminary objections raised by the 2nd Defendant herein and stated that the reasons therefor will be incorporated in our judgment on the substantive matter. In this opinion, therefore, I will deal with our reasons for overruling the objection as well express, very briefly, my views on the substantive matter in respect of which the unanimous decision of the court is fully reflected in the judgment by our highly esteemed brother, Dr. Date-Bah, JSC.

## Brief Background

The background facts of this case are set out in greater detail in Justice Date-Bah's judgement, and here, I will only make reference to such factual details as are, in my view, necessary for giving adequate perspective to the ruling on the preliminary objection.

By a writ filed on May 26th 2010, by the Commission for Human Rights and Administrative Justice (hereinafter referred to as 'CHRAJ' or 'the Plaintiff') against the Attorney General (hereinafter referred to as the 'AG' or 'the 1st Defendant) and Mr. Baba Kamara (hereinafter referred to as 'the 2nd Defendant') the Plaintiff prayed the Court for the following reliefs:-

> 'a. A declaration that upon a true and proper construction and/or interpretation of Article 218(e) of the Constitution ... the Commission on Human Rights and Administrative Justice has the mandate to investigate a private individual, entity and/or person who is alleged to be involved or implicated in an act of bribery or corruption allegedly committed (by) a public official or officials and who is/are being investigated by the Commission.
>
> b. A declaration that on a true and proper interpretation of Article 218(e) of the 1992 Constitution, the mandate of the Commission on Human Rights and Administrative Justice 'to investigate all instances of alleged or suspected corruption and misappropriation of public moneys by officials' covers situations in which an individual, entity and/or person though not a 'public official' is alleged to be involved or implicated in an act of alleged bribery or corruption involving public officials and which is under investigation by the Commission.'

It is not in controversy that the instant writ arose out of investigative proceedings commenced by CHRAJ into alleged acts of bribery and corruption involving

certain persons who, at the material times, were public officials, and the 2nd Defendant. The 2nd Defendant, who at all times material to the matter under investigation had been a private businessman, challenged the jurisdiction of CHRAJ to investigate him on the grounds that, by the provisions of Article 218(e) CHRAJ had the mandate to investigate only public officials and not private citizens such as himself. On the basis of this challenge the 2nd Defendant refused to submit himself to CHRAJ and, consequently, CHRAJ brought the instant suit.

**The Preliminary Objection**

On November 8th 2010, the 2nd Defendant filed a Notice of Preliminary Objection raising an objection against this court's continued hearing of the case filed by CHRAJ, on the grounds that:-

a. The action is moot because, in a matter that came before the High Court on an application for an Order of Prohibition, in suit no. HRCM 46/10, Republic v. Kwame Peprah, **Alhaji Baba Kamara**, Alhaji Boniface Saddique, Brig-Gen. Lord Attivor and Dr. Ato Quarshie, the High Court prohibited the Plaintiff from investigating 2nd Defendant *and consequently*,
b. There is no useful purpose to be served by hearing the action and the same should therefore be dismissed.

However, in the Statement of Case in support of the preliminary objection, the 2nd Defendant, without prior notice or leave of the Court, added and argued another ground of objection that:-

> 'Before one can invoke the original jurisdiction of this court under article 2(1) (b) of the Constitution of the Republic of Ghana, it has to be shown that an act or omission has been done by a person be it a corporate person or an individual which breaches a particular constitutional provision. In the present case there is no act or omission of the 2nd Defendant which can be said to be a breach of the Constitution.'

We were somewhat tempted to ignore this additional ground of preliminary objection which was added without due form. However, since it raised a fundamental question of whether or not the court's original jurisdiction had been properly invoked, we shall deal with it, albeit only briefly, after considering the original grounds as notified, which are, effectively, one ground, i.e. whether or not the matter was moot, in the light of the said High Court judgement.

**Mootness**

In the Statement of Case in support of this ground of objection, (and also from the judgment and order of the High Court dated 11th June 2010, on the said application) it is evident that the matter came before the High Court by way of an application to prohibit CHRAJ from continuing with the aforesaid investigative

hearings because, notwithstanding the pendency of the same investigations, according to the 2nd Defendant's said Statement of Case, the Commissioner for CHRAJ, "... Commissioner Short, speaking on behalf of the Plaintiff granted an extensive interview on Metropolitan Television, a television station which by virtue of being on the internet has a global reach in which the said Commissioner Short made very prejudicial comments about 2nd Defendant and the other Applicants".

There is no dispute that the application was successful, and that the learned High Court Judge did make an order prohibiting CHRAJ from continuing with the investigations on the ground of bias, which decision is on appeal in the Court of Appeal. Does this make the matter moot?

It was argued on behalf of the 2nd Defendant herein that, in view of the fact that, as at the time, CHRAJ was prohibited from investigating him and, until the said decision of the High Court is set aside, any decision given by this court would be moot, no useful purpose would be served by continuing with the hearing of the suit. In support of this contention, the 2nd Defendant referred to the celebrated case of **Bilson v. Attorney General, (1993-1994) 1 GLR 104**.

However, it is noteworthy that upon a close analysis of the decision in Bilson, it is discernible that the primary basis for the court's conclusion was that:-

> ".... Since on the pleadings, the plaintiff was seeking a declaration in a vacuum, his writ had not disclosed any cause of action."

In this case can one rightly say that CHRAJ is seeking a declaration in a vacuum? As is evident from the 2nd Defendant's own Statement of Case in support of the preliminary objection, the action herein arose as a direct result of his objection to CHRAJ's assumption of jurisdiction to investigate him, a private person (in the course of an investigation into incidents of alleged or suspected corruption by certain public officials), and his refusal to submit himself to such investigations. Therefore, the action herein is within the context of a dispute or controversy between CHRAJ and the 2nd Defendant regarding the scope of CHRAJ's constitutional mandate under article 218(e). As such, therefore, the mere fact that, the Plaintiff herein might be, forever, unable to investigate the 2nd Defendant, in the event the Order of Prohibition is upheld on appeal, cannot render this present matter moot. Mootness must always be determined according to the peculiar circumstances of each case and even where the question at issue in a particular case might have been overtaken by events and rendered moot, yet, the court may still proceed to determine the issue if it is anticipated that it is likely to be a recurring one. It was noted by the esteemed Acquah JSC (as he then was, of blessed memory) in **Amidu v Kufuor [2001-2002] 2 SCGLR 86 at 106** that:-

> ".... As defined in Black's Law Dictionary (6th ed.), an action is generally considered moot when it no longer presents a **justiciable** controversy because issues involved have become academic or dead. This may happen when the matter in dispute has either been resolved already and hence there is no need for judicial intervention, or events happening thereafter have rendered the issue no longer live. In either situation, unless the issue is a recurring one and likely to be raised again between the parties, the courts would not entertain such a dead issue." (my emphasis)

Whilst we do not intend to anticipate or prejudge the outcome of the Plaintiff's appeal, yet, to the extent that there is a possibility of the matter between the Plaintiff and the 2nd Defendant herein raising its head again, we cannot in this instance conclude that it no longer presents a justiciable controversy. Furthermore, in our view, the interpretation of a constitutional provision does not affect only the parties before the court, or relate only to the case in which it arose (particularly in a matter such as this, which involves the scope of the mandate of a constitutional body in the performance of one its constitutionally assigned functions). Rather, it has an intimate and indelible impact on such provision and all subsequent proceedings thereunder; unless and until such interpretation is varied by this Court or such provision is duly amended by the legislature. The note of caution expressed by the learned Kpegah, JSC., in Bilson v. The Attorney General (supra, at page 110) still holds true that:-

> "The judicial authority of which this court is the beneficiary or endowed with is essentially a jurisdiction to deal with real or substantial disputes which affect the legal rights or obligations of parties who appear before us, and whose interests are adverse to each other. These competing interests will necessarily call for specific reliefs through conclusive and certain judicial decree or decrees. In these circumstances the matter could be said to be justiciable and not otherwise. The principle of justiciability precludes us from giving advisory opinions based on hypothetical facts which are not part of an existing controversy."

However, our view is that, in the instant matter, there is nothing hypothetical about the task we have been called upon to perform. Hence, unlike the circumstances underlying Bilson v The Attorney General, we are not being called upon to undertake an academic exercise of no practical significance, or merely render an advisory opinion in a vacuum. Consequently, the matter before the court was not rendered moot by the judgement of the High Court or for any reason whatsoever.

**Jurisdiction**

In his Statement of Case in support of the Preliminary Objection herein, the 2nd Defendant asserted that 'before one invokes the original jurisdiction of this court under article 2(1) of the Constitution, it is mandatory and a condition precedent that there has to be an act or omission of a person complained of which said act or omission is said to be unconstitutional and by implication a breach of a particular provision of the constitution'. He, therefore, submitted that:-

a. when properly invoked Article 2(1) (b) should be invoked 'together with a failure of an identifiable constitutional provision' because article 2(1) (b) 'is the vehicle by which a breach of a constitutional provision is remedied, and in this matter the plaintiff does not allege any such breach.

b. article 130 only provides the venue where one goes for a remedy and, therefore, insofar as CHRAJ does not show that any particular Article of the constitution has been breached, the writ is misconceived.

In support of these submissions, the 2nd Defendant referred to **Bilson v. Apaloo, [1981] GLR 24**, **New Patriotic Party v. National Democratic Congress, [2000] SCGLR 461** and **National Democratic Congress v. Electoral Commission, [2001-2002] SCGLR 954** and concluded that, since the '2nd Defendant has not engaged in any positive act or omission which can be said to be a breach of an Article of the Constitution we urge this court to dismiss the writ on this ground.' It is our view that these authorities are not entirely relevant to the resolution of the issue arising in this aspect of the matter before us.

Article 2(1) (b) of the Constitution reads as follows:-

> "(1) A person who alleges that -
>
> (a) ….
>
> (b) any act or omission of any person;
>
> is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect"

And article 130(1) provides that:-

> "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."

In its Statement of Case in response to the 2nd Defendant's statement in support of the Preliminary Objection, the Plaintiff sought, in part, to assert that the 2nd Defendant's refusal to submit to its jurisdiction is tantamount to an act or omission on the part of the 2nd Defendant. The Plaintiff, therefore, contended, inter alia, that '...by resisting the Plaintiff's constitutional mandate to investigate him and refusing to 'submit himself to the Plaintiff's jurisdiction', the 2nd Defendant undermined the very letter and spirit of article 218 of the constitutional provision that confers the mandate on the Plaintiff to investigate all instances of alleged [corruption].' With all due respect to counsel for the Plaintiff, this submission may be stretching matters rather too far. When a person denies the jurisdiction or the mandate of a person does such denial constitute a breach or contravention of the constitutional or statutory provision under which the mandate is claimed? The answer is 'no'. Rather, what such denial does is to create a controversy as to the proper meaning of the provision.

Indeed, it is very clear from the instant writ and the pleadings that, although the Plaintiff places its action under both articles 2(1) and 130(1)(a) of the Constitution, in fact, the action is, essentially, for the interpretation of article 218(e) rather than one for enforcement *in stricto sensu*, although it is arguable that every action for interpretation of a provision of the Constitution is also one for assuring the effective application of that provision and, therefore, in the long, run its enforcement. It is now a trite observation that articles 2(1) and 130(1) are two sides of the same coin. Article 2(1) establishes the principle that where the general enforcement of the supreme law of the land is concerned, a person may bring an action directly to this court (subject of course to the High Court's specific jurisdiction under article 33), and article 130 (1) establishes the Supreme Court's original jurisdiction over certain specific matters. The exclusive original jurisdiction to interpret the Constitution is one such specific matter that has been placed under the original jurisdiction of the court. And whilst there are various fences that have been built over the years to forestall the abuse of process, interpretation of the Constitution still remains a distinct part of the exclusive original jurisdiction of this court and, in relevant cases, may be invoked separately or (as is often done) in conjunction with the enforcement jurisdiction.

The guiding principles for our exercising our interpretative jurisdiction were encapsulated long time ago in The Republic v. Special Tribunal; Ex Parte Akosah, [1980] GLR 592, wherein the Court of Appeal, per Anin, J.A., after reviewing the existing case law, summarised the position as follows:-

> "... an issue of enforcement or interpretation of a provision of the Constitution... [arises] in any of the following eventualities:

(a) where the words of the provision are imprecise or unclear or ambiguous. Put in another way, it arises if one party invites the court to declare that the words of the article have a double meaning or are obscure or else mean something different from or more than what they say;

(b) where rival meanings have been placed by the litigants on the words of any provision of the Constitution;

(c) where there is a conflict in the meaning and effect of two or more articles of the Constitution, and the question is raised as to which provision shall prevail;

(d) where on the face of the provisions there is a conflict between the operation of particular institutions set up under the Constitution and thereby raising problems of enforcement and of interpretation.

From the pleadings filed in the case, and even from the 2nd Defendant's Statement of Case in support of the Preliminary Objection, it is evident that the crux of the matter between the parties herein is the proper meaning of article 218(e). From its Statement of Case, the Plaintiff is convinced, for stated legal reasons, that when it is performing its duty investigating alleged or suspected corruption by public officials, the scope of its mandate under article 218(e) includes the investigation of private persons, individuals or entities that are involved or implicated in the alleged or suspected corruption. On the other hand the 2nd Defendant, from his Statement of Case, is equally convinced that, since at all material times, he had not been a public official, CHRAJ cannot, under any circumstances, investigate him for corruption and that, at best, if the State is inclined to investigate him, there are other statutory courses of action it may take to bring him to account. If this situation does not raise a controversy concerning the interpretation of a constitutional provision we do not know what does. It gives rise to a proper recourse to the interpretative jurisdiction of this court, to settle the matter once and for all. It is only after an authoritative interpretation of this provision that the scope of Plaintiff's mandate under article 218 (particularly with regard to private persons) would be clarified, the controversy between the Plaintiff and the 2nd Defendant resolved and future such disputations forestalled.

Furthermore, CHRAJ is a constitutional body whose existence and mandate are prescribed within specific provisions of the Constitution. It is charged under article 218 with responsibility to perform certain functions which are essential to good governance and healthy national development. Included in these functions is the investigation of "*...all instances of alleged or suspected corruption....*" If in the course of carrying out this function, or indeed any of its other functions, the scope of its mandate is challenged, to the extent that a person CHRAJ wishes to include

in its investigations refuses to subject himself to its jurisdiction, what ought to be the prudent course of action for CHRAJ to take? Should it abandon the investigation of that person, even though it is convinced that it has the constitutional mandate to include that person in the investigation? Should it proceed with the investigation in the teeth of the person's objections and contentions? even if, in the circumstances, protracted litigation, at the needless expense of the taxpayer, might result from such a course of action? In the circumstances, we believe that, the reasonable and proper course of action open to CHRAJ is what it has taken and, therefore, we found that the court's interpretative jurisdiction under article 130(1) has been properly invoked.

**The Substantive Matter**

I join my learned brethren in supporting the judgment of my esteemed brother Justice Date-Bah. All I wish to add is a reminder to all that a national Constitution is a crucial and valuable tool for sound socio-economic development. It is for this reason that, in order to foster a well balanced society, the Constitution, whilst affording to the individual far-reaching rights and freedoms also imposes on the individual certain duties. Thus in the Chapter 6, dealing with the Directive Principles of State Policy, the Constitution in article 37(1) declares certain social objectives which remain as fresh and pertinent as they did when they were first adopted, i.e.:-

> "The State shall endeavour to secure and protect a social order founded on the ideals and principles of **freedom, equality, justice, probity, and accountability as enshrined in Chapter 5 of this Constitution**; and in particular, the State shall direct its policy towards ensuring that every citizen has equality of rights, obligations and opportunities before the law." (my emphasis)

The Constitution then proceeds, in article 41, to spell out, broadly, the concomitant duties of a citizen of Ghana, which include the duty:-

> "to promote the prestige and good name of Ghana ....
>
> "to uphold and defend [the] Constitution and the law....
>
> "to respect the rights, freedoms and legitimate interests of others, and generally refrain from doing acts detrimental to the welfare of other persons;
>
> "to work conscientiously in his lawfully chosen occupation...."

Corruption is most inimical because it militates against the rights and freedoms of others and all sound principles of good governance. It is now generally considered, by all right thinking persons, to be a practice which raises serious moral and

political concerns, undermines good governance and economic development, and distorts competitive conditions. On the part of participating citizens, it amounts to a dereliction of the abovementioned constitutional duties because it has a tendency to distort and even destroy the national potential for the realisation of the ideals and principles declared in article 37. It is a real threat to the enjoyment of the wealth of the nation, by each citizen, in that it gives unfair advantage to the undeserving, whilst stultifying healthy competition. The high costs of public sector procurement of services, provisions and facilities are often the result of prices that have been inflated through corruption and corrupt practices.

It is in recognition of the nexus between transparency (honest dealing and ethical conduct) and the desired social order enshrined in the Constitution, that CHRAJ was established by the Constitution itself as one of the key institutional mechanisms for assuring a level playing field for all in the enjoyment of the benefits that would flow from a nation run on sound constitutional principles. For the court to accept the 2nd Defendant's invitation to place a narrow interpretation on the language of article 218(e), would amount to doing grave damage to both the language and purpose of the provision and would also result in placing on CHRAJ functional limitations that are not justified by the ideals and principles underlying the Constitution and so clearly expressed in the Directive Principles. Article 218(e) includes in the functions of CHRAJ, the duty to:-

> "... investigate **all instances** of alleged or suspected corruption and the misappropriation of public funds by officials and to take appropriate steps, including reports to the Attorney General and the Auditor General, resulting from such investigations."

If in the course of investigating an instance of alleged or suspected corruption by public officials a member of the private sector (natural or corporate) becomes enmeshed in the matter, CHRAJ will be duty bound to extend the scope of its investigation to cover the activities of such person, in order to plumb the full and true depth of the instance of 'alleged or suspected corruption ... by officials'. It would be derogating from the duty imposed on it by article 218(e) to draw any such artificial lines and boundaries as have been contended by the 2nd Defendant.

In the light of the foregoing, and also for the more extensive reasons set out in Justice Date-Bah's judgment, this court will grant to the Plaintiff the reliefs endorsed on its writ herein and grant the declarations as prayed.

**SOPHIA A. B. AKUFFO [MS.]**

**JUSTICE OF THE SUPREME COURT**

**DR. DATE BAH JSC:**

**Introduction**

On the 8th of February 2011, this Court dismissed a preliminary objection to this Court hearing this action. The objection had been raised on behalf of the Second Defendant**.** The court indicated that it would give its reasons for overruling the objection today. The court laid out these reasons in the judgment just delivered of the esteemed President of this Court, Her Ladyship Sophia Akuffo JSC. My own judgment will deal exclusively with the substantive action before this court. It is delivered on behalf of the whole court.

The facts of this case cry out for purposive interpretation of the enactment in issue. Section 10(4) of the Interpretation Act, 2009 (Act 792) constitutes a legislative stamp of approval of that approach to judicial interpretation. It has indeed become entrenched in this jurisdiction. The section provides as follows:

> "Without prejudice to any other provision of this section, a Court shall construe or interpret a provision of the Constitution or any other law in a manner
>
> (a) that promotes the rule of law and the values of good governance,
>
> (b) that advances human rights and fundamental freedoms,
>
> (c) that permits the creative development of the provisions of the Constitution and the laws of Ghana, and
>
> (d) that avoids technicalities and niceties of form and language which defeats the purpose and spirit of the Constitution and the laws of Ghana."

In my judgment in the recent case of *Brown v Attorney-General* **(**unreported judgment of the Supreme Court with suit number J1/1/2009, delivered on 3rd

February 2010), I endeavoured to highlight some of the recent judgments of this court which apply a purposive approach to interpretation, as follows:

> "As I said in *Asare v The Attorney-General* [2003-2004] SCGLR 823 at p. 834, when delivering the unanimous view of the Supreme Court:
>
> > "The subjective **purpose of a constitution or statute is the actual intent that the authors of it, namely, the framers of the constitution or the legislature, respectively, had at the time of the making of the constitution or the statute. On the** other hand, the objective purpose is not what the author actually intended but rather what a hypothetical reasonable author would have intended, given the context of the underlying legal system, history and values, etc. of the society for which he is making law. This objective purpose will thus usually be interpreted to include the realisation, through the given legal text, of the fundamental or core values of the legal system."

In consonance with this approach, this Court held in *Agyei Twum v Attorney-General and Anor* [2005-2006] SCGLR 732 that where a literal reading of a constitutional provision would lead to an absurd result or to undesirable public policy consequences which are incompatible with the core values of the Constitution, this Court would apply a purposive approach to reach an interpretative result more in tune with the core values of the Constitution. From the following other recent judgments of this Court (decided within the last decade), it can now be safely asserted that, in the right context, the preferred approach of this Court to constitutional interpretation is the purposive: *NPP v Attorney-General (CIBA case)* [1997-98] GLR 378, especially at p. 386 per Bamford-Addo JSC ; *Sam No.2 v Attorney-General* [2000] SCGLR 305, especially at p. 523 per Bamford-Addo JSC; *Apaloo v Electoral Commission* [2001-2002]

SCGLR 1, especially at pp. 12 and 19-22 per Bamford-Addo JSC, and pp. 38-39 per Kpegah JSC; *Republic v Yebbi & Avalifo* [2000] SCGLR 149, especially at p. 159 per Acquah JSC, as he then was; *Ampofo v CHRAJ* [2005-2006] SCGLR 227, especially at pp. 236-237 per Twum JSC and at p. 237, per Date-Bah JSC; *Omaboe III v Attorney-General & Lands Commission* [2005-2006] SCGLR 579, especially at pp. 589 and 592 per Modibo Ocran JSC; *Ghana Lotto Operators v National Lottery Authority* [2007-2008] SCGLR 1088; *Mettle-Nunoo v Electoral Commission* [2007-2008] SCGLR 1250, especially at p. 1261 per curiam; *Republic v High Court (Fast Track Division) Accra; Ex parte CHRAJ (Anane Interested Party)* [2007-2008] SCGLR 213; *Republic v High Court, Accra; ex parte Yalley (Gyane & Attor, Interested Parties)* 2007-2008] SCGLR 512 per Wood CJ and per curiam; *Republic v High Court, Accra (Commercial Division); ex parte Hesse* [2007-2008] SCGLR 1230 per Wood CJ and per curiam; *Danso-Acheampong v Attorney-General & Abodakpi (*Unreported Supreme Court Judgment of 5th November 2008, Suit No. J1/3/2007, to be reported in [2009] SCGLR 453, especially at pp. 458-9; *Republic v High Court, Sunyani, Ex parte Dauda,(Boakye-Boateng, Interested Party)* unreported Supreme Court decision of 8th April 2009 (Civil Motion No. J5/12/2009) to be reported in [2009] SCGLR 545; *Republic v High Court, Koforidua; Ex parte Asare (Baba Jamal and Ors Interested Parties)*, Civil Motion No. J5/23/2009, unreported judgment of the Supreme Court delivered on 15th July 2009, to be reported in [2009] SCGLR 545, where Atuguba JSC quoted with approval the following passage from the judgment of Acquah JSC, as he then was, in *National Media Commission v Attorney-General* [2000] SCGLR 1 at p. 11:

> "Accordingly, in interpreting the Constitution, care must be taken to ensure that all the provisions work together as parts of a functioning whole. The parts must fit together logically to form rational, internally consistent framework. And because the framework has a purpose, the parts are also to work dynamically, each contributing towards accomplishing the intended goal."

The purposive approach permeates the other judgments read in the case. The approach of this Court, reflected in this long (but not exhaustive) line of recent cases, set out above, is summed up well by Prof. Ocran JSC in *Omaboe III v Attorney-General & Lands Commission* (*supra*) where he says (at p. 592):

> "We hereby recognise, as we did in the *Asare* case, the utility of the purposive approach to the interpretation of the Constitution, but with the clear understanding that it does not rule out the legitimacy of other techniques of interpretation in appropriate circumstances".

In this inclination towards purposive interpretation in the right context, this Court is in the good and illustrious company of several outstanding apex courts of Commonwealth jurisdictions. In *Republic v High Court (Fast Track Division) Accra; Ex Parte Commission on Human Rights and Administrative Justice (Richard Anane Interested Party)* [2007-2008] SCGLR 213, I cited the case of *S v Makwanyane* (1995) 3 S.A. 391 (CC) to illustrate the approach of the South African Constitutional Court. In this case, I would like to refer to the Indian Supreme Court case of *S.R. Chaudhuri v State of Punjab*. AIR 2001

S.C.2707, where the court observed (at p. 2717, quoted in Jain, Indian Constitutional Law, 2009, at p. 1568):

> "Constitutional provisions are required to be understood and interpreted with an object oriented approach. A Constitution must not be construed in a narrow and pedantic sense. The words used may be general in terms but, their full impact and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve. We must remember that a Constitution is not just a document in solemn form, but a living framework for the Government of the people exhibiting a sufficient degree of cohesion and its successful working depends upon the democratic spirit underlying it being respected in letter and spirit."

The second apex court to whose purposive approach I would like to make a brief reference is the High Court of Australia which, in *Nationwide News Pty. Ltd. v Wills* (1992) 177 CLR 1, held that freedom of political discussion was part of the basic structure of the Australian Constitution and therefore an implied fundamental right even though the Australian Constitution does not contain a Bill of Rights. It accordingly declared unconstitutional an Australian statute that infringed this freedom."

In spite of the statutory provision and the overwhelming weight of the case law referred to above, the second defendant in this case has urged this court in his Statement of Case "to adopt the literal approach and decline the invitation by Plaintiff to interpret the provision of Article 218(e) by adding private person to the

category of persons who are to be investigated." This unsustainable position of the second defendant necessitates further discussion of this matter of the right interpretative approach for this court to adopt in this case. But before proceeding to engage in that discussion, I will first set out the facts in this case.

**The facts**

The plaintiff is an independent body that Parliament has, under an authority conferred on it by article 216 of the 1992 Constitution, established to protect human rights, to serve as an ombudsman and to fight corruption. Purporting to exercise its mandate under article 218 of the Constitution to investigate alleged or suspected corruption, the plaintiff commenced investigations into alleged or suspected acts of bribery and corruption involving the second defendant and others. All the others were public officers at the time of the alleged or suspected acts of corruption.

The allegations of corruption referred to above were made during investigations by the United Kingdom's Serious Fraud Office into the overseas business operations of Mabey and Johnson, (hereafter referred to simply as "M & J") a privately-owned British engineering company, in various countries, including Ghana. A series of disclosures, admissions of facts and pleas of guilty by this British company resulted in its conviction in the unreported case of *Regina v Mabey and John*son *Limited* and to a sentence hearing on 25th September 2009 before the Southwark Crown Court in London. The plaintiff has put the transcript of the proceedings of this Sentence Hearing into evidence before this court. In these proceedings, counsel for the Crown alleged that:

> "But in the cases of Ghana and Jamaica agents employed or paid commissions were not only paid legitimate commissions but were paid other funds by Mabey and Johnson, either for their own uses or in order to pass on to politicians or civil servants. Direct bribes were deducted from the overall commission to be paid to the agent with

> respect to Jamaica, and equally direct bribes were generally deducted from the agent's commission for Ghana. In short, the Serious Fraud Office's case is that the company in those jurisdictions employed known bribers as agents."

The SFO further alleged that a notional fund of 750,000 pounds was created by M & J from which it paid bribes amounting to 470,792.60 pounds to some Ghanaian public officials in order to secure contracts in Ghana.

The Sentence Hearing referred to above and the Prosecution Opening Note, which was also put in evidence before this court, are, of course, in the public domain. Consequently, the Ghanaian media gained access to them. Considerable discussion of them was generated. The plaintiff has indicated that it was on the basis of various publications and discussions of these allegations in the Ghanaian media that it commenced investigations into the conduct of the second defendant and six other persons. Also the Coalition for Democratic Forces ("CDF"), in a complaint dated 12th October, 2009, requested the plaintiff to "investigate the circumstances in which [ M & J] won its contract in the country, all activities that [M & J] was involved in, and all officials who one way or the order (*sic)* had dealings with [M & J]…" The President of the Republic also invited the plaintiff, by a letter of 13th October, 2009, written on his behalf by the Secretary to the President, to undertake a thorough investigation of the M & J matter.

The second defendant is currently the High Commissioner of Ghana to Nigeria. He asserts that prior to his appointment to that public office he had never held public office and had never been a public official. Until the said appointment, he was the Managing Director of Kamara Limited, a construction company. By a letter dated the 4th November, 2009, the plaintiff informed the second defendant that it was " investigating allegations of corruption against some public officials in Ghana, including you." It provided particulars of the allegations of corruption against the second defendant as follows:

i. "M & J created a notional fund of about £750,000 which was called the Ghana Development fund, from which direct payments to public officials, both elected politicians and civil servants, in Ghana were made in order to secure and maintain contracts in Ghana;
ii. You were an agent of M & J in Ghana;
iii. That you introduced M & J to Mr. Kwame Pepra, then Minister for Finance;
iv. You were the political overseer for the Ministry for Roads and Highways;
v. As agent of M & J you influenced the allocation of an extra 1.3 million sterling for the Tano Bridge and 4.5 million allocations for the Priority Bridge Programme, and
vi. You were paid commissions typically ranging between 5 and 15 per cent of a contract price, which commissions included direct bribes meant for some public officials in Ghana."

The letter requested the second defendant to submit to the plaintiff his comments and any relevant documents or information on these allegations.

On receipt of this letter, the second defendant by a letter dated 19th November, 2009 protested that he was not a public officer between 1993 and 2000. He informed the plaintiff that Kamara Limited, of which he was the Managing Director, was, until his appointment as High Commissioner, the agent of M & J. He indicated that he was unaware of any position known as 'Political Overseer' in the Ministry of Roads and Transport and that he had never held any such position. He further informed the plaintiff that until the termination of the agency, his company had provided services required of it to M & J.

It is because of the second defendant's objection to the jurisdiction claimed by the plaintiff to investigate him in connection with the M & J allegations that the

plaintiff issued a writ on 24th May 2010 to invoke the original jurisdiction of this court to grant the following reliefs:

1. "A declaration that upon a true and proper construction and/or interpretation of article 218 of the Constitution 1992 of the Republic of Ghana, the Commission On Human Rights and Administrative Justice has the mandate to investigate a private individual, entity and/or person who is alleged to be to be *(sic)* involved or implicated in an act of bribery or corruption allegedly committed a *(sic)* public official or officials and who is/are being investigated by the Commission.
2. A declaration that on a true and proper interpretation of articles 218(e) of the 1992 Constitution, the mandate of the Commission On Human Rights and Administrative Justice "to investigate all instances of alleged or suspected corruption and misappropriation of public moneys by officials" covers situations in which an individual, entity and/or person though not a "public official" is alleged to be involved or implicated in an act of alleged bribery or corruption involving public officials and which is under investigation by the Commission."

**The Law**

The constitutional provision which needs to be interpreted in order to decide this case is thus Article 218 of the 1992 Constitution which reads as follows:

> "The functions of the Commission shall be defined and prescribed by Act of Parliament and shall include the duty
>
> > (a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and

unfair treatment of any person by a public officer in the exercise of his official duties;

(b) to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the Armed Forces, the Police Service and the Prisons Service in so far as complaints relate to the failure to achieve a balanced structuring of those services or equal access by all to the recruitment of those services or fair administration in relation to those service;

(c) to investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under this Constitution.

(d) to take appropriate action to call for the remedying, correction and reversal of instances specified in paragraphs (a), (b) and (c) of this clause through such means as are fair, proper and effective, including -

(i) negotiation and compromise between the parties concerned;

(ii) causing the complaint and its finding on it to be reported to the superior of an offending person;

(iii) bringing proceedings in a competent Court for a remedy to secure the termination of the

offending action or conduct, or the abandonment or alteration of the offending procedures; and

(iv) bringing proceedings to restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or other wise ultra vires;

(e) to investigate all instances of alleged or suspected corruption and the misappropriation of public moneys by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigations;

(f) to educate the public as to human rights and freedoms by such means as the Commissioner may decide, including publications, lectures and symposia; and

(g) to report annually to Parliament on the performance of its functions."

Before considering the literal approach recommended by the Second Defendant for the interpretation of this provision, we would like to quote a few judicial dicta from the English jurisdiction which manifest this approach. In *R v City of London Court Judge* [1892] 1QB 273 at p. 290, Lord Esher MR said: "If the words of an Act are clear, you must follow them, even though they lead to a manifest absurdity. The court has nothing to do with the question whether the legislature has committed an absurdity." Similarly, Lord Goddard CJ said in *R.v Wimbledon*

*Justices, ex p. Derwent* [[1953] 1 QB 380 at 384: "A court cannot add words to a statute or read words into it which are not there." Finally, Lord Parker CJ said in *R v Oakes* [1959] 2 QB 350 at 354 that: "It seems to this court that wh*ere* the literal reading of a statute…produces an intelligible result, clearly there is no ground for reading in words or changing words according to what may be the supposed intention of Parliament."

All these *dicta* reflect the literal approach to interpretation which requires that the literal meaning of an enactment be applied, no matter the consequences and however unlikely it is that these consequences were intended by Parliament or the framers of the Constitution. By the "literal meaning" is here meant the grammatical meaning. This grammatical meaning of an enactment is, according to Bennion in his Statutory Interpretation, 4th Edition, p. 382: "its linguistic meaning taken in isolation from legal considerations, that is the meaning it bears when, as a piece of English prose, it is construed according to the rules and usages of grammar, syntax and punctuation, and the accepted linguistic canons of construction."

It has, however, never been the generally accepted common law position to apply this literal approach alone to interpretation, because even before the modern trend towards purposive interpretation, the traditional learning on statutory interpretation was that it was aided by three rules of interpretation: the literal rule; the golden rule; and the mischief rule. We do not consider it necessary to re-hash the received learning on these extrinsic aids to interpretation. We only mention the three rules in order to demonstrate the unsustainability of the Defendant's preferred approach to interpretation, as articulated in the Conclusion to his Statement of Case.

Indeed, earlier in his Statement of Case, the defendant appears to be espousing the golden rule, rather than the literal rule when he states that: "one can only resort to constitutional interpretation when there is an ambiguity or when the words if literally interpreted would give rise to an absurdity." Even by the golden rule, the defendant's position is not sustainable, since, in our view, the interpretation he is

insisting on would lead to a manifest absurdity, namely, that in relation to the same corrupt transaction involving a public servant, on the one hand, and a private individual, on the other hand, two different agencies of state would have to be deployed to investigate the matter. This absurd result is insisted upon for purely linguistic reasons.

In our opinion, Lord Blackburn provided the right insight into this matter of interpretation when he said in *River Wear Commissioners v Adamson* (1877) 2 App. Cas. 743 at 763 that:

> "In all cases the object is to see what is the intention expressed by the words used. But, from the imperfection of language, it is impossible to know what that intention is without inquiring farther, and seeing what the circumstances were with reference to which the words were used, and what was the object, appearing from those circumstances, which the person using them had in view; for the meaning of words varies according to the circumstances with respect to which they were used."

These words are among the many which have laid the foundation for the purposive approach to interpretation.

The Memorandum to the Interpretation Act, 2009 which informed Parliament's deliberation on the Bill contains a forthright endorsement of the purposive approach to interpretation in the following terms (at p. iv):

> "The general rules for the construction or interpretation used by the Courts were formulated by the Judges and not enacted by Parliament. From the Mischief Rule enunciated in *Heydon's Case [(*1584) 3 Co.Rep. 7a; 76 E.R. 637] to the Literal Rule enunciated in the *Sussex Peerage Case* [(1844) 11 Co. & F 85; 8 E.R. 1034] to the Golden Rule enunciated in *Grey v Pearson* [(1857) 6 H.L.C.61; 10 E.R. 1216] the Courts in the Commonwealth have

now moved to the Purposive Approach to the interpretation of legislation and indeed of all written instruments. The Judges have abandoned the strict constructionist view of interpretation in favour of the true purpose of legislation.

The Purposive Approach to interpretation takes account of the words of the Act according to their ordinary meaning as well as the context in which the words are used. Reliance is not placed solely on the linguistic context, but consideration is given to the subject-matter, the scope, the purpose and, to some extent, the background. Thus with the Purposive Approach to the interpretation of legislation there is no concentration on language to the exclusion of the context. The aim, ultimately, is one of synthesis."

The same Memorandum also contains the following interesting background or rationale for the introduction of section 10(4) of the Interpretation Act, 2009, quoted at the beginning of this judgment (at p.ii):

> "Clause (2) of article 1 of the Constitution 1992 places the Constitution on a pedestal high above that of the ordinary law of the land. The Constitution is the supreme law. A law found to be inconsistent with, or in contravention of, a provision of the Constitutionjn is void to the extent of the inconsistency or the contravention. The Constitution is thus not an ordinary law of the land. It is a legal document as well as a political testament. It embodies the soul of our people in a sense that the ordinary law cannot achieve. It is organic in its conception and thus allows for the growth and progressive development of its own peculiar conventions. Indeed, in obvious and suble ways it is an instrument of rights and limitations and not a catalogue of powers.

But section 1 of the Interpretation Act 1960 subjects the interpretation of the Constitution to that Act. Thus an inferior law is made the vehicle by which the construction of the supreme law of the land is determined. In this sense the Constitution is subordinated to an inferior law. It detracts from the Constitution's supremacy. This Bill seeks, among other things, to do away with that concept.

By that process the construction and interpretation of the Constitution, 1992, will not be tied down by the Interpretation Act but will take account of the cultural, economic, political and social developments of the country without recourse to amendments which can be avoided if the *spirit* of the Constitution is given its due prominence. A Constitution is a sacred document. It must of necessity deal with facts of the situation, abnormal or usual. It will grow with the development of the nation and face challenging changes and new circumstances. It must be allowed to germinate and develop its own peculiar conventions and construction not hampered by niceties of language and form that would impede its singular progress.

In musical terms the interpretation and construction of the Constitution should involve the interplay of forces that produce a melody and not the highlighting of the several notes."

In other words, the legislative intent behind section 10(4) appears to be to set the courts relatively free from the usual aids to construction of ordinary enactments and to oblige the courts to apply the purposive approach outlined in that provision, when construing the Constitution.

The fulcrum of this case, from the point of view of the second defendant, on which he has pivoted his central submission is article 218(e) of the Constitution, which provides that among the functions of the plaintiff is:

"to investigate all instances of alleged or suspected corruption and the misappropriation of public moneys by officials and to take appropriate steps,

including reports to the Attorney-General, resulting from such investigations."

The second defendant wants this court to interpret this provision literally. He argues (at p. 15 of his Statement of Case) that:

> "My Lords, I would submit that there is no issue for interpretation. The words of Article 218(e) are very clear, there are no words which are in dispute, nor are there rival meanings being put on words in the said article 218(e). What Plaintiff wants this court to do, is for the court to amend article 218(e) by adding the words '**and all persons'** so that article 218(e) would read as follows
>
> > *to investigate all instances of alleged or suspected corruption and the misappropriation of public money by officials* ***and all persons…***
>
> We submit that this invitation if done by this court would be what an English judge described as***"a naked usurpation of the legislative function under the thin disguise of interpretation."***

Earlier in the second defendant's Statement of Case, he relies on the words of Acquah JSC, as he then was, in *Attorney-General(no. 2) v Tsatsu Tsikata (no.. 2)* [2001-2002] SCGLR 620 at p. 639 indicating that the words of Article 139 were clear and unambiguous and therefore:

> "The majority's insistence on putting words into article 139(3) of the 1992 Constitution when such words are not in the article, with a view to imposing restrictions on the exercise of the Chief Justice's discretion, is not a permissible exercise of the judicial function."

The second defendant further relies on a quotation from Justice Kludze's judgment in *Republic v Fast Track High Court, Accra; Ex parte Daniels* [2003-2004] SCGLR 364 at p.370 that:

> "We cannot under the cloak of constitutional interpretation, rewrite the Constitution of Ghana. Even in the area of statutory interpretation, we cannot amend a piece of legislation because we dislike its terms or because

we suppose that the lawgiver was mistaken or unwise. Our responsibility is greater when we interpret the Constitution. We cannot and must not substitute our wisdom for the collective wisdom of the framers of the Constitution.

……That is a fundamental rule of constitutional and statutory interpretation. We intend to be faithful to the principle and that tradition of jurisprudence. We must not insert our own words or remove words from the legislation in order to arrive at a conclusion that we consider desirable or socially acceptable. If we do that, we usurp the legislative function which has been consigned to the legislator. That is a prescription for tyranny of the judicial branch and a harbinger of constitutional crisis, if not chaos and anarchy."

In contrast, the plaintiff, in its Statement of Claim, stresses its different understanding of the position of this court on the interpretation of the Constitution. Its understanding is that this Court is inclined to purposive interpretation. It quotes the words of the learned Chief Justice in *Republic v High Court (Fast Track Division) Accra; Ex parte Commission on Human Rights and Administrative Justice (Richard Anane Interested Party)* [2007-2008] 1 SCGLR 213 at p. 247 to the effect that:

"The authorities show a clear shift from the purely strict or literalist or mechanical approach in constitutional interpretation, towards a more purposive approach. This court's use of other expressions or terminology such as "context-based purposive", "benevolent", "generous", "broad", and "liberal" convey the same idea. The *locus classicus* on the broad, benevolent or liberal approach which was espoused by the then Court of Appeal (sitting as the Supreme Court), is the well-known case of *Tuffour v Attorney-General* [1980] GLR 637."

The Statement of Case also relies on this court's judgment in *Danso-Acheampo*ng v *Attorney-General* [2009] SCGLR353 at 358 where it unanimously expressed the view that:

> "This reading of the constitutional provisions is very literal. 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 meaning of the enactment in question."

It is obvious from our earlier remarks in this case that the Plaintiff's understanding of this Court's preferred approach to constitutional interpretation coincides with our own. What needs to be addressed next is whether it is ever justifiable to read words into the Constitution, against the admonition contained in the *dicta* from Acquah JSC and Kludze JSC quoted in the second defendant's statement of case. As a counterbalance to those *dicta*, we would like to refer to a passage from the lead judgment of Date-Bah JSC in *Agyei Twum v Attorney-General & Akwettey* [2005-2006] SCGLR 732 at 761-2, where he said:

> "The principle that I derive from *Sasu v Amua Sakyi* is that, in exceptional cases, additional text may be imported into an enactment in order to give effect to its purpose.
>
> It is not unprecedented for a common law court to imply a provision into a Constitution to give it efficacy in relation to its purpose. For instance, the High Court of Australia has implied a bill of rights into the Australian Constitution. (See, for instance, *Nationwide News Pty. Ltd. v Wills* (1992)

177 CLR 12; *Australian Capital Television Pty. Ltd. v Commonwealth* (1992) 177 CLR 106; *Theophanous v Herald & Weekly Times Ltd.* (1994) 182 CLR 104; *Lange v Australian Broadcasting Corp.* (1997) 189 CLR 520.) In Canada also an implied Bill of Rights was recognised by the Canadian Supreme Court before the enactment of the Canadian Charter of Rights and Freedoms. (See *Reference re Secession of Quebec* [1998] 2 S.C.R. 217). The United States Supreme Court has long recognised that though the US Constitution lists expressed powers for each branch of government, it also confers "implied powers" that arise out of the language and intent of the Constitution. (See *McCulloch v Maryland* (1819) 17 US 316.)"

In other words, one has to keep in mind the trite learning that not everything in a written constitution is written! Accordingly, although we would agree with Prof. Kludze JSC that this court has no mandate to re-write the Constitution, we would not consider the making explicit of words necessarily implied in the text of the Constitution to be a re-writing of the Constitution, where a purposive interpretation requires the making explicit of those words.

This is the context in which we are going to assess the plaintiff's argument which seeks to bring within its investigative mandate private individuals who necessarily need to be investigated if its mandate to investigate public officials under article 218 is to be realistically achievable. It is an invocation of a purposive interpretation of the whole of Article 218 and not only of its paragraph (e). Its arguments thus relate to the first relief endorsed on its writ and are set out in paragraphs 46, 47 and 49 of the plaintiff's Statement of Case as follows:

"46. The reason for which we contend that the 2nd defendant's view of article 218 of the Constitution 1992 of the Republic of Ghana is erroneous is because if the 2nd defendant's view is accepted as correct it would defeat the Commission's

mandate to investigate acts of bribery or corruption alleged against public officials the reason being that in almost every situation in which bribery or corruption is alleged against a public official, a private individual is at the centre. Invariably, acts of bribery and corruption are for want of a better expression a public/private partnership.

47. Accordingly, it is our submission that where in the discharge of its constitutional mandate of investigating public officials on grounds of alleged or suspected corruption, a private individual is named as involved in the alleged or suspected acts of corruption, that private individual cannot use his or her private status as a shield to bar the plaintiff from discharging its constitutional mandate of investigating the suspected or alleged acts of corruption. It is must *(s*ic) be pointed out here that there is no dispute from the facts and allegations which form the subject matter of plaintiff's proceedings that the 2nd defendant was mentioned as personally involved in the acts of corruption committed by the public officials being investigated by plaintiff."

….

49. "My Lords, to sum up our case on the first relief, it is plaintiff's submission that in the discharge of its constitutional mandate of investigating public officials under Article 218 of the Constitution, a private individual who is alleged or suspected to be involved in the alleged acts of corruption by the public officials cannot object to the plaintiff investigating him alongside the public officials on the basis that he is not a public official especially where as

> in this case, he is allegedly implicated or named as being involved in or central to the act of bribery or corruption, the subject matter of the investigation. It is our view that to uphold such an objection challenging the investigative mandate or powers of plaintiff to investigate a private individual in such circumstances is not only untenable, but is contrary to public policy. Such an objection carries with it the grave danger of frustrating and stultifying the constitutional mandate of plaintiff to investigate all instances of alleged or suspected corruption. …"

We consider that the plaintiff's argument on this issue is irresistible. To insist that the plaintiff's mandate relates exclusively to an investigation of public officials, even where a public official has participated in a corrupt transaction with a private individual in a situation where a comprehensive investigation of the transaction is needed in order to expose the corruption, would be similar, in a sense, to asking of Shylock in Shakespeare's Merchant of Venice to take his pound of flesh, but not to spill any blood. It is singularly unrealistic!

Shakespeare lovers will recall that in his Merchant of Venice, in the courtroom confrontation between Shylock and Portia, Shylock's merciless deployment of the literal approach to the interpretation of the bond between him and Antonio to demand his pound of flesh was defeated by the brilliant riposte of Portia. The riposte appears to be equally literalist, but deeper analysis of it reveals it to be purposive, intended to achieve the purpose of mercy and justice for Antonio. When Shylock insists that:

> "The pound of flesh which I demand of him
> Is dearly bought. 'Tis mine, and I will have it.
> If you deny me ,fie upon your law:".

(Act 4, Scene 1, lines 98-100).

Portia's response is:

"Tarry a little. There is something else.
This bond doth give thee here no jot of blood.
The words expressly are 'a pound of flesh'.
Take then thy bond. Take thou thy pound of flesh.
But in the cutting it, if thou dost shed
One drop of Christian blood, thy lands and goods
Are by the laws of Venice confiscate
Unto the state of Venice."
(Act 4, Scene 1, lines 302-309.)

The deeper purpose embedded in Portia's wise judicial position is, however, lacking in the second defendant's case.

The second defendant's argument seems to us to be intended stultify a significant part of the investigative operations of the plaintiff. It is intended to defeat one of the purposes for which the Constitution made provision for the establishment of the plaintiff. From the language and context of article 218, it is indubitable that one of its purposes is to enable the plaintiff's effective investigation of corruption by public officials. Accordingly, in our view, a purposive and holistic interpretation would require words to be implied into article 218 enabling the plaintiff to investigate private persons alongside public officials, even if private persons are not expressly specified in any particular paragraph of the article, where such investigation of a private person is necessary in order to expose the total picture of the corruption in which the public official is alleged to have participated. Such implication is needed to give efficacy to the intention and purpose of the framers.

This argument in support of the plaintiff's first relief applies equally to the plaintiff's second relief, namely, a declaration that on a true and proper

interpretation of article 218(e) of the 1992 Constitution the mandate of the plaintiff "to investigate all instances of alleged or suspected corruption and misappropriation of public moneys by officials" covers situations in which an individual, entity and/or person though not a "public official" is alleged to be involved or implicated in an act or alleged bribery or corruption involving public officials and which is under investigation by the Commission.

**Conclusion**

Accordingly, for the reasons set out above, we consider that the plaintiff should be granted both the declaratory reliefs endorsed on its writ.

**[SGD] DR. S.K. DATE-BAH**

**JUSTICE OF THE SUPREME COURT**

**[SGD] S. A. BROBBEY**

**JUSTICE OF THE SUPREME COURT**

**[SGD] J. ANSAH**

**JUSTICE OF THE SUPREME COURT**

**[SGD] S. O. A. ADINYIRA [MRS]**

**JUSTICE OF THE SUPREME COURT**

**[SGD] ANIN YEBOAH**
**JUSTICE OF THE SUPREME COURT**

**[SGD] B. T. ARYEETEY**
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