OF DIRECTORS AND PRESUMPTION OF INNOCENCE

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ABSTRACT

The efforts of daring Ghanaian lawyers and citizens have over the years extended the borders of constitutional law vis-à-vis other areas of law with wide-reaching implications on various sectors of the economy.

In recent times, the actions of perfidious managers and owners of banks and other institutions which led to the financial sector collapse have called into question the laws regulating the management of these entities and the competence of regulatory agencies. This necessitated the Bank of Ghana to tighten regulations regarding managers and directors of financial entities over which it exercises oversight.

Conversely, others have felt that of these policies and laws unfairly restrict persons who may otherwise be qualified in one respect, from assuming the office, of perhaps, a company director. That is why the recent decision in Adu Gyamfi v. The Attorney-General is quite fortuitous.

Even before that decision, there had been disquiet about certain provisions in the Companies Act, 2019 (Act 992) which effectively barred persons who have been merely charged with a criminal offence involving fraud, dishonesty or relating to the promotion, incorporation or management of a company within the preceding five (5) years from assuming the position of company director.

This position was patently in contrast to the presumption of innocence as found in the 1992 Constitution. The decision in the Adu Gyamfi case, therefore, has vacated that legislative barrier stipulated in Act 992 to ensure a fair and just playing field for potential directors who would have ordinarily qualified to occupy such a position but for the fact that they had merely been charged with the aforementioned offences.

This article constitutes a commentary on the decision,

its effect on similar provisions in other enactments and corporate governance practice in Ghana.

INTRODUCTION

At the height of class discussions in the drab GIMPA Group A (Part 1) classroom on the 2nd floor of the GIMPA Law Faculty, Accra, on the appointment and qualifications of company directors, a sly course mate (name withheld) in an effort to slow down the mundane discussions on management of companies, and trigger an exciting discourse in class asked a question that even beforehand had been nagging at the back of my mind.

The question posed to the inimitable Mr. Alexander Buabeng, a longtime lecturer of Company and Commercial Practice at the Ghana School of Law, was whether or not the provisions of section 172 of the Companies Act, 2019 (Act 992) constitute a breach of the Constitution, 1992, particularly article 19(2)(c) which guarantees an accused person's right of presumption of innocence until she is proved guilty of an offence or has pleaded guilty to a crime.

Section 172 of Act 992 which is titled, *Appointment of directors and filling of vacancy*, places certain fetters in the path of a potential company director. The impugned section essentially provides that before a person is appointed as a director of a company, she must make a statutory declaration averring that in the previous five (5) years of the application for incorporation, she has not been charged or convicted of an offence involving dishonesty, fraud or any offence relating to the promotion, incorporation or management of a company otherwise she is disqualified from acting as a company director. Sections 13 and 177 of the Companies Act also contain similar provisions.

After a short debate on the subject with Mr. Buabeng, there was a general consensus in class on the constitutional impropriety of the stated limitations, specifically on the automatic disqualification of a person for merely being charged with the stated offencesfrom assuming the position of a company director, and the learned lecturer advised us to take up a legal campaign and have the said sections declared unconstitutional and struck out from the statute books by the apex court. It was therefore a pleasant surprise to learn of the recent decision of the Supreme Court regarding the same discussions we had in class.

On 8th November, 2023 the Supreme Court in a landmark decision in

the case of ***Derick Adu-Gyamfi v. The Attorney-General***[1] once again expatiated and expanded the boundaries of Ghana's constitutional law in respect of corporate governance structures when it declared portions of the provisions of the Companies Act as being in contravention of the Constitution and therefore void, and accordingly struck down the words that rendered these provisions unconstitutional.

This paper is both a commentary and a critique of the decision of the apex court of the land.

THE PLAINTIFF'S CASE

The Plaintiff in the matter, a private legal practitioner, on the 25th day of March, 2022 invoked the exclusive original jurisdiction of the Supreme Court under Articles 2(1)(a) and 130(1) of the Constitution, 1992 by a writ of summons for the following reliefs, inter alia:

1. *A declaration that the first part of subsection 2(h)(i) of section 13 of the Companies Act, 2019 (Act 992) which makes a proposed director on an application for incorporation to deliver to the Registrar a statutory declaration indicating that within the preceding five years, that proposed director has not been charged with a criminal offence involving fraud or dishonesty is inconsistent with the letter and spirit of articles 19(1), 19(2)(c) and 15(3) of the Constitution 1992.*

2. *A declaration that the first part of subsection 2(h)(ii) of section 13 of the Companies Act, 2019 (Act 992) which makes a proposed director on an application for incorporation to deliver to the Registrar 'a statutory declaration indicating that within the preceding five years, that proposed director has not been charged with a criminal offence relating to the promotion, incorporation or management of a company' is inconsistent with the letter and spirit of articles 19(1), 19(2)(c) and 15(3) of the Constitution 1992.*

3. *A declaration that the first part of subsection 2(a)(i) of section 172 of the Companies Act, 2019 (Act 992) which prohibits a person 'charged with a criminal offence involving fraud or dishonesty' from becoming a director of a company is inconsistent with the letter and spirit of articles 19(1), 19(2)(c) and 15(3) of the Constitution 1992.*

1 (2023) (J1/18/2022) dated 8th November,2023

4. *A declaration that the first part of subsection 2(a)(ii) of section 172 of the Companies Act, 2019 (Act 992) which prohibits a person 'charged with a criminal offence relating to the promotion, incorporation or management of a company' from becoming a director of a company is inconsistent with the letter and spirit of articles 19(1), 19(2)(c) and 15(3) of the Constitution 1992.*

5. *A declaration that subsection 1(c) of section 177 of the Companies Act, 2019 (Act 992) which restrains a person who has been culpable of a criminal offence, whether convicted or not in relation to a body corporate or of fraud or breach of duty in relation to a body corporate' from being a director except with leave of court is inconsistent with the letter and spirit of articles 19(1), 19(2)(c) and 15(3) of the Constitution 1992.*

The remaining reliefs are similar in tenor to the above stated claims, including any other orders that the Honourable Court deemed fit in the circumstances. The Plaintiff's arguments as captured in the erudite judgment of Ackah-Yensu JSC was that the disputed provisions actually and potentially can deny a qualified person who can otherwise assume the directorship of a company from occupying that position and deny them their constitutional right of presumption of innocence until proven guilty which is recognized the world over and guaranteed by Article 19(2)(c) and further buttressed by Article 19(1) of the 1992 Constitution of Ghana.

To further expound on the premise of the Plaintiff's case, it is important for our own elucidation to provide the full text of the laws considered by the apex court at the behest of the claimant.

Articles 19(1) and 19(2)(c) of the 1992 Constitution state as follows:

(1) ***A person charged with a criminal offence shall be given a fair hearing within a reasonable time by a court.***

(2) ***A person charged with a criminal offence shall –***
(c) be presumed to be innocent until he is proved or has pleaded guilty.

Article 15(3) of the Constitution also states that;
"A person who has not been convicted of a criminal offence shall not be treated as a convicted person and shall be kept separately from convicted persons."

On the other hand, sections 13(2)(h)(i) and (ii) of the Companies Act detail the following:
(2) The application shall include

(h) a statutory declaration by each proposed director of the proposed company
indicating that within the preceding five years, that proposed director has not
been
(i) charged with or convicted of a criminal offence involving fraud or
dishonesty;
(ii) charged with or convicted of a criminal offence relating to the promotion,
incorporation, or management of a company;

Moreover, sections 172(2)(a)(i) and (ii) of Act 992 are outlined below;
(2) A person shall not be appointed as a director of a company unless the person has,
before the appointment
(a) ***made a statutory declaration submitted to the company and subsequently filed with the Registrar to the effect that, the person has not within the preceding five years of the application for incorporation been***
(i) charged with or convicted of a criminal offence involving fraud or dishonesty;
(ii) charged with or convicted of a criminal offence relating to the promotion,
incorporation, or management of a company;

Again, sections 177 (1)(c) and (e) of Act 992 provide that:

(1) ***Where***
(c) A person has been culpable of a criminal offence, whether convicted or not, in
relation to a body corporate or of fraud or breach of duty in relation to a body
corporate; or
(e) there is an ongoing investigation by a criminal investigating body or by the
Registrar or the equivalent in a foreign jurisdiction regarding the matters in
paragraphs (a) to (d);
the Court, on its own motion or on the application of a person referred to in
subsection (6), may order that that person shall not, without the leave of the
Court, be a director of, or in any way, whether directly or

indirectly, be
concerned or take part in the management of a company or act as auditor,
receiver, or liquidator of a company for the period specified in the order.

The Plaintiff's contention therefore was that these statutory limitations established by the provisions of Act 992 should not be allowed to stand in the teeth of the clear and imperative constitutional texts to the contrary thereby undermining the original intent of the drafters of the Act which could culminate in the emergence of onerous corporate regulatory policies.

THE DEFENDANT'S CASE

The Defendant on his part contended that since the challenged provisions have been enacted under the authority of the legislature into law, they are sound in both law and fact. That, to the extent that these provisions were enacted under the legislative authority of Parliament pursuant to Article 93(2) of the Constitution, they are appropriate and proper in law.

Citing the banking and financial sector crisis between 2017 and 2018, the Defendant further contended that it was necessary to put in place measures that would protect investors and ordinary Ghanaians from collusion between banks and other financial institutions. The Defendant prayed the apex court to adopt the purposive approach to interpretation, making reference to measures put in place by the Bank of Ghana to protect investors and the general public from unscrupulous directors and officers of companies.

THE DECISION

The Supreme Court speaking through the learned Ackah-Yensu JSC. delved into the principles governing the invocation of its exclusive original jurisdiction to interpret and enforce the Constitution relying on cases like ***Ghana Bar Association v. Attorney General***[2] and ***Aduamoa II & Others v. Adu Twum II***.[3]

After disposing of the issue of whether or not the Supreme Court's exclusive original jurisdiction had been properly invoked, the court settled

2 (2003-2004) 1 SCGLR 259
3 (1998-99) SCGLR 753

on the single issue that encapsulated the entirety of the cases put forward by the parties to the action, to wit;

"WHETHER OR NOT SECTIONS 13(2)(h)(i), 13(2)(h)(ii), 172(2)(a)(i), 172 (2)(a)(ii), 177(1)(c) and 177(1)(e) OF THE COMPANIES ACT, 2019 (ACT 992) ARE INCONSISTENT WITH ARTICLES 19(1); 19(2)(C) AND 15(3) OF THE 1992 CONSTITUTION."

Making reference to the ***Justice Abdulai v. The Attorney General case***[4], the apex court reiterated the well-established doctrine of separation of powers among the 3 arms of government (executive, legislative and judicial branches), holding that Parliament like every arm of government is subject to the Constitution. It was further stressed that the violation in question is not only limited to the letter of the Constitution but the spirit as well (***New Patriotic Party v. Attorney-General, 31st December case***[5]). An illustration was given ***in Adjei Ampofo v. Attorney-General and Anor***[6] where the Supreme Court struck out section 63(1)(d) of the Chieftaincy Act, 2008 (Act 759) as unconstitutional as it sought to criminalize refusal to obey a summons from a chief.

The court again reaffirmed the supremacy of the Constitution referencing article 2(1) of the 1992 Constitution and the case of ***Adofo and Others v. Attorney-General & COCOBOD***[7] wherein it was stated that the supremacy of Parliament within Ghana's jurisprudence is limited and that Parliamentary enactments are subject to the supremacy of the Constitution.

The Supreme Court then restated the principles on fair trials and presumption of innocence as guaranteed by the Constitution, 1992 per Articles 19(1) and 19(2)(c) respectively, holding that ***"...it is only when a person has been convicted of an offence, in the sense of having being pronounced guilty by a court of competent jurisdiction, that the person will be subject to the necessary penalties prescribed under our laws."***

Consequently, the constitutional presumption of innocence mandates that a person accused of the commission of a crime cannot be condemned before he has been heard or given a fair hearing in a court of competent jurisdiction.

It was also highlighted that the Companies Act made a distinction between persons who are undergoing investigations; those who have been charged

4 (J17 of 2022) GHASC 1 (9 March 2022)
5 (1993-94) 2 GLR 35
6 (2011) 2 SCGLR 1104
7 (2005-2006) SCGLR 42

with criminal offences and others convicted of criminal offences.

The court took particular note of sections 177 (1) (c) and (e) of Act 992 and noted that similar provisions are contained in section 186(1)(c) of the repealed old Companies Act, Act 179. The case of ***In Re West Coast Dyeing Industry Ltd; Adams and Anor v. Tandoh***[8] was acknowledged where the Court of Appeal was called upon to make pronouncements on section 186 of the repealed Companies Code, 1963 (ACT 179) and it was concluded that section 186(1)(c) did not require conclusive proof of criminal offence in line with the test of the said repealed Act.

The Supreme Court surmised that sections 177(1)(c) and (e) of the new Companies Act (Act 992) does not erode the constitutional rights of prospective directors to be heard and consequently, concluded that the words ***"charged with or"*** which appear in sections 13(2)(h)(i); 13(2)(h)(ii) and; 172(2)(a)(i) and (ii) of Act 992 are inconsistent with the letter and spirit of articles 19(1) and (2)(c) of the 1992 Constitution, declaring same as void and accordingly struck them down.

In his concurring opinion, Pwamang JSC. held that article 15(3) was not germane to the issues before the court for consideration and the learned justice also concluded that the effect of the words ***"charged with"*** contravene the intention of the framers of the Constitution as stated in articles 19(1) and 19(2)(c) because, basically a person merely charged under the disputed provisions albeit not convicted, is effectively barred from becoming a company director.

That Parliament has arrogated to itself power to disqualify a person merely because she has been charged with a criminal offence contrary to what is expressed in articles 19(1) and (2)(c) of the Constitution. The court expatiating on the doctrine of separation of powers discarded the Attorney-General's contention that there is the need to balance individual freedom with public interest in the legislature putting these limitations in the Act. The learned justice held that on a true and proper interpretation of articles 19(1) and 19(2)(c) of the 1992 Constitution, sections 13(2)(h)(i) and (ii) and 172(2)(a)(i) and (ii) of Act 992 are inconsistent with the letter and spirit of the aforementioned provisions of the constitution.

Sections 177(1)(c) and (e) of the Companies Act were distinguished from sections 13(2)(h)(i) and (ii) and 172(2)(a)(i) and (ii) of Act 992 because when construed as a whole, it would not erode the right of a person to

8 (1984-1986) 2 GLR 561-606

fair hearing – by calling witnesses and adducing evidence to disprove her criminal culpability and fitness or otherwise to assume the position of company director - and therefore same is constitutionally valid.

Asiedu JSC. in his concurring opinion came to the same conclusion as the two learned Justices above (Pwamang JSC and Ackah-Yensu JSC).

ANALYSIS OF THE DECISION

Directors, especially executive and managing directors, who usually occupy key positions within a company and have conferred on them fiduciary duties should be without dirt and have an unadulterated employment and management record. It is necessary that members of the company, investors and the general public are protected by restraining dubious and unscrupulous characters from occupying such important positions within the corporate structure.

The question to ask is whether it is legally prudent that a prospective director who has been charged with an offence and cannot defend himself until legal proceedings have commenced should be restrained or is automatically disqualified from occupying the position of a company director? Another question to pose in this instance, is whether members of a company, investors, other directors and officers of a company would be comfortable with a company director who is defending himself before the courts? It may perhaps be hard to find someone in this camp no matter how innocent such a director or prospective director may be at the end of the day.

The decision in ***Adu-Gyamfi***[9] supra could potentially portend a situation where the general public (who usually form a substantial portion of the company's customer base) would be ambivalent and hesitant about subscribing to the company's services and purchasing its products if a director of such an entity has been caught in the crosshairs of some law enforcement agency such as the Police and is undergoing investigations or prosecution.

Perception, particularly public perception, can move the thoughts and actions of the body politic. Also, public opinion can sway societal reception to the fortunes of a stated company. As the former emperor and military leader of France, Napoleon Bonaparte puts it:

9 Ibid.

> *"Public opinion is a mysterious and invisible power, to which everything must yield. There is nothing more fickle, vaguer, or more powerful; yet capricious as it is, it is nevertheless much more often true, reasonable, and just, than we imagine."*

Leaning on the Attorney-General's contentions on the fallout from the 2017-2018 banking and financial crisis, one cannot but shudder at the thought of a former employee, officer, director or board member in some of these collapsed companies caught up in the crisis taking up the directorship of a new or different company, especially within the same industry.

The sentiment may not be different depending on the tolerance level of each observer, were the person to be merely charged, but not convicted for their role in the disintegration of their former companies were they to assume directorship positions in different companies in spite of the objections of other directors, members, officers and even customers of these different entities.

Hovering back to the context of the financial crisis, there would no doubt be ineluctable misgivings regarding such a character closely connected to probably the most significant economic event to hit the banking and finance industry in Ghana. A very truculent and fractious environment may even be created where the prospective character is merely charged (not yet convicted) of any of the offences captured in the impugned sections supra which would inexorably lead to a depleted corporate governance environment with rippling effects on the organization, members, employees, customer base and in extreme circumstances, the country's economy as a company's output and finances may be affected in both the short and medium terms.

Moreover, if sections 177(1)(c) and (e) of the Companies Act do not take away the individual's right to be heard; do the words ***"charged with"*** erode such a constitutional right? One could argue that a person charged with an offence under the said provisions would be given a (fair) hearing anyway as proceedings would have already been instituted or likely to be commenced sometime in the future. The substantive and procedural laws of Ghana would not allow a person to be forever charged without legal proceedings being brought to pronounce on the guilt of the accused person neither would any court in Ghana allow the permanent threat of prosecution to hang over such potential company director.

The patent distinguishing element is that under section 177(1)(c) and (e),

the said person would be heard forthwith because the disputed provisions require a hearing by the court to decide whether a particular individual should act as a director or otherwise, whilst sections 13(2)(h)(i) and (ii) and 172(2)(a)(i) and (ii) of Act 992 are not premised on an immediate hearing. In the case of the latter, it would be up to the affected prospective director to wait until legal proceedings have been commenced before ventilating her right by adducing exculpatory evidence in proof of her innocence.

The pervasive ramifications that this judgment could potentially have on the corporate governance structures of companies in Ghana cannot be overstated. Perception and appearances are as important within company structures as they are within domestic settings in Ghanaian households and there is no doubt that directors with blemished records should be anathema rather than the norm in any new/different entity.

The *raison d'etre* of the judgment is very much understandable because as a constitutional democracy, the supremacy of the Constitution is a foremost principle that should be upheld in any circumstance.

However, does this decision give leave to suspicious and feckless persons who know very well they lack the moral and ethical values to take up such fiduciary positions? Would such characters focus rather on their parochial interests to benefit from these posts to the detriment of the fortunes and prospects of the companies they are called to serve?

One should also ask whether the constitutional rights of an individual director should override the complex decision-making process at board level and organizational structure of a company which could have extensive effects on society? It is respectfully submitted that the Attorney-General was right to argue on the need to balance individual freedoms and liberties and public interests, especially factoring in the context of the recent financial services and investment sector crisis.

There is no one-size-fits-all solution in balancing the public interest and protection of the populace against the constitutionally-guaranteed freedoms of an individual. A very tactful and meticulous case-by-case approach must be adopted to ensure that the pros outweigh the cons in such a legal maelstrom.

If care is not taken, however, there may be a repeat of the circumstances that led to the institution of the action in ***Redco v. Montero***.[10] An aspect

10 (1984-86) 1 GLR 710-718

of the case bordered on the criminality of the Spanish managing director of Redco Ltd who had been involved in alleged criminal activities with other companies for which he was incarcerated at the James Fort Prison for weeks and eventually granted bail.

The board who had suspended him without quorum contended that it was becoming more and more difficult for the managing director to attend to the business of the company as required of him because he was still under intensive investigation by the law enforcement agencies in the country and could be picked up again at any moment. He was also alleged to have been engaged in rival businesses inimical to the interests of Redco Ltd. It was not denied that the activities the M.D. had involved himself in were likely to "jeopardize" the interests of the company and there was also the danger that he may be picked up again by security services and incarcerated as he had only been granted a transitory bail. It was noted that a case like this called for the necessity to protect the interests of the company by the shareholders. The trial High Court Judge put it in these terms:

> *"Must the directors or for that matter any of the shareholders, stand aloof when it finds that the company's interest is being jeopardized? It is my opinion that it would be a breach of commonsense not to act immediately. If the directors find the position of the managing director to be such that it is not possible for him to act in the interest of the company, they have a duty to have him removed. But before then it would be naive on their part to stand by and see to the happening of the damage before they act."*

The trial court and Court of Appeal refused the interim injunction the Plaintiff director was seeking, holding that his suspension was not done maliciously with intent to injure him but done in an emergency situation with the ultimate aim of safeguarding the interest of the shareholders (members) although there was no quorum. The courts were satisfied that the Plaintiff would not suffer any hardship if he was not allowed to manage Redco whilst facing possible criminal charges. It was again noted that in light of the conduct of the managing director and its potential impact on the company, the procedural irregularities should be overlooked and the courts therefore held that he had been properly suspended.

Situating the above scenario within the context of the judgment under review, would the current decision protect such a director who is at all times amenable to police invitation, arrest and incarceration? Although articles 19(1) and 19(2)(c) guarantee fair trial and protect the presumption

of innocence in favour of an individual respectively, the impact and influence such a director would have on the fortunes of a company cannot be overemphasized.

As highlighted by the courts above, members of the company, other directors and officers cannot just sit by to allow a seemingly unscrupulous character, no matter that she may be found innocent in the long term, to have such a dire impact on the perception and motivations of the company. Should a character as the one illustrated above be allowed to assume the position of a director in a new or different firm on account of her constitutionally guaranteed right of presumption of innocence?

While that may be understandable in the context of constitutional supremacy and other principles undergirding Ghana's constitutional democracy, it may be untenable and indefensible for an appointment of this character in a different firm. Undoubtedly other members, officers, directors, employees and even the public may kick up a fuss about a person of dubious character holding a position of importance in the upper echelons of a corporate establishment.

Nonetheless, the supremacy of the Constitution must be regarded highly at all times.

SUPREMACY OF THE CONSTITUTION

It is trite learning that the 1992 Constitution is the supreme law of Ghana and any other law that is found to be inconsistent or in contravention with any provision of the Constitution, shall to the extent of the inconsistency be deemed to be void and struck out accordingly.

There is therefore established in Ghana, constitutional supremacy, unlike the United Kingdom which has set in its jurisprudence parliamentary sovereignty. All acts, enactments, statutes and other legislations emanating from the legislature are therefore subservient to the constitutional provisions in Ghana. Under the Constitution, it is within the gamut of the Supreme Court to enforce and interpret the Constitution.

Articles 2(1) and 130(1) of the 1992 Constitution confer on the Supreme Court, exclusive original jurisdiction to enforce and interpret the Constitution (subject to the enforcement of the fundamental human rights of the Constitution by the High Court).

Additionally, the Supreme Court alone is given the power to strike out a

law for being inconsistent with or in contravention of the Constitution. This power has been wielded and applied in a number of cases like ***Mensima and Others v. Attorney-General***[11] and ***Adofo and Others v. Attorney-General v. COCOBOD.***[12] In the latter case, section 5 of the Ghana Cocoa Board (Reorganization and Indemnity) Law, 1985, PNDCL 125 which sought to oust the jurisdiction of the courts in contravention of Articles 125(5) and 140(1) of the Constitution which grants unimpeded access to courts was struck down as unconstitutional.

In the case of ***Centre for Juvenile Delinquency v. Ghana Revenue Authority and Attorney-General***,[13] the apex court reaffirmed one of the cardinal principles underpinning judicial review of legislations, to wit, the presumption that every enactment by the legislature is presumed to be valid or constitutional until the contrary is proven.

In that case, the court held that the requirement under paragraphs 1(9) and 2(8) of the 1st Schedule of the Revenue Administration Act, 2016 (Act 915) that a person shall not be permitted to file a case in court unless he quotes his TIN (tax identification number) is an unjustified interference with the right of an individual to access the court for justice. The court weighed the individual's right to court access against the state's duty (acting through the GRA) to collect revenue and held that the contended paragraphs sinned against the letter and spirit of the Constitution, 1992 and accordingly struck same down.

Whenever the apex court of the land is therefore called upon to review the validity or constitutionality of provisions of an enactment, this balancing act has to be undertaken to ensure that the more beneficial interest is advanced on a stringent case-by-case basis.

CONCLUSION

No matter how one perceives the implications of the decision in ***Adu-Gyamfi v. The Attorney-General***[14] it can be universally agreed that the provisions in question are as unconstitutional as they are obsolete and should not even have been contemplated in the first place, let alone been incorporated into our statute books in these recent times. The effect of this can be seen in similar provisions in other enactments including the

11 (1996-97) SCGLR 678
12 (2005-2006) SCGLR 42
13 (2019) 143 GMJ 121 S.C.
14 Ibid.

Incorporated Private Partnerships Act, 1962 (Act 152) specifically section 5(2)(d) thereof which empowers the Registrar of Companies to refuse registration of a partnership where;

> *(d) any of the partners is an infant or of unsound mind or a person who, within the*
> *preceding five years, has been guilty of fraud or dishonesty,* ***whether convicted or***
> ***not****, in connection with any trade or business or is an undischarged bankrupt; or*
> (Emphasis added).

The decision would therefore have an impact on provisions which are *in pari materia* with the disputed sections brought before the Supreme Court.[15]

It is also undeniable that the impugned provisions are anachronistic within the context of modern constitutional governance. In the United Kingdom for instance, the Company Directors Disqualification Act of 1986 which regulates the disqualification of company directors makes no mention of a person being disqualified from occupying the position of a director based on being charged or arraigned for an offence relating to the promotion, formation, management or liquidation of a company or with the receivership or management of a company's property (section 2 of CDDA 1986).[16]

The statute only calls for an actual conviction for which a maximum period of five (years) where the order is made by a court of summary jurisdiction, and 15 years in any other case[17].

The judgment heralds a watershed moment for Ghana in the interpretation and enforcement of the 1992 Constitution vis-à-vis qualifications and capacity of persons to qualify and act as company directors. The import and impact of this seismic decision goes beyond the scope of the corporate world, especially in this era of purposive approach to interpretation which is the preferred recourse to the construction of the Constitution and other domestic statutes.

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15 Adadzi, Ferdinand D., "*Implications of the judgment in Derick Adu-Gyamfi v. the AG on the Companies Act*" (https://thebftonline.com/2023/11/implications-of-the-judgment-in-derick-adu-gyamfi-v-the-ag-on-the-companies-act), accessed 15th July, 2024.

16 ACCA, Company directors disqualification act 1986 (https://www.accaglobal.com/gb/en/student/exam-support-resources/fundamentals-exams-study-resources/f4/technical-artciles/Company-directors.html

17 Ibid.

This type of interpretation calls for the court to take into account the purpose, scope and subject matter of the text under construction. It also factors in the values of modern society and the need to interpret the Constitution to meet the dynamic and changing needs of a growing body politic.

For the time being, whenever statutory provisions offend the letter and spirit of the Constitution, the corollary is for the Supreme Court to strike same down and the court in this instance, adeptly fulfilled this constitutional duty albeit with far-reaching consequences on company and commercial practice in the coming years.