In case of reply the number and date of this letter should be quoted.

My Ref. No.................

Your Ref. No.

Suit No...J1/5/2024

REPUBLIC OF GHANA

SUPREME COURT
P. O. BOX 11
ACCRA, GHANA

11TH NOVEMBER 2024

Title of case

JONATHAN AMABLE

VRS

ATTORNEY GENERAL

Motion Type MOTION FOR INTERLOCUTORY INJUNCTION

Dear Sir/Madam,

FIXING OF DATE FOR HEARING OF APPLICATIONS (GENERALLY)

Please, take notice that a date will be fixed for hearing of the above-stated application with hearing notice(s) for the Respondent(s) from the Registrar upon request, 14 days after service of the application on the Respondent.

Counting on your usual cooperation.

Thank you.

H/L ELLEN OFEI-AYEH (MRS)
REGISTRAR, SUPREME COURT

REGISTRAR
SUPREME COURT
ACCRA, GH

1) SELALI KWANYA ESQ
2) JONATHAN AMABLE
3) ATTORNEY GENERAL

JUDICIAL SERVICE

office copy

Filed on 11/11/2024
at 9.40 am/pm
.... Registrar
SUPREME COURT OF GHANA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA - AD 2024

SUIT NO.: J1 / 5 2024

JONATHAN AMABLE Unity Lodge Anloga, Volta Region Ghana.	:	PLAINTIFF/APPLICANT
VRS		
ATTORNEY-GENERAL Office of the Attorney – General Accra	:	DEFENDANT/RESPONDENT

MOTION ON NOTICE FOR AN ORDER OF INTERLOCUTORY INJUNCTION

TAKE NOTICE that lawyers for and on behalf of Plaintiff/Applicant ('Applicant') herein will move this Honourable Court, praying for an order of interlocutory injunction restraining the Government of Ghana (represented by the Defendant/Respondent) (the 'Respondent') whether by itself or by its ministries, agents, assigns and privies, from undertaking any activity which constitutes borrowing or debt financing operations by the Government of Ghana (including raising debt financing through advances and the issuance of treasury bills, treasury bonds, and any other debt instruments) without prior parliamentary approval of the legal and commercial terms of such borrowings, pending the final determination of this suit, upon the grounds contained in the accompanying affidavit and for such further order(s) as the Honourable Court may deem fit.

ON A DATE TO BE FIXED

COURT TO BE MOVED on the day of 2024 at 9 o'clock in the forenoon or as soon thereafter as lawyers for Applicant may be heard.

DATED AT HEWARD – MILLS & CO., DANTU CHAMBERS, CHARLES LANE HOUSE, NO. D549/3, ASAFOATSE NETTEY ROAD, ACCRA THIS 8TH DAY OF OCTOBER 2024

SELALI WOANYA
LICENCE NO eGAR 01113/24
SOLICITOR FOR PLAINTIFF

THE REGISTRAR
SUPREME COURT
ACCRA

AND FOR SERVICE ON THE ABOVE-NAMED DEFENDANT / RESPONDENT, OFFICE OF THE ATTORNEY – GENERAL, ACCRA.

Filed on 11/11/2024
at 9:40 am/pm
Registrar
SUPREME COURT OF GHANA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA - AD 2024

SUIT NO.: J1 / 5 2024

JONATHAN AMABLE : PLAINTIFF/APPLICANT
Unity Lodge
Anloga, Volta Region
Ghana.

VRS

ATTORNEY-GENERAL : DEFENDANT/RESPONDENT
Office of the Attorney – General
Accra

AFFIDAVIT IN SUPPORT

I, **Jonathan Amable** of Unity Lodge, Anloga, in the Volta Region of the Republic of Ghana do hereby make oath and say as follows:

1. That I am the Plaintiff, Applicant and deponent ('Applicant') herein and I depose to this affidavit, averring to facts and matters that are within my personal knowledge, information and honest belief.

2. That at the hearing of this application, my lawyers shall, where required, seek leave of this Honourable Court to refer to all relevant processes filed in this matter to date.

3. That I am a Ghanaian and a lawyer with an extensive practice in providing legal advisory services to the public and private players within Ghana's financial sector.

4. That the Defendant/Respondent (the 'Respondent') is the principal legal advisor to the Government of the Republic of Ghana (the 'State') and pursuant to article 88 of the 1992 Constitution, responsible for the conduct of all civil cases on behalf of the State, and all civil proceedings against the State are required to be instituted against Respondent.

5. That pursuant to section 30 of the Bank of Ghana Act, 2002 (Act 612) as amended by the Bank of Ghana (Amendment) Act, 2016 (Act 918), section 61 of the Public Financial Management Act, 2016 (Act 921), and regulations 165, 168 and 169(2) of the Public Financial Management Regulations, 2019 (L.I. 2378), the Parliament of Ghana has created a statutory framework which enables the State to borrow funds through temporary advances and other loans raised from the Bank of Ghana as well as the issuance of treasury bills, treasury bonds, and other debt instruments.

6. That the fact that the activities of the State under the impugned statutory provisions constitutes borrowing has been expressly and unambiguously recognised by the Parliament of Ghana (under the relevant statutes) and the State, through such documents as the National Borrowing and Government Lending Guidelines issued by the Ministry of Finance in October 2020 (a copy of which is hereby exhibited and marked '**Exhibit A**'), the Procedures Manual for National Borrowing issued by the Ministry of Finance in October 2021 (a copy of which is hereby exhibited and marked '**Exhibit B**'), and the 2024 Annual Borrowing and Recovery Plan issued by the Ministry of Finance in February 2024 (a copy of which is hereby exhibited and marked '**Exhibit C**').

7. That the fact that the debt financing operations of the State under the impugned statutory provisions actually constitutes borrowing is further buttressed and made indubitable by the fact that the amounts raised through such transactions increase the public debt of Ghana and are recognised by the Ministry of Finance and the Bank of Ghana as creating valid repayment obligations for the State (kindly see paragraphs 179 to 182 of the Budget Statement and Economic Policy of the Government of Ghana for the 2024, a copy of which is hereby exhibited and marked '**Exhibit D**', and pages 47 and 49 of the 2023 Annual Reports and Financial Statements of the Bank of Ghana, a copy of which is hereby exhibited and marked '**Exhibit E**').

8. That in the issuance of treasury bills in the primary market, the State works through the Ministry of Finance and the Bank of Ghana to raise loans from primary dealers, with the Bank of Ghana being usually responsible for receiving and collating all bids where the treasury bills are issued through an auction. Accordingly, the Bank of Ghana and the

Ministry of Finance sometimes act as agents of the State for the purpose of its borrowing activities, in addition to the Bank of Ghana's ability to lend money to the State through advances and loans on overdraft or in any other prescribed manner, or by purchasing treasury bills or other securities directly from the State, subject to a limit of 5% of the total revenue of the previous fiscal year.

9. That the Government of Ghana, through the Ministry of Finance and the Bank of Ghana have been actively borrowing and creating repayment obligations for the State pursuant to the impugned statutory provisions, despite their non-compliance with the clear and peremptory directives of articles 181(3), 181(4) and 181(6) of the 1992 Constitution, which requires Acts of Parliament that authorise the State to borrow to provide that any such borrowing shall not become effective until its terms and conditions have been laid before Parliament and approved by a resolution of Parliament.

10. That as at July 2024, Ghana's aggregate domestic debt was approximately GHS 291 billion, out of which treasury bills and other treasury securities which were issued without parliamentary approval of their terms and conditions constituted over GHS 289 billion (kindly see the Monthly Debt Newsletter for July 2024 published by the Ministry of Finance, a copy of which is hereby exhibited and marked '**Exhibit F**'). Further, the State has issued treasury securities with an aggregate face value of approximately GHS 185 billion between January and September 2024, as compared to approximately GHS 165 billion from January to December 2023 (kindly see page 3 of the September 2024 Monthly Bulletin published by Central Securities Depository (GH) LTD, a copy of which is hereby exhibited and marked '**Exhibit G**'). This has contributed to raising our public debt stock to approximately GHS 761 billion as at July 2024, whereas it stood at approximately GHS 608 billion as at year-end 2023.

11. That on 15 February 2024 I caused my lawyers to file a writ to invoke the original enforcement jurisdiction of this Honourable Court to strike down the impugned statutory provisions on the grounds of their unconstitutionality to enable the State conduct its borrowings and debt financing operations in strict compliance with the terms of article 181 of the 1992 Constitution.

12. That the unconstitutional conduct under reference is only perpetuated in relation to treasury securities issued in the domestic market because the State duly seeks parliamentary approval of the terms and conditions of treasury securities issued in the international capital markets. This has created a situation under which the Parliament of Ghana ordinarily has a full view of loans the State raises from non-residents, but no control over the loans raised by the State from Ghanaian residents.

13. That the consequence of the relevant borrowing contracts being concluded without the requisite parliamentary approval makes them liable to be declared void for unconstitutionality, and such a consequence will be made even more dire by the fact that the holders of the offending debt instruments include banks, savings and loans companies, microfinance companies, asset management companies, insurance companies, pension funds, and ordinary Ghanaians. Accordingly, the unconstitutional conduct of the State potentially jeopardises the entire Ghanaian financial sector and the hard-earned capital of the investing public.

14. That if the State is not restrained by prohibiting it from borrowing funds unless it has obtained parliamentary approval of the terms and conditions of the loan contracts, the State will continue to borrow money from the public through the issuance of treasury bills, treasury bonds, advances, and other debt instruments in a manner which contravenes the 1992 Constitution. This will have a catastrophic effect on the national economy because declaring the offending debt instruments unconstitutional will render them unenforceable in the hands of their holders, in accordance with the settled jurisprudence of this Honourable Court that no person can derive a benefit from an unconstitutional contract. To make matters worse, a declaration that these debt instruments are unconstitutional will give the State the legal right to recover any amounts paid to the holders of these instruments, including interest or coupon payments.

15. That the purpose of the requirement for prior parliamentary approval of the terms of the State's borrowing transactions has been well espoused by this Honourable Court

as being necessary to ensure transparency, openness, probity and accountability in relation to the debt obligations contracted by the State. Accordingly, the State must not be permitted to unjustly enrich itself by breaching these constitutional restrictions at the expense of the investing public and financial institutions, who will be left without legal recourse if the State continues to wilfully and recklessly issue debt instruments without any parliamentary approval despite the clear terms of article 181(4) of the 1992 Constitution.

16. That on the balance of convenience and hardship, the investing public whose funds are at risk, and the Applicant, as a stakeholder in the Ghanaian economy and a Ghanaian citizen who is enjoined to defend and enforce the 1992 Constitution, stand to suffer irreparable harm in the terms stated above and that the said harm cannot be compensated in damages or through any other legal or equitable remedy due to the unconstitutional nature of the borrowings to be contracted by the State.

17. That I believe that in the circumstance, this Honourable Court has the power to grant an order of interlocutory injunction to restrain the State from undertaking any activity which constitutes borrowing or debt financing operations (including raising debt finance through temporary advances and other loans from the Bank of Ghana or the issuance of treasury bills, treasury bonds, and any other debt instruments) without prior parliamentary approval of the legal and commercial terms of such borrowings, pending the final determination of this suit.

18. That for the avoidance of doubt, Applicant's prayer is solely related to new borrowing transactions, and does not in any way seek to prevent the State from honouring its maturing obligations under already existing borrowing contracts, to the extent that the funds for the relevant repayments are not obtained from new borrowing transactions which do not comply with the requirement for parliamentary approval of the terms of the borrowings.

19. That in the circumstance, I pray this Honourable Court for an order restraining the State in the manner set out on the motion paper.

WHEREFORE I swear to this affidavit in support of this application.

DEPONENT

SWORN BEFORE ME THIS 8th DAY OF NOVEMBER 2024

COMMISSIONER FOR OATHS

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA - AD 2024

SUIT NO.: J1 / 5 2024

JONATHAN AMABLE Unity Lodge Anloga, Volta Region Ghana.	:	PLAINTIFF/APPLICANT
VRS		
ATTORNEY-GENERAL Office of the Attorney – General Accra	:	DEFENDANT/RESPONDENT

CERTIFICATE OF EXHIBITS

I, PETER K. KPODO hereby certify that the under listed have been exhibited to the affidavit sworn before me:

1. EXHIBIT A : National Borrowing & Government Lending Guidelines issued by The Ministry of Finance in October 2020
2. EXHIBIT B : Procedures Manual for National Borrowing issued by the Ministry Of Finance in October 2021
3. EXHIBIT C : Annual Borrowing & Recovery Plan issued by the Ministry of Finance in February 2024
4. EXHIBIT D : Budget Statement and Economic Policy of the Government of Ghana (2024)
5. EXHIBIT E : Pages 47 & 49 of the 2023 Annual Reports & Financial Statements of the Bank of Ghana
6. EXHIBIT F : Monthly Debt Newsletter for July 2014 published by the Ministry of Finance
7. EXHIBIT G : Page 3 of September 2024 Monthly Bulletin published by the Central Securities Depository (GH) Ltd

DATED THIS 8th OF NOVEMBER 2024

COMMISSIONER FOR OATHS

Filed on 11/11/2024
at 9:40 am/pm
Registrar
SUPREME COURT OF GHANA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA - AD 2024

SUIT NO.: J1 / 5 2024

JONATHAN AMABLE : PLAINTIFF/APPLICANT
Unity Lodge
Anloga, Volta Region
Ghana.

VRS

ATTORNEY-GENERAL : DEFENDANT/RESPONDENT
Office of the Attorney – General
Accra

APPLICANT'S STATEMENT OF CASE IN SUPPORT OF A MOTION ON NOTICE FOR AN ORDER OF INTERLOCUTORY INJUNCTION

1.0 INTRODUCTION

If it pleases your Lordships, this Statement of Case is made on behalf of Plaintiff/Applicant ('Applicant') herein, respectfully praying this Honourable Court for an order of interlocutory injunction to restrain the Government of Ghana (represented by the Defendant/Respondent (the 'Respondent') whether by itself or by its agents, assigns and privies (including the Ministry of Finance and the Bank of Ghana), from undertaking any activity which constitutes borrowing or debt financing operations of the Government of Ghana (including raising debt finance through temporary advances from the Bank of Ghana and the issuance of treasury bills, treasury bonds, and any other debt instruments) without prior parliamentary approval of the legal and commercial terms of such borrowings, pending the final determination of this suit.

This Statement of Case will show that:

(a) this application is competent because Applicant has the capacity to institute the substantive action and maintain this present application and this Honourable Court has the jurisdiction to hear the present application; and

(b) Applicant has a right that requires protection by this Honourable Court;

(c) there is a serious question to be tried in Applicant's substantive suit;

(d) on the balance of convenience, Applicant and the Ghanaian public will suffer grave irreparable harm if this application is not granted; and

(e) in the event that the substantive action is successful after this application is dismissed by this Honourable Court, no legal nor equitable remedy can compensate Applicant nor the Ghanaian public for the harm or injury they are likely to suffer.

2.0 SUMMARY OF FACTS

Your Lordships, on 15 February 2024 Applicant filed a writ invoking the original enforcement jurisdiction of this Honourable Court to seek the following reliefs:

(a) a declaration that articles 181(3), 181(4) and 181(6) of the 1992 Constitution control all and any type of borrowing or debt financing operations undertaken by the Government of Ghana, including loans from (and bonds and other debt instruments issued to) the Bank of Ghana by the Government of Ghana, and as well as domestic and international issuances of treasury bills, treasury notes and treasury bonds by the Government of Ghana;

(b) a declaration that section 30 of the Bank of Ghana Act, 2002 (Act 612) as amended by the Bank of Ghana (Amendment) Act, 2016 (Act 918) is inconsistent with, and contravenes, article 181(4) of the Constitution of Ghana, 1992;

(c) *a declaration that section 61 of the Public Financial Management Act, 2016 (Act 921) is inconsistent with, and contravenes, article 181(4) of the Constitution of Ghana, 1992;*

(d) *a declaration that regulation 165 of the Public Financial Management Regulations, 2019 (L.I. 2378) is inconsistent with, and contravenes, article 181(4) of the Constitution of Ghana, 1992;*

(e) *a declaration that regulation 168 of the Public Financial Management Regulations, 2019 (L.I. 2378) is inconsistent with, and contravenes, article 181(4) of the Constitution of Ghana, 1992;*

(f) *a declaration that regulation 169(2) of the Public Financial Management Regulations, 2019 (L.I. 2378) is inconsistent with, and contravenes, article 181(4) of the Constitution of Ghana, 1992;*

(g) *a consequential order striking out the relevant offending provisions from the Bank of Ghana Act, 2002 (Act 612) as amended by the Bank of Ghana (Amendment) Act, 2016 (Act 918), Public Financial Management Act, 2016 (Act 921), and Public Financial Management Regulations, 2019 (L.I. 2378);*

(h) *a declaration that the USD 10 billion COVID-19 Relief Bond transaction between the Ministry of Finance and the Bank of Ghana as part of a Bank of Ghana asset purchase programme is unconstitutional and contravenes article 181(4) of the Constitution of Ghana, 1992;*

(i) *a consequential order for the unwinding of the USD 10 billion COVID-19 Relief Bond transaction between the Ministry of Finance and the Bank of Ghana on the basis of its unconstitutionality;*

(j) *a declaration that the financing of the construction of the National Cathedral from the Consolidated Fund as a contingency vote matter without the prior approval of the*

Speaker of Parliament and the Chairperson of the Council of State was contrary to and contravenes article 179(11) of the Constitution of Ghana, 1992;

(k) *a consequential order for the return of all moneys which were unconstitutionally withdrawn from the Consolidated Fund to finance the construction of the National Cathedral; and*

(l) *any other reliefs or orders as this Court may deem just, convenient and proper to grant.*

The basis for the Applicant's plaint is that the economic challenges Ghana has witnessed in recent years, including the record breaking levels of high inflation and the significant devaluation of our national currency, with their concomitant increases in fuel prices, increased cost of borrowing due to upward adjustments to the monetary policy rate and high treasury bill rates, the introduction of new taxes such as the electronic transactions levy, and the recently concluded domestic debt restructuring programme, have exposed critical gaps in the implementation of the constitutional architecture which the framers of the 1992 Constitution designed to safeguard our national economic development and collective prosperity.

To close these gaps, enforce the relevant constitutional provisions and restore the framework which the framers of our 1992 Constitution intended for the effective management of our national resources, the Applicant seeks to strike down the impugned statutory provisions on the basis of their unconstitutionality.

Despite the pendency of the suit, the Government of Ghana has continued to issue treasury securities with the assistance of the Bank of Ghana and without any parliamentary approval of the terms and conditions of these borrowings. In fact, the Government of Ghana has already issued treasury securities with an aggregate face value of GHS 185 billion between January and September 2024, as compared to GHS 165 billion from January to December 2023. This has contributed to raise our public debt stock to approximately GHS 761 billion as at July 2024, whereas it stood at GHS 608 billion as at year-end 2023.

We submit that the State's unconstitutional conduct will continue unabated unless this Honourable Court restrains it from issuing new treasury securities and contracting new debt without parliamentary approval of the terms and conditions of all such borrowings.

3.0 GROUNDS FOR INTERLOCUTORY INJUNCTIONS

Your Lordships, the law is settled on the elements that must be proven for this Court to exercise its discretionary power to grant an interlocutory injunction, especially in cases involving allegations of unconstitutional conduct. The locus classicus for determining when an injunction is merited is the English case of *American Cyanamid v Ethicon* [1975] 1 All ER 504 which has been affirmed by Ghanaian courts, particularly by the Court of Appeal in *Vanderpuye v Nartey* [1977] 1 GLR 428. The courts have approached the exercise of its jurisdiction in granting interlocutory injunctions by following the guidelines laid down in *American Cyanamid,* where Lord Diplock stated that the court should refuse a prayer for an order for an interlocutory injunction where the applicant is unable to establish that a right which the court should protect exists or there is no serious question to be tried. Date Bah JSC applied these principles in *Welford Quarcoo v The Attorney-General & Another* [2012] ~~1~~ SCGLR 259, where he stated as follows at page 260 of the report:

> It has always been my understanding that the requirements for the grant of an interlocutory injunction are: first, that the applicant must establish that there is a serious question to be tried; secondly, that he or she would suffer irreparable damage which cannot be remedied by the award of damages, unless the interlocutory injunction is granted; and finally, that the balance of convenience is in favour of granting him or her the interlocutory injunction.

See also *Ekwam vrs Pianim (No. 1)* [1996-97] SCGLR 117 and *18th July Ltd v Yehans International Ltd* [2012] 1 SCGLR 167.

Based on the above decisions, the settled practice is for the courts to consider injunction applications on the following grounds:

(a) whether a right exists, which needs to be protected;

(b) whether there is a serious question to be tried in the substantive case;

(c) whether damages will adequately compensate the applicant in the event that the uncertainty was resolved in his favour at the trial; and

(d) whether on the balance of convenience the applicant will suffer more harm if the order sought for is not granted.

4.0 ARGUMENTS

4.1 Applicant has capacity to maintain this present action and the Supreme Court has jurisdiction to entertain this injunction application

Your Lordships, we respectfully submit that Applicant has the capacity to institute the substantive suit and maintain the present application before this Honourable Court, which is vested with jurisdiction to entertain this application.

We submit that this application, just as the substantive suit, is anchored firmly on article 2(1), articles 41(b) & (f), and article 130(1) of the 1992 Constitution, which have been restated below for emphasis:

> *Article 2(1) A person who alleges that*
>
> *(a) an enactment or anything contained in or done, under the authority of that or any other enactment; or*
>
> *(b) any act or omission of any person;*
>
> *is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.*
>
> *Article 41 The exercise and enjoyment of rights and freedoms is inseparable from the*

performance of duties and obligations, and accordingly, it shall be the duty of every citizen –

(b)to uphold and defend the Constitution and the law;

(f)to protect and preserve public property and expose and combat misuse and waste of public funds and property.

Article 130(1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in Article 33 of the 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.

It is trite that the 1992 Constitution authorises any person, including Applicant, to invoke the original jurisdiction of this Honourable Court to seek a declaration that an enactment or anything contained in or done, under the authority of that enactment contravenes a constitutional provision. See the celebrated case of *Tuffour v Attorney General* [1980] GLR 637 (headnote 1). It is also trite that the enforcement jurisdiction of this Honourable Court is conspicuously independent of its interpretation jurisdiction and article 2 of the 1992 Constitution authorises a person to invoke either jurisdiction. See *Edusei v Attorney-General & Another* [1997-1998] 2 GLR 1 @ pages 20 and 21, *Kor v Attorney General* [2015 – 2016] 1 SCGLR @ 126, and *Okudzeto Ablakwa & Another v Attorney-General & Obetsebi Lamptey* [2011] 2 SCGLR 986, where this Honourable Court speaking through Adinyira JSC held that it is the duty of the Supreme Court to measure the actions of both the Legislature and the Executive against the provisions of the Constitution to ensure that no public officer conducts herself in such a manner as to be in clear breach of the provisions of the Constitution. We associate ourselves with the learned Justice's reasoning that constitutional enforcement actions compel the Legislature and Executive to observe their constitutional limitations and ensure probity, accountability and good governance.

Your Lordships, it is also now beyond dispute that this Honourable Court has jurisdiction under articles 2, 11 and 129(4) of the 1992 Constitution to entertain injunction applications whenever its original jurisdiction is invoked. See *Ekwam v Pianim (No. 1)* [1996-97] SCGLR 117 and *Michael Ankomah-Nimfah v James Gyakye Quayson, Electoral Commission & Attorney General* Suit J1/11/2022 delivered on 13th April 2022.

Your Lordships, on the basis of the above cited authorities, we submit that Applicant has the requisite capacity to institute the substantive action and file this present application and this Honourable Court has jurisdiction to entertain and grant the order for interlocutory injunction being sought.

4.2 Applicant has a right that requires protection by this Honourable Court

Your Lordships, it is trite learning that for the grant of an interlocutory injunction, the applicant must ordinarily establish that there is a personal legal or equitable right that is in danger of violation or injury and therefore, requires the protection of this Honourable Court. In determining whether a right exists, the courts consider the pleadings and affidavit evidence of the applicant to ascertain whether the applicant has any legal or equitable right that requires protection by the court. The Supreme Court confirmed this legal proposition in *Owusu v Owusu-Ansah and Another* [2007-2008] SCGLR 870, where Adinyira JSC reasoned thus at page 875 of the report:

> *The fundamental rule therefore is that a trial court should consider whether the applicant has a legal right at law or in equity, which the court ought to protect by granting an interim injunction. This could only be determined by considering the pleadings and affidavit evidence before the court*

Your Lordships, this Honourable Court, speaking through Kulendi JSC in *Michael Ankomah-Nifah* has recognised that the constitutional right to initiate an enforcement action, where pressed pursuant to the constitutional duty to defend the 1992 Constitution, is a right which can be protected through the grant of an interlocutory injunction. The learned Justice

confirmed the seriousness which this Honourable Court attaches to applications for interlocutory injunctions to prevent constitutional breaches when he delivered himself thus:

> *Breaches of the Constitution do not affect an individual Applicant alone but the entire Ghanaian populace which have adopted for itself the Constitution as their Supreme law. Needless to say the Constitution is the safeguard of our democracy without which the institutions of state would not exist. It is the source of authority of the entire governance structure of the nation. It embodies the aspirations, goals, expectations, dreams and ambitions of the over thirty million Ghanaians. It is the sourcebook that enjoins our collective efforts to usher ourselves into prosperity. Therefore it is the mirror by which every individual must do a reflection to ensure that our actions do not go contrary to, or in violation or defiance of, the collective will of Ghanaians expressed in the Constitution.*
>
> ***An allegation of an intentional continuing breach of the Constitution by any individual, group, institution, organ or agency must be a matter of considerable concern to all. In the case of Network Computers Systems Ltd v. Intelsat Global Sales & Marketing Ltd [2012] 1 SCGLR 218, this Court per Atuguba JSC held that "[a]court cannot shut its eyes to the violation of a statute as that would be very contrary to its raison d'etre". We cannot help but ask, how much more alleged willful violations of the Constitution****? (Emphasis supplied)*

On the basis of the above authority, we respectfully submit that not only Applicant, but the entire Ghanaian public, has a legal right that requires protection by this Honourable Court as the final guardrail of our constitutional order, to ensure compliance by the Executive with the clear terms of article 181(4) of the 1992 Constitution.

4.3 There is a serious question to be tried in Applicant's substantive suit

Your Lordships, we respectfully submit that this application ought to be granted because there is a serious question to be tried in the substantive suit.

Kpegah J (as he then was), in *Baiden v Tandoh and others* [1991] 1 GLR 98, held that the Court must consider whether there is a serious question to be tried when determining an application for an interlocutory injunction. Your Lordships, we respectfully submit that we have demonstrated that there is a serious question to be tried in the substantive suit – the question regarding the constitutionality of the impugned statutory provisions. The gravity of the question to be tried is made stronger by the fact that this is not a case for constitutional interpretation. Instead, this is the case for constitutional enforcement of the clear and peremptory terms of article 181(4), within the light of the constitutional definition of "loans" under article 181(6) of the 1992 Constitution.

Your Lordships, we are further fortified in our belief that there is a serious question to be tried by the decision of this Honourable Court in *Kpodo and Another vs. Attorney-General* [2018-2019] 2 GLR 220, where the learned Justices of this Court, speaking through the venerable Akuffo CJ, recognised that treasury bills and other treasury securities are instruments issued by the Government to borrow money to finance its activities. The Honourable Lady Chief Justice stated as follows:

> *Article 181 (4) of the Constitution provides, that the terms and conditions of loans either granted or raised by the Government on behalf of itself or any public institution shall be placed before Parliament for approval. This presupposes that the framers of the Constitution were aware that monies received by the Government as loans would definitely be subject to terms and conditions including specification of the projects to which such loans must be applied. The application of monies from loans raised by the Government are, therefore, not entirely be at the discretion of the Government. Consequently, when the provisions in the Constitution are construed as a whole, the logical result would be that the reference to total revenues of Ghana in Article 152(2) was not intended to include loans. In any case, the budget statement for 2017 (as is the case in other budgets) does not capture loans under revenues. But, we notice from a reading of the tables in the appendixes to the 2017 budget, which provoked this case, that in the figures on financing of the budget, there are differentiations among foreign project loans, programme loans and bonds.* ***Our holding above is in respect to loans contracted within the purview of Article 181 by or under the authority of an Act of***

Parliament for purposes of a particular identified project or program and does not exclude any loan that is contracted to fund the national budget in general terms, such as government treasury bills and bonds which are issued to raise money to finance regular government activities. *(Emphasis supplied)*

Your Lordships, the above-cited binding decision of this Honourable Court has already established that the issuance of debt securities is a form of borrowing, thereby making the substantive case a straightforward matter of constitutional enforcement. We are further fortified in our belief by the unanimous judgment of this Honourable Court in the recent case of *Mahama Ayariga v Attorney-General, Parliament of the Republic of Ghana, Ghana Amalgamated Trust PLC and National Trust Holding Company* (Suit No. J1/20/2022 delivered on 19th June 2024), where this Honourable Court, presided over by the Honourable Lady Chief Justice Torkornoo CJ, and through an opinion delivered by Asiedu JSC, elucidated the meaning, scope, effect and importance of article 181 of the Constitution. Asiedu JSC delivered himself thus:

> ***[9.1]*** *Article 181 clause 6 defines 'loan' and restricts the definition and makes it applicable to article 181 only. The provision states that:*
> *"(6) For the purposes of this article, "loan" includes any monies lent or given to or by the Government on condition of return or repayment, and any other form of borrowing or lending in respect of which*
> *(a) monies from the Consolidated Fund or any other public fund may be used for payment or repayment; or*
> *(b) monies from any fund by whatever name called, established for the purposes of payment or repayment whether directly or indirectly, may be used for payment or repayment".*
> *Thus, under article 181(6) 'loan' is any monies lent to the Government of Ghana on condition of return or repayment; 'loan' is any monies given to the Government of Ghana on condition of return or repayment; 'loan' is any monies given by the Government of Ghana on condition of return or repayment.* ***Loan, under article 181(6) is also any other form of borrowing or lending in respect of which monies from the Consolidated Fund or any other public fund may be used for payment or***

*repayment or monies from any fund however **described and established for the purposes of payment or repayment whether directly or indirectly, may be used for payment or repayment.** **One underlying condition in respect of loans whether borrowed or lent by the Government under article 181(6) is the fact of payment or repayment of the money borrowed or lent.** If the loan was given by Government to some other person or institution, the Government must expect that the monies given out as a loan will be repaid to it on a future date and **if the monies were borrowed by the Government, there must be a condition that the monies will be repaid by the Government on a future date. The repayment of any such loan must come out of public funds by whatever name it may be described.***

[9.2]. My lords, it is a constitutional requirement that whenever the Government gives a loan or raises a loan either for itself or for any public institution or authority, Parliamentary approval is needed. *(Emphasis supplied)*

Your Lordships, in *Mahama Ayariga*, this Honourable Court discussed the different types of parliamentary approvals required for different purposes under the 1992 Constitution and held that parliamentary approval under article 179 is strictly for approval of governmental expenditure as disclosed under the national budget, whereas State borrowing is governed by articles 181(3) and 181(4), and State lending is governed under articles 181(1) and 181(2) of the 1992 Constitution. On the basis of this discussion, this Honourable Court held that:

> *when the Government intends to raise or secure any loan either for itself or for any public institution or authority, article 181(3)(4) shall be adhered to. **This article demands that loans raised for the benefit of either the Government or a public institution or authority shall be raised by or under the authority of an Act of Parliament which shall provide: (a) that the loan agreement be placed before Parliament for approval by a resolution of Parliament, and (b) that monies received from the loan agreement be paid into the Consolidated Fund or other Public Fund either existing or created for the purposes of that loan**. (Emphasis supplied)*

Your Lordships, having regard to the above authorities, it is a matter too plain to be contested that the loans contracted by the State through the issuance of treasury bills, debt securities or advances from the Bank of Ghana constitute borrowing which is caught by article 181(4) of the Constitution and must be subjected to parliamentary approval of the terms thereof. These terms must necessarily include the interest rates for such loans. The failure of the relevant statutes to require parliamentary approval as a condition for the effectiveness of these borrowings is therefore a constitutional violation which this Honourable Court must rectify to safeguard Ghana's economy.

We therefore urge this Honourable Court to grant the application because there is a serious question to be tried.

4.4 On the balance of convenience, Applicant and the Ghanaian public will suffer irreparable harm if this order is not granted and if Applicant's substantive suit succeeds, damages will not be an adequate remedy

Your Lordships, we respectfully submit that on the balance of convenience, Applicant and the Ghanaian public will suffer irreparable harm if this order is not granted. Further, if Applicant's substantive suit succeeds after this application is dismissed, neither damages nor any other legal remedy will be adequate.

Your Lordships, the question of balance of convenience arises where there is doubt as to the adequacy of damages available to either party or to both. Lord Diplock in *American Cyanamid* held that in assessing where the balance of convenience lies, a significant factor to consider is whether or not each party could be adequately compensated in damages.

We are also mindful that in a constitutional case such as this, a further consideration for this Honourable Court in considering the balance of convenience will be the legal proposition that where the relief sought relates to a public law matter, particular care must be taken not to halt the action presumptively for the public good, unless there are very cogent reasons to do so, and provided also that any subsequent nullification of the impugned act or omission cannot restore the status quo. See *Welford* @ 260 and *France (No.1) v Electoral Commission &*

Attorney-General [2012] 1 SCGLR 689 @ 692. However, we respectfully submit that this dictum does not apply in these circumstances because the substantive suit relates to an enforcement of the clear, unambiguous and peremptory provisions of article 181(4) of the 1992 Constitution as already interpreted by this Honourable Court. Accordingly, any presumption of good in favour of the actions of the Executive has been effectively and robustly rebutted by the express dictates of the 1992 Constitution. Further, in the unlikely event that the dictum applies to the instant case, the arguments made above and below constitute very cogent reasons to restrain the conduct of the Executive by requiring them to borrow subject to parliamentary approval of the terms of the borrowings in accordance with article 181(4) of the 1992 Constitution. Indeed, seeking parliamentary approval of the terms of the issuance of treasury securities will not be burdensome or novel because the Government routinely seeks approval of the terms and conditions of treasury securities issued in the international capital markets (such as Eurobonds) and has only made this exception which lacks constitutional basis in relation to treasury securities issued domestically. It is therefore our contention that permitting the impugned acts to continue subject to subsequent nullification upon the determination of the substantive suit would mean that this Honourable Court is not only condoning a subversion of the Constitution and the sovereign will of Ghanaians, but also permitting conduct which may have dire socio-economic consequences on the good people of Ghana.

Your Lordships, in the recent case of *Mahama Ayariga*, this Honourable Court, after discussing article 181 of the 1992 Constitution extensively, endorsed the previous decision of the Supreme Court in *Attorney-General vs. Faroe Atlantic Co. Ltd* [2005-2006] SCGLR 271, which along with a long line of Supreme Court cases establishes the legal proposition that contracts which are concluded in breach of article 181 are wholly and incurably void because the 1992 Constitution stipulates that such contracts are not to become effective without parliamentary approval. In *Mahama Ayariga*, Your Lordships explained the rationale for this position as follows:

> *Article 181 of the 1992 Constitution embodies part of the general constitutional provisions on the concept of separation of powers and its sub-principle of checks and balances designed to ensure accountability and the prudent use and management of the resources of the country by demanding that the Executive arm of Government*

accounts to the people's representatives in Parliament and explain to them the reason for raising a particular amount of loan and the use to which such loan may be put; all for the benefit and betterment of the country as a whole.

My Lords, in accordance with the above cited authorities, we respectfully submit that Applicant and the Ghanaian public will suffer great irreparable harm if the application is not granted. The harm will be evidenced not only by the breach of the clear provisions of the 1992 Constitution, which all Ghanaians are enjoined to protect and enforce, but also the potential destruction of the national economy in the event that the relevant debt instruments are subsequently held to be unenforceable for breach of article 181(4) of the 1992 Constitution. Indeed, this Honourable Court recognised the gravity carried by potential breaches of the 1992 Constitution in *Michael Ankomah-Nifah,* where it stated as follows:

The substantive suit, being a public interest action, the persons whose interest are at stake are not only the Applicant, the Interested Party or the Constituents of Assin North but every Ghanaian, because every citizen has a community of interest in the Constitution, a violation of which the Applicant has alleged in his Writ of Summons. The Constitution itself, in Article 3(4), places on all citizens the duty to "at all times defend the Constitution and in particular, to resist any person or group of persons seeking to overthrow the constitution."

In assessing whether or not the circumstances of this case make the grant of interlocutory injunction just and convenient, the Constitution is the expression of the sovereign will and shared aspiration of the Ghanaian people, and the pivot of governance. It is the highest law of the land and for that matter sacred. This is the reason why any law or action that contradicts and/or is inconsistent with the Constitution would be null, void and of no legal effect. *The exclusive forum and sanctuary for the ventilation of any issue of a true and proper interpretation of any provision of the basic and sacred law of the land is this Court.* ***The exclusive reservation of this jurisdiction to the Supreme Court is the constitutional indication of the sanctity with which the framers of the Constitution intended that it be treated. Consequently, an allegation of a breach and more so a subsisting***

*and continuing breach of the Constitution constitutes an invasion of the sovereign will of the Ghanaian people, occasions an incalculable damage, injury **and inconvenience which warrants serious** and urgent judicial attention and intervention. No court, organ or agency of this Republic can or should be insensitive, aloof, indifferent and/or unconcerned about an allegation **of a violation of this sacred and basic law,** let alone a subsisting or continuing violation. **Otherwise, it would be condoning a subversion of the Constitution and sovereign will of the Ghanaian people in an irreparable way.** In this regard, the balance of convenience tilts in favour of the Ghanaian people whose community of interest in the Constitution is sought to be vindicated if the Applicant's complaint is eventually upheld by this Court.* (Emphasis supplied)

Your Lordships, the harm to be suffered by Ghanaians if this application is not granted is made more pronounced when one considers the rationale behind the introduction of a financial control regime for the Executive into our constitutional framework. The Proposals of the Constitutional Commission for a Constitution for Ghana of 1968 clarifies the mischief the framers identified and the remedy they proposed to cure that mischief in the following passage:

*"**One of the most revealing consequences of the coup d'etat of the 24th February was the realisation by the people of Ghana of the huge debt which our country owed.** Apart from the fact that our economy had been made bankrupt we owed money well over 800,000,000 cedis. **We need not go into the details; we all know the various agreements which the National Liberation Council has had to undertake in order to have a rescheduling of our external debts. This calls for specific provisions in the Constitution to deal with the question of loans,** and we propose that Government should not enter into an agreement for the granting of a loan out of any public fund or public account unless the National Assembly has approved, by the votes of not less than two-thirds of all the members of the Assembly, the granting of the loan.*

> ***We further propose that the agreement entered into in respect of the loan should be laid before the National Assembly and should not become effective or operative unless it has been approved by an ordinary resolution of the National Assembly*** *in the case of a loan granted to an authority in the country, but where the agreement is in respect of a loan granted to an authority outside this country then the agreement should only come into force after a resolution in favour of the granting of the loan has been passed by the National Assembly, supported by the votes of not less than two-thirds of all the members of the National Assembly.*
>
> ***We are strongly of the view that the above proposals relating to the granting of loans should apply with equal force to the raising of loans. The only addition we wish to make is that the Government should not have power to raise a loan on behalf of itself or any public institution or authority except by or under the authority of an Act of Parliament. That Act of Parliament should incorporate our above proposals regarding resolutions of the National Assembly mutatis mutandis***." [Emphasis added]

Your Lordships, the above passage makes it abundantly clear that after experiencing the pain of an unsustainable public debt and the ignominy of debt restructuring, the framers of our national constitutions have, since the 1969 Constitution, intended to subject the effectiveness of all forms of borrowing transactions undertaken by the Government of Ghana to the sunlight and scrutiny of prior parliamentary approval. We therefore rely on the above cited authorities to submit that greater hardship, irreparable damage and inconvenience will be occasioned to the 1992 Constitution, the rule of law, the principles of separation of power and its concomitant system of checks and balances on the exercise of constitutional authority, the investing public, and the Ghanaian people as a whole, if the Government of Ghana is permitted to continue to issue treasury securities and contract loans from the Bank of Ghana or the Ghanaian public without parliamentary approval, pending the determination of the substantive suit to nullify the impugned statutory provisions. We contend that the dismissal of this application would embolden the Government's unbridled borrowing and give judicial endorsement to unconstitutional conduct which has the potential to destabilise the national economy. In the case of borrowing from the Bank of Ghana, this is especially true because

conventional learning indicates that central bank financing of the Government's budget contributes to inflation. Further, we submit that the grant of this application will not occasion any harm to the Government because the terms of the order sought enables them to continue with their borrowing activities, subject to parliamentary approval of the legal and commercial terms of such borrowings, including the interest rates, tenors and the rights afforded to the investing public in the event of a default. Such an order will therefore accord with the already established practice of the Government in relation to seeking parliamentary approval for the issuance of international debt securities, and the sworn duty of this Honourable Court to enforce the restraints placed by the framers of the 1992 Constitution on the powers of the Executive and the Legislature.

5.0 CONCLUSIONS

In conclusion, we respectfully submit that Applicant is entitled to an order for interlocutory injunction for the following reasons:

1. Applicant has the capacity to institute the substantive action and this Honourable Court has the jurisdiction to entertain this present application;

2. Applicant has a legal right that requires protection by this Honourable Court;

3. There are serious questions to be tried in Applicant's substantive suit;

4. The balance of convenience weighs in Applicant's favour as Applicant and the Ghanaian public will suffer irreparable harm if this application is refused; and

5. In the event that the substantive action is successful after this application is dismissed by this Honourable Court, damages will neither be adequate nor available to compensate Applicant and the Ghanaian public for any loss or injury that may follow.

DATED AT HEWARD – MILLS & CO., DANTU CHAMBERS, CHARLES LANE HOUSE, NO. D549/3, ASAFOATSE NETTEY ROAD, ACCRA THIS 8TH DAY OF OCTOBER 2024

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LICENCE NO eGAR 01113/24
SOLICITOR FOR PLAINTIFF

THE REGISTRAR
SUPREME COURT
ACCRA

AND FOR SERVICE ON THE ABOVE-NAMED DEFENDANT / RESPONDENT, OFFICE OF THE ATTORNEY – GENERAL, ACCRA

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