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HIGH COURT, ACCRA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
(HUMAN RIGHTS DIVISION)
ACCRA – A.D. 2018

Suit No.: HR/0122/2018

IN THE MATTER OF AN APPLICATION

UNDER

ARTICLE 33 OF THE CONSTITUTION, 1992,

AND

ORDER 67 OF THE HIGH COURT (CIVIL PROCEDURE) RULES, 2004, (CI 47)

AND

THE INHERENT JURISDICTION OF THE HIGH COURT

BETWEEN

FRANCIS KWARTENG ARTHUR 3000012248 **APPLICANT**
N13, Sefwi Benchemaa-Nkatieso,
Juaboso District, Western Region.

C.A. Vanderpuye Memorial
104 Kwame Nkrumah Av.
Adabraka, Accra.

AND

3000006013

THE NATIONAL IDENTIFICATION AUTHORITY **1ST RESPONDENT**
No.8 Nelson Mandela Avenue
Off Gulf House Street
South Legon, Accra.

722

THE ATTORNEY-GENERAL **2ND RESPONDENT**
Attorney General's Department
Ministries, Accra.

STATEMENT OF CASE

A. INTRODUCTION

1. This Statement of Case is in respect of the Applicant's originating motion on notice invoking this Honourable Court's jurisdiction under Article 33 of the Constitution, 1992, Order 67 of the High Court (Civil Procedure) Rules, 2004 (CI 47) and the inherent jurisdiction of this honourable Court. Specifically, the Application is to remedy violations of the Applicant's rights to administrative justice and to equality or non-discrimination; which rights have been, are being or are likely to be violated by the Respondents, the National Identification Authority and the Attorney-General. We also, concurrently, wish to invoke this honourable Court's inherent jurisdiction to protect the general rights of the Applicant to the extent that these rights are found under the common law of Ghana.

2. Particularly, we pray the honourable Court to:

    a. Adjudge and declare that the Applicant's right to administrative justice and to equality or non-discrimination, have been, are being or are likely to be violated by the Respondents;
    b. Make an order of:
        i. Prohibition restraining the Respondents from further interfering with or violating the above-mentioned rights of the Applicant; and
        ii. Mandamus to bring up into this Court compelling the 1st Respondent, its officers, agents, assigns or privies whatsoever or howsoever described or called to register and issue the Applicant with a national identity card, his failure to provide the so-called "digital electronic code" notwithstanding;
    c. Provide any other remedies that the honourable Court may deem fit for the greater good of the Ghanaian society as a whole.

B. FACTS

3. The Applicant is a Ghanaian, barrister and solicitor of the Supreme Court of Ghana and member of the Ghana Bar Association (hereinafter referred to as the "GBA"). The 1st Respondent Authority, on the other hand, is a statutory body established under the National Identification Authority Act, 2006 (Act 707) with the object of creating, maintaining, providing and promoting the use of national identity cards in order to advance economic, political and social activities in Ghana. The 2nd Respondent, the Attorney-General, is the principal legal advisor to the Government and, consequently, to the 1st Defendant. The law allows the Applicant to bring this suit against the 2nd Respondent jointly with the 1st Respondent.

4. In order to enable it achieve its primary objective, the law empowers the 1st Respondent to, among other things, collect personal information on eligible Ghanaians and foreign nationals permanently resident in Ghana. Such personal information will, then, be entered and kept on the National Identity Register established under the National Identity Register Act, 2008 (Act 750) (hereinafter referred to as the "Register"). Consequent upon the registration, the 1st Respondent is required to issue national identity cards (hereinafter referred to as the "Card") to duly registered persons.

   Sometime before December, 2017, the National Identification Register (Amendment) Act (Act 950) was passed to revise the list of personal information of eligible persons that shall constitute the content of the Register in respect of each registered person. Among these pieces of personal information is what has come to be known as "digital address code" under Section 4(2)(a)(xxi) of Act 750 (as amended by Section 1 of Act 950)

5. Meanwhile, in or before July 2018, the 1st Respondent announced through the GBA that it has commenced the registration process for the members of the GBA in Accra. The Applicant, a member of the GBA, acting

upon this announcement, went to subject himself to the 1st Respondent's registration processes with the ultimate aim of obtaining a Card.

At the registration workstation at the premises of the GBA in Accra, the officials of the 1st Respondent, purporting to be acting in accordance with Section 4(2)(a)(xxi) of Act 750 (as amended by Section 1 of Act 950), required of the Applicant the said "digital address code." Indeed, the Applicant could not provide the said officials with the "digital address code", whereupon the officials refused to register him for the issue of a Card. All attempts by the Applicant to procure the officials of the 1st Respondent to enter his particulars onto the Register and issue him with a Card proved futile.

6. The 1St Respondent's only reason for refusing to enter the Applicant on to the Register and issue him with a Card is merely that he (the Applicant) has failed to provide the said "digital address code" to them upon request.

C. ARGUMENT FOR THE PLAINT

7. It is based on these facts that the Applicant caused this application to be brought in fervent confidence that his fundamental human rights under the Constitution of the Republic, which he strongly believes have been, are being or are likely to be violated, will be respected, protected, fulfilled or vindicated. Accordingly, we intend to argue each of the alleged rights violations in the following manner:

    a. The right to administrative justice:
        i. Illegality/ultra vires:
            1. Illegality by misapprehension of law; and
            2. Illegality by want of legal basis;
        ii. Unreasonableness/Irrationality.
    b. The right to equality and non-discrimination.

Respectfully, my Lord, we wish to proceed as such.

D. THE RIGHT TO ADMINISTRATIVE JUSTICE

8. A court will declare an administrative act or decision invalid, "only if the right remedy is sought by the right person in the right proceedings and circumstances." [See: **Wade and Forsyth, Administrative Law**, p. 251. The analysis is corroborated in **Craig, Administrative Law**, pp. 739–40. The genesis for the view is to be found in H.W.R. Wade, **"Unlawful Administrative Action: Void or Voidable?** (Part I)" (1967) Vol. 83 L.Q.R. 499, 512–18].

9. This case is brought pursuant to Article 33 of the Constitution. Article 33(1), states that:

> *"Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress."*

This provision sets out the elements that are required to be fulfilled when pursuing a human rights claim in the High Court under Chapter 5 of the 1992 Constitution. The relevant element here, however, is the "right person", namely, whether the applicant has standing in the matter. To have standing under Article 33(1) the principal requirement is that the applicant must be a victim of the alleged violation. This was explained in ***Sam (No. 2) v Attorney-General*** [2000] SCGLR 305, ... as follows:

> *"However, under Article 33(1) which deals with the Protection of Human and other Rights by the Courts, the personal interest requirement is a prerequisite condition for standing, to enable a plaintiff to enforce his human rights and freedoms ... The words "in relation to him" and "that person" implies that a plaintiff must have personal interest in the litigation."*

Also see: ***New Patriotic Party v Attorney-General (CIBA CASE)*** [1996-97] SCGLR, 729, ***Edusei (No. 2) v Attorney-General*** [1998-99] SCGLR 729 and ***Bimpong- Buta v General Legal Council*** [2003-2004] 2 SCGLR 1200.

10. From the facts of the case (above), the Applicant is a Ghanaian and member of the GBA. Persons who are entitled to be registered at the 1st Respondent's workstation at the GBA Centre are primarily Ghanaians who are members of the GBA. This brings the Applicant within the class of persons who are entitled to present themselves for the 1st Respondent's registration process. Indeed, it is the refusal of the 1st Respondent to enter the Applicant's name on to the Register, the Applicant having duly availed himself, which is pith of this plaint. The plaint in this matter, therefore, is "in respect of him" – the Applicant. Accordingly, this makes the Applicant a victim of the alleged violations in question; which, in turn, affords him a standing to bring this matter before this honourable Court.

11. Article 23 of the Constitution epitomises administrative justice in Ghana. It provides that:

> *"Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal."*

This Article, thus, subsumes the common law right to administrative justice under the human rights framework of the Constitution. Accordingly, the Article provides an avenue for persons, natural or legal, [See: ***New Patriotic Party. v. Attorney-General (CIBA CASE)*** [1996-97] SCGLR 729] to challenge the actions and decisions of administrative bodies and, thereby, seek a redress by way of human rights action under Chapter 5 of the Constitution. Thus, in ***Awuni v West African***

Examinations Council [2003 – 2004] SCGLR 471, Kpegah, JSC, declared that:

> *"It was time we told public authorities that they would be held scrupulously to the democratic rights enshrined in Chapter Five (Article 12-32); and especially the values impliedly enshrined in Article 23."*

While Akuffo, JSC (as she then was), concurred that:

> *"Thus, by this article [Article 23], the right to administrative justice is given constitutional force, the objective being the assurance to all persons the due observance and application of the principles of natural justice which foster due process and the stated qualities, in the performance of administrative activities that affect them."*

We may, then, without fear of antagonism, submit that the common law *causa* of judicial review over administrative bodies is, by Article 23 of the Constitution, a fundamental human right in Ghana, which may be enforced through Article 33(1) or Order 67 of CI 47.

12. The primary test for determining whether a body or a person is subject to administrative justice is the source of their power. Primarily speaking, therefore, a body or a person's act or decision is subject to administrative justice if the source of the power behind the act or decision is a statute or legislation. This was stated by Sir John Donaldson, MR, in ***R. v. Panel on Take-Overs and Mergers, ex parte Datafin Plc*** [1987] QB 815, 847, as follows:

> *"If the source of power is a statute, or subordinate legislation under a statute, then clearly the body in question will be subject to judicial review."*

Also see Lord Diplock in ***Council of Civil Service Unions v Minister for the Civil Service*** [1985] AC 374, 409; and ***Enekwa v Kwame Nkrumah***

University of Science and Technology [2009] SCGLR 242; and ***Awuni v West African Examinations Council*** [2003 – 2004] SCGLR 471.

The 1st Respondent is a statutory body established under the National Identification Authority Act, 2006 (Act 750) with the object of creating, maintaining, providing and promoting the use of national identity cards. The 1st Respondent is, therefore, an administrative body, thereby making its decisions and actions amenable to the limitations and requirement of administrative justice.

13. Fundamentally, administrative justice requires that administrative bodies or officials, like the 1st Respondent, act within the confines of some standards or principle and not according to their whims and caprices. This was succinctly put by Sir William Wade in **Administrative Law** (6th Ed.) at page 6 as follows:

> *"The essence of administrative law lies in judge-made doctrines which apply right across the board and which therefore set legal standards of conduct for public authorities."*

Consequently, administrative authorities and their officials should not, in their decisions or actions, violate at least three cardinal standards. They are not to do any of the following: First, they are not to act outside the powers given them (*ultra vires*) or in an illegal manner. Second, they should not be irrational or unreasonable in excising the discretion accorded them or in exercising their judgement. And, third, they should not act in breach of the dictates of natural justice, fair hearing or what is known elsewhere as "due process". This was laid down in ***Council of Civil Service Unions v Minister for the Civil Service*** [1985] AC 374, 410, where Lord Diplock states that:

> *"Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds*

upon which administrative action is subject to control by judicial review. The first ground I would call "illegality," the second "irrationality" and the third "procedural impropriety." That is not to say that further development on a case by case basis may not in course of time add further grounds."

14. Respectfully, my Lord, our contention is that the decision of the 1st Respondent to subject the Applicant's right to be entered on to the Register and, thereby, acquire a Card to a thing called "digital address code" is not only illegal, but also unreasonable. We wish to explain this contention as follows – first, illegality and, second, unreasonableness:

(a) Illegality (*Ultra Vires*)

15. It is a settled principle that where a tribunal or an administrative body makes a mistake in applying the law, the superior courts are entitled to declare such a decision or act invalid. Thus, in ***Pearlman v. Harrow School Governors*** [1979] QB 56, 70, Lord Denning, MR, stated that:

"No Court or tribunal has any jurisdiction to make an error of law on which the decision of the case depends. If it makes such an error, it goes outside its jurisdiction and certiorari will lie to correct it."

Similarly, four years later, in ***O'Reilly v Mackman*** [1983] 2 AC 237, 278, Lord Diplock would opine that:

"If a tribunal whose jurisdiction was limited by statute or subordinate legislation mistook the law applicable to the facts as it had found them, it must have asked itself the wrong question, i.e., one into which it was not empowered to inquire and so had no jurisdiction to determine. Its purported 'determination', not being 'a determination' within the meaning of the empowering legislation, was accordingly a nullity."

Explaining the basis of the rule a decade on, Browne-Wilkinson said in ***R v Hull University Visitor, ex parte Page*** [1993] AC 682, 701, that:

> *"Thenceforward, it was to be taken that Parliament had only conferred the decision-making power on the basis that it was to be exercised on the correct legal basis: a misdirection in law in making the decision therefore rendered the decision ultra vires."*

This is the basis of the rule of illegality (also known as *ultra vires*) as summed up succinctly by Lord Diplock in ***Council of Civil Service Unions v Minister for the Civil Service*** [1985] AC 374, 410, as follows:

> *"By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it."*

16. My Lord, our contention is that the 1st Respondent, an administrative body, has violated the rule against illegality. They have acted illegally in two ways:

a. By misapprehending (misinterpreting or misapplying) Section 1 of Act 950 when they made the supply of the said "digital address code" equivalent to an eligibility criterion for the registration; and
b. By imposing an obligation – the acquisition and supply of a "digital address code" – which has no legal basis.

My Lord, we wish to explains each head of illegality as follows:

i. *Illegality by Misapprehension of Law*

17. The relevant parts of Section 4 of Act 750 (as amended by Section 1 of Act 950) provides as follows:

"The personal information required to be recorded in the Register in respect of an individual who applies to be registered shall include: (a) that person's (i) full name; (ii) sex; (iii) date of birth; (iv) place and country of birth; (v) nationality; : (vi) residential address; (vii) postal address; (viii) marital status and where applicable name of the spouse; (ix) level of education; (x) employment status; (xi) birth certificate number; (xii) Street name; (xiii) electronic mail address; (xiv) telephone number; (xv) tax identification number (TIN) and date issue; (xvi) social security number and date joined: (xvii) national health insurance number and date of issue; (xviii) voter identity number and date of issue; (xix) passport number and date of issue; (xx) driver's licence and date of issue; (xxi) digital address code; (xxii) languages spoken; (xxiii)occupation; (xxiv) height; (xxv) colour of eyes; and (xxvi) colour of hair; (xxvii) person with disability code; (xxviii) zip or postal code; (xxix) existing personal identification number if any; (xxx) type of verification document, its number and date of issue; and (xxxi)challenge column. (b) information on that individual's parentage ...; and (d) any other particulars that the Minister may by Regulation prescribe."

18. On the other hand, Section 7(1) of Act 750 (as amended by Section 2 of Act 950) spells out the eligibility criteria for the registration. It states that:

"The following individuals who are of the age zero and above are eligible to be registered under this Act: (a) Ghanaian citizens resident in or outside this country (b) foreign nationals permanently resident in this country, (c) foreign nationals with resident permits of at least twelve months in each case; and (d) dual citizens, namely, individuals who hold Ghanaian citizenship in addition to any other citizenship."

It may be observed that while Section 4(2), whose marginal note reads "Content of Register", spells out the range of personal information which the Register may contain, it is rather Section 7(1), whose marginal note reads "Eligibility for Registration", which sets out the eligibility criteria –

the grounds upon which a person may either be entered or refused entry on to the Register. In other words, the only persons who can be refused entry on to the Register are those persons who do not fall within any of the four criteria that are set out under Section 7(1) of Act 750 (and not Section 4, where the "digital address code" is found).

19. From the facts of this case (above), the Applicant was refused entry on to the register on the grounds only that he did not supply the 1st Respondent's registration officials with a "digital address code." However, the requirement of a "digital address code" is not found under Section 7 of the Act. It is found, rather, under Section 4, whose marginal note reads "Content of Register." By this, it may be argued (and we so argue, respectfully) that the Act does not permit the 1st Respondent to rely on the non-supply of the personal information in Section 4 as an eligibility criterion. So that once the 1st Respondent officials certified themselves that the Applicant sufficiently falls under one or more of the eligibility criteria under Section 7 of Act 750, they should have entered as much (not necessarily all) of the personal information required of and provided by him under Section 4 of the Act as. My Lord, they ought not refuse him entry altogether.

20. Based on this misapprehension (misinterpretation and misapplication) of the law, we submit, respectfully, that the 1st Respondent Authority acted out of the scope of the law (*ultra vires*), when they refused to enter the Applicant on to the register merely and only because he could not supply a "digital address code". Their refusal is invalid; and we pray your Lordship, humbly, to so declare and order.

ii. *Illegality by want of Legal Basis*

21. Our second contention under the allegation of illegality is that the "digital address code" is a total stranger to the laws of this country. Ours is a polity of constitutionalism; and one of the cornerstones of constitutionalism is rule law. The concept of rule law prescribes that law

(rather than man) should rule the people. Accordingly, Prof David Feldman "Constitutionalism," in Philip P. Wiener ed., ***Dictionary of the History of Ideas: Studies of Selected Pivotal Ideas (Vol. 1)***, 485, 491-92 (1973), explains that:

> *"Constitutionalism proclaims the desirability of the rule of law as opposed to rule by the arbitrary judgment or mere fiat of public officials ... government officials are not free to do anything they please in any manner they choose ..."*

Accordingly, no person or public official could impose a duty or an obligation on citizens except by, through or under law. Thus, in ***Asare v Attorney-General & General Legal Council*** (Writ No. J1/7/2016, Supreme Court judgment of June 22, 2017), where the Council imposed new admission processes on law school applicants without a law, the Supreme Court unanimously held that the new admission criteria were invalid. Similarly, in ***Banful & Anor v Attorney-General*** (Writ No. J1/7/2016, Supreme Court judgment of June 22, 2017), where two former Guantanamo Bay detainees were, through an executive agreement with the United States authorities, admitted into Ghana without a specific law by Parliament, the Supreme Court held that the agreement was void.

22. It is on this principle that all the artificial data or information that are listed under Section 4(2)(a), except the "digital address code", have legislation which gives legal force and legitimacy to them. "Postal address", for instance, is backed by the Postal and Courier Services Regulatory Commission Act, 2003 (Act 649). The object of Act 649 is to "regulate the operation of post and courier services; to designate a national postal service provider and to provide for related matters." Similarly, "residential address", "street name" and "house number" are all backed by the Land use and Spatial Planning Act, 2016 (Act 925). Specifically, the object of Act 925 is to regulate "land use and spatial planning, provide for sustainable development of land and human

settlements through a decentralised planning system, ensure judicious use of land in order to improve quality of life, promote health and safety in respect of human settlements and to regulate national, regional, district and local spatial planning, and generally to provide for spatial aspects of socioeconomic development and for related matters." Further, the requirement of "telephone number" is backed the National Communications Authority Act of 2008, (Act 769), Electronic Communications Act of Ghana, 2008 (Act 775), and the Electronic Communications Amendment Act, 2008 (Act 786). Again, "electronic mail address" is backed by the Electronic Transactions Act, 2008 (Act 772) and, in a way, by the National Information Technology Agency Act, 2008 (Act 771).

My Lord, "Tax identification number", "SSNIT number", "Voter's identity number", "driver's licence number", "passport number", "birth certificate", and, even "marital status" are backed, respectively, by the Revenue Administration Act, 2016 (Act 915); the National Pensions Act, 2008 (Act 766); Article 42 of the Constitution and the Public Elections (Registration of Voters) Regulations, 2016 (C.I. 91); the Road Traffic Act and the Driver and Vehicle Licensing Authority Act, 1999 (Act 569); the Passport and Travel Certificates Act, 1967 (NLCD 155); the Registration (Births and Deaths) Act, 1965 (Act 301); and the Marriages Act, 1884-1985 (CAP. 127). These specific legislations give these requirements the requisite legal force and legitimacy, thereby, making them *prima facie* evidence at law of what they purport to represent.

23. On the contrary, the question – which law backs this "digital address code"? – cannot be answered in the affirmative. Consequently, its requirement has, we submit respectfully, no value at law; and, for that reason, could not be used as a basis to burden a citizen with a duty or an obligation or deny him or her a right or a privilege.

24. Our contention is not that every project or program of the State must be backed by express law. Rather, our proposition is that every

invention by the State which places an obligation or a duty on the citizen or which portends punishment or denial of a right or a privilege to the citizen must be backed by law in order to have force or legitimacy. The 1st Respondent relies on the "digital address code" to deny the Applicant and other citizens their right to be registered and issued with a national identity card. To all intents and purposes, the Card will, in itself, later be a licence to other greater rights and privilege. Because of this, it ought to be shown that the "digital address code" is, in the least, known to the law like all the other requirements under Section 4 of Act 750 (as amended by Act 950). And, to the extent that the "digital address code" is and remains alien to the laws of Ghana, this honourable Court is entitled, as a matter of justice and rule of law, to declare the decision of the 1st Respondent invalid, which refuses to enter the Applicant on to the Register and issue him with a Card. We so pray, respectfully.

(b) Unreasonableness (Irrationality)

25. The courts, in their power to supervise administrative bodies and officials, have long asserted that when exercising their powers in giving effect to a legislation, administrative bodies or officials must act within the confines of what is reasonable. Thus, Lord Coke, 420 years ago, in ***Rooke's Case*** (1598) 5 Co Rep 99b, 77 E.R. 209, 210, states that:

> *"For discretion is a science or understanding to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to their wills and private affections; for as one saith, talis discretio discretionem confundit."*

This principle would, two centuries later, be echoed by Lord Mansfield in ***R. v. Askew*** (1768) 4 Burr 2186, 2188, as follows:

> *"It is true that the judgment and discretion of determining upon this skill, ability, learning, and sufficiency to exercise and practise this*

profession is trusted to the College of Physicians: and this Court will not take it from them, nor interrupt them in the due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be fair, candid, and unprejudiced; not arbitrary, capricious, or biased; much less, warped by resentment, or personal dislike."

These principles, which seems to be focused on individual or personal dislike, would be later refined by the courts to suit situations where in their exercise of administrative power, administrative authorities would be found to be "partial and unequal in their operation as between different classes, if they were manifestly unjust, if they disclosed bad faith, or if they involved such oppressive or gratuitous interference with the rights of citizens as could find no justification in the minds of reasonable men."

26. Such is the origin of the principle of irrationality or what has come to be known in modern times as Wednesbury unreasonableness. Thus, in ***Associated Provincial Picture Houses Ltd. v Wednesbury Corporation*** [1948] 1 KB 223, Lord Green, MR, put the matter as follows at page 233:

"The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account.

However, it is not enough for authorities to merely "take into account" the relevant factors. They also need to show further that the factors they took into account did, in fact, have a bearing on the conclusions they reach. Thus, Lord Green, MR, continues:

"Once that question [of taking the relevant factors in account] is answered in favour of the local authority, it may be still possible to say that, although the local authority have kept within the four corners of

the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere."

In the same light, Lord Diplock, in ***Council of Civil Service Unions v Minister for the Civil Service*** [1985] AC 374, 410, had to put the test of irrationality or unreasonableness as follows:

*"By 'irrationality' I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" [**Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation** [1948] 1 K.B. 223]. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."*

The derivative jurisprudence of these long line of authorities seems to suggest that, even where they act in accordance with the patent letter of the law in exercising their administrative powers, the acts or decisions of administrative bodies or officials may still be declared invalid on the grounds that their interpretation or application of the law is so "outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it." [See the commentary of M. Supperstone & J Goudie, **Judicial Review (Butterworth, 1992)** at page 124]

My Lord, this test, itself, is against the backdrop of the important interpretation rule that Parliament does not intend to be unreasonable in making laws for the regulation of the people. Thus, "one is entitled and indeed bound to assume that Parliament intends to act reasonably, and therefore to prefer a reasonable interpretation of a statutory provision if there is any choice" [See: ***IRC v Hinchy*** [1960] AC 748, 768, per Lord Reid]; and, further, that "the more unreasonable a result, the less likely it is that Parliament intended it." [See: ***R. (Edison First Power Ltd) v***

Secretary of State for the Environment, Transport and the Regions, [2003] 4 All E.R. 209, 217, per Lord Bingham of Cornhill.]

27. As noted in the facts, the National Identification Register (Amendment) Act (Act 950) was passed in 2017 to revise the list of personal information that the 1st Respondent may place on the Register. According to Section 1 of Act 950 (which amends Section 4 of Act 750), as many as 31 pieces of personal information are to be taken from and recorded in respect of each person.

A careful analysis of Section 1 of Act 950, however, may disclose that the information to be collected may be divided into two broad categories – (1) those that are biological to the person and (2) those that are circumstantial. The biological pieces of personal information to be collected are as follows: (i) full name; (ii) sex; (iii) date of birth; (iv) place and country of birth; (v) nationality; (xxii) languages spoken; (xxiv) height; (xxv) colour of eyes; and (xxvi) colour of hair.

On the other hand, the circumstantial pieces of personal information are: (vi) residential address; (vii) postal address; (viii) marital status and where applicable name of the spouse; (ix) level of education; (x) employment status; (xi) birth certificate number; (xii) Street name; (xiii) electronic mail address; (xiv) telephone number; (xv) tax identification number (TIN) and date issue; (xvi) social security number and date joined: (xvii) national health insurance number and date of issue; (xviii) voter identity number and date of issue; (xix) passport number and date of issue; (xx) driver's licence and date of issue; (xxiii) occupation; (xxvii) person with disability code; (xxviii) zip or postal code; (xxix) existing personal identification number if any; (xxx) type of verification document, its number and date of issue; and (xxxi) challenge column (whatever this means).

28. My Lord, even the most cursory look at Section 1 of Act 950 would disclose the following:

a. That, unlike the biological pieces of personal information, not all the circumstantial pieces of personal information may be necessary for, available to or, even, obtainable by all citizens who may be eligible for or need the Card. For example, not every Ghanaian may be interested in, need or have a postal address; an electronic mail address (if he or she is not computer literate); a telephone number (if he or she is not interested in or capable of having and maintaining a phone); a national health insurance number (if he or she is not interested in joining the NHIS scheme); a voter identity card (if he or she is not eligible or, even, interested in voting); a passport (if he or she is not interested in travelling outside Ghana or the ECOWAS sub-region); a driver's licence (if he or she does not know or is not interested in knowing how to drive); or, even, a person with disability code (if the person, though with disability, is not interested in obtaining such a code). Such information may, therefore, not be a sensible prerequisite to a person's entry on to the Register. Indeed, such information, we contend, respectfully, are all not cumulatively essential and the failure of a person to provide ALL need not affect their eligibility to be registered and be issued with a Card.

b. That, unlike the biological pieces of personal information, some of the circumstantial data are merely duplicitous or alternatives in respect of which the availability of one may obviate the need or requirement for the other. Take the relationship between a residential address, a postal address and an electronic mail address, for example. The supply of a residential address will make the requirement of a postal address a mere surplusage, since what matters for the register is to confirm or know where the persons may be found. However, the most obvious of the duplicitous pair of personal information is "residential address" and the so-called "digital address code" (which is at the crux of this plaint). The presentation of one (say, a residential address) should reasonably

obviate the need for a "digital address code"; and not make its non-presentation a disqualifying factor. So that a person who presents one but fails to present the other should not be barred from being entered on to the Register and issued with a Card.

29. From the facts of the case (above), the Applicant, a Ghanaian and member of the GBA, responded to the call by the 1st Respondent through the GBA to present himself for registration for the Card. The officials of the 1st Respondent however refused to enter his name on to the Register on the grounds *only* that he did not provide them with a "digital address code" (notwithstanding the fact that the Applicant has provided his full residential address together with all the other personal information).

30. My Lord, we submit that the 1st Respondent and its officials were exceptionally irrational is using the supply of a "digital address code" as an eligibility criterion for registration under Act 750 (as amended by Act 950). We therefore pray, humbly, that the Court declare so.

E. THE RIGHT TO EQUALITY OR NON-DISCRIMINATION

31. The claim under this head of argument is more public interest oriented than personal to the Applicant (even though the Applicant found himself caught up in the teeth of both the public interest dimension and the personal interest dimension of it). The claim is that by illegally and unreasonably (as argued above) making the supply of a "digital address code" an eligibility criterion for registering persons, the 1st Respondent has effectively deployed a ruthless scheme which stands to discriminate against a large class of people (including the Applicant); and, which also has the real potential of torpedoing the entire national identity card project.

32. A cardinal principle of our democracy is that "all persons shall be equal before the law." This also means that a person shall not be discriminated against [See Article 17(1) and (2), 1992 Constitution].

While the Constitution names some specific grounds in respect of which no one should suffer discrimination – "gender, race, colour, ethnic origin, religion, creed or social or economic status" – such grounds are more indicative than exhaustive. This claim of inexhaustiveness may be supported by the definition of "discrimination" given by the Constitution. Article 17(3), thus, defines "discrimination" to mean giving a:

> *"different treatment to different persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions, colour, gender, occupation, religion or creed, whereby persons of one description are subjected to disabilities or restrictions to which persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description."*

This definition, by listing different grounds from what is listed under Article 17(2), provides a hint that the focus of Article 17 is not the enumeration of grounds of non-discrimination, but rather the broader principle against unjustifiable differential treatments that a person may be subjected to. This view is further strengthened by Article 17(4) which instructs affirmative action or positive discrimination in respect of different grounds.

33. My Lord may take judicial notice of the public discussion that welcomed the launching of the "digital address code" system in 2017. Nonetheless, our research on the "digital address code" reveals the following: It is powered by a mobile phone software application known as the GhanaPostGPS. GhanaPostGPS is an internet-enabled system of using the Global Position System (GPS) technology – a satellite-based radio-navigational system owned by the United States government and operated by the United States Air Force.

As my Lord may already know (and we have no reason to apprehend that my Lord does not), GPS technology uses longitude and latitude coordinates (intersections) to locate spots on the earth's surface. These longitudinal and latitudinal coordinates are, then, computer-coded into the "digital address codes" that the Respondents require of every

Ghanaian as a location address. We do not wish to bore my Lord further with the details of the mechanics behind the GPS technology and the "digital address code". Suffice it, however, to say that to generate one's "digital address code", one needs at least three things: (1) a smart phone; (2) a good internet access and, above all, (3) the skill and ability to use the GhanaPostGPS smart phone application. If the State has any way of helping people to generate their "digital address codes", it has not yet made that way accessible to Ghanaians. Therefore, individuals are burdened with the duty of generating their own "digital address codes" as it stands.

34. From the above explanation, one thing stands out – a person may not be able to access or obtain a "digital address code" unless he or she falls within a certain social or economic class. A class where he or she not only can afford a smart phone or good internet, but also has the ability and skill to use the GhanaPostGPS mobile phone application to generate a "digital address code". Further, a person's place of residence (which may sometimes, but not always, also depend on his or her social and economic status) may also determine whether he or she can obtain the said "digital address code". Similarly, a person's level of education, too, may play a role.

35. Considered from this perspective, it becomes quite imperative that if the Respondents are allowed to continue using the "digital address code" as an eligibility criterion for registering persons for the Card, an overwhelming number of citizens will be denied access to the Card. Lest we forget, the overarching purpose of the Register and the Card, as stated in the long title of Act 707, is to "advance economic, political and social activities in Ghana." How, then, may this worthy purpose of the Register be achieved when a large number of persons are, by the illegal and unreasonable decisions or acts of the 1st Respondent, excluded from it?

36. My Lord, we submit, respectfully, that the decision of the 1st Respondent to not Register persons who do not produce a "digital address code" is discriminatory. The decision discriminates against persons (including the Applicant) on the basis of their social or economic status, educational background and, even, place of residence. Therefore, we pray this honourable Court to so declare.

F. PRAYER

37. My Lord, on the strength of the above laws, arguments and propositions; and, also, in the pursuit of justice, we humbly pray that this honourable Court:

a. Adjudge and declare that the Applicant's right to administrative justice and to equality or non-discrimination, have been, are being or are likely to be violated by the Respondents;
b. Make an order of:
    i. Prohibition restraining the Respondents from further interfering with or violating the above-mentioned rights of the Applicant; and
    ii. *Mandamus* to bring up into this Court compelling the 1st Respondent, its officers, agents, assigns or privies whatsoever or howsoever described or called to register and issue the Applicant with a national identity card, his failure to provide the so-called "digital address code" notwithstanding;
c. Provide any other remedies that the honourable Court may deem fit for the greater good of the Ghanaian society as a whole.

Humbly Submitted.

DATED AT ACCRA THIS 17TH DAY OF OCTOBER, 2018.

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FRANCIS KWARTENG ARTHUR, ESQ.
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TIN No.: P0000484687
R. O. SOLOMON CONSULTING
Applicant

THE REGISTRAR
HIGH COURT
(HUMAN RIGHTS DIVISION)
ACCRA

AND FOR SERVICE ON THE:

1. The 1st Respondent, whose address of service is No.8 Nelson Mandela Avenue, Off Gulf House Street, South-Legon, Accra; and
2. The 2nd Respondent, whose address for service is the Attorney-General's Department, Ministries, Accra.