

Filed on... 30/12/20
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S.D.L. Registrar
SUPREME COURT OF GHANA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA – A.D. 2020

WRIT NO.

ARTICLE 64 OF THE 1992 CONSTITUTION AND SUPREME COURT RULES, 1996
(C.I. 16) (AS AMENDED BY C.I. 74 AND C.I. 99)

PRESIDENTIAL ELECTION PETITION
PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER 2020.

The Petition of

JOHN DRAMANI MAHAMA
No. 33 Chain Homes
Airport Valley Drive
Accra
GL-128-5622

51/5/2021
PETITIONER

AND

- 1. ELECTORAL COMMISSION** 1ST RESPONDENT
National Headquarters
6th Avenue
Ridge – Accra
- 2. NANA ADDO DANKWA AKUFO-ADDO** 2ND RESPONDENT
House No. 02 Onyaa Crescent
Nima - Accra

The Petition of **JOHN DRAMANI MAHAMA** of No. 33 Chain Homes, Airport Valley Drive, Accra, a citizen of Ghana by birth, whose name is stated at the foot of this Petition.

- (1) Petitioner states that at the Presidential Election held on 7th December 2020 among Petitioner, 2nd Respondent, Christian Kwabena Andrews (Ghana Union Movement), Ivor Kwabena Greenstreet (Convention People's Party), Akua Donkor (Ghana Freedom Party), Henry Herbert Lartey (Great Consolidated Popular Party), Hassan Ayariga (All People's Congress), Percival Kofi Akpaloo (Liberal Party of Ghana), David Asibi Ayindenaba Apasera (People's National Convention), Brigitte Akosua Dzugbenuku (Progressive People's Party), Nana Konadu Agyeman Rawlings (National

Democratic Party) and Alfred Kwame Asiedu Walker (Independent) as candidates, the Returning Officer for the Presidential Election and Chairperson of 1st Respondent, Mrs. Jean Adukwei Mensa, has returned 2nd Respondent as validly elected.

(2) Petitioner says that the grounds for his Petition are as follows:

- a. That the purported declaration made on 9th December 2020 by Mrs. Jean Adukwei Mensa, Chairperson of 1st Respondent and the Returning Officer for the Presidential Election held on 7th December 2020 violated Article 63(3) of the 1992 Constitution, and is therefore unconstitutional, null and void and of no effect whatsoever.
- b. That in making the said declaration, Mrs. Jean Adukwei Mensa, Chairperson of 1st Respondent and the Returning Officer for the Presidential Election, violated the constitutional duty imposed on her by Articles 23 and 296(a) of the 1992 Constitution to be fair, candid and reasonable.
- c. That the said declaration was made arbitrarily, capriciously, and with bias in favour of 2nd Respondent, contrary to Article 296(b) of the 1992 Constitution.
- d. That the said declaration was made without regard to due process of law as required under Articles 23 and 296(b) of the 1992 Constitution.

(3) Therefore, your Petitioner prays the Supreme Court for the following reliefs:

- (a) A declaration that Mrs. Jean Adukwei Mensa, Chairperson of 1st Respondent and the Returning Officer for the Presidential Elections held on 7th December 2020 was in breach of Article 63(3) of the 1992 Constitution in the declaration she made on 9th December 2020 in respect of the Presidential Election that was held on 7th December 2020;
- (b) A declaration that, based on the data contained in the declaration made by Mrs. Jean Adukwei Mensa, Chairperson of 1st Respondent and the Returning Officer for the Presidential Elections held on 7th December 2020, no candidate satisfied the requirement of Article 63(3) of the 1992 Constitution to be declared President-elect;
- (c) A declaration that the purported declaration made on 9th December 2020 of the results of the Presidential Election by Mrs.

Jean Adukwei Mensa, Chairperson of 1st Respondent and the Returning Officer for the Presidential Elections held on 7th December 2020 is unconstitutional, null and void and of no effect whatsoever;

- (d) An order annulling the **Declaration of President-Elect Instrument, 2020 (C.I. 135)** dated 9th December 2020, issued under the hand of Mrs. Jean Adukwei Mensa, Chairperson of 1st Respondent and the Returning Officer for the Presidential Elections held 7th December 2020 and gazetted on 10th December, 2020;
- (e) An order of injunction restraining the 2nd Respondent from holding himself out as President-elect;
- (f) An order of mandatory injunction directing the 1st Respondent to proceed to conduct a second election with Petitioner and 1st Respondent as the candidates as required under Articles 63(4) and (5) of the 1992 Constitution.

- (4) The number of witnesses that Petitioner intends to call is five (5).

DATED ON 30TH DECEMBER, 2020.



JOHN DRAMANI MAHAMA

- (5) THE NAME OF MY COUNSEL AND MY ADDRESS FOR SERVICE ARE:

TONY LITHUR

Lithur Brew & Company

No. 110B 1st Kade Close

Kanda Estates

Accra

(6) **THE ADDRESSES FOR RESPONDENTS ARE:**

- (i) **NANA ADDO DANKWA AKUFO-ADDO** 1ST RESPONDENT
House No. 02 Onyaa Crescent
Nima - Accra
- (ii) **ELECTORAL COMMISSION** 2ND RESPONDENT
National Headquarters
6th Avenue
Ridge - Accra

NOTICE TO APPEAR

[RULES 68A AND 68B OF C.I. 16 AS AMENDED BY C.I. 74 AND C.I. 99]

PLEASE TAKE NOTICE that you are required within three (3) days after service hereof upon you, inclusive of the date of such service, to enter appearance either in person or by your solicitor at the Registry of the Supreme Court, Accra, in the Greater Accra Region of the Republic of Ghana, should you think fit to do so and thereafter to make answer to this Petition, and that in default of your doing so, the Court will proceed to hear the Petition and pronounce judgment in your absence notwithstanding.

TO:

1. **ELECTORAL COMMISSION** 1ST RESPONDENT
National Headquarters
6th Avenue
Ridge - Accra
2. **NANA ADDO DANKWA AKUFO-ADDO** 2ND RESPONDENT
House No. 02 Onyaa Crescent
Nima - Accra

DATED IN ACCRA ON THE 30TH DAY OF DECEMBER 2020


TONY LITHUR

SOLICITOR'S LICENCE NO. GAR 00091/20

LAW FIRM REGISTRATION NO. ePP00048/20

LITHUR BREW & COMPANY
No. 110B 1ST KADE CLOSE,
KANDA ESTATES
P O. BOX CT 3865 CANTONMENTS ACCRA
TEL: 0302208104/05

**THE REGISTRAR
SUPREME COURT
ACCRA**

Note: Any person entering appearance should at the same time furnish an address for service within the jurisdiction of the court in which proceedings were commenced. The Answer should be filed within **ten (10)** days after the Petition is served on the Respondents.

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2ND RESPONDENT

House No. 02 Onyaa Crescent
Nima - Accra

PETITION OF JOHN DRAMANI MAHAMA

THE PETITION OF JOHN DRAMANI MAHAMA, of House No. 33, Chain Homes, Airport Valley Drive, Accra, in the Greater Accra Region of the Republic of Ghana shows that:

1. Petitioner is a citizen of Ghana by birth.
2. Petitioner is a member of the National Democratic Congress (NDC) and its candidate for the office of President in the Presidential Election held on 7th December 2020.
3. 1st Respondent is the body mandated by the 1992 Constitution to conduct and supervise all public elections and referenda.

4. 2nd Respondent is the candidate of the New Patriotic Party (NPP) for the office of President in the Presidential Election held on 7th December 2020.
5. On 9th December 2020, Mrs. Jean Adukwei Mensa, Chairperson of 1st Respondent and the Returning Officer for the Presidential Election, held a press conference at which she purported to declare 2nd Respondent duly elected as President. The purported declaration was broadcast live on radio, television and other electronic media. Attached and marked as **Exhibit "A"** is an video and audio recording of the purported declaration.
6. Purporting to declare the results, Mrs. Jean Adukwei Mensa, Chairperson of 1st Respondent and the Returning Officer for the Presidential Election, said: **"At the end of the transparent, fair, orderly, timely and peaceful Presidential Elections, the total number of valid votes cast was 13,434,574 representing 79% of the total registered voters."**
7. In the declaration, Mrs. Jean Adukwei Mensa, Chairperson of 1st Respondent and the Returning Officer for the Presidential Election, further said that 2nd Respondent of the NPP obtained 6,730,413 votes, being 51.595% of the total valid votes cast.
8. The claim that the percentage of votes obtained by 2nd Respondent was 51.595% of the total valid votes that she herself distinctly stated to have been 13,434,574, was a manifest error, as votes cast for 2nd Respondent would amount to 50.098% and not the 51.595% erroneously declared.
9. Mrs. Jean Adukwei Mensa, Chairperson of 1st Respondent and the Returning Officer for the Presidential Election, further declared that: **"John Dramani Mahama of the NDC obtained 6,214,889 votes, being 47.366% of the total valid votes cast."**
10. From the total valid votes cast of 13,434,574, Petitioner's percentage would be 46.260% and not the 47.366% erroneously declared.
11. The percentages attributed to all but one of the other candidates by Mrs. Jean Adukwei Mensa were also incorrect.
12. If the total number of valid votes standing to the names of each of the Presidential Candidates is summed up, this would yield a total number of valid votes cast of 13,121,111, a figure that is completely missing from the

purported declaration by Mrs. Jean Adukwei Mensa on 9th December 2020 and the purported rectification on 10th December 2020.

13. When the percentages of valid votes cast and standing to the names of each of the Presidential Candidates, and as purportedly declared by Mrs. Jean Adukwei Mensa on 9th December 2020 are summed up, they would yield a total of one hundred point three per cent (100.3%), a mathematical and statistical impossibility, a further proof of the wrongfulness and unconstitutionality of the purported declaration.
14. In purporting to declare 2nd Respondent as the winner of the Presidential Election, Mrs. Jean Adukwei Mensa, also stated that: ***“Currently the election results we have declared exclude that of the Techiman South Constituency, with a voter population of 128,018. The said election results are not ready because they are being contested....”*** ***“.....even if we were to add the 128,018 full results to the results of the second candidate, it would not change the outcome of the election hence our declaration of the 2020 presidential results without that of Techiman South”***.
15. The Techiman South Constituency has a total registered voter population of 128,018, and if added to the total valid votes announced by Mrs. Jean Adukwei Mensa as cast (13,434,574), the resultant figure would now be 13,562,592.
16. Consequently, if all the votes of Techiman South Constituency were added to Petitioner’s votes, 2nd Respondent’s votes would remain the same at 6,730,413, now yielding 49.625%, while the votes of Petitioner would increase to 6,342,907, now yielding 46.768%.
17. Therefore, Mrs. Jean Adukwei Mensa’s claim in the purported declaration on 9th December 2020 that adding all the 128,018 votes in the Techiman South Constituency to the votes standing to the name of Petitioner would not change the results, was clearly wrong.
18. Article 63(3) of the 1992 Constitution provides that: ***“A person shall not be elected as President of Ghana unless at the presidential election the number of votes cast in his favour is more than fifty percent of the total number of valid votes cast at the election.”***

19. 1st Respondent and its Chairperson, Mrs. Jean Adukwei Mensa, are required, in the conduct of their responsibilities in respect of elections, to comply with the Constitution.
20. In declaring 2nd Respondent as the winner of the 2020 Presidential Elections on 9th December 2020, the Chairperson of 1st Respondent, Mrs. Jean Adukwei Mensa, acted in flagrant violation of the 1992 Constitution.
21. 1st Respondent and its Chairperson, Mrs. Jean Adukwei Mensa, in the conduct of their duties, is required by Articles 23 and 296 of the 1992 Constitution to act fairly, reasonably, candidly and not arbitrarily or capriciously, and to comply with the requirements of law.
22. Mrs. Jean Adukwei Mensa predetermined, prior to the 7th December 2020 Presidential and Parliamentary Elections, that she would announce the results within 24 hours after the close of polls. Consequently, she refused to entertain legitimate concerns placed before her regarding errors in the data she was proceeding to make the declaration on.
23. Prior to her making the said purported declaration, Mrs. Jean Adukwei Mensa had been notified by agents of Petitioner of certain material errors in the figures collated, and then refused to accept a letter written by the NDC to her, raising some of those concerns. Attached and marked as **Exhibit "B"** is a copy of the said letter.
24. Article 296 (b) of the 1992 Constitution requires 1st Respondent and Mrs. Jean Adukwei Mensa not to be "**biased either by resentment, prejudice or personal dislike**", and also requires them to exercise discretionary power "**in accordance with due process of law**".
25. 1st Respondent purported to gazette the declaration she made on 9th December 2020 by publishing the **Declaration of President-Elect Instrument, 2020 (C.I. 135)**, under the hand of Mrs. Jean Mensa, claiming that 2nd Respondent was the winner of the Presidential Election on the basis of him having attained more than 50% of the valid votes cast. A copy of C.I. 135 is attached as **Exhibit "C"**.
26. The gazette notice of the outcome of the Presidential Election is required to be based on the declaration actually made by Mrs. Jean Adukwei Mensa as the Chairperson of 1st Respondent and the Returning Officer of the results of the Presidential Election.

27. The gazette notification contained in **C.I. 135**, being notification of the publicly broadcast declaration made by Mrs. Jean Adukwei Mensa on the evening of 9th December 2020, is also unconstitutional, null and void, of no effect whatsoever, and therefore liable to be set aside.
28. On 10th December 2020, an unsigned Press Release of 1st Respondent claimed that its Chairperson, Mrs. Jean Adukwei Mensa, had “inadvertently” used the figure of 13,433,573 for the total valid votes cast. The said release claimed that **“The total valid votes cast is now 13,119,460.”** A copy of the said press release is attached and marked as **Exhibit “D”**, and available on 1st Respondent’s website www.ec.gov.gh as of 11:45 hours GMT on 29th December, 2020.
29. In this purported corrective press release, 1st Respondent introduced two completely new figures for the total votes cast in the Presidential Election. Thus, there was no correction properly so called, since to be valid, a correction of a prior mistake must correctly name the mistake to be corrected. In this case, the mistake to be corrected was itself mistakenly stated. The numbers 13,434,574 and 13,433,573 are completely different, with a margin of 1001 votes.
30. In seeking to justify the new figure put forward in the press release, various adjustments to figures of votes cast for various candidates are made without any explanation and with a total lack of transparency.
31. The so-called rectification on 10th December 2020 of the errors in the purported declaration of 9th December 2020, was itself egregiously wrong. Exhibit “E” provides sample details of wrong aggregation of valid votes on the face of the summary sheets (Form 10) of some 11 constituencies. Exhibit “E” shows that the sum total of valid votes obtained by all candidates varies from the figure recorded on the face of the summary sheet as the total valid votes from those constituencies.
32. Exhibit “F” is a spreadsheet covering sample details from 32 constituencies showing vote padding by 1st Respondent in favour of 2nd Respondent. When the votes 2nd Respondent obtained in all polling stations as shown on their respective pink sheets in these 32 constituencies are aggregated, the resultant figure differs from the figure that was declared by 1st Respondent for 2nd Respondent as

captured on the summary sheets of the respective constituencies. They show that more votes were added to those of 2nd Respondent than he had obtained.

33. If Mrs. Jean Adukwei Mensa as Returning Officer of the Presidential Election, had determined in good faith that her declaration on 9th December 2020 was in error, her constitutional duty to be fair and candid required her, among other things, to acknowledge the error, set aside her erroneous declaration and proceed on the path to correcting her error, respecting the rights of candidates to participate in the processes towards the making of such a declaration.

34. The unsigned press release of 1st Respondent has no value in the determination of the validity of the declaration that Mrs. Jean Adukwei Mensa made on 9th December 2020, especially as the issue of the release was not undertaken transparently and in accordance with due process of law and established practice, including the participation of affected candidates through their respective agents.

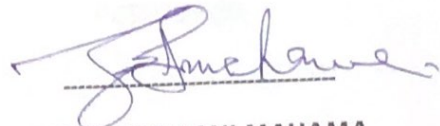
35. **WHEREFORE** the Petitioner seeks the following reliefs:

- (a) A declaration that Mrs. Jean Adukwei Mensa, Chairperson of 1st Respondent and the Returning Officer for the Presidential Elections held on 7th December 2020 was in breach of Article 63(3) of the 1992 Constitution in the declaration she made on 9th December 2020 in respect of the Presidential Election that was held on 7th December 2020;
- (b) A declaration that, based on the data contained in the declaration made by Mrs. Jean Adukwei Mensa, Chairperson of 1st Respondent and the Returning Officer for the Presidential Elections held on 7th December 2020, no candidate satisfied the requirement of Article 63(3) of the 1992 Constitution to be declared President-elect;
- (c) A declaration that the purported declaration made on 9th December 2020 of the results of the Presidential Election by Mrs. Jean Adukwei Mensa, Chairperson of 1st Respondent and the Returning Officer for the Presidential Elections held on 7th December 2020 is unconstitutional, null and void and of no effect whatsoever;
- (d) An order annulling the **Declaration of President-Elect Instrument, 2020 (C.I. 135)** dated 9th December 2020, issued under the hand of

Mrs. Jean Adukwei Mensa, Chairperson of 1st Respondent and the Returning Officer for the Presidential Elections held 7th December 2020 and gazetted on 10th December, 2020;

- (e) An order of injunction restraining the 2nd Respondent from holding himself out as President-elect;
- (f) An order of mandatory injunction directing the 1st Respondent to proceed to conduct a second election with Petitioner and 1st Respondent as the candidates as required under Articles 63(4) and (5) of the 1992 Constitution.

DATED IN ACCRA ON THE 30TH DAY OF DECEMBER 2020



JOHN DRAMANI MAHAMA
PETITIONER

THE REGISTRAR
SUPREME COURT
ACCRA

AND COPY FOR SERVICE ON THE ABOVE-NAMED RESPONDENTS