

**PETITION NO.J1/6/2013**

**IN THE MATTER OF A PETITION CHALLENGING THE VALIDITY OF THE ELECTION OF  
JOHN DRAMANI MAHAMA AS PRESIDENT OF THE REPUBLIC OF GHANA PURSUANT TO  
THE PRESIDENTIAL ELECTION HELD ON 7<sup>TH</sup> AND 8<sup>TH</sup> DECEMBER 2012:**

*BETWEEN:*

- A N D*

- |    |  |                 |
|----|--|-----------------|
| 1. | <b>JOHN DRAMANI MAHAMA</b><br>Castle, Castle Road, Osu, Accra  |                 |
| 2. | <b>THE ELECTORAL COMMISSION</b><br>National Headquarters of the Electoral Commission<br>6 <sup>th</sup> Avenue, Ridge, Accra |                 |
| 3. | <b>NATIONAL DEMOCRATIC CONGRESS (NDC)</b><br>Party Headquarters, Kokomlemle, Accra.  | ... Respondents |

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## B. Introduction

On the 7<sup>th</sup> and 8<sup>th</sup> days of December, 2012, Ghana held its presidential and parliamentary elections. The presidential election was contested by seven (7) candidates who were sponsored by political parties and one (1) other who contested as an independent candidate. The 1<sup>st</sup> petitioner was the candidate of the New Patriotic Party (NPP). The elections were originally fixed for 7<sup>th</sup> December, 2012. Polls in certain polling stations were adjourned to 8<sup>th</sup> December, 2012, owing to the alleged failure of the biometric verification devices (BVD). In view of the requirement of the law regulating the conduct of the December 2012 elections for voting to take place only after prospective voters had successfully undergone biometric verification, the polls continued on the following day in the polling stations in which biometric verification devices had allegedly broken down. Thus, for the first time in the history of the Fourth Republic, a presidential election was held over two days, underscoring the importance of the requirement for biometric verification.

On 9<sup>th</sup> December, 2012, the Chairman of the 2<sup>nd</sup> respondent, the body constitutionally and statutorily mandated to conduct and supervise public elections and referenda in the Republic and to declare the results thereof, declared the 1<sup>st</sup> respondent, candidate of the 3<sup>rd</sup> respondent, as the winner of the presidential contest with 5,574,761 votes (50.70%) and, thus, as having been validly elected as President of the Republic. Thereafter, on 10<sup>th</sup> December, 2012, the Declaration of President-Elect Instrument, 2012 (C. I. 80) was published under the hand of Dr. Kwadwo Afari-Gyan, the Chairman of the 2<sup>nd</sup> respondent.

Having received reports of the commission of flagrant constitutional and statutory violations as well as malpractices and irregularities in the conduct of the election, the 1<sup>st</sup> petitioner, together with his vice presidential candidate, 2<sup>nd</sup> petitioner and the 3<sup>rd</sup> petitioner, the National Chairman of the NPP, filed the instant petition on 28<sup>th</sup> December, 2012 against the 1<sup>st</sup> and 2<sup>nd</sup> respondents herein. The 3<sup>rd</sup> respondent, upon its own application, was joined pursuant to an order of this Honourable Court dated 22<sup>nd</sup> January, 2013.

To ensure a coherent presentation of the petitioners' case and to assist in a determination of their claims, this Address will be presented in the following order:-

- a. facts underpinning the Petition
- b. reliefs sought by Petition
- c. summary of Answers filed by respondents
- d. issues for trial

- e. explanation of the grounds for the reliefs claimed in petition, i.e. the various violations, malpractices and irregularities
- f. burden and standard of proof
- g. the legal effect of the violations, malpractices and irregularities stated by petitioners
- h. the primary evidence of the violations, malpractices and irregularities stated in petition
- i. categorisation/re-categorisation of the exhibits
- j. evaluation of the evidence led at the trial
- k. statistical analysis of the impact of votes affected by infractions and
- l. conclusion.

Where necessary, in order to aid further a better appreciation of this Address, sub-topics may be introduced under the foregoing heads of submissions. The Address will be presented in two volumes. Volume 1 will generally contain legal arguments, whereas Volume 2A and 2B will contain tables referred to in Volume 1, which sets out the polling stations in evidence.

### **C. FACTS UNDERPINNING PETITION.**

In setting out the essential facts giving rise to the institution of this action, it is necessary to comment on some key actions and decisions taken by the 2<sup>nd</sup> respondent in the run-up to the December 2012 elections which had far-reaching implications for the conduct of the 7<sup>th</sup> and 8<sup>th</sup> December, 2012 presidential elections. These significant actions and decisions by 2<sup>nd</sup> respondent, it is respectfully submitted, provided in a large measure the context and environment for the occurrence of numerous constitutional and statutory violations, malpractices and irregularities that characterised the conduct of the elections, as was amply shown at the trial.

Upon the close of nominations for the December 2012 presidential election, eight (8) nominations pronounced to be valid by the 2<sup>nd</sup> respondent had been received. Following the conduct of the ballot to determine the placement of each candidate on the ballot paper to be used for the elections, the eight (8) candidates for the election were placed in the following order:

- |     |                             |      |
|-----|-----------------------------|------|
| (1) | John Dramani Mahama         | NDC  |
| (2) | Dr. Henry Herbert Lartey    | GCPP |
| (3) | Nana Addo Dankwa Akufo-Addo | NPP  |
| (4) | Dr. Papa Kwesi Nduom        | PPP  |

(5)	Akwasi Addai Odike	UFP
(6)	Hassan Ayariga	PNC
(7)	Dr. Michael Abu Sakara Forster	CPP
(8)	Jacob Osei Yeboah.	Independent

One disturbing decision by the 2<sup>nd</sup> respondent was the registration of voters without assigning them to any polling station. An intriguing development was the announcement to Parliament on 15<sup>th</sup> June, 2012, by the Chairman of 2<sup>nd</sup> respondent that, 2<sup>nd</sup> respondent had registered some **one million (1, 000,000)** voters who had not been assigned to any polling station. This was contrary to **Regulation 2 of the Public Elections (Registration of Voters) Regulations 2012, (C. I. 72)**, which required that registration of voters be carried out in designated polling stations, known for that purpose as registration centres.

It is the case of petitioners that, after 2<sup>nd</sup> respondent had conducted its biometric registration exercise, it announced to the general public that the provisional number of voters registered was a little less than **thirteen million (13,000,000)** and that, after cleaning the provisional register and verifying same, it would publish the final number of registered voters. Surprisingly and contrary to legitimate expectations, when 2<sup>nd</sup> respondent posted the final total number of registered voters on its website, the number had inexplicably increased by over **one million (1,000,000)**.

On or about 26<sup>th</sup> September, 2012, that is some forty-two (42) days before the presidential election scheduled for 7<sup>th</sup> December, 2012, the 2<sup>nd</sup> respondent, acting through its Chairman, officially announced the total number of polling stations to be employed in conducting both the presidential and parliamentary elections in December 2012 as **twenty-six thousand and two (26,002)**. This was ostensibly to ensure transparency, fairness and integrity of the December 2012 presidential and parliamentary elections. It was also to comply with **Regulation 16(4) of the Public Elections Regulations, 2012 (C.I.75)**, which prohibited the establishment of new polling stations within forty-two (42) days of an election. In order to ensure the integrity of results emanating therefrom, polling stations were to be identified by a combination of both their names and unique codes assigned to each of them.

The petitioners further say that the total number of registered voters, that 2<sup>nd</sup> respondent furnished petitioners' party, the NPP, was **fourteen million and thirty-one thousand, six hundred and eighty (14,031,680)**. Surprisingly, it came to the notice of the petitioners that 2<sup>nd</sup> respondent had on Sunday, 9<sup>th</sup> December, 2012, declared the total number of registered voters as **14,158,890**. Furthermore, on the same date, 2<sup>nd</sup> respondent posted on its website the total number of registered voters as **14,031,793**, showing a clear disparity of **127,097**. The figure of **14,031,793** was also different from that of **14,031,680**, *which was declared as*

*the total number of registered voters in the case of the parliamentary elections, and which had also earlier on been furnished the NPP as the total number of registered voters.*

Contrary to **Regulation 21 (2)** of the **Public Elections (Registration of Voters) Regulations 2012 (C. I. 72)**, 2<sup>nd</sup> respondent failed to provide the NPP with a provisional register of voters for each polling station, thereby disabling petitioners and their party from effectively verifying the names on the list to ascertain their authenticity.

The 2<sup>nd</sup> respondent furnished the petitioners' party, NPP, with a copy of the final voters register only a few days before the conduct of the general elections i.e. from 19<sup>th</sup> November to 2<sup>nd</sup> December, 2012. This inordinate delay in furnishing the NPP with the final voters register prevented the NPP from scrutinizing the said register and, thereby, contributed substantially in undermining the transparency, fairness and integrity of the December 2012 elections.

Although a common register was to have been compiled for both the presidential and parliamentary elections, it turned out from the results declared by the 2<sup>nd</sup> respondent that the total number of registered voters in respect of the presidential election exceeded that of the registered voters for the parliamentary elections by **one hundred and twenty-seven thousand, two hundred and ten (127,210)** voters. The petitioners respectfully contend that there cannot lawfully be different totals of registered voters for the presidential and parliamentary elections.

The significance of the foregoing would become more relevant at the trial, where it came to light that the 2<sup>nd</sup> respondent had no explanation for the initial increase in the total number of registered voters from **13, 917, 366** to **14, 158, 890** (as contended in paragraph 6 of the 2<sup>nd</sup> respondent's 2<sup>nd</sup> Amended Answer, filed on 3<sup>rd</sup> April, 2013). The relevance of the unpredictable nature of the register of voters used in the December 2012 elections is again emphasised by the many instances of multiple registrations, voting without biometric verification and over-voting witnessed in the elections.

Following the completion of the presidential election on 8<sup>th</sup> December, 2012, the Chairman of the 2<sup>nd</sup> respondent, pursuant to Regulation 5(5) of C. I. 75, declared the results of the presidential election to the general public via radio and television in the evening of 9<sup>th</sup> December 2012 as follows:

- (i) the total number of registered voters was **fourteen million one hundred and fifty-eight thousand eight hundred and ninety (14,158, 890)**. This number of registered voters so declared was, however, in excess of the official total number of registered voters of **fourteen million and thirty-one thousand**

**six hundred and eighty (14,031,680) which the 2<sup>nd</sup> Respondent had furnished the NPP between 19<sup>th</sup> November, 2012 and 2<sup>nd</sup> December, 2012 by as much as one hundred and twenty-seven thousand, two hundred and ten (127,210) votes.**

- (ii) total votes declared as cast in favour of the contesting presidential candidates were as follows:

(1) John Dramani Mahama	--	5,574,761	50.70%
(2) Dr. Henry Herbert Lartey	--	38,223	0.35%
(3) Nana Addo Dankwa Akufo-Addo	--	5,248,898	47.74%
(4) Dr. Papa Kwesi Nduom	--	64,362	0.59%
(5) Akwasi Addai Odiase	--	8,877	0.08%
(6) Hassan Ayariga	--	24,617	0.22%
(7) Dr. Michael Abu Sakara Forster	--	20,323	0.18%
(8) Jacob Osei Yeboah	--	15,201	0.14%
		-----	
		10,995,262	100%

The difference in votes between the 1<sup>st</sup> petitioner and the 1<sup>st</sup> respondent, as declared by the 2<sup>nd</sup> respondent, was **325,863**.

In fact, prior to the declaration of the results by the 2<sup>nd</sup> respondent, the NPP, in the afternoon of 9<sup>th</sup> December, 2012, met with the Chairman of the 2<sup>nd</sup> respondent to put forward its concerns about the election results and requested that the declaration of the results by the 2<sup>nd</sup> respondent be delayed, in order that these concerns be addressed. The Chairman of the 2<sup>nd</sup> respondent failed to heed the call of the NPP for a suspension of the declaration of the results on the ground that insufficient information had been made available to him. He refused to probe the results and, particularly, referred to the fact that the number of **Statements of Poll and Declaration of Results of Election for the Office of President** ("pink sheets"), which constituted the primary basis on which results were faxed to the offices of the 2<sup>nd</sup> respondent for him subsequently to declare the presidential election result, was inadequate for him to stop the declaration based on same. The 2<sup>nd</sup> respondent's Chairman, thus, went ahead and declared the result of the presidential election.



The anomalies in various actions and decisions of the 2<sup>nd</sup> respondent in the run-up to the December 2012 elections, together with the receipt by the petitioners of numerous complaints relating to constitutional and statutory violations, malpractices and irregularities detected across the country in the conduct of the election, suggested that the declaration by the 2<sup>nd</sup> respondent did not accurately reflect the will of Ghanaians. This led the NPP to put together a task force headed by the 2<sup>nd</sup> petitioner to investigate the results, as declared by the 2<sup>nd</sup> respondent.

Painstaking investigations, conducted by the petitioners after the polls, revealed that the 2<sup>nd</sup> respondent inexplicably issued an inordinate amount of ballots to polling stations relative to the number of registered voters at the polling stations. Whereas the declared policy of the 2<sup>nd</sup> respondent for the 2012 elections was to issue each polling station with ballots of some 5-10% higher than the number of registered voters at that polling station, the evidence shows that in **10,097** polling stations, which excludes the 22 unknown polling stations (relied upon by petitioners), 2<sup>nd</sup> respondent's voters register (**14,031,680 version**) indicated total registered voters of **5,198,554**, but the ballots issued to the **10,097** polling stations amounted to **10,245,680**, which is about one hundred percent (100%) more than the registered voters at these polling stations. This unwarranted increase in the number of ballot papers issued to these polling stations can be verified by comparing the aggregate of the total number of registered voters as set out in B1 of the pink sheets to the aggregate of the figures in A1 (total number of ballots issued to the polling stations) on those pink sheets. This created room and a fruitful opportunity for electoral malpractices, such as over-voting and voting without biometric verification.

Further investigations, conducted by the NPP within the constitutionally stipulated period of twenty-one (21) days for the presentation of a presidential election petition, disclosed a number of constitutional and statutory violations, malpractices and irregularities in the conduct of the election. These investigations involved an examination of some 24,000 out of the 26,002 pink sheets, which, as stated above, served as the primary record on which results are declared at all the 26,002 polling stations and on the basis of which the final national results were subsequently declared by the 2<sup>nd</sup> respondent. The main categories of constitutional and statutory violations, malpractices and irregularities are as follows:

- i. widespread instances of over-voting, i.e. where votes cast exceeded (a) the total number of ballot papers issued to voters on election day or (b) where votes cast

- at various polling stations exceeded the total number of registered voters in violation of **article 42** of the **Constitution**, the universally-acknowledged principle of “one man, one vote” and **Regulation 24(1)** of **C. I. 75**;
- ii. widespread instances of people voting at polling stations without prior biometric verification in violation of the law governing the elections of December 2012, particularly, **Regulation 30(2)** of **C. I. 75**;
  - iii. widespread instances of polling stations where alleged results appearing on the pink sheets were not authenticated by the signatures of presiding officers or their assistants in violation of **article 49(3)** of the **Constitution** and **Regulation 36(2)** of **C. I. 75**;
  - iv. instances where voting took place in certain locations which could not be identified as part of the official list of 26,002 polling stations created by the 2<sup>nd</sup> respondent for the conduct of the December 2012 presidential elections;
  - v. widespread instances of polling stations where different results were strangely recorded on pink sheets bearing the same polling station codes, contrary to the expressed and accepted policy of 2<sup>nd</sup> respondent for each polling station to be assigned a unique code in order to guarantee the integrity of the results and to avoid confusing one polling station with another;
  - vi. widespread instances where different results were declared on pink sheets bearing the same serial numbers, contrary to the established procedure of 2<sup>nd</sup> respondent. These serial numbers were for the purpose of uniquely identifying each pink sheet.

It is the respectful contention of the petitioners that these constitutional and statutory violations, malpractices and irregularities materially affected the outcome of the December 2012 presidential election. On the strength of this, this Petition was filed on 28<sup>th</sup> December, 2012 within the constitutionally stipulated period.

#### **D. RELIEFS SOUGHT BY PETITIONERS**

The reliefs claimed in this Petition are:

- (1) that John Dramani Mahama, the 1<sup>st</sup> respondent herein, was not validly elected President of the Republic of Ghana;
- (2) that Nana Addo Dankwa Akufo-Addo, the 1<sup>st</sup> petitioner herein, rather was validly elected President of the Republic of Ghana;
- (3) consequential orders as to this Court may seem meet.

The reliefs sought by the petitioners in this suit are essentially as set out in Form 30 of the **Supreme Court (Amendment) Rules, 2012, C. I. 74.**

#### **E. SUMMARY OF ANSWERS FILED BY RESPONDENTS.**

By his 2<sup>nd</sup> Amended Answer dated 26<sup>th</sup> February, 2013, the 1<sup>st</sup> respondent, John Dramani Mahama, denied the claims of the petitioners relating to the bloated and doubtful voters register used for the December 2012 elections, as well as the use of some unknown polling stations. The 1<sup>st</sup> respondent stated that he considered as irrelevant the various matters raised by the petitioners. According to him, what was relevant was the actual votes cast by registered voters in favour of each candidate. To the 1<sup>st</sup> respondent the number of registered voters used in the elections was wholly irrelevant to the determination of the Petition. The 1<sup>st</sup> respondent, further, stated that a common register, to the best of his knowledge, was used for both the presidential and parliamentary elections.

On the claim of people having voted without undergoing biometric verification, the 1<sup>st</sup> respondent had interesting answers. He initially denied the claim of voting having gone on without biometric verification in some polling stations and required particulars of polling stations, where such occurrences were registered and the number of persons who allegedly voted without biometric fingerprint verification. The 1<sup>st</sup> respondent stated categorically that only voters who had undergone fingerprint verification were permitted to vote in the December 2012 elections.

As if to cover up “in the case of any eventuality”, the 1<sup>st</sup> respondent contended that, in any event, fingerprint verification is not the only means of verification permissible under the law. He asserted that failure of any prospective voter to undergo fingerprint verification could not be a lawful basis for denying that person his constitutional right to vote. In essence, the 1<sup>st</sup> respondent claimed that the requirement for a voter to vote only after undergoing biometric verification was unconstitutional. The 1<sup>st</sup> respondent sought to assign a part of the blame for people voting without biometric verification unto the 1<sup>st</sup> petitioner, in stating that the 1<sup>st</sup> petitioner ought to have had “polling agents and/or counting agents who were part of the prescribed voter identification processes prior to voting”. In the view of the 1<sup>st</sup> respondent, the polling agents of the 1<sup>st</sup> petitioner “having participated in the process and having, after public counting of the results, certified the results”, the 1<sup>st</sup> petitioner could not be heard to complain about the outcome of the election.

1<sup>st</sup> respondent also denied the claim of the petitioners about different results being recorded on pink sheets in respect of polling stations bearing the same polling station codes. The 1<sup>st</sup> respondent alleged that, assuming that there were such occurrences in the December 2012 elections, the declared result of the election would not be affected.

The claim of petitioners relating to the failure of some presiding officers of the 2<sup>nd</sup> respondent to sign pink sheets was also denied by the 1<sup>st</sup> respondent. Again, the 1<sup>st</sup> respondent asserted that such failure could not invalidate the results of the election, and same did not also affect the result of the elections.

1<sup>st</sup> respondent denied claims of over-voting by the petitioners and demanded particulars of the polling stations where the irregularities occurred and the amount of votes affected. Allegations of pink sheets bearing the same serial numbers were also denied by the 1<sup>st</sup> respondent, with a further claim that, in any event, such occurrences could not have affected the outcome of the election.

The 1<sup>st</sup> respondent claimed that the result of the election was the product of painstaking and public counting, and was based on the exercise of the fundamental rights of Ghanaian eligible voters under **article 42** of the Constitution.

The 2<sup>nd</sup> respondent, by its 2<sup>nd</sup> Amended Answer filed on 3<sup>rd</sup> April, 2013, generally denied the petitioners’ claims. The thrust of the Answer filed by the 2<sup>nd</sup> respondent was to defend

stoutly the elections it had conducted. The material averments of the 2<sup>nd</sup> respondent were that the initial provisional figure it announced of the voters' register was **13,917,366**. After the conduct of registration of Foreign Service officials, students abroad on government scholarships, other Ghanaians working abroad in international organizations and the late registration of service personnel returning from international peacekeeping duties, the figure increased to **14,158,890**. After processing data to include persons who established that they had valid voter cards and removing names which ought not to have been there on account of multiple registrations and wrong inclusions, the figure came down to **14,031,793**. The 2<sup>nd</sup> respondent, further, stated that following directives from the court on decisions regarding appeals from challenges and objections, the figure stood at **14,031,680**. According to the 2<sup>nd</sup> respondent, the correct figure that it forwarded to all parties and which was used in the declaration of results in the December 2012 elections was **14,031,793**. The 2<sup>nd</sup> respondent, thus, commenced its series of declaration of errors (that ostensibly characterised the conduct of the December 2012 elections) by declaring the figure of **14,158,890** it announced as the total registered voters in the 2012 elections as an error. In place of the statutorily mandated provisional voters' register [**Regulation 21(2) of C. I. 72**], 2<sup>nd</sup> respondent alleged that it furnished to political parties daily printouts of the registration effected at each registration centre.

2<sup>nd</sup> respondent alleged, further, that each and every voter was verified once before being allowed to vote for the candidate of his/her choice and that anyone who could not be verified biometrically was turned away. It also claimed that it complied with the decision to allocate to each polling station 10% of the ballot papers above the number of registered voters for the polling station. In line with the answer of the 1<sup>st</sup> respondent, the 2<sup>nd</sup> respondent also stated that the votes cast in the elections were counted in the full view of the public and were recorded and announced to the public, and, therefore, represented the legitimate will of voters.

2<sup>nd</sup> respondent denied that any person voted without biometric verification. Most materially, the 2<sup>nd</sup> respondent claimed that, upon being served with the further and better particulars of the 11, 915 polling stations (originally relied upon by petitioners), *it carried out an analysis of the **pink sheets*** in question and its analysis confirmed that no voters were allowed to vote without biometric verification at any polling station.

This statement of the 2<sup>nd</sup> respondent, in the humble view of the petitioners, is very material because, as the evidence led at the trial showed, the incidence of people voting without biometric verification was evident on the face of the pink sheets. The 2<sup>nd</sup> respondent's averment, it is respectfully submitted, exposes the mischief with which that claim by the 2<sup>nd</sup> respondent was laced.

Most materially, again, the 2<sup>nd</sup> respondent claimed that the pink sheets for the December 2012 elections were designed and printed *before the law requiring voters to be verified biometrically* was passed. Hence the appearance on the form of the question C3 as follows:

*"What is the number of ballots issued to voters verified by the use of Form 1C (but not by use of BVD)"?*

This averment of the 2<sup>nd</sup> respondent would also prove to be false at the trial, in the face of the clear, cogent evidence consisting of admissions by the Chairman of 2<sup>nd</sup> respondent on 6<sup>th</sup> June, 2013, that C. I. 75 (mandating the use of biometric verification) came into force on 28<sup>th</sup> September, 2012, long before the 2<sup>nd</sup> respondent on 20<sup>th</sup> October, 2012, ordered the printing of the pink sheets.

2<sup>nd</sup> respondent also further stated that, in view of the **late decision regarding verification**, all presiding officers were instructed to leave question C3 on the pink sheet blank, as verification would be carried out for each voter at the polling station. However, some presiding officers mistakenly filled question C3.

2<sup>nd</sup> respondent agreed with the contention of the petitioners that each polling station had a name and unique code assigned to it, but added that, where a polling station was used for both the general elections and special voting, the pink sheet for that polling station kept the same code number.

On absence of signatures, the 2<sup>nd</sup> respondent presented yet another interesting answer. It admitted partly the claims of the petitioners. It stated that of the 2,009 pink sheets that were claimed not to have been signed, 1,009 were in fact signed either at the polling station or at the collation centre [**contrary to the Constitution**]; 905 (representing 3.5% of the total number of pink sheets used in the election) were unsigned. **It, however, failed to indicate how many pink sheets were signed at the polling station and how many at the**

***collation centres, contrary to the Constitution.*** The 2<sup>nd</sup> respondent claimed that 1,989 pink sheets were signed by polling agents of candidates in the elections. The 2<sup>nd</sup> respondent went on to deny the claim for invalidation of the results on the pink sheets, which were not signed by its presiding officers.

2<sup>nd</sup> respondent, in its 2<sup>nd</sup> Amended Answer, was completely silent on the case of petitioners that over-voting occurred in polling stations where *total votes cast exceeded ballots issued to voters*. It restricted its answer to the claim of over-voting to saying that the petitioners had not been able to show one single instance where the total votes cast exceeded the number of voters on the register of the polling stations.

On duplicate serial numbers, 2<sup>nd</sup> respondent indicated that the need for it to print two sets of pink sheets was due to its anticipation that it was going to receive nominations of between 12 and 18 candidates for the presidential election. It, further, stated that, where the serial numbers of two pink sheets were identical, the names of the polling stations and codes were different.

Both of these claims of the 2<sup>nd</sup> respondent on serial numbers proved to be false at the trial.

The Answer of the 3<sup>rd</sup> respondent was basically a rehash of the Amended Answer filed by the 1<sup>st</sup> respondent. The new matters raised in its Amended Answer are few. The 3<sup>rd</sup> respondent stated that Members of Parliament, including those who stood on the ticket of the NPP, had taken up their seats in Parliament. It also claimed that the Petition was brought in bad faith, even though it failed to give particulars of the bad faith, as required by the Rules of Civil Procedure.

## **F. ISSUES FOR TRIAL**

On 2<sup>nd</sup> April, 2013, this Honourable Court set down the issues for trial as follows:

1. whether or not there were violations, omissions, malpractices and

irregularities in the conduct of the presidential election held on the 7<sup>th</sup> and 8<sup>th</sup> December, 2012;

2. whether or not the said violations, omissions, malpractices and irregularities, if any, affected the results of the election.

In so doing, this Honourable Court directed that, in order to expedite the determination of this case, the trial would be by affidavits. The Court gave the parties to the action the option to lead oral evidence, and, further, stated that oral evidence by any other person might be allowed only where the Court was satisfied that there were compelling reasons therefor.

The Court, further, ordered the petitioners to file the affidavits setting out the evidence and that of the witnesses they proposed to rely on in proof of their case on or before 7<sup>th</sup> April, 2013. The respondents were also to file their corresponding affidavits within 5 days from the service upon them of the petitioners' affidavits.

#### **G. EXPLANATION OF THE GROUNDS FOR THE RELIEFS CLAIMED IN PETITION, I.E. THE VARIOUS VIOLATIONS, MALPRACTICES AND IRREGULARITIES**

It would be respectfully observed that, unlike the **Representation of the People Act, 1992 (PNDCL 284)** which details in its section 20 the various grounds upon which the election of a candidate for the office of Member of Parliament may be cancelled, both the **Constitution** and the **Presidential Election Act, 1992 (PNDCL 285)** do not set out the grounds upon which the election of the President of Ghana may be declared invalid. **Article 64 (1) and (2)** of the **Constitution** are in these terms:

*“64. (1) The validity of the election of the President may be challenged only by a citizen of Ghana who may present a petition for the purpose to the Supreme Court within twenty-one days after the declaration of the result of the election in respect of which the petition is presented.*



*(2) A declaration by the Supreme Court that the election of the President is not valid shall be without prejudice to anything done by the President before the declaration.”*

It is respectfully submitted, however, that, upon a careful construction of **articles 62, 63 and 64** of the Constitution, the election of a candidate for the office of President would be rendered invalid upon proof of any facts before this Honourable Court showing that:

- (a) the candidate declared elected as President of Ghana at the presidential election did not, in fact, obtain more than fifty percent (50%) of the total number of **valid votes cast** at the election;
- (b) there has been non-compliance with or violations of the Constitution, the Regulations or any other law relating to the conduct of the election and that the non-compliance/violations affected the result of the election;
- (c) the election was tainted by the perpetration of a corrupt, or other criminal act, misconduct or circumstances which reasonably could have affected the outcome of the election;
- (d) the candidate declared elected as President of Ghana was at the time of the election not qualified or disqualified for election as President of Ghana in terms of **article 62** of the Constitution.

It is submitted that the facts underpinning this Petition are largely grounded on a combination of grounds (a) and (b) as set out in the foregoing paragraphs. In the presentation of this Petition, the various violations, malpractices and irregularities at the heart of the Petition have been put in different categories.

The various constitutional and statutory violations, malpractices and irregularities can be seen in different combinations, i.e. it is possible to find a variable combination of a number of violations of the law, malpractices and irregularities occurring together in one polling station and recorded on the same pink sheet. In certain instances, there may be just one violation, irregularity or malpractice (infraction) at a particular polling station. In order to ensure a clear presentation of petitioners' case and to aid the Court in its determination of the question whether the aggregate of these violations affected the outcome of the election, the pink sheets have been grouped into various categories of infractions. This exercise ensures that one pink sheet falls into only one category.

It will, later in the course of this Address be illustrated why, upon an analysis of decisions from other common law jurisdictions and international best practice, these grounds constitute a legitimate basis for invalidating a presidential election in accordance with **article 64(2)**.

The case of the petitioners on the various infractions the subject matter of this Petition is set out here below.

#### **(i) Over-voting**

The case on “over-voting” is inextricably tied to the guarantee of the principle of equal and universal adult suffrage of the Ghanaian adult citizen by the **Constitution**. It is respectfully submitted that, under the **Constitution**, each registered voter, who casts his/her vote in the manner prescribed by the law, can only have his/her vote counted once. The protection of this principle by the body constitutionally mandated to so do (the 2<sup>nd</sup> respondent herein) can be ascertained by an examination of how ballots issued to voters were accounted for. Two scenarios will be helpful to us.

Firstly, it is eminently clear that, where all the number of people duly registered to vote at a particular polling station turn up on election day to vote, (and this can be discovered from the number of ballots issued), the number of ballots found in the box at the end of the polls cannot be more than the number of voters registered to vote at that polling station.

Secondly, where a number less than the number of registered voters at a particular polling station show up to vote (and this can also be determined from the number of ballots issued), it goes without saying that the number of ballots found in the box at the close of the polls should not be more than the number of ballots issued to the voters.

If any of the above scenarios occurred, then there has been “over-voting”. The principal witness for the petitioners, 2<sup>nd</sup> petitioner, Dr. Mahamudu Bawumia, in his evidence-in-chief on **17<sup>th</sup> April, 2013**, explained to the Court these two types of over-voting. At **pages 16 to 17** of the record of proceedings for that day, he clearly stated the case of the petitioners on over-voting. Dr. Bawumia went ahead to indicate, at **page 23** of the record of proceedings for **17<sup>th</sup> April, 2013**, some examples of over-voting in polling stations in respect of which pink sheets were filed.

As Dr. Afari-Gyan in his evidence under cross-examination by counsel for petitioners on **17<sup>th</sup> July, 2013** stated, in a case of over-voting, the results of the election at the affected polling station should be cancelled. Over-voting constitutes an abuse of the franchise under the

supervision of the 2<sup>nd</sup> respondent. It means that the integrity of the polls at the particular polling station has been compromised and the results at the polling station in question cannot be guaranteed, and same therefore ought to be annulled.

The evidence led at the trial supports the view of the 2<sup>nd</sup> respondent and the petitioners that, indeed, when there are cases of over-voting, the results at the polling station cannot be relied upon. The 2<sup>nd</sup> respondent itself, on two (2) occasions in accordance with its policy, annulled results in polling stations where over-voting occurred.

When the Constitution vests the right to vote for the President of the Republic in the people, it undoubtedly makes it a fundamental right, albeit regulated by the Constitution and other laws consistent with the Constitution. The fundamental nature of the right to vote was underscored by this Honourable Court in **Tehn-Addy v. Electoral Commission** [1996-97] SCGLR 589.

It is the respectful submission of the Petitioners that the right to vote, having been conferred by the Constitution, must be exercised in accordance with the Constitution or any other law not inconsistent with the Constitution.

Please see: **Ahumah-Ocansey v. Electoral Commission; Centre for Human Rights & Civil Liberties (CHURCIL) v. Attorney-General & Electoral Commission (Consolidated)** [2010] SCGLR 575.

The right to vote, being fundamental, one means of protecting it lies in the equal weight accorded to each vote and the equal dignity owed to each voter. Any practice which undermines the principle of equal suffrage by eroding the one person, one vote principle, also achieves inequality in the weight to be accorded the vote of an individual voter. This is what over-voting does, and, it is, therefore, clearly unconstitutional.

The effect of over-voting was classically analysed in the English case of **Lamb v. Mcleod** (1932) 3 WWR 596. The court held that there were two types of petition. One type is where the petitioner seeks to oust the candidate who has been returned or has been declared duly elected and to have another candidate declared as the winner. The other type does not attempt to assert the rights of another candidate and is not concerned in securing the seat of another person, but rather seeks that the seat be vacated on the ground of some act or omission which renders the election void.

In **Lamb v. Mcleod**, the subject matter of the complaint was the validity of 17 votes in an election where the margin of victory between the candidates was only 5. The court held, inter alia, that:

*“it cannot be said that there was an electing of a member of Parliament by the majority” as the intrusion by wrongdoers made “it impossible to determine for which candidate the majority of qualified votes were cast”.*

It is respectfully submitted that it is the obligation of the 2<sup>nd</sup> respondent to protect the due exercise of the right to vote, an essential element of which is that each voter’s vote counts only once. It follows necessarily, therefore, that any practice suggestive of over-voting must be outlawed. If there is the occurrence of over-voting, it goes without saying that the franchise constitutionally given to the voter at a polling station has been abused. The result of the election at the polling station in question must be annulled.

In the U.S. case of **Reynolds v. Sims** 377 US, 533, 555, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), the United States Supreme Court observed as follows:

*“the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”*

It is the case of petitioners that over-voting debases and dilutes the weight to be accorded to each individual vote, and is, therefore, unconstitutional.

This Honourable Court is respectfully invited to advert its mind to the very important fact that, in an election at a polling station shown to have been affected by over-voting, it is not possible to determine which of the votes cast constitutes the invalid votes and, therefore, which votes cast count as the lawful votes. The practice, therefore, has been to annul all the results of the polling stations where they are proven to have occurred.

The respondents surprisingly argue that, even in polling stations affected by over-voting, it would amount to a denial of the right to vote of innocent citizens and, therefore, unconstitutional for the whole of the votes at the polling stations to be annulled. This argument is patently unsound and illogical for the reasons already stated. That argument is also clearly defeated by the evidence of Dr. Afari-Gyan under cross-examination by counsel for petitioners on 17<sup>th</sup> July, 2013, when he admitted that, in a case of over-voting, consistent with what he told the whole nation before the December 2012 elections, the results of the

election at the polling station in question will have to be annulled, as the integrity of the election would have been compromised.

According to the evidence, the aggregate of the votes registered on the pink sheets affected by over-voting was **745,569**.

### **(ii) Voting without biometric verification**

Voting without biometric verification is also linked to the protection of the integrity of the electoral process as well as to the principle of universal and equal adult suffrage. It is to ensure that only persons entitled and properly accredited to vote exercise their franchise in accordance with the law.

The Constitution, no doubt, accords to every citizen of Ghana above the age of 18 and of sound mind the right to vote and to be registered as a voter in accordance with law. Straightaway, it would appear that the right to vote is not an inherent right. Neither is it absolute. It is conferred by the Constitution and subject to certain limitations imposed by the same Constitution.

The Constitution does not prescribe all the steps by which voting is done in Ghana. Neither does it prescribe how registration of voters for public elections and referenda is to be carried out, what procedures should be employed, or what kind of registration prospective voters should undergo. The Constitution, again, does not prescribe how public elections are to be conducted and supervised. By virtue of **article 45**, the Constitution vests the 2<sup>nd</sup> respondent with the performance of such functions. Thus, the 2<sup>nd</sup> respondent is uniquely empowered by the Constitution to enact regulations to perform the functions of prescribing the manner in which registration is done; the procedures for ascertaining and verifying the identity of voters in a way as to ensure the sanctity of the citizen's franchise and the integrity of the electoral system; and procedures with which a voter should comply before casting his vote in accordance with **article 42**.

It cannot be contended that an unconstitutionality is occasioned when the 2<sup>nd</sup> respondent, pursuant to powers conferred on it by the **Constitution**, enacts regulations (**C.I. 75**), prescribing how registration of voters should be done in this country and regulating the conduct of public elections, and those regulations impose any reasonable requirements for prospective voters to comply with, such as the establishment their identity before voting.

**Regulation 18(1) of C.I. 75** makes it mandatory for every polling station to be provided with a biometric verification device. It reads:

“The returning officer **shall** provide a presiding officer with: (a) a number of ballot boxes and ballot papers; (b) **a biometric verification equipment**; and (c) any other equipment or materials that the Commission considers necessary.”

**Regulation 47(1) of C.I. 75** defines a ‘biometric verification equipment’ to mean:

“... a device provided at a polling station by the [Electoral] Commission for the purpose of establishing by fingerprint the identity of the voter.”

**Regulation 30 of C.I. 75** reads:

- (1) A presiding officer **may**, before delivering a ballot paper to a person who is to vote at the election, require the person to produce (a) a voter identification card, or (b) any other evidence determined by the Commission, in order to establish by fingerprint or facial recognition that the person is the registered voter whose name and voter identification number and particulars appear in the register.
- (2) The voter **shall** go through a biometric verification process.

**Regulation 34(1) of C.I. 75** lists the specific grounds upon which voting can be adjourned:

“Where the proceedings at a polling station are interrupted or obstructed by (a) riot, open violence, storm, flood, or other natural catastrophe, or (b) the **breakdown of an equipment**, the presiding officer **shall** in consultation with the returning officer and **subject to the approval of the Commission**, adjourn the proceedings to the following day.”

The ordinary meaning of **Regulation 30(2)** of C.I. 75 is that no registered voter should be allowed to vote without first and foremost going through a biometric verification process. The word ‘shall’ makes it obligatory for all voters to be verified biometrically before being allowed to vote. The combined effect of **Regulations 18(1), 30(2)** and **34(1)** is that the use of the Biometric Verification Device (BVD) was made a mandatory component of the 2012 presidential election. It was made unavoidable because the framers of the Regulation recognised that a credible voters register may only tackle partially the threat of multiple voting, impersonation and ballot box stuffing. This is because it is highly improbable for any polling station to register 100 per cent voter turnout and that tolerance level within the total voter population of a polling station leaves enough potential room for illegal votes to be

counted. Thus, for the first time in our Fourth Republican journey, voting in a general election spanned two days and it so happened because of reported incidents of alleged breakdown of BVDs. That unprecedented adjournment underlines the significance that the nation attached to biometric verification for the 2012 general elections.

The imperative application of BVD for the purposes of authentication of Ghanaian voters' identity before voting must be seen within the context of the integrity deficit of our elections. The type of registration done has a direct influence on the process of identification and authentication that the voter will be subjected to at the polling station before voting.

The history of voter registration, respectfully, ought to be considered in order to appreciate the legitimate objects of Regulation 30 of C.I. 75. A credible voters' register has always posed a challenge to the quest for free and fair elections in Ghana. By the year 2000, Ghana's voter population had grown from 8,229,902 (or 54.7% of the total population) in 1992 to 10,698,652 (56.57% of the total population). The voter population in 2004 saw an unusual reduction to 10,354,970 (51.61% of the total population). However, it increased again in 2008 to 12,472,758 (55.6%), prompting the Chairman of the Electoral Commission to disclose that the Commission estimated the register to be bloated by some one million entries.

On **15<sup>th</sup> September, 2008**, the Chairman of the Electoral Commission announced on **Joy FM** that the voters' register was bloated and called on Ghanaians to help purge it before the December Elections.

**"If our population is indeed 22 million, then perhaps 13 million people on our register would be statistically unacceptable by world standards. If that is the case, then it may mean that there is something wrong with our register... Let me say that at the end of the day, the register is as good as the stakeholders are prepared to accept. If they think there is nothing wrong with the register that is fine. If they think there's nothing wrong with the register; they bussed the people, they sent the children, they invited the foreigners to come and participate in this. If they think that is ok, what else could we use? We have to use a register. That is the register that we will use."**

See <http://www.modernghana.com/newsthread1/182306/4/>

After having made this statement in 2008, it is little wonder that the Chairman of the 2<sup>nd</sup>

respondent enacted Regulation 30(2) of C.I. 75. The 2<sup>nd</sup> respondent and all major political parties resolved to tackle head-on multiple voting and impersonation, two of the major problems afflicting the electoral system in Ghana. The compilation of a new voters' register using biometric technology, plus the mandatory use of biometric verification devices on polling day, as provided by both **C.I. 72** and **C.I. 75**, respectively, were the necessary mechanisms lawfully put in place to enhance the integrity of the ballot in Ghana.

Biometric verification is basically verifying that you are who you say you are and it is the means by which a person can be uniquely identified by evaluating one or more distinguishing biological traits. Biometric verification is basically the final test to be certain that you are the person who your information says you are. No matter what biometric methodology is used, the identification verification process remains the same. The procedures to establish identity through biometric verification is simply part of the administrative process that enables voters to exercise their right to vote, which the 2<sup>nd</sup> respondent is mandated by the Constitution to ensure, much in the same way that polling stations are set up at specific locations and during specific times on polling day.

Voter identification contributes to the practical realisation of **article 42** rights. The Court is respectfully urged to consider the significant admission made by the Chairman of the 2<sup>nd</sup> respondent on this point in his evidence under cross-examination by counsel for petitioners captured at **pages 7–8** of the record of proceedings of **10<sup>th</sup> June, 2013** that the BVD “**enhances the principle of one man, one vote**”. The following important admissions transpired between counsel and the Chairman of 2<sup>nd</sup> respondent.

Q. Would you agree that BVD device reinforces the principle of one man, one vote?

A. Yes my lord I would agree that it reinforces and it enhances it.

Q. the BVD device also keeps account of successful verifications?

A. My lord it does.

Q. And therefore if elections officials do what they are supposed to do, nobody can vote more than once?



A.

My lords that will be correct.

It is also the humble submission of the petitioners that, properly looked at, **Regulation 30** of C.I. 75 rather broadens the access of Ghanaian citizens to the ballot box. It enables more properly qualified citizens actually to vote than hitherto. This is because the combined effect of **Regulation 30(1)** and **(2)** of **C.I. 75** is to qualify persons who do not even possess a voter ID card issued by the 2<sup>nd</sup> respondent to vote, in so far as they are able to pass the second test of biometric verification. The first hurdle involves a mere exercise of discretionary powers on the part of the presiding officer to determine whether a person who arrives at the polling station without an ID card issued by the 2<sup>nd</sup> respondent can vote. The system has been made so flexible that, if you are able to show that you are indeed who you are on account of the biometric details which you would have earlier on given to the 2<sup>nd</sup> respondent during the registration exercise, you can vote.

It is for this reason that the Electoral Commission announced before polling day that voters who had misplaced their voter ID cards need not worry and could still go to their respective polling stations and vote, in so far as they could pass the process of biometric verification. If this is the case, it cannot be unconstitutional for a voter to be prevented from voting simply because his biometric details do not match the details on the BVD. The biometric verification process was thus the most important mechanism to ascertain and confirming the identity of the prospective voter. The sole aim of biometric verification is to prevent fraud and multiple voting. A scheme which broadens the access of Ghanaian citizens to the ballot box, but at the same time deters fraud, cannot be unconstitutional. Surely, the 1<sup>st</sup> and 3<sup>rd</sup> respondents cannot be opposed to such a scheme. It is submitted that our Constitution anticipates that it is necessary to protect the right to vote in a way as to give substantive content to that right. That is the object of voting with biometric verification.

Respectfully, if it is constitutional for the 2<sup>nd</sup> respondent to prescribe that voters can only exercise their franchise upon the production of some form of identification cards, then it cannot be unconstitutional for the same 2<sup>nd</sup> respondent to require that voting can only be done after a verification of the identity of the voter as part of the scheme to curb fraud and multiple voting. Otherwise, then one would say that the only prerequisite for a person to exercise his franchise is by showing that that person is a allegedly Ghanaian of eighteen years or above and of sound mind. The production of an identity card may not even be necessary, because the person can show through any means accepted by the presiding officer that his name is in the voters register.

In recognition of the pre-eminent role it plays in the attainment of the right to vote and the democratic system of governance established by the Constitution, **article 46** makes the 2<sup>nd</sup> respondent independent of any person or authority in the performance of its function.

Nonetheless, recognizing the need for transparency, probity and accountability and in order to curb any tendency for abuse of powers, the Constitution, in **article 51**, enjoins the 2<sup>nd</sup> Respondent to make regulations governing the conduct of presidential elections. In essence, apart from the Constitution itself, the only law that regulates the power of the Electoral Commission to conduct elections in this country are the **Regulations** that it regularly makes.

In execution of the duty cast on it by **article 45** to conduct and supervise public elections in Ghana and in exercise of its independence under **article 46**, as well as the duty to make Regulations to govern the conduct of elections, the 2<sup>nd</sup> respondent published the **Public Elections Regulations, 2012 (C.I. 75)**, in which it set out rules and regulations regarding how a person may validly vote in the December 2012 elections. This Honourable Court has held, in **Apaloo v. Electoral Commission** [2001-2002] SCGLR 1, that the regulations enacted by the 2<sup>nd</sup> respondent constitute the only constitutionally valid and acceptable instrument by which the 2<sup>nd</sup> respondent can regulate important matters in the conduct of public elections, like the identity of voters and verification of same. It is respectfully submitted that C.I. 75, having fully satisfied the prerequisites of **article 11(7)**, i.e., laying before Parliament, publication in the gazette on the day it is so laid and having duly come into force within twenty-one sitting days after being so laid, possesses all the elements of validity.

It is submitted that, in so far as the regulations of the 2<sup>nd</sup> respondent, in this case **C.I. 75**, have not been demonstrated to infringe on the letter and spirit of the Constitution, or to constitute an undue fetter on the right to vote, this Honourable Court ought to give effect to the full terms of C.I. 75. This Honourable Court, in the absence of a cogent justification of its unconstitutionality, is respectfully invited to uphold the constitutionality of all of the contents of C.I. 75. Indeed, when a legislative instrument passed by the body constitutionally empowered to so do has been challenged, the only duty of a court of law is to enquire into whether there has been a valid exercise of that body's power to enact the law in question.

This important principle of law was expressed in a decision of the English House of Lords in **DPP v. Smith** [1988] UK HL 11 (12 July, 1990) wherein Lord Bridge stated as follows:

*“When a legislative instrument made by a law-maker with limited power is challenged, the only function of a court is to determine whether there has been a valid exercise of that limited legislative power in relation to the matter which is the subject of disputed enforcement. If a law-maker has validly exercised his power, the court may give effect to the law validly made. But if the court sees only an invalid law made in excess of the law-maker’s power, it has no jurisdiction to modify or adapt the law to bring it within the law-maker’s power.”*

Biometric verification was intended to deal with instances of voter fraud and impersonation witnessed in the past. It is an even-handed restriction, since as Dr. Afari-Gyan stated in evidence, every voter is supposed to be verified. Even persons with the words “**Face Only**” (“F.O.”), written by their names in the voters’ register, and, thereby, suggesting the presence of one form of disability or the other which would disable them from being verified by fingerprint, were verified. The only difference is the manner of verification. It is correct to say that, under the current legal regime of Ghana, biometric verification is uniformly applied to all classes of voters. It is an even-handed restriction intended to protect the reliability and integrity of the electoral process itself. As held in the U.S. case of **Anderson v. Celebrezze** 460 U. S. 780 (1983), reasonable, non-discriminatory restrictions which achieve the object of strengthening the electoral system cannot be unconstitutional.

It is the respectful submission of the petitioners that, with these weighty considerations informing the provision in Regulation 30 of C.I. 75, in order for any allegation suggesting an unconstitutionality of voting with biometric verification to be sustained, the proponents thereof, i.e. respondents herein, must demonstrate a corresponding interest equally weighty to justify the non-application of Regulation 30.

The facts, in the South African case of **New National Party v Government of the Republic of South Africa and Others** (CCT9/99) [1999] ZACC 5; 1999 (3) SA 191; 1999 (5) BCLR 489 (13 April 1999), illustrate classically the position of petitioners. They are akin to the requirement of people voting only after going through fingerprint identification on the BVD. In this case, the appellant political party, intent on contesting the 1999 national and provincial elections in South Africa, brought a challenge to the constitutionality of certain provisions requiring otherwise qualified voters to possess certain identification documentation in order to register and vote. The impugned provisions prescribed that, pursuant to the *Electoral Act*, No. 73 of 1998, South African citizens otherwise entitled to vote could only participate in the 1999 elections if they possessed and produced one of two

identification documents when voting: either a bar-coded identification card or a temporary identification card (TIC).

Ultimately, by a majority of 8-1, the Constitutional Court of South Africa held that the bar-coded identification scheme prescribed by Parliament, which captured the fingerprints of registrants, did not infringe the right to vote. In coming to this conclusion, the Court noted that it was not unconstitutional for Parliament to expect citizens to act reasonably in pursuit of the right to vote, including taking reasonable steps to meet the documentary requirements.

The Constitutional Court, *per* Yacoob J, held:

***“The contention in this appeal is that the impugned provisions of the Electoral Act constitute a denial of the right to vote to a substantial number of South African citizens. Any scheme designed to facilitate the exercise of this right carries with it the possibility that some people will not comply with its provisions. But that does not make the scheme unconstitutional. The decisive question which arises for consideration in this case is the following: when can it legitimately be said that a legislative measure designed to enable people to vote in fact results in a denial of that right? What a party alleging that an Act of Parliament has infringed the right to vote is required to establish in order to succeed will emerge in the process of answering this question.”***

The Court further held:

***“The Constitution effectively confers the right to vote for legislative bodies at all levels of government only on those South African citizens who are 18 years or older. It must be emphasised at this stage that the right to vote is not available to everyone in South Africa irrespective of age or citizenship. The importance of the right to vote is self-evident and can never be overstated. There is however no point in belabouring its importance and it is sufficient to say that the right is fundamental to a democracy for without it there can be no democracy. But the mere existence of the right to vote without proper arrangements for its effective exercise does nothing for a democracy; it is both empty and useless. The Constitution takes an important step in the recognition of the importance of the right to exercise the vote by providing that all South African citizens have the right to free, fair and regular elections. It is to be noted that all South African citizens irrespective of their age have a right to these elections. The right to vote is of course***

*indispensable to, and empty without, the right to free and fair elections; the latter gives content and meaning to the former. The right to free and fair elections underlines the importance of the exercise of the right to vote and the requirement that every election should be fair has implications for the way in which the right to vote can be given more substantive content and legitimately exercised. Two of these implications are material for this case: each citizen entitled to do so must not vote more than once in any election; any person not entitled to vote must not be permitted to do so. The extent to which these deviations occur will have an impact on the fairness of the election. This means that the regulation of the exercise of the right to vote is necessary so that these deviations can be eliminated or restricted in order to ensure the proper implementation of the right to vote.”*

See also: the US case of **Norman v. Reed** 502 US 279, 288-289 (1992).

Undoubtedly, it was the duty of the 1<sup>st</sup> and 3<sup>rd</sup> respondents, that is, those who allege the unconstitutionality of the biometric verification, to show how it unduly infringes the right to vote in violation of the Constitution, and to introduce evidence of the number of citizens who were unable to vote as a result of the requirement for voting without biometric verification. Courts, respectfully, are not there to decide on hypothetical issues. “*Constitutional issues should be determined in the context of a concrete set of facts, not in the abstract or hypothetically.*” See the Supreme Court of Canada in **MacKay v. Manitoba** [1989] 2 S.C.R. 357 at 361-362.

This duty required to be discharged by the respondents is in consonance with the presumption of validity or constitutionality made in favour of impugned legislation. This Honourable Court in **Asare- Baah III v. Attorney-General & Electoral Commission** [2010] SCGLR 463 at 470 - 471, speaking through Georgina Wood CJ, affirmed this principle, when the learned Chief Justice expressed herself thus:

*“The presumption is that every enactment by the legislature is presumed to be valid and constitutional, until the contrary is proven. A law would not be adjudged unconstitutional, unless the case is so clear as to be devoid of any doubts. Indeed, the legal principle in criminal law which enjoins doubts to be resolved in favour of accused persons, very much works in much the same way in this area of the law. The principle is so hallowed that to doubt the constitutional validity of a law, is to resolve it in favour of its validity. In other words, doubts are resolved in favour of*

*constitutionality and not the person challenging it... It is therefore evident that the principle can only be justly applied where the alleged particularity of want of constitutionality, however manifested or described, whether as being ultra vires the powers conferred, or as breaches, violations, conflicts or non-compliance with constitutional requirements or procedures, are clearly spelt out .”*

See also: **Republic v. Tommy Thompson Books Ltd** [1996-97] SCGLR 804 @ 851.

Also: the English case of **F Hoffman –La Roche & Co v. Secretary of State for Trade and Industry** [1974] 2 All ER 1128, HL.

Also: the Australian case of **Commonwealth v. Tasmania (The Tasmania Dam Case)** 158 CLR 1.

The endeavour by the respondents, to discharge the burden of proving the unconstitutionality of the requirement of C. I. 75 for a person to vote only after going through a process of biometric verification, is inconsistent and unconvincing. Having admitted that the 1<sup>st</sup> respondent called on people to vote without biometric verification, they come to court and say that this did not influence the 2<sup>nd</sup> respondent in the exercise of its discretion in allowing or denying the right of people to vote without biometric verification. They go ahead to state that nobody voted without biometric verification.

After their attention had been drawn to the fact that, indeed, voting without biometric verification occurred throughout the country and that, even in certain polling stations, the 2<sup>nd</sup> respondent's officers, in accordance with the acknowledged rules for the conduct of the December 2012 elections, annulled results in **four (4) polling stations** for failure of certain voters to go through biometric verification, Johnson Asiedu Nketiah, who testified for and on behalf of the 1<sup>st</sup> and 3<sup>rd</sup> respondents, stated in paragraph 15B of his affidavit filed on 15<sup>th</sup> April, 2013, that the decision to make voters vote only after going through biometric verification is unconstitutional.

It is submitted that, as argued above, voting with biometric verification is perfectly constitutional and serves a sufficiently weighty end. On an election day, the election official needs to be sure that the person arriving at the polling station, apart from the mere production of the required ID card, is the same person whose biometric details are captured on the biometric voters register. The history of our electoral system is replete with numerous instances of people voting with fake ID cards, impersonation and multiple voting. There,

thus, can be no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters. Moreover, the state's interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying and verifying the details of all voters. The electoral system cannot inspire confidence if no safeguards exist to detect or deter fraud or to confirm the identity of voters.

Please see: the U.S. case of **William Crawford v. Marion County Election Board** 553 U.S. (2008).

Clearly, it is the burden of the 1<sup>st</sup> and 3<sup>rd</sup> respondents to show how the requirement in **Regulation 30** of C.I. 75 for voters to vote only after going through a process of biometric verification is neither a necessary nor appropriate method of avoiding election fraud, and that it will arbitrarily disfranchise citizens who cannot be verified in accordance with C.I. 75. The abysmal effort of the 1<sup>st</sup> and 3<sup>rd</sup> respondents to prove how voting with biometric verification disfranchised some Ghanaians legitimately entitled to vote cannot go without comment. The respondents were unable to adduce evidence of any data relating to the number of people, who were allegedly disfranchised as a result of an alleged denial of their right to vote through the enforcement of **Regulation 30(2)** of C.I. 75 by the 2<sup>nd</sup> respondent. They were unable to cite the case of even a single Ghanaian, whose right to vote was allegedly infringed upon by the requirement of voting only with biometric verification. It cannot be gainsaid that this was the thrust of the duty cast on respondents, by the effect of their allegation that the statutory provision in **Regulation 30** of C.I. 75 for citizens to vote only after having gone through a process of biometric verification is unconstitutional. The evidence adduced by the respondents before this Honourable Court, which consisted only of their oral testimony and bare assertions in affidavits, on the contrary, sought to suggest that everyone voted after biometric verification. If this is the case, then the respondents cannot, in another breath, assert that it would amount to an unconstitutional disfranchisement of Ghanaians for people to vote only with biometric verification. Are the respondents not blowing hot and cold?

In the **Crawford v. Marion County Election Board** case (supra), the US Supreme Court, in upholding the constitutionality of an Indiana statute requiring citizens voting in person on election day, or casting a ballot in person at the office of the circuit clerk, to present specific photo identification, held that the party seeking to invalidate the voting-identification in its application "bears a heavy burden of persuasion". The court went on to hold that the overall burden of the Indiana statute was minimal and justified and that respecting the right to vote

should be evaluated under the approach in **Burdick v. Takushi**, 504 U.S. 428, which calls for application of differential, “*important regulating interests standard for nonsevere, non-discriminatory restrictions....*” In the opinion of the court, “*there was a real risk that voter fraud could affect a close election’s outcome.*” There was therefore, no “*question about the legitimacy or importance of a state’s interest in counting only eligible voters’ vote.*”

Strictly looked at, it is quite clear that having regard to the objects of the requirement for a voter to cast his vote only after going through prior biometric verification, **Regulation 30(2) of C.I. 75** is intended to ensure that only valid votes are counted in an election. It is our humble contention that this Honourable Court is definitely under a constitutional duty to uphold the validity of any law which seeks the constitutional injunction for only valid votes to be counted in the election of the President of Ghana. An election is about those who are eligible to vote and can produce valid votes. The legitimacy of a government is derived from valid votes. The 2<sup>nd</sup> Respondent and all the parties to this suit have a valid interest in deterring and detecting voter fraud. Therefore, any argument that seeks to down play or diminish the utility value of the purpose behind C.I. 75 should be viewed with grave suspicion.

The burden of voting with biometric verification is displaced by the burden of the risk of fraud.

In a constitutional system such as ours, the citizenry should directly elect their President in a firm and secure manner. If the President is not voted for in a manner that is not secure, then the country will head into an abyss for the election would not have represented the will of the people. The will of the people can only be exercised by the eligible voter.

Respectfully, the legitimacy of the State’s interest to set up an electoral system which can effectively guarantee the due exercise of the right to vote by persons constitutionally entitled to so do, devoid of abuses of same and corruption by unscrupulous elements, has been emphasised by this Court. Even when this Honourable Court had occasion to declare **section 7(5) of the Representation of the People Act, 1992 (PNDCL 284)** as an unconstitutional interference with the right of prisoners to vote in **Ahumah-Ocansey v. Electoral Commission; Centre for Human Rights & Civil Liberties (CHURCIL) v. Attorney-General & Electoral Commission (Consolidated)** (supra), Dotse JSC, at page 656 of the report, observed as follows:



*“... the 1992 Constitution, even though has very progressive and strong provisions which guarantee and protect the fundamental human rights, liberties and other freedoms enjoyable by citizens of Ghana, has provisions which also regulate and control the enjoyment of those rights, freedoms and liberties by operation of articles 12 (2), 14(1)(a)-(g), (21(2) and (4)(a)-(d) and 24(4) just to mention a few. It will therefore mean that the Constitution gives and protects the rights by the right hand, and takes away some of those rights in the interest of protecting certain public interest issues of property, morality, safety, security, etc. by the left hand. Similar sentiments were expressed by the Supreme Court speaking with one voice through Prof. Ocran JSC of blessed memory in the case of Gorman v. Republic [2003-2004] 2 SCGLR 784 as follows:*

*‘However, we must always guard against a sweeping invocation of fundamental human rights as a catch-all defence of the rights of defendants. People tend to overlook the fact that the Constitution adopts the view of human rights that seek to balance the rights of the individual as against the legitimate interests of the community. While the balance is decidedly tilted in favour of the individual, the public interest and the protection of the general public are very much part of the discourse on human rights in our Constitution’....”*

It is the respectful view of the petitioners that, in situations where the 2<sup>nd</sup> respondent as admitted by its Chairman, Dr. Afari-Gyan, would have permitted certain persons like the Omanhene to cast votes without biometric verification, the 2<sup>nd</sup> respondent rather would have been acting unlawfully and unconstitutionally. This is because such cases would promote the uneven application of the law on biometric verification. The 2<sup>nd</sup> respondent, by turning others who could not be verified away and permitting others who were well-known in the community but who could also not be verified biometrically to vote, could be said to be valuing the vote of one person over the other. It is an uneven application of the law. It implies that the main guarantee of one’s right to vote, after having registered, is whether one is well-known in one’s community. If one is not and one’s biometric details cannot be captured, one will be turned away even though, in another instance, an Omanhene or a prominent person will be allowed to vote even though he has not been verified biometrically.

Quite remarkably, contrary to the clear dictates of **Regulation 30(2)** of C.I. 75, the 2<sup>nd</sup> respondent in its training manual, exhibit “**EC2**”, granted unto its officials, particularly, presiding officials at the polling stations, some amount of discretion in permitting persons

whose fingerprints could not be verified to be allowed to vote. It is respectfully submitted that in addition to advocating the taking of an unlawful and unconstitutional decision by the 2<sup>nd</sup> respondent, exhibit “**EC2**” clearly is evidence of the fact that the situation as the “Omanhene” cited by Dr. Afari-Gyan in his testimony before the Court, is more than hypothetical. It is a pointer to the fact that, indeed, on election day, the 2<sup>nd</sup> respondent exercised its discretion in permitting people to vote without biometric verification, in subversion of the provisions in **C.I. 75**. It is further submitted that it is in anticipation of the fact that certain people might be permitted to vote without prior biometric verification that the column in C3 on the pink sheet was put there. 2<sup>nd</sup> respondent cannot turn round and say that C3 was filled in “error”, when on its own evidence, its officials had been trained to use their discretion to permit certain persons to vote without biometric verification.

The Indian Supreme Court case of **A.C. Jose v. Sivan Pillai & others** 1984 SCR (3) 74 at 75 [paras 86H-89G], is authority for the contention that, where certain electoral procedures are prescribed expressly by an enactment and its rules, the electoral commission is not at liberty to derogate from such rules, or exercise any discretion. In ruling against the exercise of discretion to use voting machines in some areas when the law did not support same, the court held at paragraph 87A-B that:

*“Where there is an Act and there are express Rules made thereunder, it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Act or the Rules. The powers of the Commission are meant to supplement rather than supplant the law (both statute and Rules) in the matter of superintendence, direction and control as provided by Article 324”.*

Having prescribed the manner in which voting can be done, it is arbitrary and a disparate treatment for the 2<sup>nd</sup> respondent to act in any way as to suggest that it values one person’s vote more than the other. Such a situation will amount to discrimination on the part of the 2<sup>nd</sup> respondent.

Please see: the U.S. case of **Bush v. Gore** 531 U.S. 98 148 L.ED.2d 388, where the US Supreme Court granted certiorari to quash the decision of a Florida Supreme Court in ordering manual recount of votes on which machines had failed to detect votes for President. In so doing, the US Supreme Court observed that the Florida Supreme Court ruling for a manual recount to be done to discern the “*intent on the voter*” did not ensure uniform treatment of voters and, thereby, failed to satisfy minimum requirement for non-

arbitrary treatment of voters necessary under the “Equal Protection Clause”. The court noted as follows:

*“ .... For state recount in presidential election to be conducted in compliance with requirements of equal protection and due process, it would require adoption of adequate statewide standards for determining what was a legal vote, and practicable procedures to implement them, and also orderly judicial review of any disputed matters that might arise.”*

The unconstitutionality of the position of the Chairman of the 2<sup>nd</sup> respondent that, in some cases the 2<sup>nd</sup> respondent’s agents permitted certain persons who are well-known in their community to cast votes without biometric verification, is highlighted by the U.S. case of **Moore v. Ogilvie**, 394 U. S. 814, 89 S.Ct. 1493, 23 L.Ed.2d 1 (1969), where it was stated that:

*“the idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government.”*

Though the 2<sup>nd</sup> respondent’s Chairman admitted that, in certain situations, his officials were allowed to permit “prominent persons” to vote, they curiously denied that any person voted without verification. The 2<sup>nd</sup> respondent claimed that, upon being served with the further and better particulars of the 11,915 polling stations (originally relied upon by petitioners), *it carried out an analysis of the **pink sheets*** in question and its analysis confirmed that no voters were allowed to vote without verification at any polling station.

This statement of the 2<sup>nd</sup> respondent, in the humble view of the petitioners, was patently false because, as the evidence led at the trial showed, the incidence of people voting without biometric verification was evident on the face of the pink sheets. If the 2<sup>nd</sup> respondent, indeed, *analysed the pink sheets after being served with the further and better particulars* by the petitioners, it is curious that it did not observe the fact of people having voted without prior biometric verification. This averment, it is submitted, exposes the falsehood with which most of the answers of the 2<sup>nd</sup> respondent was laced.

Another bizarre contention by the 2<sup>nd</sup> respondent was the claim that the pink sheets for the December 2012 elections were designed and printed *before the decision to compel voters to be verified biometrically* before voting was taken. Hence the appearance on the form of the question C3 as follows:

*“What is the number of ballots issued to voters verified by the use of Form 1C (but not by use of BVD)”?*

2<sup>nd</sup> respondent also further stated that, in view of the **late decision regarding verification**, all presiding officers were instructed to leave question C3 on the pink sheet blank, as verification would be carried out for each voter at the polling station. However, some presiding officers mistakenly filled question C3.

This averment of the 2<sup>nd</sup> respondent was also belied by the unimpeachable evidence consisting of admissions by the Chairman of 2<sup>nd</sup> respondent, on **6<sup>th</sup> June, 2013**, that C.I. 75 (mandating the use of biometric verification) came into force on 28<sup>th</sup> September, 2012, long before the Chairman of 2<sup>nd</sup> respondent on 20<sup>th</sup> October, 2012, gave the order for the pink sheets to be printed. The explanation simply cannot be true because, if it is, then it raises grave concerns over the capacity of presiding officers the 2<sup>nd</sup> respondent, with the resources of the State, employed. C3 (“What is the number of ballots issued to voters verified by the use of Form 1C (but not by the use of BVD)”) is clear and so simple to understand that it leaves no room for ambiguity or multiple interpretations. Thus, if over 2,000 presiding officers, trained with state resources, could not be trusted by the 2<sup>nd</sup> respondent to understand and act properly on such a simple instruction, only to fill column C3 in “error”, then one can imagine the number of other “errors” committed on the pink sheets which culminated in the 9<sup>th</sup> December, 2012 declaration that 1<sup>st</sup> respondent won the election.

It is strange and striking that the 1<sup>st</sup> and 3<sup>rd</sup> respondents who, at the material time of the passage of **C.I. 75**, were the President of the Republic and the ruling majority party in Parliament, respectively, were, together with 2<sup>nd</sup> respondent, principally responsible for the enactment of **C.I. 75**, should now, through a species of weak constitutional argument, attempt to undermine the constitutional validity of C.I. 75 by seeking to legitimize illegal conduct to justify the questionable declaration of 9<sup>th</sup> December, 2012 by the 2<sup>nd</sup> respondent. Such contradictory behaviour does not enhance the democratic governance of our State under the rule of law.

Maintaining confidence in the electoral process is essential to preserving any constitutional democracy. In the Canadian Supreme Court case of **R. v. Oakes**, 1986 Can LII 46 (SCC), [1986] S.C.R. 103 at 136, Dickson CJ concluded that:

*“faith in social and political institutions, which enhance the participation of individuals and groups in society, is of central importance in a free and democratic society. If [citizens] lack confidence in the electoral system, they will be discouraged from participating in a meaningful way in the electoral process. More importantly, they will lack faith in their elected representatives. Confidence in the electoral process is, therefore, a pressing and substantial objective.”*

**Regulation 30 of C.I. 75** states in mandatory terms that every voter shall go through a process of biometric verification. Biometric verification is verification by the biometric verification device. In flagrant violation of C.I. 75, the evidence adduced before the Court shows that many people voted without biometric verification.

The evidence led at the trial shows that **508,837** people voted without prior biometric verification. This, it is respectfully submitted, was unconstitutional, a violation of the law and a malpractice.

### **(iii) Absence of signatures**

The case of the petitioners on the absence of signatures on pink sheets may be summarised in this manner. In order to regulate or govern the manner in which the Electoral Commission organizes and supervises public elections and referenda in the Republic, the Constitution devotes a full article to *steps that mandatorily ought to be taken by the Electoral Commission* in the conduct of polls, the counting of votes, recording of ballots and declaration of results. These are enshrined in **article 49**. **Article 49(2)** and **(3)** entrust the presiding officer, the representative of the Electoral Commission, with certain duties. These duties, most importantly, relate to counting the ballots and recording the votes cast in favour of each candidate or question (if it is a referendum) in the presence of polling agents, if any, and *signing the declaration form on which the votes are recorded*. It is only after this that the presiding officer, in accordance with the same **article 49 (3)**, is constitutionally mandated to announce the results of the voting at that polling station, before communicating the results to the returning officer.

***It is especially significant to note that, indeed, article 49 is the only occasion, which details of voting at elections and referenda are specifically spelt out in the Constitution itself. In all other situations, the power to determine the manner in which elections shall be conducted is left to the 2<sup>nd</sup> respondent to regulate through the***

***enactment of regulations pursuant to article 51. It is obvious that the Constitution itself recognises that activities at the polling stations are at the bedrock of the democratic system of governance, hence the need for specific regulation of same by the Constitution, rather than being left to determination by the Electoral Commission.***

The mandatory provisions in **article 49** have an even greater significance when due account is taken of the **Preamble** to the Constitution. Serving as the spirit within which the Constitution is enacted, the **Preamble** operates as the yardstick by which the tenets of good governance ought to be measured. In this vein, it is humbly submitted that any conduct on the part of a person which militates against the attainment of the principles spelt out in the **Preamble** ought to be jettisoned by this Honourable Court. When regard is had to the **Preamble**, this Honourable Court will find that the Principle of Universal Adult Suffrage, as well as the commitment to establish a framework of government in accordance with democratic principles, run through the **Preamble**. It is our further respectful submission that, this being the case, any provision in the Constitution which aims at advancing or regulating the conduct of public elections and referenda in order to realise the goals of the **Preamble** must be respected and enforced by this Court.

It is our respectful contention that each of the steps specifically prescribed by **article 49** to be carried out by the presiding officer, apart from its mandatory nature, has a direct effect on the assurance of the integrity of the polls at a particular polling station and ensuring that the actual results of the polls are the ones announced to the public. This is why the constitutional provision must be respected and cannot be ignored by the 2<sup>nd</sup> respondent in its conduct of polls, since it guarantees that the legitimate will of the people is duly disclosed, a development central to the existence of democratic governance.

It is the humble contention of the petitioners that, save in certain instances where it can clearly be demonstrated that the subject matter in question properly belongs to the class of matters that can aptly be classified as having been consigned to the exclusive authority of a particular branch of government, like parliamentary proceedings (as held by this Court in the cases of **Tuffuor v. Attorney-General** [1980] GLR 637 CA and **J. H. Mensah v. Attorney-General** [1996-97] GLR 320), every provision in the Constitution is to be enforced by this Honourable Court. This is what is contained in the principle of the enforceability of the Constitution. The Constitution, being the primary law, serves as the yardstick for good governance and the standard by which the actions of all persons, particularly public officers, are to be measured. It is for this reason that **article 3(4)** entrusts every citizen with the duty to defend the Constitution, after **article 2 (1)** has also accorded unto the citizen a right to

bring an action in the Supreme Court for the enforcement of the Constitution. This was the effect of this Honourable Court's decision in **New Patriotic Party v. Attorney-General** [1993-94] 2 GLR 35 where the Court held that every provision in the Constitution is capable of enforcement by the Supreme Court. In so holding, the Court stated that the doctrine of "political question" was inapplicable in Ghana, because, under articles 1, 2 and 130, all issues of constitutional interpretation were justiciable by the Supreme Court. The Court further stated that, in any event, the Constitution itself was a political document, since every matter which arose from it for interpretation or enforcement was bound to have a political dimension.

It is on account of the principle of the enforceability of every provision in the whole of the Constitution that this Honourable Court assumed jurisdiction in the case of **Adjei-Ampofo v. Accra Metropolitan Assembly & Attorney-General** [2007-2008] SCGLR 611. Sophia Akuffo JSC, in consonance with this, noted, inter alia at page 620 as follows:

*"The objective of article 2(1) is to encourage all Ghanaians to help ensure the effectiveness of the Constitution, as a whole, through legal action in the Supreme Court."*

The argument has been made that there was a lot of pressure on the presiding officers which accounted for the failure to sign the pink sheets. The evidence before the Court is that some pink sheets were signed by the polling agents without the presiding officer signing. Since the requirement of the law is that the presiding officer should sign before handing over to the polling agents, it is difficult to see how, in spite of the alleged pressure on him/her, the presiding officer found time to give the pink sheet to the polling agents.

It ought to be respectfully noted that the requirement for presiding officers to sign pink sheets, is not onerous. In reality, every presiding officer at any polling station fills **only one** declaration form and is required to sign that **one** declaration form, in order to show that it is the act or deed of that presiding officer. It is not as if the presiding officers are supposed to fill a number of declaration forms at one polling station. It is, therefore, unfathomable how the presiding officers appointed by the 2<sup>nd</sup> respondent could not proceed to sign the pink sheets after taking the pain and time to fill the pink sheets in question, with information relating to ballot accounting and results.

***The signing of declaration forms by the presiding officers, apart from being in fulfilment of a constitutional duty, is also to authenticate the results of the elections.***

***It is submitted that any announcement of the results of the polls, when same have not been recorded and duly signed in accordance with article 49, will render the subsequent communication of the results to the returning officer unconstitutional, null, void and of no effect. This is because the returning officer, before acting on the declaration containing the results of the polls at a particular polling station, must be satisfied and ensure that the constitutional requirement of a signature on the declaration form has been discharged, and that the pink sheet is, in truth, the act or deed of the official representative of the Electoral Commission, i.e. the presiding officer at the polling station.***

Dr. Afari-Gyan, in his evidence under cross-examination by counsel for petitioners on **12<sup>th</sup> June, 2013**, told the Court that he himself, in making a declaration of the presidential election results, will have to sign the instrument by which he so makes. Asked as to whether without his signature the declaration can be made, he answered “**NO MY LORDS**”.

The reason why Dr. Afari-Gyan stated that, without signing the declaration, the declaration made by him cannot be made, is simple. It is that it is his signature which validates the declaration he makes. If Dr. Afari-Gyan, the returning officer for the December 2012 presidential elections, has to sign the declaration he makes before same will be valid, it cannot be contended that the presiding officers on whose results he bases his declaration, do not have to sign the pink sheets.

In an election petition, such as this, where the result of the elections as declared by the 2<sup>nd</sup> respondent is being questioned, this Honourable Court, it is respectfully submitted, cannot uphold the validity of the results from polling stations where declaration forms were not authenticated by the signatures of the official heads of the polling stations, i.e. the presiding officers.

The 1<sup>st</sup> respondent claims that the failure of the presiding officers to sign, where they were supposed to sign could “not be a basis for annulling lawfully cast votes”, where polling agents of the various candidates signed. It is our humble response that, excepting the self-serving, mass-manufactured and untested affidavit evidence of witnesses of the 1<sup>st</sup> and 3<sup>rd</sup> respondents who claimed to be polling agents, no credible evidence was proffered to show that the votes entered on the pink sheets not signed by the presiding officers were a true reflection of the voting that went on in the polling stations in question. In any event and, furthermore, the results of polling stations are not authenticated by polling agents. The burden on the petitioners was merely to show that the allegation of a failure to sign the pink



sheets in question was made out. Once the petitioners have established the significance of the failure of the presiding officers to sign the pink sheets, the burden shifts onto the respondents. The respondents failed to adduce a shred of evidence in support of the contention that the outcome of the voting at the polling stations affected by “no presiding officer’s signature” was just as was recorded on the pink sheets, lack of signatures notwithstanding.

It is the respectful contention of the petitioners that ***the due execution of the declaration by the presiding officers before the results of the polls are announced to the public will avoid situations where results are swapped and also situations where different results are entered on different declaration forms for the same polling stations. It is pertinent to note that, in this case, there are examples where different results, in areas where the presiding officers did not sign, are entered for the same polling stations. Instances can be found where two pink sheets exist for the same polling stations, with one having different names of polling agents at the back.***

***The constitutional provision in article 49(3), enjoining presiding officers to sign the declaration forms before announcing results, was to avoid such absurdities. It is intended to prevent undue manipulation of the results by any person, including the Electoral Commission itself and party agents.***

It is respectfully submitted that even if the polling agents sign a declaration form, but that declaration form ***is not signed by the Electoral Commission’s official representative (the presiding officer), same is invalid and of no effect. This is because the presiding officer is in charge of a polling station and is responsible for the declaration of the results at the polling station.*** (Please see: C.I. 75 and page 15 of exhibit “EC 2” - the Electoral Commission’s Guide to candidates and their agents).

It is submitted that, having enacted C.I. 75 to govern the conduct of the 2012 presidential election in accordance with **article 51**, the 2<sup>nd</sup> respondent cannot resile from same.

By signing the forms in the presence of the agents and before the results are announced, the presiding officer, essentially, will be vouching for the declaration on the form. He/she would be attesting to the correctness of the results. In the absence of such an attestation by him, it is correct to say that the alleged results of the polls at the particular polling station were not authenticated by the official representative of the 2<sup>nd</sup> respondent, even though

same were taken into account in the final declaration by the 2<sup>nd</sup> respondent. It is, therefore, submitted that those results ought to be annulled.

It should respectfully be noted that **article 49(3)** does not place any premium on the presence of the signature of the agent on the declaration forms unlike that of the presiding officer. That is why it stipulates that “the polling agents (*if any*)” shall then sign the declaration form after the signing by the presiding officer. It is submitted that the signatures of the polling agents on the declaration forms, at best, are akin to those of witnesses to a document. The signature of a witness to the execution of a document is valueless in the absence of the signature of the principal party itself, i.e. the party who is to be bound by the contents of the document.

It is very important to note respectfully that the signature of a polling agent does not authenticate the results of an election. That is why, even if agents leave the polling stations before the results are declared or simply fail to sign the declaration forms, the presiding officer proceeds to announce results.

In the pleadings of the 2<sup>nd</sup> respondent as well as the evidence of 2<sup>nd</sup> respondent’s Chairman before the Court, it was alleged that some of the pink sheets in issue were signed by the presiding officers or on their behalf at the collation centres, at the direction of the returning officers. Our response to this unsubstantiated allegation is that, same merely underscores the need for signatures of the presiding officers on the pink sheets. Further, the petitioners contend that this pleading amounts to a confession of an unconstitutional conduct on the part of the 2<sup>nd</sup> respondent. It is wholly unreasonable and unacceptable for the 2<sup>nd</sup> respondent to say that they purported to authenticate results from polling stations after copies of the official record of the election have been given to agents of the candidates and they had taken their copies away. It is for the sake of ensuring that the contents of a duly authenticated pink sheet are exactly as will be given to each party thereto that the Constitution requires that same be signed before declaration of results are made by the presiding officer.

The Chairman of the 2<sup>nd</sup> respondent himself recognizes the utmost need for the declaration forms to be filled and executed strictly. That is why in his evidence he stated that failure to fill a portion of the form at the time prescribed on the form is an irregularity. By the force of the same logic, failure to sign the declaration form, will not only be an irregularity, but also an irremediable breach of the Constitution since the results have already been declared and

one candidate declared the winner on account of these unsigned or unauthenticated declaration forms.

The need for an official document to be duly executed, in order for its contents to be binding, has been affirmed by this Honourable Court.

Please see: **Akowuah & Anor v. Amoo & Anor.** [2012] 1 SCGLR 261, wherein this Honourable Court, speaking through Anin-Yeboah JSC, held, inter alia, as follows:

*“... And an official court process or document like a bail bond or justification of sureties should be free from irregularities to leave no one in doubt that the surety has executed the bond. Cancellations and lack of signature or thumbprint or mark apparent on the face of the document would create serious doubts as to its authenticity...”*

It is our respectful contention that if this Honourable Court in **Akowuah & Anor v. Amoo & Anor.** (supra) considered an official court process or a bail bond so serious that it must “*be from irregularities to leave no one in doubt*” as to its authenticity *a fortiori* the declaration of results in a presidential election on which the future, hopes and aspirations of the nation hang must be free from all irregularities. It is respectfully submitted that this Honourable Court ought to place a high premium on the need for the declaration forms to be authenticated by the signature of the official who presided over the election at the polling station in question, i.e. the presiding officer.

The Nigerian cases of **Attorney-General, Kwara State & Anor v. Chief Joshua Alao & anor.** (2009) 9 NWLR Part 671, 84 @ 104 and **Omega Bank Plc v. O. B. C. Limited**, 21 NSCQR 771 @ 794 (per Musdapher JSC), also underscore the point that a document not signed by the person authorised to execute it is, with the greatest respect, worthless and does not possess any efficacy in law.

It has always been the law that an unsigned document, in circumstances where signature is essential, is bad in law and void.

According to the evidence, the number of votes affected by the failure of presiding officers to sign pink sheets is **659,814**.

**(iv) Instances where voting took place in certain locations which could not be identified as part of the official list of 26,002 polling stations created by the 2<sup>nd</sup> respondent for the conduct of the December 2012 presidential election.**

Ground 2(a) of the petition is to the effect that presidential elections were conducted in **22 locations** which were not part of the **twenty-six thousand and two (26,002)** polling stations created by the 2<sup>nd</sup> Respondent for purposes of the December 2012 elections. In the run-up to the December 2012 elections, the 2<sup>nd</sup> respondent created polling stations to be used for both the parliamentary and presidential polls. The list of polling stations officially designated for the general elections of December, 2012 was supplied to all the parties.

In Ghana, the creation of polling stations, the time frame within which same must be created and the date after which the creation of additional polling stations is prohibited, are regulated by law, i.e. **C.I. 75**. By **Regulation 16(4)** thereof, new polling stations could not be created by the 2<sup>nd</sup> respondent for the December 2012 elections not later than forty-two (42) days to the election.

2<sup>nd</sup> respondent furnished the NPP with a list of 26,002 polling stations for the purpose of the December, 2012 general elections. These polling stations could be identified by a combination of their names and unique polling station codes. The evidence led before this Honourable Court indicated that the number of locations outside the official list of 26,002 polling stations at which the 2<sup>nd</sup> respondent conducted elections was 22. This list of 22 locations is set out in **Table 15 of Volume 2B** of this Address.

It is the humble contention of the petitioners that the conduct of elections in 22 locations outside the official list of 26,002 polling stations was unlawful. This is because the existence of any polling station, which cannot be identified on the official list of polling stations by a combination of both polling station name and polling station code, is legally unknown and, therefore, unlawful. Such locations were created and used in violation of **C.I. 75**.

Reference is respectfully made to the evidence of the 2<sup>nd</sup> petitioner on **17<sup>th</sup> April, 2013**, specifically captured on **pages 15, 40 and 42** of the record of proceedings and also the evidence of Chairman of 2<sup>nd</sup> respondent on **8<sup>th</sup> July, 2013 (pages 56-57** of the record of proceedings).

The respondents make the argument that elections were indeed conducted at these locations and that the various candidates in the presidential election sent polling agents to those locations. Therefore, the respondents contend that the inclusion of votes from these locations was legitimate. Petitioner's respectful answer is in two parts. Firstly, this argument

begs the question whether or not those locations were part of the official list of polling stations. The evidence shows that they were not. Secondly, polling agents are not responsible for the conduct of elections. Polling agents are primarily the agents of the candidates and mere observers. The presence of the polling agent does not, and cannot ratify an illegality or unconstitutionality.

On the strength of the foregoing, it is our respectful submission that the contention of the respondents that the mere fact that the agents of the 1<sup>st</sup> petitioner were present at the 22 unknown locations in question rendered the results emanating therefrom legal, is patently untenable.

In point of fact, Regulation 17 of C.I. 75 makes the presiding officers appointed by the 2<sup>nd</sup> respondent and who are officers of the 2<sup>nd</sup> respondent fully responsible for the conduct of the polls at the polling stations. It is the submission of the petitioners that to hold that the presence of the polling agents of the NPP at these “unknown” locations and their alleged signing of the pink sheets, rendered legal or constitutional results emanating therefrom, will amount to an interference with the independence of the 2<sup>nd</sup> respondent under **article 46** of the Constitution. This is because *the logical consequence of such an argument is that the powers given to the 2<sup>nd</sup> respondent in the conduct of elections will be subjected to the discretion of polling agents of the various parties in an election, with the effect that where the 2<sup>nd</sup> respondent is acting unlawfully or even unconstitutionally, an act of an agent can ratify such illegality.*

The limited role of agents and the independence of the 2<sup>nd</sup> respondent, which necessarily implies that the powers and duties of the 2<sup>nd</sup> respondent can never be substituted for the discretion of any agent were examined in **Apaloo v. Electoral Commission (supra)** wherein this Honourable Court, per *Atuguba JSC*, observed as follows:

*“The ascertainment of the identity of a prospective voter is part of the conduct of public elections and as the Constitution places that duty on the Electoral Commission, it can only do so by itself and its proper agents... to surrender the judgment of the presiding officer as to the identity of a voter to the candidate’s polling agents, is in effect, to delegate that function to those agents, contrary to articles 45 (c) and 46 of the Constitution.”*

If presiding officers, who are officials of the 2<sup>nd</sup> respondent and primarily responsible for the conduct of the polls, supervise elections at stations unknown to the official list of polling

stations supplied to all the parties, the 2<sup>nd</sup> respondent cannot turn round and defend those results simply because persons who are not constitutionally obliged to supervise elections were present at those polling stations and signed the purported results from them.

According to the evidence, the number of votes from these locations were **9522**.

#### **(v) Duplicate Serial Numbers on Pink Sheets**

A cardinal feature of all electoral processes under the Fourth Republic to date has been how to guarantee the security of election materials. This is to avoid the mischief of substitution of election materials by unscrupulous persons determined to compromise the electoral process by replacing authentic electoral materials with their own forged ones.

This is an ever present danger that must constantly be addressed to assure the integrity of the electoral process. One of the means by which the 2<sup>nd</sup> respondent has over the years sought to do this, alongside other measures, has been to pre-emboss electoral materials with unique serial numbers. This is to ensure that specific electoral materials, as far as possible, are used only once at every polling station and also to detect the introduction of forged materials into the electoral process. Thus, for example, the ballot papers have serial numbers embossed on them to ensure that each ballot paper is unique in its identity. The series equally ensures that ballot papers are allocated to constituencies and polling stations in accordance with serial numbers known to the 2<sup>nd</sup> respondent. In the same way, in order to avoid the threat of replacement of official ballot boxes with unofficial ballot boxes, the ballot boxes officially used by the 2<sup>nd</sup> respondent have embossed on them serial numbers. Even the tamper proof envelopes, into which presiding officers at polling station put all election materials post announcement of the results at the poll, have serial numbers in order to enable detection of any attempt to replace an authentic tamper proof envelope with a counterfeit one. It should be noted that in each of these examples the serial numbers come already embossed on the article from the manufacturers/printers. It would, accordingly, be astonishing, if not self-defeating, where the primary record of the election, which are the pink sheets, on which results are declared, had no serial number as a security feature to prevent substitution or forgeries of such critical electoral materials.

This is more so, when the Chairman of 2<sup>nd</sup> respondent, Dr. Afari-Gyan, in his evidence on **10<sup>th</sup> June, 2013**, at **pages 56 – 57** of the record of proceedings for that day conceded that, pink sheets are sensitive material, when used in an election. Respectfully, that argument is

flawed because all election materials become sensitive only when used in an election. This answer to questions asked him, in cross-examination by counsel for petitioners, confirms the fact that pink sheets are no less sensitive than other primary materials used for the conduct of elections like ballot papers and ballot boxes.

This Honourable Court is respectfully invited to take particular note of the evasive manner in which the 2<sup>nd</sup> respondent's Chairman attempted to avoid and deflect the questions asked by counsel for petitioners on the significance of pink sheets on **10<sup>th</sup> June, 2013**. Dr. Afari-Gyan, in his bid to downplay the significance of serial numbers on the pink sheet, danced round in circles for so long a time before he eventually conceded that pink sheets are sensitive material when used in an election.

In a move which effectively emphasised the significance of serial numbers on the pink sheets, Dr. Afari-Gyan, on **11<sup>th</sup> June, 2013**, under further cross-examination by counsel for petitioners, admitted at **page 23** of the record of proceedings that what distinguishes two blank pink sheets is their serial number(s). This admission, it is respectfully submitted, supports the petitioners' proposition that, if a person lays his hands on an unfilled or blank pink sheet, that person can fill it out with what purports to be results of polls in a polling station and the fraud perpetrated by that person will go unnoticed. This is because, as the evidence at the trial showed, the essential distinguishing factors of a polling station, i.e. polling station name and code, do not come pre-embossed. It means that in order to secure the integrity of results from a polling station or, in order to authenticate results from any polling station, the genuineness of the paper on which the results are recorded must be determinable through some means. This means, it is submitted, is through the embossment of the serial numbers on the pink sheets.

Consistent with this security system which seeks to guarantee the integrity of the electoral process and the authenticity of electoral materials, the pink sheets, come with serial numbers pre-embossed from the printers to ensure that *each such form is unique to the polling station where it is used*. ***The point here is not that what gives a polling station its identity and uniqueness are the serial numbers of the pink sheets - not at all. What gives the polling station its identity are the polling station name and code. The point, however, is that what is unique to each pink sheet is its serial number. For each pink sheet has a specific serial number pre-embossed on it from the printers. All other features on it are the same as any other pink sheet. So once a particular pink sheet is assigned to a particular polling station with a particular code and the***

***presiding officer writes, by hand, the name and code of that polling station in the space provided on the pink sheet, the serial number locks the polling station name and code to that polling station for good.*** The pink sheet with that particular serial number will definitely not be used again in the election. It is in this sense that the serial numbers constitute a security feature of the pink sheets. And it is in this sense that it can legitimately be likened to the serial numbers on a cheque book, one's passport or currency, which come with the serial numbers pre-embossed from the printers.

In his evidence-in-chief, Mr Asiedu Nketia, the representative of 1<sup>st</sup> and 3<sup>rd</sup> respondents, sought to suggest that he is not even very sure what petitioners claim to be serial numbers on the pink sheets are. This feigning of ignorance of the serial numbers on the pink sheets is belied by the fact that, both in their Amended Answers filed on 26<sup>th</sup> February 2013 and their joint affidavit evidence sworn to by Mr. Asiedu Nketiah on 16<sup>th</sup> April, 2013, 1<sup>st</sup> and 3<sup>rd</sup> respondents state categorically that serial numbers are not unique to polling stations and constitute no security feature. This effort by 1<sup>st</sup> and 3<sup>rd</sup> respondents to deny the existence of serial numbers, even though evident on the face of the pink sheets, exposes a curious anxiety to conjure this reality out of existence.

Mr. Asiedu Nketia said that if the serial numbers were the security feature petitioners claim they are, then the 2<sup>nd</sup> respondent would have drawn the attention of all political parties to that fact during the various training programmes the 2<sup>nd</sup> respondent had with their party agents, as was the case with serial numbers on the ballot papers; and that the fact that this did not happen shows that no significance should be paid to the numbers. The simple answer to that is that the serial numbers constitute an internal check and security mechanism for the 2<sup>nd</sup> respondent itself and not so much for polling agents on polling day. What is more, since duplicate serial numbers could be discovered only after the fact, that is, after elections, when all pink sheets are brought together and analysed, polling agents at specific polling stations dealing with specific pink sheets would be in absolutely no position to detect the use of duplicate serial numbers, unlike the case of serial numbers of ballot papers which polling agents could detect on election day.

On his part, Dr. Afari Gyan, the Chairman of the 2<sup>nd</sup> respondent and the returning officer for the presidential election, who should know better, has equally stated that it is the polling station name and code that is unique to a particular polling station and that once the name and code of the polling station are written on the space provided on a particular pink sheet, it does not matter that another pink sheet with the same serial number is used for a different



polling station with its unique name and code. This, with respect, begs the question and underscores the flaws in the electoral process of December 2012 and how the conduct of 2<sup>nd</sup> respondent itself afforded an opportunity for legitimate results of voting at polling stations to be altered and/or swapped. The point, however, is that if only one set of pink sheets, each with a unique serial number, had been printed, and yet at the close of polls there was discovered pink sheets with the same serial numbers but different results, that will clearly constitute a grave malpractice.

Another question that begs for an answer is the rationale for printing two sets of pink sheets. With respect, the convoluted reasoning proffered to this question by 2<sup>nd</sup> respondent, in paragraph 18 (a) of its 2<sup>nd</sup> Amended Answer filed on 3<sup>rd</sup> April, 2013 provides no explanation. It rather leaves many more questions unanswered and manifestly points to the lack of a plausible explanation. 2<sup>nd</sup> respondent avers in its Answer that they printed the two sets of pink sheets in anticipation of there being more than eight (8) candidates for the presidential election; that this could have come to pass had the nominations of a number of potential candidates not been rejected for not meeting the qualifying criteria. This rather disingenuous explanation, however, falls apart completely when regard is had to the real facts and the evidence on the face of the pink sheets.

In the first place, both sets of the pink sheets had already printed on them the names of the eight (8) candidates that, indeed, qualified to contest and, in actual fact, contested the 2012 presidential election. One would have expected that, if the rationalisation of 2<sup>nd</sup> respondent was true, it would have left the second set of pink sheets blank for the potential presidential candidates, as is the case with parliamentary election pink sheets. What, however, definitively gives the lie away is the fact that both sets of pink sheets had the names of the eight (8) presidential candidates for the 2012 election embossed on them in the order of their placement on the ballot paper. This meant that the pink sheets were printed only after the ballot among the candidates to determine their order of placement on the ballot paper was determined on Friday, 19<sup>th</sup> October, 2012. By that date, the 2<sup>nd</sup> respondent had rejected the applications of the potential nominees for presidential election. There was, thus, no reason for the printing of a second set of pink sheets. The question which rings out and cries for a convincing answer, therefore, is: *the rationale for the 2<sup>nd</sup> Respondent's printing of a second set of pink sheets, with exactly the same candidates and same serial numbers. Furthermore, having printed this excess set, it is yet to be convincingly explained why 2<sup>nd</sup> Respondent decide to use them and indeed used them when there was no need to.*

It becomes apparent that Dr. Afari Gyan's response that there was nothing wrong with having pink sheets with the same serial numbers being used for different polling stations, provided the uniqueness of the two polling stations could be identified by their different names and different codes, actually begs the question why this should happen. When account is taken of the fact that most of the polling stations where the constitutional and statutory violations of over-voting, voting without biometric registration and the absence of signatures of presiding officers occurred, are found on these pink sheets with duplicate serial numbers, the full significance of the malpractice of deliberately deploying the same set of pink sheets to different polling stations becomes evident.

Indeed, as Dr. Mahamadu Bawumia, 2<sup>nd</sup> petitioner, noted in his testimony, the only unique feature of each and every pink sheet which is already printed on delivery to the 2<sup>nd</sup> respondent is its serial number. All other features are the same. The polling station name and code and the other entries are hand written and any one up to mischief can sit in his or her house and fill in the duplicate pink sheets with correct polling station code and name and sign them. This is precisely what printing only one set of pink sheets each with a unique serial number was to prevent and this is what printing two (2) sets of the same pink sheets with the same serial numbers for no good reason whatsoever provided opportunity for.

Dr. Afari Gyan had also stated in his evidence-in-chief that the numbers on the pink sheet have no significance because unlike the serial numbers on the ballot papers, this is not a requirement of any statute or instrument. Admittedly, Regulation 26(2) of Public Elections Regulations 2012 (C.I. 75) provides thus: **"Every ballot paper shall: (c) have a number on it"**.

*However, it should be noted that there is no law or regulation requiring that the official stamp used to stamp ballot papers at the polling station should bear serial numbers, yet for good reason, these stamps all bear serial numbers, as a matter of established practice of the 2<sup>nd</sup> respondent.*

More specifically, however, is that Regulation 26(c) C.I. 75 does not say every ballot shall have a **serial** number on it. The reference is to **"a number"**, but this is understood to mean **serial number**. This is because the only purpose of numbers on articles in such situation is to provide the articles with a mark of identification. There would be absolutely no purpose of having pre-embossed numbers on such an article if it were random without any record of the random nature. Dr. Afari Gyan, in an attempt to explain this away, said in his evidence-

in-chief that it was simply to provide a count of the number of pink sheets printed. If that were so, the pink sheets, it is respectfully submitted, should have been numbered from 1 to the last copy.

It is noteworthy that Dr. Afari-Gyan eventually conceded in cross-examination by counsel for petitioners on **10<sup>th</sup> June, 2013** (at **pages 68-69** of the record of proceedings for that day) that if one set of pink sheets had been printed and used in the December 2012 election, a serial number on the pink sheet would have been unique to each polling station. The following transpired between counsel and the witness.

Q. Now apart from this set of pink sheets, you printed another set.

A. Well, my lords it translates to that.

Q. And the second set you printed was the same as the first set in all material particular.

A. My lords, yes because the second set was supposed to be a continuation of the first.

Q. So was the second set, in fact, a continuation?

A. No.

Q. Now Dr. Afari Gyan, if you had not printed this second set, the first set distributed to all the polling stations could have remained unique to each particular polling station?

A. My lords, yes, I would agree with you.

Again, it is for same reason that the numbers on the ballot boxes, the tamper proof envelopes and above all the pink sheets, the primary document on which the election results are based and declared, are in series. Any argument, that there may be pre-embossed numbers on any of the election articles, but they are not serial, is not only untrue but flies in the face of good reason and ought to be rejected as misconceived.

In the circumstance, it is respectfully submitted that the phenomena of pink sheets with same serial numbers being used for different polling stations constitute a grave security breach, which undermines the integrity of the elections where they occurred. The results therefrom ought to be annulled, especially in the face of the overwhelming evidence that the duplicate serial numbers became the mechanism by which all the other infractions, were committed in the December 2012 elections, just as where two passports with different names but the same serial number or two cheques with the same serial number are rejected by the relevant authorities as completely untenable.

If there had been any doubt as to the significance of serial numbers in securing the integrity of elections, and assisting the detection of voting malpractices, such doubt was put to rest on the final day of cross-examination when counsel for petitioners confronted Dr. Afari-Gyan with triplicates and quadruplicate serial numbers on different pink sheets. This dramatically demonstrated the manipulation to which pink sheets bearing the same serial numbers were put in the 2012 presidential election.

Dr. Afari-Gyan's evidence highlighted the significance of the testimony of the 2<sup>nd</sup> petitioner that 88% of all the constitutional and statutory violations, malpractices and irregularities occurred on pink sheets with the same serial numbers.

According to the evidence, total votes affected by the use of duplicate serial numbers are **3,508,491**.

**(vi) Widespread instances of polling stations where different results were strangely recorded on different pink sheets bearing the same polling station codes**

One of the grounds for the reliefs claimed in this petition is the fact that there were widespread instances where different results from different polling stations were strangely recorded on pink sheets bearing the same polling station codes. This, clearly, is contrary to the expressed and accepted policy of 2<sup>nd</sup> respondent for each polling station to be assigned a unique code in order to guarantee the integrity of the results and to avoid confusing one polling station with another.

As stated above, each polling station on the official list of polling stations is identified by a combination of both name and code. In view of the difficulty in identifying a polling station just by the name, owing to the many instances of similarities in polling station names, the

codes are a very important factor in establishing the existence of polling stations, and also, guaranteeing the accuracy of results from a particular polling station.

This Honourable Court is respectfully invited to refer to the evidence under cross-examination of Dr.Afari-Gyan on **10<sup>th</sup> July, 2013**, at **pages 20-22** and **28-29** of the record of proceedings of that.

Respectfully, in a situation, where two polling stations bear the same polling station codes, it is not possible to establish which of the results is genuine. Enormous confusion will be created. The phenomenon clearly defeats or negates the rationale for the 2<sup>nd</sup> Respondent creating polling stations and uniquely identifying them by polling station codes.

It is these practical difficulties inherent in relying on two different results recorded on pink sheets which bear the same polling station code, which underpin the application by petitioners to have votes from the affected polling stations annulled by this Honourable Court.

According to the evidence, the number of votes affected is **13, 317**.

#### **H. The Role of Polling Agents in General Elections**

The respondents contended throughout the trial that (i) the presence of polling agents as representatives of contesting political parties or candidates at the polls, (ii) their signing of pink sheets and (iii) the lack of protest on the face of the pink sheets, are indicative of the accuracy of the results and accordingly, the petitioners are estopped from challenging those results. This position of the respondents is a clear misconception of the law and role of the polling agent.

It is the contention of petitioners that the constitutional responsibility of the conduct of public elections and referenda including the 2012 elections, has been entrusted to the 2<sup>nd</sup> responsibility by article 43 of the Constitution. The 2<sup>nd</sup> respondent can not relinquish that constitutional duty to the polling agents or anybody for that matter. This Honourable Court has had occasion to pronounce on this point in the case of **Apaloo v. Electoral Commission** (supra).

Further, it is the contention of the petitioner that the presence and signature of a polling agent does not give the imprimatur of legality and constitutionality to events at the polling station on election day. At best their signature attests to the record on the face of the pink sheet. This fact is buttressed by the terms of the declaration to which the polling agents actually signed. The declaration is in these terms:

**“We, the undersigned, do hereby declare that the results shown above are a true and accurate account of the ballots in this polling station.”**

Thirdly, it is the further submission of the petitioners that under **Regulation 19(4) of C.I. 75**, polling agents are in essence observers. This role of the polling agent sharply contrasts the role of polling agents under **Regulation 48** of the repealed **Public Elections Regulations 1996 (C.I. 15)** under which polling agents were the designated officials of the 2<sup>nd</sup> respondent. The observer status of polling agents under C.I. 75 was clearly confirmed by the Chairman of 2<sup>nd</sup> respondent under cross-examination on 13<sup>th</sup> June, 2013 (pages 21, 25-26 of the record of proceedings).

Q. You are aware that the functions of a polling agent are strictly circumscribed?

A. My lords I would say so.

Q. They are not election officials?

A. In the strict sense of the term, no.

Q. I would like you to read Rule 19(4) of C1 75?

A. WITNESS READS OUT

Q. So I am suggesting to you that it is not the business of the polling agent to supervise the work of the election officials but to observe the conduct of the poll?

A. My lords I agree that the agent is not supposed to supervise but he plays an active role at the station.

At pages **25-26** of the record of proceedings for the same day, Dr. Afari-Gyan made the point about the very limited role of polling agents abundantly clear.

Q. A polling agent is not involved in the actual administration of the election?

A. My lords you are correct.

Q. He does not count the votes after the election?

A. My lords no.

Q. He counts?

- A. He does not.
- Q. He also does not inspect the ID cards of persons who are in the cue to vote?
- A. My lords no.
- Q. He cannot confront anybody directly at the polling station?
- A. My lords no and for that matter nobody can confront anybody directly at the polling station.
- Q. if he has any objection to anything happening he has to inform the presiding officer?
- A. My lord yes.
- Q. So the presiding officer is in-charge of the polling station?
- A. My lords absolutely.
- Q. He has the final say on any matter?
- A. So far as it is connected with the election yes.
- Q. In fact the presiding officer can ask the polling agent to leave the polling station.
- A. My lords yes if the polling agent misconducts himself or herself.
- Q. And who determines who misconducts himself, it is the presiding officer?
- A. Yes it is the presiding officer but misconduct they are trained to know how mis-conducting oneself in a polling station is.

This role of polling agents is further emphasized at pages 10 to 14 - Exhibit "EC 1" (Guide to Candidates and Their Agents) published by 2<sup>nd</sup> respondent, and pages 12-17 of "EC 2" (A Guide to Election Officials, Election 2012 Presidential & Parliamentary Elections, Electoral Commission).

The only requirement for mounting a presidential election challenge is that the challenger must be a citizen of Ghana. There is no requirement for one's polling agents to have protested the validity of the polls at the polling station before one can mount a challenge. In truth, the appointment of a polling agent is optional and that cannot operate as a bar to the

institution of presidential election petition. See article 49 of the Constitution and Regulation 19(1) of C.I. 75.

Candidates and/or their polling agents are legally entitled but not legally required or bound to be present at the elections/polls and or witness the counting, recording and declaration of votes or election results at the polling station. The presence of candidates and/or their polling agents at the polls at the various stations was optional and, therefore, dispensable.

Sowah JA (as he then was) in **Tuffuor v. Attorney General** [1980] GLR 637@656

“...The decision of Mr. Justice Apaloo to appear before Parliament cannot make any difference to the interpretation of the relevant article under consideration unless that decision is in accordance with the postulates of the Constitution. It is indeed the propriety of the decision which is under challenge. This court does not think that any act or conduct which is contrary to the express or implied provisions of the Constitution can be validated by equitable doctrines of estoppel. No person can make lawful what the Constitution says is unlawful. No person can make unlawful what the Constitution says is lawful. The conduct must conform to due process of law as laid down in the fundamental law of the land or it is unlawful and invalid...”

If countenanced, the argument of the respondent will stultify the letter and spirit of the Constitution.

## **I. BURDEN AND STANDARD OF PROOF IN AN ELECTION PETITION**

It is trite learning that the burden of proof relates to the party on whom the duty or onus to lead evidence to the level prescribed by law on a specific matter in dispute at a trial, whereas the standard of proof refers to the yardstick by which the quality of evidence adduced at a trial in proof of a matter is issue is measured. It is generally acknowledged that an election petition is a specie of civil cases and must be decided on the balance of probabilities, which is the standard of proof in civil actions. Please see cases from similar common law jurisdictions particularly, the Nigerian cases of **Barr. Enoch Kwaali & Anor v. Hon. Issah Dobi & 37 Others** and **Ayo Arise v. Olubunmi Adentunbi & Others** [2011] All FWLR 941.

The **Evidence Act, 1975 (Act 323) section 12 (1)** stipulates that the burden of persuasion in civil cases requires proof by a preponderance of probabilities, i.e. that degree of certainty of belief in the mind of the court by which it is convinced that the existence of a fact is more probable than its non-existence.



Delivering the judgment of the Supreme Court, Ansah JSC in **Takoradi Flour Mills v. Samir Faris** [2005-2006] SCGLR 882, in determining how the burden of proof in matters in which the civil standard is applied, stated at page 900 thereof thus:

*“ ..., it is sufficient to say that this being a civil suit, the rules of evidence requires that the plaintiff produces sufficient evidence to make out his claim on a preponderance of probabilities, as defined in section 12(2) of the Evidence Decree, 1975 (NRCD 323). Our understanding of the rules in the Evidence Decree, 1975 on the burden of proof is that in assessing the balance of probabilities, all the evidence, be it that of the plaintiff or the defendant, must be considered and the party in whose favour the balance tilts is the person whose case is the more probable of the rival versions and is deserving of a favourable verdict.”*

**Section 11 (1) of the Evidence Act** states:

*“For evidential purposes, the burden of persuasion means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue”.*

Further, **section 14(1)** of the **Evidence Act** also stipulates that except as is provided by law, unless and until it is shifted, *a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence.*

The English law has rejected any notion that there might be intermediate standard or standards between the balance of probabilities and beyond reasonable doubt, or that there are degrees of probability within the concept of the balance of probabilities. Some earlier authorities had suggested this approach to civil cases involving allegations of criminal conduct, or other conduct of similar gravity, but it is now clear that such an approach is thought to produce over-complication and confusion. That is not to say that the gravity of the allegation is irrelevant to considering whether the standard of proof on the balance of probabilities has been met. It is a matter of the weight of the evidence needed to tip the balance of probabilities.

Please See: **Dennis, the Law of Evidence, Fifth Edition [2013] at 484-5.**

For the avoidance of doubt, it is respectfully submitted that Ghanaian law, just like some authoritative decisions in England recently, recognises only two standards of proof; the civil standard and the criminal standard. There is no middle way.

In a civil matter, where the plaintiffs (in this case, the petitioners) assert, they bear the burden of proof. The petitioners bear the burden of introducing evidence cogent to convince the trier of fact about the occurrence of the violations of the Constitution/statute, malpractices and irregularities they complain of. Upon a discharge of this onus by them, the burden then shifts unto the defendant (in this case, respondents herein), to rebut.

It is submitted that, notwithstanding the foregoing, in accordance with **section 14 (1)** of the Evidence Act, the respondents bear the burden of proving a violation of the constitutional rights of citizens to vote by a decision of this Honourable Court annulling votes in polling stations shown by petitioners to be affected by violations of the Constitution and statute, malpractices and irregularities. This is because, essentially, that allegation is material to the sustenance of their defence. This humble submission is in synchrony with the hallowed constitutional principle of the presumption of validity or constitutionality made in favour impugned legislation, espoused above and enunciated in decisions like **Asare- Baah III v. – Attorney-General & Electoral Commission** (supra), **Republic v. Tommy Thompson Books Ltd** (supra), **F Hoffman –La Roche & Co v. Secretary of State for Trade and Industry** (supra) and **Commonwealth v. Tasmania (The Tasmania Dam Case)** (supra).

It is humbly submitted that in the peculiar circumstances of this case ***the burden in relation to all the other allegations of the petitioners ought to be discharged as per the civil standard, i.e. on the balance of probabilities.***

This case is a civil suit and the conduct of same is regulated by the **Supreme Court (Amendment) Rules, 2012 (C.I. 74)** and the **High Court (Civil Procedure) Rules, 2004, C.I. 47**. This Honourable Court, time without number, referred to same in the conduct of the proceedings. It is our respectful submission that it is self-evident that the instant petition was acknowledged by all the parties to fall in the realm of a civil suit. Nobody is on a criminal trial here. Dr. Mahamudu Bawumia clearly emphasised this in his evidence of **23<sup>rd</sup> April, 2013** (recorded at pages **59–60** of the Record of proceedings), whereat he refused to be drawn into any suggestion with the view to impugning motives for the conduct of any person. The petitioners are largely relying on proof of constitutional and statutory violations, irregularities and malpractices, and this, we humbly submit, must be proved on the civil standard of balance of probabilities.

As observed already, neither the **Constitution** nor the **Presidential Election Act, 1992 (PNDCL 285)** set out the grounds upon which the election of the President of the Republic may be declared invalid. However, upon a careful consideration of the relevant constitutional and statutory legislations governing the conduct of elections and the challenge of results declared by the 2<sup>nd</sup> respondent in fulfilment of its constitutional obligations, we have distilled the following as factors the proof of which would suffice for an annulment of the results of a presidential election in Ghana:

- (a) the candidate declared as elected as President of Ghana, at the presidential election, did not obtain more than fifty percent (50%) of the total number of **valid votes cast** at the election;
- (b) there was non-compliance with or violations of the Constitution, the Regulations or any other law relating to the conduct of the elections and that the non-compliance/violations affected the result of the election;
- (c) the election was affected by the perpetration of a corrupt, or other criminal act or circumstance which reasonably could have affected the outcome of the election;
- (d) the candidate declared as elected as President of Ghana, was, at the time of the election, not qualified or disqualified for election as President of Ghana in terms of **article 62** of the Constitution.

It is very interesting to note that the issues set down by this Honourable Court on 2<sup>nd</sup> April, 2013, upon the conclusion of the pre-trial formalities, call for a determination of matters that largely can be subsumed under grounds (a) and (b). It is, thus, within these parameters that the success or otherwise of the instant Petition will be decided. Any decision given by this Honourable Court, it is respectfully submitted, ought to be tied to this.

Respectfully, the action before this Honourable Court is a novel one, since this is the first time a presidential election petition has been mounted under the Constitution. To this extent, it is the intention of petitioners to rely on decisions from other jurisdictions with a system of law analogous with that of Ghana in demonstrating how an evaluation of the discharge of the burden of proof by the parties herein ought to be done.

With the greatest respect, it seems eminently clear, that in many jurisdictions, the key point in election challenges where the thrust of the complaint is about the non-compliance with rules and regulations regarding the conduct of the election, is, whether the results of the

elections were affected or the outcome would have been different taking into account the violations complained of.

Lord Coleridge, in the old English case of **Woodward v. Sarsons** (1875) L. R. 10 at 733 noted as follows:

*"If this proposition be closely examined it will be found to be equivalent to this, that the non-observance of the rules or forms which is to render the election invalid, must be so great as to amount to a conducting of the election in a manner contrary to the principle of an election by ballot, and must be so great as to satisfy the tribunal that it did affect or might have affected the majority of the voters, or in other words, the result of the election".*

What amounts to conducting an election substantially in accordance with the law or with the principle of an election by ballot, it is respectfully submitted, is an inexact phrase and is to be determined on a case by case basis, with the ultimate yardstick again being, whether or not the non-compliance is capable of affecting the outcome of an election.

This position of ours is classically illustrated by the English locus classicus of **Morgan v. Simpson** [1975] Q. B. 151, in which Lord Denning M.R., in overturning the results of an election, rendered a powerful ruling which has stood the test of time. This was a case involving a local government election in which 23, 691 votes were cast. 82 ballots were properly rejected by the returning officer. 44 of those ballots were rejected because they had not been stamped with the official mark as required by local election rules. The 44 unstamped ballot papers had been issued at 18 different polling stations where notices had been displayed at the polling stations directing the voters to see that ballots had been stamped. The voters, to whom the ballots had been issued, did not notice that polling clerks had failed to stamp them. The returning officer himself had not been at fault. If the 44 ballots had not been rejected but had been counted, the petitioner would have won the election by a majority of seven over the respondent. In consequence of the rejection of the 44 ballots, the respondent had a majority of 11 votes and was declared to be the successful candidate. The English Court of Appeal held per Lord Denning MR, that an election was to be declared invalid if:

- (a) **irregularities in the conduct of the election had been such that it could not be said that the election had been conducted substantially in accordance with the law as to elections, or**
- (b) **if the irregularities had affected the result.**

Accordingly, where breaches of the election rules, although trivial, had affected the result, that by itself was enough to compel the court to declare the election void even though it had been conducted substantially in accordance with the law as to elections. Conversely, if the election had been conducted so badly that it was not substantially in accordance with the election law it was vitiated irrespective of whether or not the result of the election had been affected.

See also: **Gunn v. Sharpe** [1974] 2 AER 1058, which was referred to by Lord Denning in **Morgan v. Simpson** and described by the Master of the Rolls as authority only for the proposition that mistakes must affect the outcome.

It is correct to say that in determining whether breaches of the electoral law, malpractices and irregularities have affected the outcome of an election, account is taken of the figures in issue. The resolution of the issue is tied to whether the petitioner has shown such numbers of irregular votes as can potentially change the status of the winner.

This principle was applied by the Supreme Court of Uganda in the case of **Dr Kizza Besigye v EC & Museveni Yoweri Kaguta**, Election Petition No. 1 2006. The court therein, accepted the argument of the learned Solicitor-General who contended that the petitioner should have indicated that the difference between the petitioner's total votes and the 2<sup>nd</sup> respondent's total votes were affected. According to the Solicitor-General:

- (1) Numbers must be used to measure the effect of irregularities;
- (2) the number of votes obtained by the 2<sup>nd</sup> Respondent, i.e, over **1.5 million votes**, must be taken into account. The petitioner must show that irregularities affected this difference;
- (3) the Court must consider that the result of the election is that of the whole national constituency and not in isolated districts;

The Ugandan court, accordingly, held that the petitioner failed to prove that there were any irregularities which affected the results in a substantial manner and so they answered issue 3 in the negative. It is submitted that apart from the principles used in adjudicating this case which may be applicable to the facts of the instant action, the **Dr Kizza Besigye** case is clearly distinguishable from the one before this Court. This is because unlike in the **Dr Kizza Besigye** case, the petitioners herein have established that the violations, malpractices and irregularities in issue affect a substantial number of votes recorded on the pink sheets, as to substantially affect the outcome of the election.

Exactly as to when a petitioner will be held by a court of competent jurisdiction to have discharged the burden of proof in accordance with the requisite standard, is answered by the Canadian case of **Ted Opitz v. Borys Wrzesnewskyj** 2012 SCC 55 in which by a majority of 4–3, the Supreme Court of Canada evaluated some disputed votes, annulled some and restored others which had earlier been annulled by the Ontario Superior of Justice. The majority, in coming to its conclusions, noted as follows:

*“...an applicant who has led evidence from which an “irregularity” could be inferred will have met his prima facie evidentiary burden. At that point, the respondent can point to evidence from which it may reasonably inferred that no “irregularity” occurred or that despite the “irregularity”, the voter was in fact entitled to vote”.*

Respectfully, it is our intention to analyse in detail, the holdings in these cases with the view to showing how, on an application of the principles therein, petitioners’ action ought to succeed, especially considering the huge amount of votes shown to be irregular or unlawful.

## **J. THE LEGAL EFFECT OF THE CONSTITUTIONAL AND STATUTORY VIOLATIONS, MALPRACTICES AND IRREGULARITIES**

Respectfully, the nature of irregularities, violations and malpractices relied upon by the petitioners in support of this Petition has already been stated. **Article 64(2)** of the Constitution effectively grants unto this Honourable Court the power of declaring the election of a presidential candidate invalid. As we have abundantly illustrated above, a proof of any of the matters relied on by the petitioners should, at least, result in a declaration of the election of the 1<sup>st</sup> respondent as invalid by this Honourable Court. This is because, having regard to the margin of victory of the 1<sup>st</sup> respondent in the disputed elections, a finding by this Honourable Court that the votes recorded in the polling stations in question were tainted by the violations, malpractices and irregularities stated by petitioners, will affect the outcome of the elections.

As is discernible, the approach of the petitioners is not to call for a nullification of the results of the entire election. The approach of the petitioners is to pray for an annulment of the votes in the polling stations affected by the violations complained of. This approach, it is submitted, is in accord with international best practice. Examples of international best practice can be drawn from the basic principles and commitments to the conduct of elections adopted by the International Institute for Democracy and Electoral Assistance (IDEA), the Council of Europe’s Venice Commission and the Organisation for Security and

Cooperation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR).

The Venice Commission's **Code of Good Practice in Electoral Matters**, for instance, while acknowledging the need for failure to comply with the electoral law to be open to challenge before an appeal body [in our case, the Supreme Court], says that appeal bodies:

*"should have authority to annul elections, if irregularities may have influenced the outcome, i.e. affected the distribution of seats. This is the general principle, but it should be open to adjustment, i.e. annulment should not necessarily affect the whole country or constituency – indeed, it should be possible to annul the results of just one polling station. This makes it possible to avoid the two extremes – annulling an entire election, although irregularities affect a small area only, and refusing to annul, because the area affected is too small."*

It is submitted that the nature of the infractions complained of, warrant an annulment of the entirety of the votes in the affected polling stations.

It is respectfully submitted that the case of the petitioners has far-reaching implications for the integrity of the electoral system. The integrity of the process is guaranteed by the 2<sup>nd</sup> respondent conducting the elections in accordance with the Constitution and the electoral laws of Ghana. Where it fails to do so, the results of the affected polling stations ought to be annulled. Thus, for instance, in the case of the mandatory constitutional requirement that the presiding officer signs the pink sheets before declaration of results, failure to do so renders the declaration null, void and of no effect. The results of that polling station ought to be annulled, since it cannot be validated. Failure on their part so to do, should lead to an annulment of the votes in the affected polling stations, since the results of those polling stations cannot be validated.

Further, where persons vote in breach of the statutory requirement that voters vote only after being biometrically verified, failure on the part of 2<sup>nd</sup> respondent to ensure compliance with the requirement ought to lead to an annulment of the results of the affected polling station. Since it means that the integrity of results of that polling station has been compromised.

Similarly, where votes counted exceed the number of total registered voters at the polling stations or the ballots issued to voters, in violation of the constitutional principle of one man,

one vote, the results from the affected polling stations ought to be annulled, as over-voting is evidence that the integrity of the election at the polling station has been compromised.

Equally, apart from these constitutional and statutory violations, where there are occurrences of malpractices and irregularities such as the use of duplicate polling station codes, duplicate serial numbers on pink sheets which cast doubt on the integrity of the results at the polling stations, the results ought to be annulled.

#### **(i) Valid Vote**

The manner in which the Constitution has formulated the basis on which a person may be deemed to be elected President is a pointer to the fact that the Constitution itself envisages that it is only valid votes cast at an election, which must be counted. **Article 63(3)**, which is material for this purpose, stipulates thus:

*“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.”*

It is submitted that the Constitution itself, by this provision, recognises that in an election there shall be valid votes and invalid votes. This provision clearly empowers the 2<sup>nd</sup> respondent to take into account in the declaration of a person as President of Ghana only valid or lawful votes and mandates it to disregard unlawful or invalid votes.

***It is to be noted that the Constitution does not indicate the number of people who must vote in a presidential election before the legality of the election of a person as President will be upheld. Neither does it specify the quantum of votes in relation to the population of the country that a person must obtain before he can become President.*** This stipulation in **article 63(3)** is in contradistinction to the numerical requirements for referenda, as set out, for instance, in **article 290(4)** and **article 5**, dealing with amendments of entrenched clauses of the Constitution and creation, merger and alteration of the boundaries of regions respectively, where minimum numerical turn-out requirements by voters must be met to validate the referendum. It is obvious, therefore, that where the Constitution intends to ensure that a specific number of people actually take part in any vote, it expressly says so.

In the case of the election of a President of the Republic, all that the Constitution is concerned about is that, the person so elected has obtained more than 50% of the valid votes cast. It is respectfully submitted that because a valid mandate for the person



occupying the office of the President is an integral bedrock of our constitutional democracy, this Honourable Court owes a duty to uphold the integrity of elections only in polling stations where the results of the elections have not been affected by violations, malpractices and irregularities.

It is respectfully further submitted that a “valid vote” is **a vote cast in accordance with the mandatory regulations affecting elections or lawful instructions issued to all registered voters in advance of the elections**. For a vote to be valid, a person who has the right to vote must first cast it. **Article 42** of the 1992 Constitution does not *only* give every citizen of Ghana of eighteen years of age or above and of sound mind the right to vote but also an entitlement to **“be registered as a voter for the purposes of public elections and referenda.”** The requirement that a voter must be first registered to vote is a constitutional imperative. The Constitution has, therefore, connected the registration requirement genetically to the right to vote; so it is a *requirement* for the right to vote and not a *limitation* of the right. That requirement in itself *requires* certain processes to be in place to realise it and the mandatory use of a Biometric Verification Device is what the nation has agreed, by way of a constitutional instrument properly enacted, to be the current enhancing method of realising that right to vote statutorily prescribed by **Regulation 30(2) of C.I. 75**.

Chief Justice Willy Mutunga’s dictum in the recent Kenyan election petition case of **Raila Odinga v. Independent Electoral and Boundaries Commission & Others** (Petition No. 5 of 2013) delved into the issue of what constitutes an invalid vote. From paragraphs 280-282, his Lordship stated:

*“The Regulations made by IEBC have no provision for “rejected votes”, though they provide for “rejected ballot papers”, “spoilt ballot papers”, and “disputed votes”. It is clear that “spoilt ballot papers” are those which are not placed in the ballot box, but are cancelled and replaced where necessary, by the presiding officer at the polling station. This differs from the “rejected ballot papers” which, although placed in the ballot-box, are subsequently declared invalid, on account of certain factors specified in the election regulations – such as fraud, duplicity of marking, and related shortfalls.*

*No law and no Regulation brings out any distinction between “vote” and “ballot paper”, even though both the governing statute and its Regulations have used these terms interchangeably. We have to draw the inference that neither the Legislature, nor IEBC, had attached any significance to the possibility of differing meanings; which leads us to the conclusion that a ballot paper marked and inserted into the*

*ballot-box, has consistently been perceived as a vote; thus, the ballot paper marked and inserted into the ballot-box will be a valid vote or a rejected vote, depending on the elector's compliance with the applicable standards.*

*Since, in principle, the compliant ballot paper, or the vote, counts in favour of the intended candidate, this is the valid vote; but the non-compliant ballot paper, or vote, will not count in the tally of any candidate; it is not only rejected, but is invalid, and confers no electoral advantage upon any candidate."*

We respectfully summarise the elements of an invalid vote as follows:

- (i) that it violates the provisions of the Constitution
- (ii) that it is a rejected ballot paper as defined by **Regulation 37** of C.I. 75
- (iii) that the voter did not comply with the provisions of **C.I. 75**
- (iv) that it was procured in a way manifestly inconsistent with the principles of a free, fair and transparent election, the very principles underlying the legitimacy of constitutional democracy.

It is further submitted that an election is valid when it is conducted in accordance with the Constitution and in compliance with the laws enacted to govern the proper conduct of elections. These are important safeguards aimed at ensuring appropriate protection for citizens who desire to exercise their fundamental right to vote. The Constitution, under **article 49**, makes express provisions on how the polls at the polling station are to be conducted. It is instructive that the Constitution made it mandatory for the presiding officer, to sign the pink sheet before declaring the polling station results and sending same to the returning officer.

As held, per Sankey JCA in the Nigerian election petition of a senatorial contest, **Arise v Adetunbi** [2011] All FWLR (Pt. 558) 941 at 983, paras. D-F:

*"The polling units' results as set down in the Forms EC8A (1) [our equivalent is the pink sheet] are the primary evidence of votes cast in an election. They are the foundation or base on which the pyramid of an election process is built. As was held by this Court in the case of Eruotor v Ughmiakpor [1999] 9 NWLR (Pt. 619) 460 at 467:*

*'... the Supreme Court described polling booths or units as the root or base of the pyramid of the whole electoral process. And the document emanating therefrom on which the total votes scored by a candidate in an election are recorded and signed*

*by the presiding officer and party agents is surely the strongest evidence to establish the votes scored by the various contestants. In the instant case, that document is the Form EC8A (1).’ Agagu v Mimiko (2009) All FWLR (Pt. 462) 1122 at 1193; Awuse v Odili (2005) All FWLR (Pt. 253) 720; (2005) 16 NWLR (Pt. 952) 416 at 488; Nwobodo v Onoh (1984) 1 SCNLR 1 at 34; Sabiya v Tukur (1983) 11 SC 109; (1983) 7 NSCC 559.”*

This presidential election petition before this highest court of the land is calling for a substantial number of total votes cast to be annulled because they have been stricken by the cancer of invalidity, namely, constitutional and statutory violations, malpractices and irregularities.

The Nigerian Court of Appeal case of **INEC v Oshiomole** (2008) CLR 11(a) (SC) is of particular interest, considering the fact that the Federal Republic of Nigeria has a fairly developed jurisprudence in election petitions. The case was about the gubernatorial election in Edo State, taking place on 14<sup>th</sup> April, 2007, like all the others across Nigeria. In Edo State, the Peoples Democratic Party (PDP) and Action Congress (AC) fielded Senator Prof. Oserheimen Osunbor and Comrade Adams Aliyu Oshiomole as their respective candidates, and the Independent National Electoral Commission (INEC) returned PDP's candidate, Senator Prof. Oserheimen Osunbor as the winner of the election. Dissatisfied with the results declared by INEC, Comrade Adams Oshiomole and Action Congress filed a petition at the Edo State National Assembly, Governorship and Legislative Houses Election Petition Tribunal.

**The tribunal concluded by cancelling election results in 14 out of 18 Local Governments in Edo State and overturning the results.** The Court of Appeal dismissed the appeal upholding the petitioner as the validly elected Governor, “**being the candidate who scored the highest number of valid votes cast**”, after most of the results were annulled for substantial non-compliance with the law.

The legitimacy and in fact, constitutionality of a presidency is derived from the validity of the votes that went into the declaration of the presidential election results. It is on the strength of this that the 2<sup>nd</sup> respondent at every election rejects certain votes and, actually, annuls results from some polling stations plagued by infractions. The practice in jurisdictions analogous to Ghana’s will be referred to, in order to demonstrate that the courts have

always had the power to declare a person the winner of an election based only on valid votes cast. Reference is respectfully made to the Nigerian case of **Dr. Olusegun Agagu v. Rahman Olusegun Mimiko** (2009) ALL FWLR (Pt. 462) 1122, where an election petition contesting the results of governorship election in Ondo State was upheld on the ground that the result had been affected by irregularities and malpractices. On account of the valid votes, the petitioner was declared the winner. On appeal, the Nigerian Court of Appeal, in dismissing the appeal, held at page 1200 thus:

*“By virtue of Section 147(1) and (2) of the Electoral Act, 2006, if the tribunal or court as the case may be, determines that a candidate who was returned as elected was not validly elected on any ground, the tribunal or the court shall nullify the election. But if the tribunal or the court determines that a candidate who was returned as elected was not validly elected on the ground that he did not score the **majority of valid votes cast** at the election, the tribunal or the court, as the case may be, shall declare as elected the candidate who scored the highest number of valid votes cast at the election and satisfied the requirement of the Constitution and the Act.”*

It is respectfully submitted that it is this same power vested in an “election court or tribunal” to determine the validity of votes cast, that led the Canadian Supreme Court in **Ted Opitz v. Borys Wrzesnewskyj** (supra), to arrive at its decision in that case. The court there scrutinised the validity of votes cast. Even though by a majority of 4–3, the election of the winner of the election in dispute was upheld, the court indeed annulled some votes which were not valid. In simple terms, the main reason why the majority in that case declined to overturn the results was that the number of invalid votes that had been cancelled by the court was insufficient to upset the margin of victory of the winning candidate (unlike in this Petition before this Honourable Court).

It is humbly submitted that the power vested in a Court to uphold the validity of votes lawfully cast has also been used to annul results where an election has been affected by an irregularity, but it is not clear on account of the irregularities, whether the result of the election has been affected. In the English case of **Considine v. Didrichsen & Anor** [2004] EWHC 2711 (QB), a returning officer had, in an all-postal ballot for both the European parliamentary election and the local government election, through printer’s error, sent the wrong ballots to voters in the wrong wards. It was never determined how many voters actually received wrong ballots, since only about 17 or so complained. It was held that, even though it could not be determined whether or not the irregularity affected the results, it was

serious enough to annul the results. Accordingly, the results of the elections were annulled by the Court.

It is pertinent to note that, even though in the case of **Raila Odinga v. Independent Electoral and Boundaries Commission & Others** (supra), the petition was dismissed, the Kenyan Supreme Court annulled certain votes on the basis of their being invalid. The court went on, in affirmation of the principle that invalid votes are not reckoned in an election, to hold that the rejected ballots should not be taken into account in the determination of the winner. The reason for the dismissal of the petition was again on the simple ground that the irregularities shown to the court did not affect the outcome in terms of upsetting the margin of victory. The petitioners just failed to make the numbers.

The same principle was applied in **Dr Kizza Besigye v EC & Museveni Yoweri Kaguta** (supra).

#### **(ii) Irregularities affecting the outcome**

It is eminently clear that in an election challenge, a primary factor to be weighed by the court is whether infractions proved to the court have affected the outcome in a material way. This is generally understood to mean that the number of votes affected by the violations, malpractices and irregularities must be so substantial as to make a difference in the declaration of who the winner of the election is. It is for this reason that the Canadian Supreme Court in **Ted Opitz v. Borys Wrzesnewskyj** (supra) held, at paragraph 168 that:

*“a court could annul an election if the applicant has established that there were irregularities..... that affected the results of the election..... The irregularities must be of a type that could affect the outcome of the election and impact a sufficient number of votes to equal or exceed the winner’s plurality....”*

It is the petitioner’s respectful contention that the 2<sup>nd</sup> respondent is only constitutionally mandated to declare valid votes cast. The 2<sup>nd</sup> respondent is therefore, under constitutional obligation to conduct elections in accordance with the electoral laws of Ghana. The integrity of the electoral process is guaranteed by 2<sup>nd</sup> respondent conducting elections in accordance with the laws of Ghana. Therefore, where votes are cast illegally, this Honourable Court is empowered by both the Constitution and international best practice to annul results from affected polling stations. In so doing, the Court is respectfully entreated to be mindful of the fact that the pressure of time or convenience does not have to diminish the constitutional

obligations of the 2<sup>nd</sup> respondent. A desire for speed, convenience or expediency is not a general excuse for the dereliction of duties or ignoring constitutional guarantees.

Even though the petitioners recognise that the number of votes sought to be invalidated is substantial, this Honourable Court is respectfully urged to enforce the provision in **article 63(3)**, which provides that the election of the President of the Republic can only be made on the basis of valid votes cast. It is noteworthy that in most of the presidential election challenges which have failed, the petitioners have just not been able to establish violations, malpractices and irregularities of such a number as to affect materially the margin of victory or the plurality of votes.

This Honourable Court is respectfully urged to hold that the outcome of the 2012 presidential election should be based on the valid votes cast in the election.

#### **K. THE PRIMARY EVIDENCE OF THE CONSTITUTIONAL AND STATUTORY VIOLATIONS, MALPRACTICES AND IRREGULARITIES**

The petitioners are calling for the annulment of votes at certain polling stations on the basis of various infractions the subject matter of this Petition. The petitioners are therefore necessarily required to adduce evidence in proof thereof. The primary evidence of the record of what transpired at the polling stations is the pink sheets?

Petitioners, in the spirit of fairness, have submitted that the primary evidence of whatever transpired at the polling centres, is the **pink sheets**, (in apparent reference to the colour of the declaration forms used in the December 2012 elections), filled by the presiding officers at the polling stations set up by the 2<sup>nd</sup> respondent. The petitioners submit that the 2<sup>nd</sup> respondent is enjoined to stand or fall by the contents of the pink sheets. Quite surprisingly, the 2<sup>nd</sup> respondent, whose officers and agents filled and made the declarations contained in the pink sheets (numbered as **Forms “EL 21 B”** and **“EL 22B”**), sought to defend the accuracy of the pink sheets where it deemed fit, and attempted to resile from their contents, where it saw necessary.

It is the humble contention of the petitioners that the pink sheets, being the only official record of the polls at the various polling stations, actually reflect exactly what transpired at the polling stations in question. Effect must be given to the record of all the infractions recorded on the face of them, and attested to by the various presiding officers and counting agents. The situation where the 2<sup>nd</sup> respondent's Chairman in the witness box, attempted to

repudiate certain records made by the presiding officers, or to correct certain statements contained in them, cannot be allowed to hold as it is antithetical to the need for absolute guarantee about the accuracy of information recorded about the elections on the official declarations at the polling stations. If a part of the pink sheet, the official declaration of the ballot accounting and the polling station results, cannot be relied upon, then this Honourable Court has respectfully no choice to annul the elections at the polling centres in question, since the official record cannot be vouched for. The 2<sup>nd</sup> respondent cannot be permitted to place reliance on one part of the pink sheets and repudiate the contents of another. All parties are bound by the contents of the pink sheet.

Throughout this case, with the exception of the 2<sup>nd</sup> respondent's questionable **17 pink sheets** in the "**EC 11 Series**", the respondents never tendered a single pink sheet in respect of any of the polling stations in question. Neither did they attempt to contradict the veracity or genuineness of the pink sheets tendered by petitioners by confronting them with their own pink sheets.

In any event, the respondent could not have done so because the electoral laws of this country require that exact duplicates be given to all parties, as per **Regulation 36(3)(b) of C.I. 75**.

Indeed, this Honourable Court by its ruling dated 7<sup>th</sup> February, 2013 on an application for the 2<sup>nd</sup> respondent to produce the pink sheets for inspection and photocopying, per *Adinyira (Mrs.) JSC*, held that the duplicate copies of the pink sheets in the possession of petitioners are admissible in the same degree as the originals in the custody of the 2<sup>nd</sup> respondent. The Court further noted that the authenticity of the duplicates in the possession of the petitioners is not in issue. This ruling was informed by the statutory requirement of Regulation 36(3)(b) of C.I. 75.

Authorities from other jurisdictions on the effect of the declaration forms filled at the polling stations by presiding officers, clearly buttress the petitioner's position that the primary evidence to be adduced in an election contest is the declaration forms executed at the polling stations. Being at the root or base of the pyramid of the whole electoral process, the polling stations constitute the most important feature of the electoral system, and so do forms emanating therefrom which attest to the conduct of the polls and the manner in which voting was done, number of ballots issued, number of people who registered to vote, number of people who in fact, voted, etc. In the Nigerian case of **Independent National**

**Electoral Commission v. Ray** (2004) 14 NWLR Part 892, it was held at page 92 thereof, inter alia, as follows:

*“... contrary to the submission by the learned appellants’ counsel, therefore, whereas Form EC8A [the equivalent in our case of, Form EL 21 B or the pink sheet], can stand on its own in the computation of election results as that being the primary document, Forms EC8B, EC8C, and EC8E cannot on their own stand unless predicated on Form EC8A. In the absence of the primary document, they cannot be taken as representing the result of an election... it is noteworthy to further state that the failure of the appellants to tender Form EC8A is certainly fatal to their reliance on Exhibits A, N1, N2, N3, N4, P and Q which are all of no probative value...”*

Though this case is of persuasive value only, the petitioners respectfully urge the logic and force of reasoning in same for the due consideration of this Honourable Court.

See also: the Nigerian case of **Chief Sergeant Chidi Awuse v. Dr. Peter Odili & Ors** (2005) 16 NWLR Part 952, 416 at 488.

The 2<sup>nd</sup> respondent’s Chairman himself, who is the returning officer for presidential elections in Ghana, in his evidence, placed premium on the pink sheets, and underscored the need for the pink sheet to be filled in the manner indicated on it. To him even the times at which the various portions are required to be filled are so important that, failure to do same, constitutes an irregularity. If this is the position of the Chairman of the 2<sup>nd</sup> respondent, it is untenable that the 2<sup>nd</sup> respondent would want the Court to ignore declarations made on the pink sheet by its officers? It is to be remembered that, apart from the pink sheets, there is no other record of how the polls were conducted at the polling stations and the accounting of the ballots. The 2<sup>nd</sup> respondent cannot to resile from some of the contents of the pink sheets.

At the polling station, before the start of poll, the presiding officer is required officially to supply information about the ballots and the voters register for that polling station, on the pink sheet. He or she before the commencement of the poll indicates the number of ballots issued to the polling station and the range of serial numbers. He or she also declares the number of voters on the polling station register and the total number of voters eligible to vote at the polling station, after adding the number of voters on the proxy list.



At the end of the polls and before the counting commences, the presiding officer makes an account of how the ballots were utilized in the elections including, very materially, the number of ballots issued to voters on the polling station register, number of ballots issued to voters verified by the use of Form 1C (but not by the use of BVD). Rejected ballots are also accounted for after the counting has been completed.

It is pertinent to note that the “results of elections” part is filled after counting has been done. This takes place after all the information about the ballots, including the number of ballot issued to voters on the polling station register and number of ballots issued to voters verified by the use of Form 1C (but not by the use of BVD)), has been entered on the pink sheet by the presiding officer. After counting of votes has been done, the presiding officer in accordance with **article 49** of the Constitution and **C.I. 75**, proceeds to fill the “results of the elections” part, before signing same in the presence of the candidates’ agents who also sign and then, the presiding officer proceeds to declare the results.

If this is so, the 2<sup>nd</sup> respondent cannot now contend that the “results of the elections” part, which is the last to be filed, is correct, but the information relating to the accounting of the ballots is full of mistakes, not accurate and should be ignored. Respectfully, the respondents cannot pick and choose which information on the pink sheet to be bound by. If the ballot information is incorrectly filled and, therefore, cannot be relied upon, then the information relating to the results of the elections, which is filled after the ballot accounting has been done, also cannot be relied upon. This Honourable Court will, therefore, be perfectly justified in setting aside the results emanating from the polling stations in question.

It is respectfully submitted that this Honourable Court has to rely on the pink sheet as primary record of elections at the polling stations, given the structure of our electoral system. As stated in the evidence of Dr. Mahamudu Bawumia, 2<sup>nd</sup> petitioner, and admitted to by Dr. Afari-Gyan, the whole nation is deemed to be one constituency in a presidential election. The Chairman of 2<sup>nd</sup> respondent, Dr. Afari-Gyan, is the returning officer for that election. As returning officer, he is not primarily responsible for the conduct of the elections at the polling stations. Same is in the sole charge of the presiding officers. The presiding officer, after accounting for the ballots and declaring the results as per the pink sheet, delivers a copy to each of the candidates’ agents available at the polling station and then takes his copy of the completed pink sheet to the constituency collation centre. At the constituency collation centre, the returning officer for the constituency takes delivery of all Form EL 21B and 22B (pink sheet), and proceeds to collate the votes entered on them. The

returning officer for the constituency collates the votes for all the polling stations in the constituency and enters the aggregate on Form EL23A (the constituency collation form). Then he declares the results for the constituency before forwarding the results to the regional offices of the 2<sup>nd</sup> respondent. Same are then forwarded to the National Office where the 2<sup>nd</sup> respondent's Chairman, Dr. Afari-Gyan, is and will proceed to declare the results of elections for the whole nation after presumably having received results from all over the country. Dr. Afari-Gyan himself stated in evidence that he does not even personally get to see the pink sheets before declaring the results. It follows, therefore, that he merely assumes the collation done by his officials, presumably on the basis of the pink sheets, is correct, and then goes ahead to declare the results.

It is to be noted that where there is a conflict between the entries made on the declaration forms (pink sheets) and entries in the constituency collation forms, the pink sheet is preferred, since the declaration forms or pink sheet is the basis for of the collation forms.

Please see: the Nigerian case of **Hon. Barrister Kress Njiokwuemini v. Engineer Victor Ochei & Others**. (2004) 15 NWLR Part 895, 196 at 235.

The history of elections of this nation will also reflect the fact that wrong entries made in the collation forms have been responsible for the erroneous declaration of one candidate as a winner, as opposed to another. That error has ultimately been resolved by a reference to the declaration forms (the "pink sheet"). This fact is confirmed by the evidence of Dr. Afari-Gyan, in his evidence-in-chief on **30<sup>th</sup> May, 2013**, at **pages 67–68** of the record of proceedings for that day, wherein he admitted that a "**transpositional error**" has been responsible for the declaration of the wrong person as winner of an election.

Please see: **Enos v. Electoral Commission & Anor** [1999-2000] 1 GLR 564 per Heward-Mills J. (as she then was). In that case, the petitioner on the ticket of the NPP and the 2<sup>nd</sup> respondent on the ticket of the NDC, contested for the Ajumako-Enyan-Essiam Constituency during the 1996 parliamentary elections. During the compilation of the results from the polling stations by the returning officer, the representative of the petitioner noticed that votes in the special voting which had been counted earlier had not been included in the recording of the total votes in the constituency. It was held by the High Court in holding (1) as follows:

*"In the instant case however due to error on the part of the electoral officers, the person who received the most votes had not been declared the winner and thus a*

*substantial breach of the law had been committed.... Thus even though the election itself had been conducted in accordance with the law, the court found that had those breaches not occurred, the petitioner would have been declared the winner. He had therefore been caused incalculable harm by the commission of the officers which had substantially affected the results.”*

It has always been the law that the contents of a document are binding on the party who, being of full capacity, executes it and appends his signature to it. The vain effort of the 2<sup>nd</sup> respondent to deny the content of some of the pink sheets tendered in evidence and not challenged as the act or deed of the 2<sup>nd</sup> respondent, is intolerable, to say the least.

*The best evidence of the contents of a document is the document itself. It is conclusive of the facts in issue, no oral evidence is admissible to add to, subtract from or vary the contents of a document.*

That is why the **Evidence Act** prohibits any attempt by the 2<sup>nd</sup> respondent to repudiate or resile from the contents of the pink sheets, especially in relation to the truth of the information about ballot accounting stated on the face of each pink sheet. **Section 25 (1)** of the **Evidence Act** stipulates as follows:

*“Except as otherwise provided by law, including a rule of equity, the facts recited in a written document are conclusively presumed to be true as between the parties to the document, or their successors in interest.”*

**Section 24(1)** of the **Evidence Act** tells us the effect of a conclusive presumption. It indicates clearly that where the basic facts which would necessitate the drawing of a conclusive presumption are established in an action, a court ought not consider any evidence to the contrary. It is in these terms:

*“Where the basic facts that give rise to a conclusive presumption are found or otherwise established in the action, evidence contrary to the conclusively presumed fact may not be considered by the tribunal of fact.”*

It is our submission that where the petitioners have shown that the pink sheets in question were indeed the act or deed of officials of the 2<sup>nd</sup> respondent and the 2<sup>nd</sup> respondent has not led any evidence challenging the authenticity of those documents, this Court should hold that a conclusive presumption has been duly established about the authenticity of the pink sheets and the contents thereof. It should be noted that in the unhealthy effort to deny the

truth of certain contents of the pink sheets, the 2<sup>nd</sup> respondent did not lead evidence from any of the presiding officers who executed the pink sheets which they now seek to resile from. The Chairman of the 2<sup>nd</sup> respondent, who was not the author of those documents, cannot purport to sit in the witness box and vary or explain away the declarations made by those officers, as erroneous or mistaken. If this is tolerated by the Court, it would respectfully be a recipe for chaos and arbitrariness, as no one in the future can rely on declaration forms filled at the polling stations. There will be no document which will prove to be authoritative and binding on the 2<sup>nd</sup> respondent. Its officers will not be accountable for any document that they append their signatures to or execute. In a serious matter as this, it is submitted that, whatever the contents of any document duly executed by officers of the 2<sup>nd</sup> respondent are, same is binding upon them and a plea of *non est factum* or mistake will not avail them.

The law recognises the supremacy of documentary evidence and considers same as the yardstick by which the veracity of oral testimony is tested. The best evidence is documentary evidence. It is more reliable and authentic than words from the vocal cords of man because they are neither transient nor subject to distortion and misinterpretation.

It is on the strength of this that the courts of Ghana have on a number of occasions held that whenever there was in existence a written document and conflicting oral evidence, the practice of the court is to lean favourably towards the documentary evidence, especially if it was authentic and the oral evidence conflicting.

Please see the decisions in **Agyei Osae & Others v. Adjeifio & Others** [2007-2008] 1 SCGLR 499, per *Brobbey JSC*, and **Yorkwa v. Duah** [1992-93] GBR 278, CA and **Fosua & Anor v. Dufie (Decd)** 2009 SCGLR 310, wherein *Atuguba JSC* stated at page 318 that:

*“Given the high evidential potency of documentary evidence, in the eyes of the law, the trial judge should have given cogent reasons for doubting the veracity of exhibit 2, being the undertaking given by the late Kwaku Poku.”*

It has been held that when documents are looked at by a judge and he pays due attention to the evidence adduced, the judge ought not to substitute his own independent judgment to any witness be he an expert.

Please see: the English case of **Henessey v. Keating** (1908) 421 L. T. R. 169.

Also: the English case of **Payton & Co. v. Snelling Lampard & Co** (1901) AC 308

Although a document may be a victim of forgery by human conduct, act or intervention, the instances of forgery are less when compared with oral or parol evidence, where witnesses lie with ease.

Please see: the Nigerian case of **Akinbisiade v. The State** (2006) 17 NWLR (Pt.1007) 184 SC.

See also: the Nigerian case of **Ndayako v. Mohammed** (2006) 17 NWLR (Pt. 1009) 655, where the Nigerian Court of Appeal sitting as the highest court in an election petition held that, in election petitions, oral evidence and/or demeanour of witnesses are not as important and decisive in settling the issues as documentary evidence tendered. *Documents used in an election and all documents containing facts relevant to the issues in a petition are the best form of resolving election matters.*

See also: **Aiki v. Idowu** [2006] FWLR (Part 293) 361 per Alagoa JCA, who described the status of documentary evidence thus:

*“Documents when tendered and admitted in court are like words uttered and do speak for themselves. They are even more reliable and authentic than words from the vocal chords of man, because they are neither transient nor subject to distortion and misrepresentation but remain and indelible through the ages. They bear eloquent testimony to what happened.”*

Also: **Awuse v. Peter Odili & Others** (2005) 16 NWLR Part 952 416

On the strength of the foregoing, this Honourable Court is invited to ignore the feeble attempts of the 2<sup>nd</sup> respondent to subtract, add to or vary the contents of the pink sheets in the oral testimony before the Court. The only evidence admissible in any transaction reduced to writing is the document containing the transaction.

#### **L. ACTUAL EVIDENCE OF PINK SHEETS FILED BY PETITIONERS**

In recognising the pink sheets as the primary evidence of the constitutional and statutory violations, malpractices and irregularities that occurred in the December 2012 election, the petitioners were also mindful of the fact that concrete evidence had to be adduced before the Court by way of the filing of those pink sheets in order to establish claims made in the Petition. As a first step to so doing, the petitioners clearly set out in their Petition and verifying affidavit the particulars of the violations malpractices and irregularities complained of, which substantially and materially affected the result of the presidential election. That put

the Court on notice as to the matters to be relied on. There were six (6) main kinds of violations, malpractices and irregularities identified which materially affected the outcome of the election. The petitioners' case was clearly expressed to be hinged on these violations of constitutional and statutory provisions and electoral malpractices and irregularities which took place at polling stations as evidenced by the pink sheets in evidence.

Indeed, the affidavit of the 2<sup>nd</sup> petitioner filed on 7<sup>th</sup> April, 2013, pursuant to the Court's directions on memorandum of issues and mode of trial of 2<sup>nd</sup> April, 2013, makes this important point quite unambiguously. **In paragraph 23, the 2<sup>nd</sup> petitioner averred that, from the findings of the party's investigations, the case is based on "six main categories of constitutional and statutory violations, commissions, irregularities and malpractices..."**

In examining the pink sheets to be used in this action, it was discovered that the manner in which the violations manifested themselves on the face of the pink sheets varied. In some cases, there was just a single violation of the electoral laws complained of evident on the face of the pink sheet. For instance, you could notice a case of just over voting or say, voting without biometric verification at some polling stations. In many instances, there were multiple violations, malpractices and irregularities. Again, the manner in which the multiplicity of infractions occurred also varied. For instance, in many cases, over voting was accompanied by voting without biometric verification. You could also have over voting plus absence of signature of the presiding officer or voting without biometric verification plus both absence of presiding officer's signature and use of duplicate serial numbers. At **paragraph 36** of 2<sup>nd</sup> petitioner, Dr. Bawumia's affidavit filed on 7<sup>th</sup> April, 2013, he illustrated this when he said that the "examination of the pink sheets revealed in most cases more than one irregularity occurred at a polling station." **Paragraphs 44-67** of that affidavit listed the various combinations of the violations, irregularities and malpractices, while maintaining and pointing out the exact number of polling stations where each of the six main categories of infractions occurred.

Respectfully, the manner in which the violations, malpractices and irregularities occurred, showed that care had to be employed in stating the exact number of polling stations that were affected by those irregularities, violations and malpractices, else, "double-counting" would have occurred. **In order to avoid the occurrence of "double-counting", the pink sheets (or polling stations) in support of the 6 main violations, malpractices and irregularities identified by the petitioners were classified into 24 mutually exclusive categories.**

**Paragraph 42 of the 2<sup>nd</sup> petitioner's affidavit makes this point when it notes that, "in combining these multiple categories statistically, care was taken to avoid double**

**counting. This was achieved by making sure the various categories of irregularities are mutually exclusive so that no polling station where an irregularity occurred could belong to more than one category.**” Respectfully, this statistical arrangement was to facilitate an efficient understanding of the evidence to be led at the trial and was to assist everybody connected with the litigation, including the respondents and the Court. The 24 mutually distinct categories were referred to in **paragraph 43** of the 2<sup>nd</sup> petitioner’s affidavit referred to the classification into “24 distinct and mutually exclusive categories in which no polling station can belong to more than one category, thereby avoiding double counting.” Thus, the purpose of breaking down the categorisation to 24 was simply to avoid double counting. It is respectfully submitted that this genuine effort of the petitioners to assist the Court and the parties in this suit to ensure an easy understanding of the case before the Court should not be used to replace or exclude the actual evidence of infractions that occurred in polling stations as shown on the face of the pink sheets that have been submitted.

To express clearly the methodology of the petitioners in arriving at these 24 mutually distinct categories, **paragraph 70** of the affidavit stated as follows: “That the votes that ought to be annulled from the declared results of each of the candidates were determined by the following method:

- (a) All the polling stations where the violations, irregularities and malpractices occurred were **identified**.
- (b) To avoid double counting, the violations, malpractices, and irregularities were classified into 24 mutually exclusive categories.

In (c), (d), and (e) of the same paragraph the affidavit explains how for each of the categories of infringements votes declared for each candidate at the affected polling stations were totalled and subtracted from the overall total declared votes to reach the new total lawful or valid votes.

Thus, the purpose of breaking down the categories into 24 was simply to avoid double-counting. To say that the petitioners’ case is based on categorisation rather than violations /infractions is to misunderstand entirely the case of petitioners, which is based on categories or infractions but on violations or infractions on the face of the pink sheet.

#### **(i) Duplications/multiplications in exhibits filed**

Be that as it may, the petitioners duly filed the exhibits they intended to rely on in accordance with the Order of this Court dated 2<sup>nd</sup> April, 2013. In filing and serving the

exhibits, they were some duplications and multiplications in the exhibits filed. But as, stated by the 2<sup>nd</sup> petitioner on many times in his evidence before this Honourable Court, as far as the impact of these exhibits on the analysis is concerned, each exhibit is supposed to be counted just once no matter the duplications and multiplications registered in respect of them. Dr. Mahamudu Bawumia, in his characteristic honesty and in the spirit of fairness, very early on in his evidence under cross-examination quickly conceded that there are apparent in the evidence filed and served on the respondents some duplications, but those duplications were not used in the analysis. On the **18<sup>th</sup> day of April, 2013**, the following transpired between counsel for 1<sup>st</sup> respondent and Dr. Mahamudu Bawumia (recorded at **pages 37-38** of the record of proceedings for that day):

Q: Am just asking a simple question whether you have used the pink sheet twice given them different numbers?

A: Not in the analysis but I think in your receipt of the documentation that is clear, but not in the analysis.

Q: I have here Exhibit MBP 1332, the name of polling station is SCMB Cocoa Shed Osedu and the polling station code is B132002, I have in my custody the same polling station this time with Exhibit number MBP1366. Can you confirm to the Court that once again, you have used the same pink sheet twice in the analysis.

A: I have confirmed you have received the pink sheet twice but I have not used the same pink sheet twice in the analysis.

In the light of the foregoing, it is our respectful submission that in point of fact, it does not matter whether a polling station's pink sheet has been multiplied, duplicated or triplicated in so far as same was used only once in the analysis. It is quite remarkable that this Honourable Court has on a number of occasions stated that this is the position, in spite of the persistent efforts of respondents to create the erroneous impression that the petitioners have padded their pink sheets. On the **22<sup>nd</sup> day of April, 2013**, Baffoe-Bonnie JSC expressing himself on the initial application by counsel for respondents for the appointment of a referee to determine the exact number of exhibits filed by petitioners, stated at **page 25** of the Record of proceedings thus:

*"..... They have pleaded 11000 and they have submitted 8,000 then they will be required to lead evidence on the 8,000 so it is the aggregation of the figures on the pink sheets based upon the various categories of violations so am thinking that we going to base and ask a referee to count, counting the pink sheets submitted really is neither here nor there it is the aggregation that is important that is what I think."*



It is respectfully submitted that the petitioners fully view this position taken by Baffoe-Bonnie JSC as the correct approach to evaluating the pink sheets filed by petitioners in this suit. It is the unique count of pink sheets filed together with the aggregate of votes on them that matter. Whether there are duplications and multiplications or not is immaterial, in so far as those duplications and multiplications are not taken into account and they are counted only once in the analysis by petitioners.

**(ii) Exactly how many unique and clearly distinct pink sheets are on record as having been filed by petitioners?**

The answer to this question will assist the Court in determining how many pink sheets should be used in the resolution of the question whether the petitioners have discharged their burden in relation to the issues set down for trial.

By an Order of this Honourable Court dated 9<sup>th</sup> May, 2013, Messrs. KPMG was mandated to make a true and faithful count of all the exhibits of pink sheets according to and under the various categories of alleged electoral malpractices as appearing, contained and specified in paragraphs 44-67 of the affidavit of the 2<sup>nd</sup> petitioner filed in this Court on the 7<sup>th</sup> day of April, 2013 and specifying in respect of each pink sheet, its exhibit number, if any, as well as its polling station name and code number.

On **24<sup>th</sup> June, 2013**, the referee appointed by this Honourable Court presented its report through a director of KPMG, Nii Amanor Doodoo as Exhibits “Court Exhibits 1, 1A, 1B, 1C and 1D”. The report of KPMG has been of assistance in clarifying these issues before the Court. As this Honourable Court will note, KPMG in presenting its report, indicated that **13,926** pink sheets were counted from the Registrar’s set. Out of this, **8,675** unique pink sheets (distinct by polling station name, code and exhibit numbers) were counted. This 8,675 figure is made up of **5,470** “unduplicated” pink sheets, i.e. those appearing only once, and **3,205** out of **6,911** “multiplicated or duplicated” (which appeared more than once) pink sheets.

KPMG also excluded **1,545** pink sheets on the ground of a failure to identifying them as allegedly being unclear and marked them as “Incomplete Data in Registrar’s Set”. Pages

**77-79** of the record of proceedings for **27<sup>th</sup> June, 2013** fully capture this material information. Under cross-examination by counsel for petitioners, Nii Amanor Dodoo stated as follows:

Q: The **8,675** does it include it [the 1545 pink sheets]?

A: 8,675?

Q: Yes.

A: The **8,675** is the total of exhibit codes appearing once which comes up to 5,470 and then out of the 6,911 if you were to take out just one copy, one polling station code on itself, that comes up to 3,205. The two make up the 8,675.

Q: So the **8,675**, does it include the **1,545**?

A: **No it does not** include the **1,545**.

Having shown that KPMG set out 8,675 unique counts of pink sheets, we now proceed to show how many exhibits in addition to this figure, were successfully shown by the petitioners to have been also filed. It ought to be stated that out of the 1545 pink sheets that KPMG declined to identify, 5 of them were totally blank. The remaining list of **1540** was tendered at the trial as “**Exhibit AA**”. Quite significantly, both the petitioners and 2<sup>nd</sup> respondent were able to identify clearly all the remaining **1,540** pink sheets, using the combination of polling station code and polling station numbers, which KPMG was unable to identify and thus, omitted from the count of unique pink sheets. Whereas the petitioners identified **1,219 unique** pink sheets, the 2<sup>nd</sup> respondent using its resources was able to identify **1,234** out of the 1,545 unidentified by KPMG. This became amply clear in the cross-examination of the 2<sup>nd</sup> respondent’s Chairman by counsel for petitioners on **15<sup>th</sup> July, 2013** (recorded at pages **48–49** of the record of proceedings).

Q: Can you tell the Court what you have in your hand?

A: My Lord, the title is “List of Uniquely Identified polling Station Names and Codes from the 1,545 Pink Sheets marked as Incomplete Data in Registrar’s Set”.

Q: What is the total number on the list?

A: My Lord the total number is 1,219 and is in respect of this sheet that we say we have identified 15 more so there could be 15 added to the 1,219.

Q: You confirm that this 1,219 are unique counts taken out of the 1,545 yes.

A: Out of the 1,545 yes.

These lists of 1,219 (identified by the petitioners out of the 1545 pink sheets) as well as the 1,234 (identified by respondents out of the 1545 pink sheets) were tendered at the trial as Exhibits “BB” and “BB1”.

That by a subsequent Order dated **5<sup>th</sup> June, 2013** this Honourable Court requested KPMG to use the set of pink sheets in the custody of the President of the Court to cross-check and finalise the count of the pink sheets. This was done by KPMG. In the President’s set, were **2,876** pink sheets that were not in the Registrar’s set. This was clearly admitted to by the representative of KPMG, Nii Amanor Dodoo, in his cross-examination by counsel for petitioners on **27<sup>th</sup> June, 2013**. At **page 28** of the record of proceedings, this is what transpired:

Q: I believe there were 2,876 pink sheets that were in the President’s set but were not found in the Registrar’s set?

A: Yes that is so 2,876 that is actually listed on page 438 that is appendix C.3.20.

Respectfully, a careful scrutiny of this figure of **2,876** pink sheets that were found in the President’s set, but which were not in the Registrar’s set, will disclose that **804** pink sheets can be said to be unique and distinct.

The KPMG report also identified **1,366** pink sheets in the President’s set as unclear or unidentified exhibits. From this list, a unique count of **60** pink sheets was obtained. The petitioners have also identified **648** unique pink sheets used by counsel for 1<sup>st</sup> and 3<sup>rd</sup> respondents in their cross-examination of 2<sup>nd</sup> petitioner, which are neither part of the Registrar’s set nor part of President’s set.

The respondents have strenuously resisted all requests made to them the number of exhibits served on them, including by the Court. It is the respectful contention of the petitioners that any exhibit which is proved to have been filed in this Honourable Court constitutes evidence before the Court and must be taken into account in the determination of the petition, unless the exhibit is a duplication of another one already counted.

**Rule 69(C)(4) of C.I. 74** mandates the Court to:

*“inquire into and determine the petition expeditiously and ... give its decision not later than fifteen days from the close of hearing”.*

It is the case of the petitioners that this duty to ***inquire into and determine the petition expeditiously*** enjoins the Court to consider all relevant evidence devoid of any technicality. In any event, the point is quite simple. Once the pink sheets were used by the respondents in their cross-examination, they must be deemed to have been filed by the petitioner. The exhibits in question have been clearly identified by the respondents and were referred to in the cross-examination of the 2<sup>nd</sup> petitioner.

When all the various unique counts (8,675, 1234, 804, 648) in their specific groups are merged together into one comprehensive list, they disclose a total pink sheet count of **11,421**. The criteria for determining the polling stations petitioners are relying on for purposes of this submission are that, they must:

- (i) be captured in the further and better particulars
- (ii) be supported by the affidavit of the 2<sup>nd</sup> petitioner or appropriately re-categorised with leave of the Court
- (iii) have unique polling station codes (**except for the duplicate polling station code category where separate results are recorded on two or three different pink sheets with the same polling station code**)
- (iv) be captured in the KPMG Report or used by the respondents in their cross-examination of the 2<sup>nd</sup> petitioner
- (v) not be part of the 704 polling stations the petitioners deleted with leave of the Court.

Using these criteria, we would be relying on **10,119** polling stations set out in **Table 1 of Volume 2**. These are made up of the following unique counts:

(i) Registrar's set (KPMG report)	<b>7999</b>
(ii) Registrar's remarks (KPMG report)	<b>690</b>
(iii) President's set (KPMG report)	<b>804</b>
(iv) President's remarks (KPMG report)	<b>60</b>
(v) Respondents cross-examination exhibits	<b>566</b>

See the Nigerian case of **Awusie v. Odili & Ors.**, (supra) wherein in an election petition, the Nigerian Court held that once a document is received in evidence and so marked, it becomes an evidence before the court, and the court has a duty to evaluate the probative value of every documentary evidence tendered before it.

### **(iii) Mislabelling/re-categorisation of petitioners' exhibits**

Respectfully, as stated already in this address, the sheer magnitude of the task of filing hundreds of thousands of exhibits within the very limited time of 5 days set by this Honourable Court at the application for directions stage resulted in some mistakes relating to the labelling of same. The challenge of categorisation of the exhibits is explained by the enormity of the task in first assembling the material upon which the petition is founded, to wit, the pink sheets from across the whole country, and then proceeding to analyse them for the purpose of checking and cross-checking the violations of electoral laws, malpractices and irregularities complained of throughout the country, in order to assess the legal basis for a petition to be filed. All this had to be done within the twenty-one (21) day constitutional deadline. Following the direction of the Court on the mode of trial and the specific order for the petitioners to file their affidavit evidence first within five (5) days of the Order, a new challenge of putting together thousands of pink sheets and labelling them with exhibit numbers arose. In such an enterprise which was strictly time-bound, some margin of error in categorisation and labelling of exhibits was simply unavoidable.

In the process of making relevant number of copies for service on the members of the panel and the parties hereto, errors were made in the labelling of some of the exhibits. So that in certain cases for instance an exhibit labelled as "MD L..." may later on be found as properly belonging to the "MB Q" series.

In order to align properly the petitioners' evidence and to throw light on some aspects of the evidence filed in this Honourable Court, a re-categorisation of some pink sheet exhibits has been done, as set out in **Table 2 of Volume 2** of this Address. The total number of votes involved for the polling stations that have been re-categorised is **60,215**.

***Re-categorisation does not mean adducing fresh evidence. Re-categorisation in this case only means shifting a few pink sheets from one category to the other to give a truer reflection of the infractions evident on the face of the pink sheets. It would not change the nature of the pink sheet or the facts that were present on the pink sheets from the day of declaration up to the date that the exhibits were filed in compliance with the Court order dated 2<sup>nd</sup> April, 2013. It can only assist the Court in finding out the truth from the mountain of evidence. There is no surprise to be occasioned by***

***this re-categorisation of those exhibits now. Each and every one of the exhibits that has been re-categorised were filed in this Court, since they are either in the KPMG report or shown to have been used by the respondents to cross-examine the 2<sup>nd</sup> petitioner.***

It is pertinent to note that the issue of re-categorisation of some of the exhibits filed has come up in the course of the trial a number of times. The first time the matter came up was on **16<sup>th</sup> May 2013** when the learned President of the Court, Atuguba JSC, indicated that the petitioners could undertake the re-categorisation at the “address” stage, which is now.

***Indeed, the fact that the respondents chose not to make use of the opportunity offered by this Honourable Court to cross-examine Dr. Bawumia further following receipt of the KPMG report is further testimony to the fact that they believe they had done all they could to cross-examine the witness on the categories and nature of evidence that petitioners have filed and on which their case is based. The respondents themselves concede that any further cross-examination on the evidence would be superfluous.***

Respectfully, it is the petitioners’ contention that this Honourable Court will determine this Petition based on the evidence adduced at the trial. In doing the re-categorisation, due cognisance is taken of the admonition of Dotse JSC at **page 37** of the record of proceedings for **16<sup>th</sup> July, 2013**, when he stated as follows: **“And we are conducting this case based solely on evidence put before the Court and if you do not have those exhibits then you cannot get them through the witness”.**

The factors that have been taken into account in the re-categorisation of the exhibits are as follows:

- (i) the position that no single pink sheet is used more than once in the analysis still holds, since when there is re-categorization, the pink sheet is merely moved from one exclusive category to another exclusive category. So even where there is mislabelling that should not constitute a vitiating factor;
- (ii) as the pink sheets are in evidence, the infractions are apparent on their face; and
- (iii) in the interest of doing substantial justice, such errors of mislabelling should not be used to exclude material evidence.

#### **(iv) Alleged defects in affidavit of petitioners**

Respondents throughout the trial attacked the exhibits attached to petitioners on the ground that some of them were improperly stamped by a commissioner for oaths or improperly identified in the affidavit of 2<sup>nd</sup> petitioner filed on 7<sup>th</sup> April, 2013. Upon a careful examination of the affidavit and exhibits attached therewith, the petitioner in characteristic candour, conceded some of the defects with the manner in which attached to his affidavit were annexed, but explained the challenging circumstances within which the affidavit, as which have been captured above. It is important to note that the affidavit itself was properly executed by the deponent thereto. The defects were only in relation to some of the attachments to the affidavit.

The rules governing the filing of an affidavit are as spelt out in **Order 20 of C. I. 47**. Whilst recognizing the mandatory nature within which some of the provisions in C. I. 47 are formulated, the petitioners would respectfully pray **Order 81 of C. I. 47** in aid of this Honourable Court exercising its powers to waive breaches of **Order 20**.

This Court on many occasions held that failure to comply with any of the provisions of C. I. 47 is an irregularity, unless it affects the jurisdiction of the Court or breach of a statute other than the rules of court, or violates the rules of natural justice. On this point, we rely on **Republic v. High Court, Accra; ex parte Allgate Co. Limited (Amalgamated Bank Limited Interested Party)** [2007-2008] 2 SCGLR 1041.

It is further submitted that the duty cast on the Court by **Rule 69(4) of C. I. 74** to conduct an enquiry into the instant petition will require that the Court considers all exhibits placed before it which are intended to assist in the discharge of that duty, in so far as they are relevant. This duty further requires that the court administers substantial justice without undue regard to technicalities.

Reference is also respectfully made to the Ugandan case of **BESIGYE KUZA V MUSEVENI YOWERI KAGUTA AND ELECTORAL COMMISSION** [2001] UGSC 3 JUDGEMENT DATED 20 APRIL, 2001.

C.J ODOKI in delivering the majority decision had this to say on defective affidavits at pages 16 and 17,

*“The issue in the case is whether the document filed by Hon. Okwir is an affidavit or a statutory declaration. The document is headed ‘affidavit’. But at the end of it he stated, ‘And I made this solemn declaration conscientiously believing the same to be true and by virtue of the statutory declaration Act 1 35’. It was declared before solicitor/commissioner for Oaths. It seems to me Hon. Okwir intended to swear an affidavit, but the form the document*

*took was that of statutory declaration. If the document was for use in these court proceedings, it could not be a statutory declaration but an affidavit. The document was witnessed by a solicitor/commissioner for Oaths who had the power to administer an affidavit. THE MOST IMPORTANT ELEMENT IS THAT IT WAS MADE ON OATH. I THINK THIS IS A MATTER OF FORM WHICH I SHOULD DISREGARD BY APPLYING THE PRINCIPLE SET OUT IN ARTICLE 126 THAT SUBSTANTIAL JUSTICE SHALL BE ADMINISTERED WITHOUT UNDUE REGARD TO TECHNICALITIES, GIVEN THE SPECIAL CIRCUMSTANCES OF THIS PETITION."*

Odoki CJ stated further that, *"From the authorities I have cited there is a general trend towards taking a liberal approach in dealing with defective affidavits. This is in line with the constitutional directive enacted in article 126 of the Constitution that the courts should administer substantive justice without undue regard to technicalities. Rules of procedure should be used as handmaidens of justice but not to defeat them."*

In the 2006 Ugandan Presidential Election petition between **BESIGYE KUZA V MUSEVENI YOWERI KAGUTA AND ELECTORAL COMMISSION** (supra), TSEKOOKO JSC referring to Order 45 rule 4 of the Ugandan CPR had this to say: *"these laws already emphasize expeditious disposal of a presidential election petition. Therefore placing undue reliance on technicalities can lead to unwarranted injustice."*

He observed further thus, *"Mind you, there were lamentations during the hearing of the petition about the short time available within which parties were able to assemble evidence. While shortage of time is no good excuse for shoddy work, such complaints if genuine, must be taken into account in assessing the value of evidence available."*

It is therefore submitted that since the affidavit of the 2<sup>nd</sup> petitioner to which the pink sheets were annexed was duly executed and sworn to, the unavoidable errors of the annexures being without any correct or accurate designation of pink sheet exhibits, where the authenticity is not disputed by the respondents, ought to be treated and waived as mere irregularity, so that the said pink sheets exhibited which are already in evidence can be considered and evaluated in the interest of substantial justice.

In the Nigerian case of **Dr. Chris Nwabueze Ngige vrs Mr. Peter Obi and 436 Others** [2006] Volume 18 WRN 33, it was held by the Court of Appeal at holding 30 that, election petitions are by their nature peculiar from the point of view of public policy. It is, therefore, the duty of the court to endeavor to hear them without allowing technicalities to unduly fetter their jurisdiction.

The Nigerian case of **Awuse v Odili and Others** [2005] 16 NWLR (Part 952) page 416 is recommended to their Lordships and Ladyships. It is hoped that they will find it persuasive.



In that case it was held that “*once a document is received in evidence, and so marked, it becomes evidence before the court under the provision of Section 91(1) of the Evidence Act, the tribunal has the duty to evaluate the probative value of every documentary evidence tendered before it.*”

#### **L. EVALUATION OF THE EVIDENCE LED AT THE TRIAL**

The principal witness for the petitioners, Dr. Mahamudu Bawumia, the 2<sup>nd</sup> petitioner, in his evidence-in-chief, laid out the evidence of the petitioners. This was after he had deposed to an affidavit on 17<sup>th</sup> April, 2013 to which he had attached the relevant evidence in support of the petitioners’ case – the pink sheets. It is respectfully submitted that a careful evaluation of the totality of the evidence adduced by petitioners will lead this Honourable Court to the clear and irresistible conclusion that the petitioners have abundantly discharged their burden in relation to every facet of the petition; from allegations of flaws with the registration of voters to how duplicate serial numbers on the pink sheets facilitated the perpetration of the substantive violations of the electoral laws on the strength of which the reliefs in this petition are being sought, i.e., over-voting, voting without biometric verification, absence of signatures on pink sheets, etc.

##### **(i) Unaccounted and Double Registration**

In its Answer to the Petition, the 2<sup>nd</sup> respondent provided an initial provisional registration figure of **13,917,366**. The 2<sup>nd</sup> respondent further claimed that after the conduct of registration of foreign service officials, students abroad on Government of Ghana scholarship, Ghanaians working abroad in international organizations, and the late registration of foreign personnel returning from international peace-keeping duties, the figure increased to **14,158,890** registered voters. This represented an increase of **241,524** registered voters over the provisional registration figure of 13,917,366.

The 2<sup>nd</sup> respondent added that after processing the data to include persons who had been improperly removed from the register and removing names that had been improperly added to the register, the register reduced to **14,031,793**. Petitioners requested further and better particulars on the 241,524 registrations 2<sup>nd</sup> respondent claimed to have conducted of Ghanaians abroad and returning peacekeeping personnel. It is significant that the 2<sup>nd</sup> respondent was only able to provide **2,883** particulars, leaving a staggering **238,641** entries without particulars and, thus, unaccounted for in the register. It is submitted that the claim of foreign registration accounting for the 241,524 excess entries in the register, following the compilation and publication of the provisional register, was an afterthought intended to mislead this Honourable Court. Simply put, the claim that the excess of 241,524

registrations being attributable to so-called foreign registration was not borne out by the evidence led by 2<sup>nd</sup> respondent. It is yet another indication of the lack of credibility of 2<sup>nd</sup> respondent in this Petition. It is submitted that the 238,641 registrations, which could not be identified with particulars of any lawfully registered voters, provides the opportunity for infractions such as over-voting and voting without biometric verification.

It is instructive to note that in the cross-examination of the Chairman of 2<sup>nd</sup> respondent, Dr. Afari-Gyan, clear evidence of the unreliability of the voters register was established. The voters' register was proved to be laden with many cases of multiple registration by individuals. This evidence of multiple registration was illustrated through a reference to the registration of Ghanaians abroad. A list of instances where people registered to vote on multiple times and were issued with different identification cards by the 2<sup>nd</sup> respondent was prepared and questions asked of Dr. Afari-Gyan by counsel for petitioners on **6<sup>th</sup> June, 2013**. At **pages 35-38** of the record of proceedings, the evidence on this was set out.

In all, out of **705** people allegedly registered abroad by 2<sup>nd</sup> respondent, **50** cases of multiple registrations were admitted to by Dr. Afari-Gyan. This constitutes approximately **14%** of the number of people allegedly registered abroad. If in just a list of 705 people registered abroad, 50 cases of double registration can be found, then extrapolating the same percentage in respect of the total voters register of 14,031,680 will result in a figure of some **1,990,000** double registration.

It is submitted that the double registrations effected by the 2<sup>nd</sup> respondent was due to the manner in which the registration of voters was done, whereby nobody could even determine the exact number of total registered voters in Ghana as of December, 2012. The 2<sup>nd</sup> respondent's failure to furnish the NPP with the provisional register and the late and piecemeal supply of the certified register disabled the NPP from scrutinizing in detail the voters register. The numbers on which the 2<sup>nd</sup> respondent was going to rely in the conduct of the December 2012 polls kept changing so much that 2<sup>nd</sup> respondent even claimed to have made a mistake in the figure it used in the declaration of the results on 9<sup>th</sup> December, 2012.

#### **(ii) Ballot Papers Printed by 2<sup>nd</sup> Respondent**

The Chairman of the 2<sup>nd</sup> respondent denied the petitioners claim that the ballots printed for the 2012 elections were some 100% more than the total number of registered voters, way above the **10%** margin that was communicated by the 2<sup>nd</sup> respondent to the NPP and other political parties. Dr. Afari Gyan maintained that the total number of ballots printed for the election was **15,434,968**. This was captured in the record of the proceedings on the **11<sup>th</sup> of June 2013, at pages 3-5**. During cross-examination by counsel for the petitioners, Dr. Afari-Gyan provided a breakdown of the ballots printed as follows:

- Booklets of 100 ballots - 141,597 = 14,159,700
- Booklets of 50 ballots - 12,627 = 631,350
- Booklets of 25 ballots - 38,041 = 951,025

It is clear that the evidence of Dr. Afari Gyan on this issue was not truthful. This is because if one adds up the total number of ballots printed from the breakdown he provided, it amounts to **15,742,075**. This figure is **307,107** higher than the **15,434,968** number he provided as the total ballots printed. In an election where the margin of difference is in the region of **320,000**, Dr Afari-Gyan's inability to account for **307,107** ballots is very significant. The pink sheets in evidence also support the petitioners' claim that an inordinately large number of ballots were printed relative to the number of registered voters in the **10,119** polling stations in contention. Summing up the ballots issued to the polling stations in column A1 of the pink sheets which petitioners are relying on results in a total number of **10,245,680**. This means that if the 2<sup>nd</sup> respondent printed **15,434,968** ballots as they claim, then they only had a balance of **5,189,288** ballots for the remaining **15,883** polling stations. This would be clearly insufficient. The evidence provided by Dr. Afari Gyan is, therefore, not credible.

As was the case with the voters register, the 2<sup>nd</sup> respondent was unable to provide consistent figures on the number of ballots printed for the 2012 presidential election. An inordinately large number of ballots relative to registered voters provides the opportunity for violations, malpractices and irregularities such as over-voting, and voting without biometric verification.

### **(iii) Over-voting**

It is eminently clear that the petitioners succeeded in establishing the claim of over-voting in 1,722 polling stations used in the conduct of the December 2012 presidential election. Confronted with the overwhelming record of over-voting on the face of the pink sheets, the respondents resorted to devising various excuses at rationalising the phenomenon. The first occasion on which the respondents sought belatedly to justify or explain away the entries made in columns on the pink sheets indicating of over-voting was on **23<sup>rd</sup> April, 2013**, when counsel for 1<sup>st</sup> respondent in his cross-examination made the point that every case of over-voting on the face of the pink sheet was an administrative error. Counsel for 1<sup>st</sup> respondent, at **page 39** of the record of proceedings for **23<sup>rd</sup> April, 2013**, then started speculating as to the reasons for the entries indicative of over-voting by evolving a strange theory of electoral

practice. Counsel suggested that the reason why there seemed to be over-voting on some of the pink sheets was that the number “***at the bottom was just lifted and placed in C1***”. This explanation was debunked by 2<sup>nd</sup> petitioner, when he indicated that that constituted an impossible proposition since C1 is filled before the count of ballots. Thus, it is highly irregular that a number would be lifted from the total votes cast column and placed in C1 after the counting of the ballots. This irregularity undermines the reliability of the record, i.e., the pink sheet, and compromises the integrity of the results, which should lead to the annulment of the results in that polling station.

The following is what transpired between counsel for the 1<sup>st</sup> respondent and the 2<sup>nd</sup> petitioner on 23<sup>rd</sup> April, 2013:

“Q. I am suggesting to you that even if the number there is 73 obviously what could have happen (sic) was that the total valid votes was lifted and repeated at C1?

A. *My lords C1 is suppose (sic) to be filled in before you count the ballots so it could not have been lifted and placed after counting the ballots.*

Q. It was lifted erroneously?

...

WITNESS: We can only deal with what is on the face of the pink sheet. I cannot speak to the state of side (sic) of the presiding officer.

Q. And I am suggesting to you that at the very best that pink sheet...?

A. My lord it was very clear to me. It is 73 ballots issued and it is 77 in the ballot box, it is a clear case of over voting.”

The 1<sup>st</sup> respondent’s counsel continued with his proposition of strange electoral theories by wildly alleging that to sustain a claim of over-voting, spoilt ballots in an election (which do

not go into the ballot box) ought to be added to issued ballots. This theory again turned out to be patently false.

“Q. Exhibit MBC 287 and the name is RC Primary School Aveyime and the polling station code is H080801. Would you say there is over voting on this exhibit?

A. On the face of it there is, I can add the numbers to be sure. Yes my lords there is over voting on this form C1 is 706 that is the ballot issued to voters and the total number of votes in the ballot box is 713.

Q. I am suggesting to you that in fact there is no over voting because you did not add spoilt ballot to the issued ballot?

A. Spoilt ballots to issued ballots.

Q. Absolutely they are part of the issued ballots?

A. Actually if a ballot is spoilt it is re-issued, so the total number of ballots that are issued it includes the spoilt ballots. You re-issue to the voter that has been spoilt so I think you have to understand this properly.”

Further on, in cross-examination on the same day, the absurdity of counsel for 1<sup>st</sup> respondent’s proposition became quite clear to the Court. At **page 44**, the following is recorded of interactions between counsel for 1<sup>st</sup> respondent and the President of the Panel.

“ATUGUBA: Tony Lithur we are trying to get your electoral proposition quiet clear, your electoral thesis is that spoilt ballots are part of issued ballots.

LITHUR: Yes my lord.

ATUGUBA: And should be added to the figure in C1.

LITHUR: No, should be added to total votes in ballot box. Sorry my lords.

ATUGUBA: That is very conning, It just cannot be.”

Having had his theories on over-voting thrown out of the window, counsel for 1<sup>st</sup> respondent was not deterred. On the **24<sup>th</sup>** day of **April, 2013**, in further cross-examination, counsel suggested to Dr. Mahamudu Bawumia that the reason why there seemed to be over-voting in some polling stations was due to administrative errors and the failure to add rejected ballots.

“Q: I am suggesting to you that again clearly that was an administrative error.

A: My lords that cannot be the case.

Q: Doc, is that the only reason why there is a difference between votes in the ballot and the C1 is because rejected votes were not added at all in all those cases.

A: No my lords, the C1 is to be filled before you have a filling of the rejected ballots and the total votes so sequentially, it will be wrong. The total votes in the ballot box exceed the ballots issued to voters. You and I were not there. The evidence is on the face of the pink sheet. You cannot read what the mindsets of the presiding officers were.”

Again, the absurdity of the proposition of counsel for the 1<sup>st</sup> respondent was apparent. As the principal witness for the petitioners, Dr. Bawumia, pointed out, no one can discern the intention of the makers of the instrument, i.e., the pink sheets in issue. The document must be taken as it is. It is submitted that this position of Dr. Bawumia is consistent with time-honoured rules of interpretation and construing a document in the face of unsubstantiated oral evidence to the contrary. As stated above, the contents of a document are binding on the party who, being of full capacity, appends his signature to it. That party cannot resile from it or choose an alternative course. The 2<sup>nd</sup> respondent is deemed to be bound by the

contents of the pink sheets put in evidence and the genuineness of which has not been vitiated in anyway.

#### **(iv) Voting without Biometric Verification**

Again, the evidence on the face of the pink sheets as adduced before this Honourable Court buttresses the petitioners' case that voting was permitted by the 2<sup>nd</sup> respondent in certain places without biometric verification. In evaluating the case of the petitioners, the Court's attention must respectfully be adverted to the role played by the 1<sup>st</sup> respondent in the encouragement of this unhealthy trend in the history of the nation's electoral practice. The petitioners contended in their pleadings that the 1<sup>st</sup> respondent in fact encouraged people to go out and vote without biometric verification after the first day of voting, i.e., 7<sup>th</sup> December, 2012. In court, witness for 1<sup>st</sup> and 3<sup>rd</sup> respondents, Johnson Asiedu Nketiah, admitted this in his evidence in-chief on **23<sup>rd</sup> May, 2013** as captured in the record of proceedings for that day at **pages 32-34**.

Further, in the cross-examination of Dr. Mahamudu Bawumia, counsel for 1<sup>st</sup> respondent sought to defend this statement by the 1<sup>st</sup> respondent. This is what is recorded at page 41 of the record of proceedings for the **24<sup>th</sup> day of April, 2013**.

“Q. I believe the hullabaloo started when it was discovered that some of the verification devices were not functioning properly?

A. I think the hullabaloo started when the machine was not functioning properly and 1<sup>st</sup> Respondent asked that contrary to the law people should be allowed to vote without biometric verification.

Q. In fact I am suggesting to you that 1<sup>st</sup> Respondent answer is the correct statement of the law?

A. And then I have not seen that law.”

So, respectfully, it cannot be disputed that the 1<sup>st</sup> respondent in fact supported actively voting without biometric verification. This conduct of the 1<sup>st</sup> respondent undoubtedly is

antithetical to the development of democracy and to his responsibilities as the Chief Executive of the State, who swore a solemn oath under **article 57(3)** to uphold the Constitution and laws of the Republic. Even though a constitutional body had enacted regulations to govern the conduct of the elections, the 1<sup>st</sup> respondent found it right to interfere by advocating a behaviour by citizens which ultimately undermined the integrity of the electoral process and the laws of the nation. It is submitted that, having done this, the 1<sup>st</sup> respondent cannot turn round and reap the fruits of that unlawful act.

The seriousness of the action of 1<sup>st</sup> respondent in urging people to go and vote without biometric verification is underscored by the fact that 1<sup>st</sup> respondent in so doing, was fully aware of the understanding that operated among all relevant parties that voting in the December 2012 elections would only be permissible after the voter had gone through biometric verification. This fact was classically admitted to by witness for both 1<sup>st</sup> and 2<sup>nd</sup> respondent, Johnson Aseidu Nketiah on his last day under cross-examination by counsel for petitioners, when it emerged that in an interview the witness had on **Citi FM**, an Accra-based radio station, the witness had indicated that any polling station where voting without prior biometric verification was recorded, would have the results cancelled. The tape was played to the hearing of the Court. Excerpts of the tape go as follows.

**Interviewer:** *Now, General, we will to that issue. But, General, are you saying that you did not hear and that your party agent did not tell you that there were areas in this country where the verification machines were not used apparently because they were not working?*

**Asiedu-Nketiah:** *You know something, we agreed at Electoral Commission at IPAC level that there is no way any voting could take place without verification. That was a basic principle....*

**Interviewer:** *So the claim that, you know, it is possible and in fact, it happened because we spoke on this platform to polling station officials of the Electoral Commission who conceded that indeed they had made arrangements to allow people vote without verification?*

**Asiedu-Nketiah:** *I think those people must be in jail by now if anything of that nature happened. They should be in jail by now because I'll be surprised because we trained our agents and alerted them. And, remember, the last 2 weeks of the elections and the clarion call for all political parties and the Electoral Commission*



*and all that advert was that: NO VERIFICATION, NO VOTE. And, it's on the basis of this that we trained... and I know the electoral laws provide that where er, the, the, the, irregularities are detected at particular polling stations the sanctions could be that, the result of those polling stations will be cancelled and taken out of the total national tally.*

On account of this, respectfully, it is hugely surprisingly that the 1<sup>st</sup> respondent would rather advocate an unlawful conduct of Ghanaians. Every party in the conduct of the election knew about the rules set for the holding of same. In the face of this, he however elected to organise a disobedience of the same rules. It is our submission that the 1<sup>st</sup> respondent's conduct was calculated at subverting the Constitution and winning the December 2012 elections at all cost.

The Chairman of the 2<sup>nd</sup> respondent also sought to make an ex post facto rationalization for the figures appearing in question C3 of the pink sheet when he stated that that question was not supposed to be filled because it was not intended to be there. This allegation was linked to the claim that the pink sheets for the December 2012 elections were designed and printed *before the decision to compel voters to be verified biometrically* before voting was taken. Hence the appearance on the form of question C3 which was as follows:

*"What is the number of ballots issued to voters verified by the use of Form 1C (but not by use of BVD)".*

The falsity of this assertion was exposed during the cross-examination of 2<sup>nd</sup> respondent's Chairman on **6<sup>th</sup> June, 2013**, when it came to light that C.I. 75 (mandating the use of biometric verification) came into force long before the Chairman of 2<sup>nd</sup> respondent on 20<sup>th</sup> October, 2012, gave the order for the pink sheets to be printed. At **pages 27-28** of the record of proceedings, this is stated.

"Q: Now so do you have any idea when CI 75 was gazetted?

A: My lords, I will not remember the exact date.

Q: It was gazette on 14<sup>th</sup> August, 2012.

A: Thank you my lords.

- Q: So the law with regard to non-verification non-voting was gazetted 14<sup>th</sup> August, 2012.
- A: My lords if that is the date it bears, yes.
- Q: This is a copy, what do you have in your hand?
- A: My lords, I have in my hand Republic of Ghana Public Elections Regulations 2012, C.I 75.
- Q: Now you can tell us the date of gazette.
- A: My lords, date of gazette notification, 14<sup>th</sup> August, 2012.
- Q: And when did come into force?
- A: Entry into force 28<sup>th</sup> September, 2012.
- Q: Now these regulations you have in your hand were passed at the instance of the Electoral Commission, am I right?
- A: Yes, my lords.
- Q: So at the time that you caused the pink sheets to be printed, the law was that everybody's voting should be verified?
- A: Yes my lords.
- Q: Should be verified biometrically?
- A: Yes my lords."

The weakness of the effort to explain the allegation that Column C3 should not have been on the pink sheet was laid bare on **6<sup>th</sup> June, 2013**. Dr. Afair-Gyan claimed that, in the course of the training of the presiding officers, his outfit had instructed them not to fill in question C3. It however became clear that question C3, in the form in which it was, was not

on the forms used to train the presiding officers. At **page 17** of the record of proceedings, the following is recorded of the cross-examination by counsel for petitioners:

“Q: So you could not have trained your officials on C3 as it appears on the pink sheet?

A: My lords, we didn’t intend to train them on C3 because C3 was not supposed to be there.

Q: So you proceeded to create a portion on the pink sheet for an unascertained number to C3 is that not what you are telling this court?

A: I have said that my lord that yes but I have to explain. I have said that as an election administrator it is my responsibility to ensure that not a single eligible person is disenfranchised.”

Further cross-examination on this point ensued at pages 22-23 of the record of proceedings for 6<sup>th</sup> June 2013 as follows:

"Q: This is a sample of the pink sheet, am I right?

A: You are correct.

Q: Now if you look at C3 at page 51, it differs from C3 on the actual pink sheet.

A: In fact on mine, on the left side at least there is no C3 at all.

Q: Yes, that precisely my point that the C3 as it appears on the pink sheet is not there at all. Do you agree with me?

A: Yes my lords, it is not here at all.”

What even made the claim of Dr. Afari-Gyan more incredulous was the fact that question C3 was filled all over the country by election officials. Dr. Afari-Gyan at page 24 of proceedings for 6<sup>th</sup> June, 2013 also conceded that those figures in C3 were generated from the elections. When it became clear that his explanations about the entries in C3 were simply unbelievable, he quickly stated that all he knew was that the number supposed to be zero. This is what is recorded of the further cross-examination on this point by counsel for petitioners, as captured at **pages 23-26** of proceedings for **6<sup>th</sup> June, 2013**:

“Q: Now Dr. Afari Gyan you are aware that in the December, 2012 elections entries were made in C3 all over the country.

A: Yes my lords.

Q: I am suggesting to you that in fact no such instruction was given to any official to enter zero.

A: My lords, I disagree, instruction was clearly given. Those entries I believe were made in error.

Q: Now the figures that were entered there were obviously generated from the election, am I right?

A: My lords, I would believe so.

Q: You believe so, or you don't know?

A: My lords, I believe that they are figures that are intended to relate to the election.

Q: And do you have any idea where those figures should have been placed other than in the C3 column?

A: Well, in the situations that I have analysed, they are almost invariably the same figure were in C1 and in C3 and then it was

entered at the total number of ballots found at the box and this will give rise to a very curious situation.

.....

Q: Now, Dr. Afari Gyan I don't think you answered my question. My question was that the numbers that had been put in C3 you agree had been generated from the elections. Where do you think it should be put instead of C3?

A: My lords since that number was a repetition of C1 and C3 my indication is that it should not have been there at all.

Q: So where it is not equal to C1 where would it have been?

A: My lords, he is asking me something in the abstracts and is difficult for me to know where it should have been.

Q: So your answer is that it is difficult for you to tell where it should be.

A: My lords, in the instant that I am saying that there should have been nothing in that column so if something is entered...

ATUGUBA: Yes so there is nothing abstract about it. It is the sheet and the way it is operated that he is trying to ascertain so...

WITNESS: Yes my lords, my claim is that there should have been nothing in that column."

It would also be recalled that Dr. Afari-Gyan earlier on in answer to a question by Dotse JSC, as to how the alleged information to presiding officers not to enter question C3 was done (whether written or by what means), stated that he could not tell.

It is our respectful submission that, when due account is taken of all the circumstances surrounding the conduct of the elections and the inconsistent and implausible answers given by Dr. Afari-Gyan, petitioners have on the balance of probabilities proved that voting without biometric verification occurred in various parts of the country, contrary to the electoral laws of Ghana. It is the further contention of the petitioners that, indeed, question C3 was deliberately put on the pink sheet by the 2<sup>nd</sup> respondent because in the December 2012 elections the 2<sup>nd</sup> respondent's officers were given discretion to dispense with biometric verification contrary to the law. This is borne out by **Exhibit G (*The Biometric Verification Device (BVD) User Manual, 2012 Presidential and Parliamentary Elections*), pages 16 and 20**, tendered on **13<sup>th</sup> June 2013** by counsel for the petitioners through the Chairman of the 2<sup>nd</sup> respondent, Dr. Afari-Gyan. Thus, it is the aggregate of information entered in C3 on the pink sheet that gives the total number of persons who voted without biometric verification, contrary to the law.

#### **(v) Absence of Signatures**

The Petitioners have fully set out arguments above to show why the constitutional provision in **article 49(3)** for the signature of presiding officer on a pink sheet is crucial, because it is a mandatory constitutional requirement, not an administrative directory. In order to illustrate the validity of petitioners' claim as to the absence of signatures by presiding officers, counsel for petitioners in his cross-examination of the 2<sup>nd</sup> respondent's Chairman, tendered through the witness various lists evidencing the petitioners' claims. On those lists were various exhibit numbers of unsigned pink sheets. These were checked by the witness, Dr. Afari-Gyan and tendered at the trial. We hereby list these exhibits together with the days on which they were tendered as set out hereunder.

#### **4<sup>th</sup> July, 2013 proceedings**

179 unsigned pink sheets tendered as Exhibit MBH	-	at pages 8 & 9.
182 unsigned pink sheets in MBQ series tendered as Exhibit J	-	at page 36
55 unsigned pink sheets in MBJ series tendered as Exhibit K	-	at page 38
114 unsigned pink sheets in MBF series tendered as Exhibit L	-	at page 47
12 unsigned pink sheets in MBQ series tendered as Exhibit M	-	at page 48
11 unsigned pink sheets in MBO series tendered as Exhibit N	-	at page 49

### **Total number of pink sheets in issue 553**

#### **10<sup>th</sup> July, 2013 proceedings**

28 unsigned pink sheets in MBF series tendered as Exhibit T	-	at page 4
3 unsigned pink sheets in MBG series tendered as Exhibit T1	-	at page 4
59 unsigned pink sheets in MBJ series tendered as Exhibit T2	-	at page 5
33 unsigned pink sheets in MBK series tendered as Exhibit T3	-	at page 5
66 unsigned pink sheets in MBN series tendered as Exhibit T4	-	at page 5
12 unsigned pink sheets in MBO series tendered as Exhibit T5	-	at page 5.
88 unsigned pink sheets in MBQ Lot 1 series tendered as Exhibit T6	-	at page 5
26 unsigned pink sheets in MBQ Lot 2A series tendered as Exhibit T7	-	at page 5
9 unsigned pink sheets in MBQ Lot 3 series tendered as Exhibit T8	-	at page 5
45 unsigned pink sheets in MBS series tendered as Exhibit T9	-	at page 45
1 unsigned pink sheet in MBV series tendered as Exhibit T10	-	at page 45.
1 unsigned pin sheet in MBZ series tendered as Exhibit T 11	-	at page 45.

### **Total number of pink sheets in issue 371**

A total of **924** pink sheets were presented to Dr. Afari-Gyan on **4<sup>th</sup> and 10<sup>th</sup> of July, 2013**, and he admitted the absence of a presiding officer's signature on each of them. He also conceded that **905** pink sheets were also unsigned. Out of the 905 pink sheets, **191** formed part of the **924** pink sheets presented to Dr. Afari-Gyan. In total, therefore, the petitioners are relying on **1,638 unsigned pink sheets** involving **65, 9814 votes**.

We would also respectfully urge this Honourable Court to advert its mind to a decision of this Court on the significance of the signing of an official document where signature is

necessary i.e. **Akowuah & Anor v. Amoo & Anor.** (supra), wherein the Court, speaking through Anin-Yeboah JSC, held, inter alia, as follows:

*“... And an official court process or document like a bail bond or justification of sureties should be free from irregularities to leave no one in doubt that the surety has executed the bond. Cancellations and lack of signature or thumbprint or mark apparent on the face of the document would create serious doubts as to its authenticity...”*

It is our respectful contention that if this Honourable Court in **Akowuah & Anor v. Amoo & Anor.** (supra), considered an official court process or a bail bond so serious that it must “*be free from irregularities to leave no one in doubt*” as to its authenticity *a fortiori* the declaration of results in a presidential election on which the future, hopes and aspirations of the nation hang must be free from all irregularities.

The importance of the presiding officer’s signature is brought to the fore when account is taken of the fact that to date, there has not been any evidence from the respondents to show that the results they allegedly announced in public were exactly as were put on the pink sheets, in the absence of the presiding officer’s signature.

This point is very significant in the light of the 1<sup>st</sup> respondent’s claim that the failure of the presiding officers to sign the pink sheets could “not be a basis for annulling lawfully cast votes.” The burden on the petitioners was merely to show that the allegation of a failure to sign the pink sheets in question was made out. The petitioners having established the failure of the presiding officers working on behalf of the 2<sup>nd</sup> respondent to sign the pink sheets, the burden then shifted onto the respondents who seek to deny the significance of the requirement for signature, to show the inconsequential nature thereof. The respondents failed to adduce a shred of evidence in support of the contention that the outcome of the voting at the polling stations affected by “no presiding officer’s signature” was just as was recorded on the pink sheets, lack of signatures notwithstanding.

The 2<sup>nd</sup> respondent also alleged that of the **2009** pink sheets originally claimed by petitioners not to have been signed by the presiding officers, **1099** were signed by the presiding officers either at the polling stations or at the collation centres. The 2<sup>nd</sup> respondent also claimed that **1,989 pink sheets** were signed by the polling agents and, therefore, the petitioners’ complaint was without merit.



This Court is respectfully urged to consider the fact that the 2<sup>nd</sup> respondent failed to adduce any evidence whatsoever of the exact number of pink sheets that were signed at the collation centres or at the polling stations by the presiding officers, other than its mere say so, even though it is the official custodian of all election-related materials. In any event, under the applicable constitutional and statutory law, the presiding officer is required to sign the pink sheet in the presence of the polling agents at the polling station before announcing the results. The 2<sup>nd</sup> respondent offered no evidence that this was done. Furthermore, the signing of pink sheets at the collation by presiding officers, even if it were true, constitutes a breach of a mandatory constitutional provision and is therefore unconstitutional, void and of no effect.

The signing of the pink sheets by the polling agents does not in any way validate the pink sheets, and cannot be a substitute for the mandatory constitutional requirement that the pink sheet must be signed by the presiding officer. **Regulation 17 of C.I. 75** emphatically settles this point when in **sub-regulation 2** it makes a presiding officer fully responsible for the control of the polling station. It is the respectful contention of the petitioners that, having regard to the foregoing issues, their evidence stands uncontradicted, and this Honourable Court is respectfully invited so to hold.

The 2<sup>nd</sup> respondent's Chairman on **13<sup>th</sup> June, 2013** admitted the limited role of polling agents in cross-examination by counsel for petitioners (at **page 21** of record of proceedings).

Q. You are aware that the functions of a polling agent are strictly circumscribed?

A. My lords I would say so.

Q. They are not election officials?

A. In the strict sense of the term, no.

Q. I would like you to read Rule 19(4) of C1 75?

A. WITNESS READS OUT

Q. So I am suggesting to you that it is not the business of the polling agent to supervise the work of the election officials but to observe the conduct of the poll?

A. My lords I agree that the agent is not supposed to supervise but he plays an active role at the station.

At pages **25-26** of the record of proceedings for the same day, Dr. Afari-Gyan made the point about the very limited role of polling agents abundantly clear.

Q. A polling agent is not involved in the actual administration of the election?

A. My lords you are correct.

Q. He does not count the votes after the election?

A. My lords no.

Q. He counts?

A. He does not.

Q. He also does not inspect the ID cards of persons who are in the cue to vote?

A. My lords no.

Q. He cannot confront anybody directly at the polling station?

A. My lords no and for that matter nobody can confront anybody directly at the polling station.

Q. if he has any objection to anything happening he has to inform the presiding officer?

- A. My lord yes.
- Q. So the presiding officer is in-charge of the polling station?
- A. My lords absolutely.
- Q. He has the final say on any matter?
- A. So far as it is connected with the election yes.
- Q. In fact the presiding officer can ask the polling agent to leave the polling station.
- A. My lords yes if the polling agent misconducts himself or herself.
- Q. And who determines who misconducts himself, it is the presiding officer?
- A. Yes it is the presiding officer but misconduct they are trained to know how mis-conducting oneself in a polling station is.

#### **(vi) Duplicate polling station codes**

From the evidence adduced by all witnesses who gave viva voce evidence, there can no longer be any dispute that a polling station code is meant to be unique to a particular polling station. However, the evidence shows that there were multiple instances of duplicate, i.e. same, polling station codes used. Indeed, in their attempt to rebut the significance of the malpractice of duplicate serial numbers being used for different polling stations, both Mr. Asiedu Nketia and Dr. Afari-Gyan, in their respective testimonies, asserted that what identifies the polling station as unique is the polling station code. This Honourable Court is respectfully referred to **page 35** of the record of proceedings of **23<sup>rd</sup> May 2013** where Asiedu Nketia, representing the 1<sup>st</sup> and 3<sup>rd</sup> respondents, admits that the polling station code is what is important in identifying a polling station. See also the admission of Dr. Afari-Gyan, **at page 12 of the record of proceedings of 30<sup>th</sup> May 2013**, where he says thus:

*“the code is unique; first in the sense that no two polling stations ever have the same code number or code. It is also unique in the sense that the code is consciously*

*crafted to contain information that directs you to the location of the polling station. And the system we use is alpha-numeric, that is to say, it combines the letters of the alphabets and numbers, and the system is a letter followed by 6 digits and it may end or may not end with another letter..."*

The petitioners, however, led irrefutable evidence of pink sheets having the same polling station codes, but with different results. **On 8<sup>th</sup> July 2013, at pages 55-59 of the record of proceedings**, during cross-examination, Dr. Afari-Gyan was confronted by counsel for petitioners with five (5) pink sheet exhibits and a list of same number of polling stations. Three have the same polling station name, Juaso Court Hall, same code F262901, but different results, marked as **Exhibits MBY, MBY- 000001 and MBT**. The remaining two polling stations have the same name, Kalpohin SHS "A", same code H194903A, but with different results, marked respectively as **Exhibits MBV000004 and MBV000005**. The list was tendered in evidence through Dr. Afari Gyan as **Exhibit "S"** at **page 59 of the record of proceedings**. The witness did not, and was not able to proffer any reasons for these triplicate and duplicate polling station codes.

In addition, during the cross-examination of Dr. Afari-Gyan on 10<sup>th</sup> July 2013, **at pages 17-22** of the record of proceedings, counsel for petitioners got him to admit that each pair of the **18 pink sheets identified by their polling station names and exhibit numbers bore the same codes**. These 9 pairs of pink sheets, with the same polling station codes, were part of the list of 905 polling stations, tendered in evidence on 8<sup>th</sup> July 2013 as **Exhibit "P"** (where the presiding officers did not sign the pink sheets).

On the same day, the witness was again confronted with three pink sheets, **Exhibits MBW 000003 (Finger of God Church, Kubekro) and MBW 000002** (Finger of God Church, Kubekro), both bearing the same polling station code, namely C140802B, but different results. They had different presiding officers, but only one of them. Exhibit MBW000002, bore the signature of the presiding officer. This can be found at pages 23 to 25, 28 and 30 of the record of proceedings.

When asked at page 29 of the record what could be the reason for one polling station having two pink sheets, witness said there is no reason. Yet that was the evidence manifest on the face of the two pink sheets:

Q: And what is the reason that one polling station will have two pink sheets?

A: My lord they should not,

Anin-Yebaoh: He wants the reason why one polling station should have two pink sheets.

Witness: I am saying that no polling station should have two pink sheets.

Again, on **11<sup>th</sup> July, 2013**, at **pages 21-30 of the record of proceedings**, counsel for petitioners confronted Dr. Afari Gyan with a **list of 16 polling stations** together with corresponding pink sheets, pairs of which had the same polling station codes. Dr. Afari-Gyan admitted that the pairs, indeed, had the same polling station codes, though they bore different results. To make matters worse, most of them had different polling station names!

Again, on the same day, counsel for petitioners confronted Dr. Afari-Gyan with 8 pairs of pink sheets with same polling station codes. This can be found at **pages 22-32** of the record of proceedings. This list of 16 polling station pink sheets (8 pairs) was tendered in evidence as Exhibit Y through Dr. Afari-Gyan at **page 32** of the record of proceedings of that day. Dr. Afari-Gyan, on that day sought to explain away the anomaly with the suggestion that one of each pair had been used for special voting.

The following Monday, 15<sup>th</sup> July, 2013, when he was confronted with evidence that no special voting took place in most of the 16 polling stations tendered as Exhibit Y, Dr. Afari-Gyan changed tune, saying he had not said that special voting took place in all the polling stations listed on Exhibit Y. This can be found at **pages 8-12** of the record of proceedings. Again, when counsel for petitioners suggested to him that special voting took place in some other named polling stations, he lamely answered that that *“it could well be so”, “it well may have been”* Please see pages 9 and 10 of the record of proceedings of 15<sup>th</sup> July 2013..

Dr. Afari-Gyan, however admitted that, notwithstanding the fact that these pairs of polling stations bore duplicate codes, the results of all these polling stations went into the declaration of the presidential election results. This is to be found at page 10 of the record of proceedings of 15<sup>th</sup> July, 2013:

“Q: So Dr, Afari Gyan, these polling stations with duplicate polling station codes all went into the declaration made by you?

A: Yes, all these polling stations went into the declaration of results.”

It is the respectful submission of the petitioners that special voting results are not recorded on pink sheets and, accordingly, the explanation proffered by Dr. Afari-Gyan for pink sheets with duplicate polling station codes is untenable and false. This is clearly demonstrated by the fact that provision is made for entry of special voting results of the whole constituency in the first column on Constituency Results Collation Form, without reference to any polling station name or code. In stark contrast, the results of votes cast in any constituency on general election day are entered on the Constituency Results Collation Form by reference to the different polling station codes in that constituency. This much Dr. Afari-Gyan was forced to admit during cross-examination by counsel for petitioners at **pages 31-36** of the record of proceedings of **10<sup>th</sup> June, 2013**.

Furthermore, **Regulation 21(11)** is quite explicit on the procedures by which the results of special voting are counted, the ballot boxes are sealed with the seal of 2<sup>nd</sup> respondent and entered onto the Constituency Results Collation Forms. It provides that, after special voting, the returning officer for the constituency shall ensure that the ballot boxes are sealed and kept in safe custody; and that he/she shall, on polling day, arrange for the ballot to be opened and the ballot boxes counted in the same manner as those contained in the ballot boxes used on polling day. No reference whatsoever is made to entering the results of the count of special voting ballot papers on pink sheets. It is no wonder, therefore, that the Constituency Results Collation Form makes no provision for the polling station name and code where special voting takes place. This explains why the attempt by the Chairman of 2<sup>nd</sup> respondent to explain the occurrence of same polling station codes on the pink sheets listed in **Exhibit P** by way of special voting woefully failed

In the light of the above analysis and the evidence based thereon, it is the respectful submission that the phenomena of duplicate polling station codes is, manifestly a serious malpractice and, accordingly, the results of polling stations tainted by this malpractice ought to be annulled, as it is not possible to determine which of the results of the polling station bearing the same code.

The number of votes affected by the malpractice of duplicate polling station codes is **13,317** and this occurred in **16** pairs of polling stations and 1 triplicate. See **Table 14 in Volume 2B**.

#### **(vii) Duplicate Serial Numbers.**

As already noted, the respondents sought to dismiss the phenomena of the same serial number on more than one pink sheet as a malpractice on the ground that what gave the

polling station its unique identity was its code and name and whether or not pink sheets with the same serial numbers were used for different polling stations, was irrelevant. This was because, so the argument of the respondents go, the essential factor was whether or not the results on the pink sheets came from one of the 26002 polling stations created by 2<sup>nd</sup> respondent for the December 2012 elections. This could be ascertained by the polling station name and code. Not even after 2<sup>nd</sup> petitioner explained the significance of the serial numbers as a security feature, which ensures that the results at each polling would be entered on only one pink sheet, whose unique feature was its serial number, in both his evidence-in-chief and his testimony during cross-examination, were respondents prepared to concede to the importance of the unique serial number pre-embossed on every unfilled booklet of pink sheets. Even when the Chairman of 2<sup>nd</sup> respondent was compelled to admit during cross-examination that, until the pink sheets are filled with entries of the polling station name code, ballot accounting entries and the results of the votes cast, the only feature that distinguishes one booklet of pink sheets from another is the serial number which comes from the printers pre-embossed. See page 23 of the record of proceedings for 11<sup>th</sup> June, 2013 where the following ensued counsel for the petitioners and the witness.

“Q: I am suggesting to you that what distinguishes two blank presidential pink sheets is the serial number?”

A: Blank, yes.”

Indeed, counsel for 3<sup>rd</sup> respondent is on record to have said on several occasions **during the course of proceedings on 10<sup>th</sup> July 2013**, that he was not going to dignify the list of Exhibit “P” series that petitioners were seeking to tender through Dr. Afari Gyan with any scrutiny, since those exhibits were worthless and as it would be waste of time, which his team and himself could employ more profitably. This Honourable Court is referred to **pages 37-40, and 42** of the record of proceedings of that day.

#### **(viii) Triplicate and Quadruplicate Serial Numbers**

Respondents were however, given a rude awakening from their disdain for the malpractice of duplicate serial numbers when, **on 11<sup>th</sup> July, 2013**, counsel for petitioners confronted Dr. Afari-Gyan, during cross-examination with the list of 17 pink sheets that bore triplicate or quadruplicate serial numbers together with their pink sheets. The witness admitted that

three sets each bore triplicate serial numbers while two sets each bore quadruplicate serial numbers. This can be found at **pages 6-10** of the record of proceedings. This list was tendered in evidence through Dr. Afari-Gyan as **Exhibit "X"**. The witness admitted that three sets of three pink sheets each had the same serial numbers, while two sets of four pink sheets bore the same serial number. The following cross-examination ensued at page 13 of the record of proceedings:

"Q: Dr. Afari-Gyan, you have told this court that you printed 2 sets of pink sheets. I see that was not enough. How do you explain triplicates and quadruplicate serial numbers that we have just seen in Exhibit "X".

A: My lords, logically there should be no triplicates and quadruplicates, that is why....

Q: I cannot hear you.

A: My lords, I cannot understand how there could be triplicates and quadruplicates I cannot understand that and that is why we have to check."

Quite clearly, serial numbers have security significance. Suddenly, the critical importance of serial numbers as a security feature which prevented electoral fraud, the swapping of one pink sheet for another and the manipulation of results on pink sheets became manifest. In a rather despairing attempt to minimize and deflect the obvious damage that the grave malpractice of pink sheets with triplicate or quadruplicate serial numbers had done to the case of respondents on duplicate serial numbers, Dr. Afari-Gyan, in re-examination on 16<sup>th</sup> July 2013, tendered as **Exhibit EC11**, a table, together with **Exhibits EC 11 A to 11E3**, the purported original copies of the pink sheets listed in Exhibit X. This only confounded matters for the 2<sup>nd</sup> respondent. This is because a critical scrutiny and comparison of the pink sheets set out in Exhibit X with Exhibits EC11A to 11E3 revealed substantial differences between the pink sheets filed by petitioners and listed as Exhibit X, and the purported originals belatedly tendered in evidence by Dr. Afari-Gyan on the penultimate day of trial.

A critical scrutiny of the two sets of pink sheets revealed significant and disturbing differences of the pink sheets captured in Exhibit X and the purported original pink sheets in Exhibit EC 11 series.

**It is the respectful submission of petitioners that the pink sheets listed in Exhibit X were duplicates of the original copies and were given to the agents of 1<sup>st</sup> petitioner at**



**the close of poll and the declaration of the results at the polling station on 7<sup>th</sup> and 8<sup>th</sup> December 2012. Being duplicates of the original, it meant every hand written entry or mark found on the duplicates must equally be on the original copies. Similarly, the originals cannot have entries on them which will not be found on their corresponding duplicates.**

Indeed, that was the whole purpose of having the pink sheets printed in duplicates, to prevent manipulation of the ballot accounting entries and the results themselves after the close of polls and the declaration of results. Indeed, the Court had noted on several occasions during the course of trial that no one was questioning the authenticity of the pink sheets that the petitioners filed and, further, that the duplicates that petitioners filed were as good as the originals in the official custody of 2<sup>nd</sup> respondent. This view of this Honourable Court underscored the reason why, upon an application by petitioners for an order directed at 2<sup>nd</sup> respondent to produce for inspection and photocopying all pink sheets in the 26002 polling stations, where elections took place on 7<sup>th</sup> and 8<sup>th</sup> December 2012, this Honourable Court dismissed the application, since according to the Court, petitioners had duplicates of the originals and that the duplicates were as good as the originals in the custody of 2<sup>nd</sup> respondent.

When petitioners, however, compared the pink sheet exhibits listed on Exhibit “X” with as the purported originals of 2<sup>nd</sup> respondent tendered as **Exhibits EC 11, 11 A1 to 11 D4** series it became manifest that there had been tampering with the alleged originals of the 2<sup>nd</sup> respondent and that, in some cases, there had been complete swaps of the pink sheets in question. It ought to be underlined that the reason why 2<sup>nd</sup> respondent virtually got forced to tender in evidence pink sheets for the first time since this Petition commenced was because it wished to discredit the damning evidence of triplicate and quadruplicate serial numbers which Exhibit X exposed. To do that, however, 2<sup>nd</sup> respondent necessarily had to produce pink sheets that were different from the duplicates that petitioners confronted Dr. Afari Gyan with through their counsel on 11<sup>th</sup> July 2013.

Thus, for instance, the three pink sheets marked **Exhibit MBP – 3246**, CHIEF BELLO INT. SCHOOL, with Code C141004A, **Exhibit MBP3238**, APOSTOLIC REVELATION SOCIETY, with Code C141102A, **MBQ 171**, BAPTIST INT. CHURCH-ADIGON, with Code C140602 all bear the same pre-embossed serial number, namely **0025195**. On the other hand, two of the purported corresponding original pink sheets tendered in evidence by 2<sup>nd</sup> respondent as **Exhibit EC 11A**, CHIEF BELLO INT. SCHOOL, with Code C141004A and **Exhibit EC**

11 BAPTIST INT. CHURCH-ADIGON, with Code C1409602, both bore the same serial number as the three duplicates, namely **0025195**. The third, however, **Exhibit EC 11 A1**, APOSTOLIC REVELATION SOCIETY, with Code C141102A had a completely different serial number, namely **0026746**. Furthermore, it is apparent from the entries on the two exhibits that the handwritings are quite different and that the specific entries are not the same. There are cancellations on the so-called original which cannot be found on the duplicate, a logical and empirical impossibility. On the other hand, a comparison of the two sets of pink sheets bearing the same serial numbers shows that all the entries in each duplicate can be found in the original and, further, that the hand writing is the same for each pair. Quite clearly, **Exhibit EC 11 A1** is a recently fabricated document, generated in an attempt to rebut the evidence of triplicate serial numbers.

Again, the three (3) pink sheets marked **Exhibit MBM-000474**, MICHEL CAMP JHS, B, with Code C141105B, **Exhibit MBP-3258**, Methodist Church Zenu (B), with Code C140904 (B), **Exhibit MBP-3264**, ST. JOHN BOSCO CATHOLIC, with Code C141404B, and **Exhibit MBP – 3254**, GARRISON PRIM. SCH, MICHEL CAMP NO. 1, with Code C141104, **all bear the same serial number, namely 0025194**. Two of the purported original sets, namely, **Exhibits EC 11E**, MICHEL CAMP JHS, B, with Code C141105B and **Exhibit EC 11E2**, GARRISON PRIM. SCH, MICHEL CAMP NO. 1, with Code C141104 both bear serial number **0025194** which is the same as those of the petitioners' set of corresponding duplicates. The other two purported originals, however, have completely different serial numbers. **Exhibit EC 11E1**, METHODIS CHURCH, ZENU (B), with Code C140904B, bears serial number **0025196**, while **Exhibit EC11E3**, JOHN BOSCO CATH CHURCH with Code C141403B bears serial number **0024724**.

An examination of the entries in the two pink sheets in respect of St. John Bosco Catholic Church shows that the entries in these two pink sheets are not the same. The votes obtained in words by 1<sup>st</sup> respondent as well by 1<sup>st</sup> petitioner are written differently on the two pink sheets. The name of the polling station is ST JOHN BOSCO CATHOLIC on **Exhibit MBP-3264**, but on the alleged original copy, it is ST JOHN BOSCO CATH CHURCH. While the polling agents for NDC, NPP and the Progressive People's Party (PPP) have allegedly signed the pink sheet in **Exhibit EC 11E 3**, those of the same parties have not signed the pink sheets in **Exhibit MBP-3264**. What is significant here is that, since the petitioners' exhibits are duplicates of the originals, every entry or marking on the petitioners' pink sheet exhibits must necessarily be found on the originals of 2<sup>nd</sup> respondent. Similarly, what is not on the petitioners' exhibits should not be on the 2<sup>nd</sup> respondent's original. In other words,

the 2<sup>nd</sup> respondent's exhibit must have exactly the same entries as the petitioners'. Where that is not the case, as is manifest on most of the exhibits bearing different serial numbers, the irresistible and logical conclusion must be that 2<sup>nd</sup> respondent has manufactured new pink sheets after the polls. The presence of a different serial number on **Exhibit EC 11E 3** is a clear indication that the actual pink sheet filled in at the polling station, is not what was produced in Court by the 2<sup>nd</sup> respondent.

What truly exposes 2<sup>nd</sup> respondent is that in its attempt to rebut the evidence of triplicate serial numbers by generating a different JOHN BOSCO CATH CHURCH pink sheet, 2<sup>nd</sup> respondent produces a pink sheet with a different serial number, namely **0024724**. In doing so, however, 2<sup>nd</sup> respondent only confounds its case. For, there are already in evidence two pink sheet exhibits with the same serial number, **0024724**. These are **Exhibit MBP-3266**, ST EMMANUEL MUSLIM B ZION, with Code C141902B and **Exhibit MBP-003074**, ST. JOHN BOSCO CATHOLIC, with Code C14140A. The pink sheets for these two polling stations have the same serial number, namely **002474**. Thus, the fabricated St John Bosco Cath Church unwittingly finds company with two other polling stations with the same serial number and, thus, joins the disreputable class of pink sheets with triplicate serial numbers.

While 2<sup>nd</sup> respondent filed **Exhibit EC 11 E** in order to rubbish petitioners' claim of pink sheets with more triplicate serial numbers, this move rather had the effect of deepening the crisis of 2<sup>nd</sup> respondent. Petitioners had already filed in this petition two other pink sheet exhibits bearing the same serial number as 2<sup>nd</sup> respondent's **Exhibit EC11 E1** with serial number **0025196**. These are **Exhibit MBP-3257** KONKYIRKOPE EBEN. METH. CH. ZENU B, with Code C141001B and **Exhibit MBP - 3273**, TMA PRIM 'B', with Code C140901B

This Honourable Court is respectfully invited to examine **Exhibit EC 11 E 1**, MTEHODIST CHURCH ZENU (B) in comparison with **Exhibit MPB-3258**. An examination will reveal differences which could only have arisen from substituting authentic original copy of **MBP-3258**. It is obvious that the entries in **Exhibit EC 11 E1** were made by placing the authentic original under the pink sheet and tracing the entries onto **Exhibit EC 11 E1**. This is what explains the deepen inscription on **Exhibit EC 11 E 1**, which cannot be found on Exhibit MBP-3258. Furthermore, while figures entered on **Exhibit MBP - 3258** bear no 'whiskers' as it were, all the entries on the so-called corresponding original strangely have these 'whiskers'. Clearly, **Exhibit EC 11 E 1** was manufactured after **Exhibit MBP - 3258** had been given to the agents of 1<sup>st</sup> petitioner at the polling station, presumably when 2<sup>nd</sup>

respondent hand was forced by the evidence on the face of the pink sheets listed in **Exhibit X**.

We shall now examine the ONYA-SHI group of pink sheets. **Exhibit MBP 3268**, ONYAI-SHI, with Code C140701, **MBH-79**, KATAMANSU PRESBY PRI. A, with Code 140601A, **Exhibit MBJ – 000097**, ASS OF GOD CH. ATAA SAKI (B), with Code C141401B, **EXHIBIT MB-AB-000020**, FINGER OF GOD CHURCH with Code C140802 all have the same serial number, namely **0025200**. In stark contrast, only **Exhibit EC 11 D**, **ONYAHI-SHI** bears the same serial number of **0025200**. Not surprisingly, **Exhibit EC 11D** has the same polling station name and code as **Exhibit MBP-3268**. The entries on the two pink sheets are exactly the same and the handwriting the same, as should be expected of an original and a duplicate thereof and as the most casual examination of the two pink sheets will reveal. Strangely, 2<sup>nd</sup> respondent filed six (6) pink sheets in response to the four (4) that petitioners filed. **And, all of the remaining five (5) are completely different from the petitioners' sets**. In contrast to the petitioners' set of three pink sheets, this set of five pink sheets had the names of the polling stations spelt differently from the names on the petitioners' set of pink sheets. They bear completely different polling station codes. The hand written entries on these pink sheets are completely different and the entry of figures on them are equally different. They bear completely different serial numbers from the petitioners' set of pink sheets. Exhibit **EC 11 D1**, PRESBY PR SCH, KATAMANSO, with Code C140601A has serial number **0025199**. Exhibit **EC11 D2**, ATAA SAKI (B), with Code C141401B has serial number **0024702** in **pink colour**, which is not the colour of an original. **Exhibit EC 11 D4**, FINGER OF GOD CH. KUBEKRO, with Code C140802A has serial number **0025191**. Exhibit **EC 11D5**, FINGER OF GOD CH. KUBEKRO, with Code C140802B has serial number **0010711**. Indeed, the Court will note that 2<sup>nd</sup> respondent has deliberately tendered in evidence pink sheets with polling station names and codes different from the exhibits that petitioners are relying on in this set of quadruplicates. Quite naturally, these pink sheets, being pink sheets in respect of other polling station names and codes, cannot be expected to bear the same serial numbers as those in petitioners' set of four. The entries on the two Finger of God Kubekro pink sheets in 2<sup>nd</sup> respondent's set are different from the Finger of God pink sheet in petitioners' set.

In the circumstances, it is respectfully submitted that the fact that 2<sup>nd</sup> respondent ordered the printing of two sets of 27,000 booklets of identical pink sheets and, in fact, used both sets in the conduct of the 2012 presidential election, constitutes a grave malpractice which provided the platform for most of the other constitutional and statutory violations,

malpractices and irregularities. This malpractice, grave enough as it was, was further compounded by evidence establishing the existence of pink sheets with triplicate and quadruplicate serial numbers that were used for the December 2012 presidential election. Accordingly, the Court is respectfully urged to find that, in addition to the duplicate serial numbers, 2<sup>nd</sup> respondent used pink sheets with triplicate and quadruplicate serial numbers for the conduct of the December 2012 presidential election. When account is taken of the fact that the great majority of the infractions that ground this Petition can be found on pink sheets bearing duplicate serial numbers, there can be no doubt that the use of such pink sheets severely compromised the integrity of the 2012 presidential election and subverted the realisation of the democratic will of the people of Ghana. **According to the evidence, the number of polling stations where this malpractice occurred on its own is 5,591.** When account is taken of the polling stations that registered other infractions together with use of duplicate serial numbers, the total number of polling stations affected by this malpractice is **8,987**. The total number of votes affected by the malpractice is **3, 508, 491**.

#### **(ix) Unknown polling stations**

The evidence led by the petitioners established clearly that there were 22 locations where voting took place in the December 2012 election which were not in the official list of 26,002 polling stations established by the 2<sup>nd</sup> respondent, in accordance with **Regulation 16** of C.I. 75. The respondents alleged in the course of the trial that the petitioners' party appointed polling agents to polling stations which are described in the Petition as "unknown polling stations". True to form, the 2<sup>nd</sup> respondent alleged bad faith. It was towards this end that counsel for the 2<sup>nd</sup> respondent tendered through the 2<sup>nd</sup> petitioner a letter purportedly signed by the 1<sup>st</sup> petitioner, **Exhibit "EC3"**. The letter purportedly appointed a polling agent to one of the impugned polling stations.

When counsel for the 3<sup>rd</sup> respondent took his turn to cross-examine the 2<sup>nd</sup> petitioner, he turned to the letter marked as **Exhibit "EC3"** and suggested to the 2<sup>nd</sup> petitioner that the contents of the letter was evidence of bad faith on the part of the petitioners. As ever the 2<sup>nd</sup> petitioner who gave evidence on behalf of the petitioners had a useful and honest answer: he pointed out that the **Exhibit "EC3"** indicated receipt at the EC office on 3<sup>rd</sup> December 2012, and yet same was purportedly written on 7<sup>th</sup> December 2012.

Even on the face of **Exhibit "EC3"**, the 2<sup>nd</sup> respondent begs the question of the unknown polling stations. The name of the polling station on the said **exhibit "EC3"**, "T/B Near

Mohilanyili's House", is part of the 26,002 official polling stations created by the 2nd respondent. It is significant to note that on the official list, the said polling station can be identified by name ("T/B Near Mohilanyili's House") and code (H192604). However, **exhibit "EC3"** does not indicate the polling station code for this polling station. The polling station code on the pink sheet the petitioners have presented is H192664, which differs markedly from that on the official list. A complete list of all 22 unknown polling stations is to be found in **Table 15, Volume 2B** of this address.

The glaring disparities between the official polling station codes and those contained in the impugned pink sheets reinforce the petitioners' contention that the 22 polling stations are not part of the 2<sup>nd</sup> respondent's official list of 26,002 polling stations established and published for the 2012 presidential election.

The 1<sup>st</sup> and 3<sup>rd</sup> respondents unsuccessfully sought to offer various explanations to debunk the petitioners' claim that 22 locations were unknown. The following examples are illustrative of that effort and the futility of its outcome:

1. In attempted rebuttal, the 1<sup>st</sup> and 3<sup>rd</sup> respondent provided information in the form of **Exhibit JAN 5** (attached to the affidavit of Aseidu Nketiah filed on 16<sup>th</sup> April, 2013) purporting to demonstrate that all the 22 locations which petitioners claim to be unknown, and were in fact part of the 26,002 polling stations. A careful scrutiny of Exhibit "JAN 5" disclosed that the polling stations stated therein by their names and codes, did not match the 22 locations referred to by the petitioners in their further and better particulars and their affidavit evidence. None of the polling station codes in Exhibit JAN 5 corresponded with the codes of the 22 locations disclosed by petitioners in the further and better particulars. For example, the petitioners contend that **Exhibit MB-AB-5**, i.e. TB Alhajipe polling station, with Code Number **H050225**, fell outside the official list of 26,002 polling stations and was, therefore, unknown. The 1<sup>st</sup> and 3<sup>rd</sup> respondents' witness, ASIEDU NKETIAH told this Honourable Court that the said polling station is identifiable as TB Binyalipe polling station with code number **H050203** and is, therefore, known. This contention of the 3<sup>rd</sup> respondent is patently untrue because TB Binyalipe polling station was in fact, already in evidence as **Exhibit MB-M-000622** and can, therefore, not be the same as TB Alhajipe polling station. The respondents therefore failed to explain the existence of **Exhibit MB-AB-5**, TB Alhajipe.

2. The petitioners further contend that **SDA Primary B** polling station, with code **B10601** found in **Exhibit MB-AB 0000018**, is unknown. This contention is grounded in the fact that the said polling station, as described, is not included in the official list of 26,002 polling stations created for the December 2012 presidential election, and furnished to the NPP by the 2<sup>nd</sup> respondent. The 1<sup>st</sup> and 3<sup>rd</sup> respondents allege that the said polling station can, in fact, be identified by the name "SDA Primary School Okwabina" and polling station code B101904. However, SDA Primary School Okwabina with code B101904 was already in evidence as Exhibit MB-P-1586. Evidently, both the polling station name and code are remarkably different from those contained in **Exhibit MB-AB 0000018**.

We respectfully invite the Court to consider the evidence of ASIEDU NKETIAH under cross-examination by counsel for petitioners **on 29<sup>th</sup> May, 2013** (pages 23–39 of the record of proceedings).

Answers given by Asiedu Nketiah at pages 29–30 are particularly relevant.

Q. Exhibit MBAB7 the name of the polling station is Emile Pazzir and the polling station code is D171704. The name given by you is Emile Baza and the same polling station code is given as D171704 and it is listed as a special voting at Afajato. First of all the names provided by you is not what is stated on the pink sheet?

A. Yes my lord but the physical location is not in doubt and elections took place, the supervised and results declared and properly certified.

Q. The name and code provided by you is not on the list of the polling stations provided by the 2<sup>nd</sup> respondent?

A. My lord I cannot confirm that

Q. It is also not on the list of centers for special voting?

A

I cannot confirm that my lord.

In consequence of all of the above, petitioners' evidence on this matter stands uncontradicted, and therefore elections were unlawfully conducted in these 22 locations.

**(x) Allegation of bad faith by 1<sup>st</sup> and 3<sup>rd</sup> respondents**

In their answer and joint affidavit, the 1<sup>st</sup> and 3<sup>rd</sup> respondents raised an allegation of bad faith against the petitioners. However, significantly, they gave no particulars of it, as required by the Rules of Civil Procedure. Nevertheless, in their cross-examination of the 2<sup>nd</sup> petitioner, they alleged two acts of bad faith.

Firstly, they alleged that petitioners had, in their petition, departed from the complaints that they raised before the 2<sup>nd</sup> respondent on 9<sup>th</sup> December, 2012. Secondly, they alleged that the petitioners had deliberately selected polling stations in the strongholds of the 1<sup>st</sup> respondent to ground their petition. As far as the first allegation is concerned, it would have been virtually impossible to expect the petitioners to have all the details of the infractions, the subject matter of the petition, within a few hours of the close of the 2012 presidential election. Indeed, only a few details were immediately available when the 3<sup>rd</sup> petitioner met the 2<sup>nd</sup> respondent, as the Chairman of the 2<sup>nd</sup> respondent himself acknowledged. The petition, however, is the result of nearly three weeks of painstaking investigations after the close of the polls. A comprehensive petition, resulting from those investigations cannot be evidence of bad faith.

In respect of the charge of selectivity, the evidence before this Honourable Court shows that there were over 1,000 pink sheets, where the 1<sup>st</sup> petitioner was the declared winner, and these form part of the Petition which the petitioners also seek to have annulled, thereby demonstrating their good faith. There is evidence before this Honourable Court that the petitioners did not receive pink sheets from the full complement of 26,002 polling stations. In the light of the above, the charge of bad faith is baseless and misconceived and ought to be ignored by this Honourable Court, especially, giving the widespread nature of the infractions that have been revealed by the evidence in the course of this trial.

**(xi) Credibility of Chairman of 2<sup>nd</sup> Respondent**

At the heart of the December 2012 presidential election is Dr. Afari-Gyan, who was both the Chairman of the 2<sup>nd</sup> respondent and the Returning Officer for the Presidential election. Even though a central figure in the December 2012 election and the person who eventually made



the declaration, making the 1<sup>st</sup> respondent the duly elected president, his attitude towards the petition has been one of nonchalance.

Initially, he failed to attend court until adverse comments were made by the Court about his absence from Court. Even after he started attending Court and it became obvious that he would need to testify for the 2<sup>nd</sup> respondent, he failed to swear to any affidavit.

When he eventually mounted the witness box, he proved to be a person who lacked credibility and was determined to whitewash his and 2<sup>nd</sup> respondent's dismal performance in the 2012 December election. He was clearly not prepared to assist the court and at every opportunity sought to mislead the court. His testimony in court is replete with so many bare-faced lies and half-truths. A few examples will suffice:

- a. In a bid to discredit the petitioners' evidence on the figures entered in C3 on the pink sheets, Dr. Afari-Gyan testified that the number of FOs in the voters register was over 70,000. This is far in excess of the figure of 3,196 given by 2<sup>nd</sup> petitioner. It turns out that the figure given by Dr. Afari-Gyan included recent registrations as well as the addition of voters from Nankana Kassena East District. As it turned out, this inflated figure was unnecessary as "FOs" also underwent biometric verification and therefore could not be used to explain the entries in C3.
- b. He gave a spurious explanation for the existence of C3 in the pink sheet. His explanation that election officials forgot to bring Form 1C to the polling station and therefore could not capture the class of voters intended to be entered in question C3 was palpably false. In 2<sup>nd</sup> respondent's own training manual, tendered and marked "**Exhibit EC 2**", the list of items required at the polling station did not include Form 1C so it had never been in the contemplation of 2<sup>nd</sup> respondent. A further excuse by Dr. Afari-Gyan that presiding officers were instructed to enter "Zero" in the C3 column also proved to be another white lie as the C3 column was filled throughout the country.
- c. Dr. Afari-Gyan feigned ignorance about several aspects of the printing of the pink sheets. First he said the shipment of the pink sheets was by sea, only to deny it a day later and to say that he did not know by what means the pink sheets came to the country. Furthermore and incredulously, he said he did not know who or where the pink sheets were printed.
- d. Dr. Afari-Gyan denied any knowledge of serial numbers on pink sheets when first confronted but after intensive cross-examination, eventually admitted that the serial

numbers were pre-embossed on the pink sheets at the instance of the 2<sup>nd</sup> respondent.

- e. He denied serial numbers on tamper-proof envelopes until promptings from the bench forced him to admit.
- f. When confronted with an extract from the voters register for Anglican primary school polling station in the Mampong constituency, he initially gave the impression that the extract was a forgery by the petitioners only for Baffoe-Bonnie JSC to expose him for misleading the court. It turned out that the voters register he was relying on to discredit that of the petitioners' was edited and printed during the pendency of the Petition. He even suggested that the register was not in colour only to admit moments later that indeed a soft copy capable of being printed in colour was given to the NPP.
- g. On 11<sup>th</sup> July, 2013, a list of pink sheets with serial numbers in triplicates and quadruplicates was tendered without objection through Dr. Afari-Gyan as exhibit "X". This list was provided to the 2<sup>nd</sup> respondent's lawyers on the 10<sup>th</sup> July, 2013 and, therefore, both Dr. Afari-Gyan and the 2<sup>nd</sup> respondent had ample time to cross check the list. However, on 16<sup>th</sup> July, 2013, Dr. Afari-Gyan sought to discredit the triplicates and quadruplicates by tendering other pink sheets alleged to be originals but having different serial numbers. These pink sheets were exposed as having been recently fabricated to meet the challenge posed by the triplicate and quadruplicate serial numbers. In the process, the mischief of triplicates sought to be cured by these fabricated pink sheets rather ended up creating new sets of triplicate serial numbers
- h. Again, 8 pairs of pink sheets (making 16 polling stations) with the same polling station codes were tendered without objection through Dr. Afari-Gyan as exhibit "Y" on 11<sup>th</sup> July, 2013. Dr. Afari-Gyan's response to the occurrence of these duplicate serial numbers was that the second pink sheet in each of the pairs represented the results of special voting. Again he said he was seeing the pink sheet for the first time even though these pink sheets have been served on the 2<sup>nd</sup> respondent since April 2013. When on Monday 15<sup>th</sup> July, 2013, Dr. Afari-Gyan was confronted with the correct information of where special voting took place in each of the constituencies where duplicate polling station codes are located he denied having said that one of the pink sheets was for special voting.

The above are just a few of the instances where Dr. Afari-Gyan peddled untruths and when confronted with the truth, he was compelled to admit the truth. It is the respectful contention

of the petitioners that the testimony of Dr. Afari-Gyan was largely unreliable and his aversion for the truth was put in proper perspective by his refusal to avoid the petitioners the results collation forms and the strenuous efforts made to frustrate the petitioners from unravelling the disputed results of 13 named constituencies. His double stand was without doubt when the report he and others made to the Nigerian government on election 2011, made recommendations intended to enhance transparency, fairness and integrity in the Nigerian polls but balked at the very idea of making similar recommendations in Ghana.

It would appear that Dr. Afari-Gyan could not maintain the impartiality expected of him and became the alter ego of the 1<sup>st</sup> and 3<sup>rd</sup> respondents, which was very unfortunate.

## **M. STATISTICAL ANALYSIS OF THE IMPACT OF CONSTITUTIONAL AND STATUTORY VIOLATIONS, MALPRACTICES AND IRREGULARITIES**

The petitioners have identified six key constitutional and statutory violations and irregularities evident on the face of the pink sheets underpinning the declaration of the presidential results by the 2<sup>nd</sup> respondent. These are:

- I. over-voting
- II. voting without biometric verification
- III. absence of the signature of a presiding officer
- IV. duplicate serial numbers i.e. occurrence of the same serial number on pink sheets for two different polling stations
- V. duplicate polling station codes, i.e. occurrence of different results/pink sheets for polling stations with the same polling station codes
- VI. unknown polling stations i.e. results recorded for polling stations which are not part of the list of 26,002 polling stations provided by the 2<sup>nd</sup> respondent for the election.

While there were many polling stations where the only violation or irregularity was one of the six listed above, in most cases more than one irregularity occurred at a polling station. For example, in a large number of polling stations, the record shows that over-voting occurred along with voting without biometric verification. There are also many instances of various combinations of over-voting, voting without biometric verification, absence of the presiding officer's signature, same serial numbers for different polling stations, and same polling station codes for different polling stations.

In fact, as the evidence at the trial showed, the 2012 presidential election was characterized by a multiplicity of constitutional and statutory violations. The following statistics present a clear picture of the inter-related nature of the violations and irregularities that took place during the election:

- while over voting occurred in **1,722** polling stations (out of the **10,119** the petitioners are relying on), in 85% of these polling stations, over-voting took place along with no biometric verification, no signature of presiding officer, duplicate serial numbers, and

duplicate polling station codes. It is only in **264** polling stations where the only irregularity was over-voting.

- while voting without biometric verification occurred in **2,020** polling stations, in 70% of these polling stations, voting without biometric verification took place along with over-voting, no signature of presiding officer, duplicate serial numbers, and duplicate polling station codes. It is only in **345** polling stations where the only irregularity was voting without biometric verification.
- while there was no signature of a presiding officer in **1,638** polling stations, in 82% of these polling stations, this occurred together with over-voting, voting without biometric verification, duplicate serial numbers, and duplicate polling station codes. It is only in **293** polling stations where the only irregularity was no signature of the presiding officer.
- while duplicate polling station codes were found in **17** polling stations, in 88% of these polling stations this occurred together with over-voting, no biometric verification, no signature of presiding officer, and duplicate serial numbers. It is only in **2** polling stations where the only irregularity was the use of duplicate polling station codes.
- duplicate serial numbers were used in **8,987** out of **10,119** polling stations the petitioners are relying on (i.e. **88%** of the polling stations in contention). Over **75%** of all cases of over-voting, voting without biometric verification and the absence of signature of presiding officer occurred with the use of duplicate serial numbers.

The use of duplicate, triplicate and quadruplicate serial numbers for pink sheets in the 2012 presidential election became the primary vehicle for the multiple violations and irregularities that occurred during the election.

It follows from the foregoing that in assessing whether the violations and irregularities had a material impact on the election outcome, they ought to be evaluated together as a whole or in combinations rather than individually.

In calculating the votes affected by these multiple violations and irregularities, care was taken to avoid double counting. We achieved this by making sure the various combinations

of violations and irregularities are placed in categories that are clearly separated so that **no polling station where a violation or irregularity occurred can belong to more than one category in the analysis of the aggregate impact of these violations on the declared results of the election.** For this purpose, twenty four separate categories of violations and irregularities were identified and presented in the affidavit of the 2<sup>nd</sup> petitioner and set out in **Figure 1** below:

**Figure1: CATEGORISATION OF VIOLATIONS AND IRREGULARITIES**

VIOLATION/IRREGULARITY	EXHIBIT CATEGORY	NO OF POLLING STATIONS
Over-voting only	MB-C	264
Over-voting , Voting without Biometric Verification	MB-D	78
Over-voting, Voting without Biometric Verification, Duplicate Serial Number	MB-E	327
Over-voting, Voting without Biometric Verification, Duplicate Serial Number, Duplicate Polling Station Code	MB-U	2
Over-voting, Voting without Biometric Verification, Duplicate Serial Number, Absence of the Signature of Presiding officer	MB-F	60
Over-voting, Voting without Biometric Verification, Absence of the Signature of Presiding officer	MB-G	15
Over-voting , Duplicate Serial Number	MB-H	754
Over-voting , Duplicate Serial Number, Duplicate Polling Station Code	MB-X	6
Over-voting, Duplicate Serial Number, Absence of the Signature of Presiding officer	MB-J	161
Over-voting, Duplicate Serial Number, Absence of the Signature of Presiding officer, Duplicate Polling Station Code	MB-AA	2
Over-voting, Absence of the Signature of Presiding officer	MB-K	53
Voting without Biometric Verification only	MB-L	345
Voting without Biometric Verification, Duplicate Serial Number	MB-M	1071
Voting without Biometric Verification, Duplicate Serial Number, Absence of the Signature of Presiding officer	MB-N	172

VIOLATION/IRREGULARITY	EXHIBIT CATEGORY	NO OF POLLING STATIONS
Voting without Biometric Verification, Duplicate Serial Number, Absence of the Signature of Presiding officer, Duplicate Polling Station Code	MB-Z	2
Voting without Biometric Verification, Absence of the Signature of Presiding officer	MB-O	57
Voting without Biometric Verification, Absence of the Signature of Presiding officer, Duplicate Polling Station Code	MB-Y	2
Absence of the Signature of Presiding officer	MB-S	293
Duplicate Serial Number only	MB-P	5591
Duplicate Serial Number, Absence of the Signature of Presiding officer	MB-Q	821
Duplicate Serial Number, Duplicate Polling Station Code	MB-V	16
Duplicate Serial Number, Absence of the Signature of Presiding officer, Duplicate Polling Station Code	MB-W	2
Duplicate Polling Station Code only	MB-T	3
Unknown Polling Station	MB-AB	22
Total		10,119

In the process of filing, there were duplications or multiplications of some exhibits, but as far as the analysis of the impact of these exhibits on the aggregate votes affected is concerned, **each exhibit is counted only once, no matter the duplications or multiplications**, a fact that remains unchanged, notwithstanding the prolonged and persistent cross-examination of 2<sup>nd</sup> petitioner by counsel for the respondents on these issues.

The criteria for determining the total number of polling stations petitioners are relying on for purposes of this submission are that, they must:

- I. be captured in the further and better particulars
- II. be supported by the affidavit of the 2<sup>nd</sup> petitioner or appropriately re-categorised with leave of the Court

- III. have unique polling station codes (**except for the duplicate polling station code category where separate results are recorded on two or three different pink sheets with the same polling station code**)
- IV. be captured in the KPMG Report or used by the respondents in their cross-examination of the 2<sup>nd</sup> petitioner.
- V. not be part of the 704 polling stations the petitioners deleted with leave of the Court.

Using these criteria, we would be relying on **10,119** polling stations set out in **Table 1 of Volume 2A**. These are made up of the following unique counts:

• Registrar's set (KPMG report)	<b>7999</b>
• Registrar's remarks (KPMG report)	<b>690</b>
• President's set (KPMG report)	<b>804</b>
• President's remarks (KPMG report)	<b>60</b>
• Respondents cross-examination exhibits	<b>566</b>

### **“Respondents’ Preferred Data Set” Argument**

The respondents have argued, however, that polling stations/pink sheets should only be counted if:

- I. they fall within the original categorization of the affidavit of the petitioners (i.e. all re-categorisation should be ignored even if the names, codes and number of polling stations specified in the further and better particulars remain the same)
- II. they fall within the original range or original labelling for each category in the affidavit of the petitioners (i.e. all mislabelled pink sheets should be ignored even if the names, codes and number of polling stations specified in the further and better particulars remain the same).
- III. the exhibit numbers are unique (i.e. pink sheets with duplicate exhibit numbers should be excluded)



Recategorisation involves moving a polling station from one category of violation or irregularity to another. For example, a polling station may have initially been placed in the over-voting only category (MB-C) but after further scrutiny may be moved to the category of over-voting and no signature of a presiding officer (MB-K). Recategorisation changes the category of violation from what was indicated in the affidavit of the 2<sup>nd</sup> Petitioner or the further and better particulars. **Table 2 of Volume 2A** contains a list of 150 polling stations/pink sheets that have been recategorised. The total number of votes involved for the polling stations that have been recategorised is **60,215**. **Figure 1A** below, provides a summary of the number of polling stations affected by the re-categorisation. It should be noted that Exhibits MB-Y and MB-Y-1, were initially categorized as having the infractions of voting without biometric verification, absence of the signature of presiding officer and duplicate polling station code. They are however, characterised by voting without biometric verification and duplicate polling station code. Since these are the only two exhibits with these combined infractions, the petitioners have maintained them in the MB-Y category.

**FIGURE 1A: NUMBER OF POLLING STATIONS AFFECTED BY RE-CATEGORISATION**

VIOLATION/IRREGULARITY	NO OF POLLING STATIONS	CATEGORIES	
		OLD	NEW
Over-voting , Voting without Biometric Verification	3	MB-D	MB-L(2) MB-M(1)
Over-voting , Voting without Biometric Verification, Duplicate Serial Number	28	MB-E	MB-D(1) MB-M(27)
Over-voting , Voting without Biometric Verification, Duplicate Serial Number, Absence of the Signature of Presiding officer	1	MB-F	MB-N(1)
Over-voting , Voting without Biometric Verification, Absence of the Signature of Presiding officer	1	MB-G	MB-D
Over-voting , Duplicate Serial Number	77	MB-H	MB-C(2) MB-P(75)

VIOLATION/IRREGULARITY	NO OF POLLING STATIONS	CATEGORIES	
		OLD	NEW
Over-voting , Duplicate Serial Number, Absence of the Signature of Presiding officer	12	MB-J	MB-H(2) MB-P(2) MB-Q(8)
Over-voting , Duplicate Serial Number, Absence of the Signature of Presiding officer, Duplicate Polling Station Code	2	MB-AA	MB-X(2)
Over-voting , Absence of the Signature of Presiding officer	1	MB-K	MB-C(1)
Voting without Biometric Verification, Duplicate Serial Number	11	MB-M	MB-P(9) MB-Q(2)
Voting without Biometric Verification, Duplicate Serial Number, Absence of the Signature of Presiding officer	2	MB-N	MB-M(1) MB-Q(1)
Voting without Biometric Verification, Absence of the Signature of Presiding officer	1	MB-O	MB-C(1)
Voting without Biometric Verification, Absence of the Signature of Presiding officer, Duplicate Polling Station Code	2	MB-Y	MB-Y(2)
Duplicate Serial Number, Absence of the Signature of Presiding officer	6	MB-Q	MB-P(6)
Duplicate Serial Number, Duplicate Polling Station Code	1	MB-V	MB-T(1)
Duplicate Serial Number, Absence of the Signature of Presiding officer, Duplicate Polling Station Code	2	MB-W	MB-V(2)
Total	150		

On the issue of mislabelling, **Table 3 of Volume 2A** shows a list of **587** pink sheets that have been inadvertently mislabelled. This includes **264 pink sheets not labelled within the original range specified in the affidavit of the 2<sup>nd</sup> petitioner**. It also includes pink

sheets from **90 polling stations** which are part of the **905** pink sheets which the 2<sup>nd</sup> respondent conceded as per **Exhibit P** as having no signatures. Notwithstanding the mislabelling, the violation or irregularity remains as indicated in the 2<sup>nd</sup> petitioner's affidavit as well as provided in the further and better particulars. **Table 4 of Volume 2A** indicates the list of **287** pink sheets that have duplicate exhibit numbers.

The argument by the respondents to exclude evidence on the basis of mislabelling, duplicate exhibit numbers and re-categorisation is bizarre. To do so would essentially amount to an exclusion of evidence and militate against the interest of doing substantial justice. Nonetheless, we have proceeded to do an impact analysis of the data using the respondents' argument. Following the argument of the respondents, the polling stations in **Tables 2, 3, and 4 of Volume 2A (a total of 1024 polling stations)** would be excluded and therefore the dataset for analysis would be restricted to the **9,095** polling stations (referred to here as "**Respondents' Preferred Data Set**" listed in **Table 1A of Volume 2A**) out of the **10,119** polling stations listed in **Table 1 of Volume 2A**.

## **N. RESULTS OF THE STATISTICAL ANALYSIS**

Should the Court decide to annul votes resulting from two or more violations, malpractices and irregularities, the sum of total votes obtained by each candidate for the affected polling stations would have to be deducted from each candidate's overall total, while making sure each polling station is counted only once. Various combinations of violations and irregularities occurred in the 2012 presidential election and we will proceed to show the impact of the key infractions.

### **1. Combination of all the Categories of Violations, Malpractices and Irregularities**

The combined violations of over-voting, voting without biometric verification, absence of signature of presiding officers, duplicate serial numbers, duplicate polling station codes, and unknown polling stations occurred in **10,119** polling stations (listed in **Table 1 of Volume 2A, with each polling station appearing only once, i.e. no double counting, except for the 17 polling stations falling within the duplicate polling station code category**).

The combined impact of all these violations, malpractices and irregularities on the results declared by the 2<sup>nd</sup> respondent is presented in **Figure 2** below which shows that the aggregate of votes in polling stations affected by all the violations and irregularities is

**3,931,339**. Where the results from these polling stations are annulled, John Dramani Mahama, the 1<sup>st</sup> respondent, would not secure the required 50% plus of valid votes cast. In that event, John Dramani Mahama's total votes would be reduced by **2,622,551**, resulting in him securing **41.79%** of valid votes cast. Nana Akufo-Addo's total votes, on the other hand, would be reduced by **1,233,186**, resulting in him securing **56.85%** of valid votes cast. All these constitutional and statutory violations, malpractices and irregularities in combination, therefore, had a material effect on the election results declared by the 2nd respondent. Nana Akufo-Addo, 1<sup>st</sup> petitioner, ought, in that circumstance, to be declared validly elected as President.

**Figure 2: IMPACT OF ANNULMENT DUE TO ALL VIOLATIONS AND IRREGULARITIES**

CANDIDATE	EC RESULTS	ALL IRREGULARITIES	VALID VOTES	% OF VALID VOTES
<b>John Mahama</b>	5,574,761	2,622,551	2,952,210	41.79%
<b>Henry Lartey</b>	38,223	16,534	21,689	0.31%
<b>Nana Akufo-Addo</b>	5,248,898	1,233,186	4,015,712	56.85%
<b>Paa Kwesi Nduom</b>	64,362	27,500	36,862	0.52%
<b>Akwasi Addai Odi</b>	8,877	3,825	5,052	0.07%
<b>Hassan Ayariga</b>	24,617	11,110	13,507	0.19%
<b>Abu Sakara</b>	20,323	9,028	11,295	0.16%
<b>Jacob Osei Yeboah</b>	15,201	7,605	7,596	0.11%
<b>TOTAL</b>	10,995,262	3,931,339	7,063,923	100.00%

Should the results from the **9,095** polling stations (**Table 1A of Volume 2A**) affected by all the categories of violations, malpractices and irregularities using the “**Respondents’ Preferred Data Set**” be annulled, John Dramani Mahama, the 1<sup>st</sup> respondent, would not secure the required 50% plus of valid votes cast. **Figure 3** below shows that annulling the votes where all these constitutional and statutory violations, malpractices and irregularities occurred using the ““Respondents’ Preferred Data Set” ” would mean that John Dramani

Mahama's total votes would be reduced by **2,365,265**, resulting in him securing **43.14%** of valid votes cast. Nana Akufo-Addo's total votes, on the other hand, would be reduced by **1,123,025**, resulting in him securing **55.45%** of valid votes cast. All these constitutional and statutory violations, malpractices and irregularities in combination therefore, would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent, **even if one accepts the "Respondents' Preferred Data Set"**. In that situation, Nana Akufo-Addo, 1<sup>st</sup> petitioner, ought to be declared validly elected as President.

**Figure 3: IMPACT OF ANNULMENT OF VOTES DUE TO ALL IRREGULARITIES BASED ON RESPONDENTS' PREFERRED DATA SET**

CANDIDATE	EC RESULTS	ALL IRREGULARITIES	VALID VOTES	% OF VALID VOTES
John Mahama	5,574,761	2,365,265	3,209,496	43.14%
Henry Lartey	38,223	14,722	23,501	0.32%
Nana Akufo-Addo	5,248,898	1,123,025	4,125,873	55.45%
Paa Kwesi Nduom	64,362	25,033	39,329	0.53%
Akwasi Addai Odié	8,877	3,357	5,520	0.07%
Hassan Ayariga	24,617	9,484	15,133	0.20%
Abu Sakara	20,323	7,697	12,626	0.17%
Jacob Osei Yeboah	15,201	6,270	8,931	0.12%
TOTAL	10,995,262	3,554,853	7,440,409	100.00%

## **2. Over-voting, Voting without Biometric verification and Absence of the Signature of Presiding officer**

The combined violations of over-voting, voting without biometric verification and absence of the signature of the Presiding officer occurred in **4,487** polling stations (listed in **Table 5 of Volume 2A**, with each polling station appearing only once, i.e., no double counting).

The combined impact of over-voting, voting without biometric verification and absence of the signature of the presiding officer on the results declared by the second respondent is presented in **Figure 4** below. The Figure shows that the aggregate of votes in polling stations affected by over-voting, voting without biometric verification and absence of the signature of the presiding officer, as recorded on the pink sheets, is **1,802,221**. Furthermore, should the results from those polling stations be annulled, John Dramani Mahama, the 1<sup>st</sup> respondent, would not secure the required 50% plus of valid votes cast. In that situation, John Dramani Mahama's total votes would be reduced by **1,229,966**, resulting in him securing **47.26%** of valid votes cast. Nana Akufo-Addo's total votes, on the other hand, would be reduced by **534,999**, resulting in him securing **51.28%** of valid votes cast. The constitutional and statutory violations of over-voting, voting without biometric verification and absence of the signature of the presiding officer, therefore, would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent. Nana Akufo-Addo, 1<sup>st</sup> petitioner, therefore, ought in that event to be declared validly elected as President.

**Figure 4: IMPACT OF ANNULMENT OF VOTES DUE TO OVER-VOTING, VOTING WITHOUT BIOMETRIC VERIFICATION & ABSENCE OF PRESIDING OFFICERS' SIGNATURE**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY OVER-VOTING & VOTING WITHOUT BIOMETRIC VERIFICATION & ABSENCE OF PRESIDING OFFICERS' SIGNATURE	VALID VOTES	% OF VALID VOTES
<b>John Mahama</b>	5,574,761	1,229,966	4,344,795	47.26%
<b>Henry Lartey</b>	38,223	7,776	30,447	0.33%
<b>Nana Akufo-Addo</b>	5,248,898	534,999	4,713,899	51.28%
<b>Paa Kwesi Nduom</b>	64,362	11,870	52,492	0.57%
<b>Akwasi Addai Odike</b>	8,877	2,110	6,767	0.07%
<b>Hassan Ayariga</b>	24,617	7,118	17,499	0.19%
<b>Abu Sakara</b>	20,323	4,108	16,215	0.18%
<b>Jacob Osei Yeboah</b>	15,201	4,274	10,927	0.12%
<b>TOTAL</b>	10,995,262	1,802,221	9,193,041	100.00%

Should the results from the **4,079** polling stations (**Table 5A of Volume 2A**) affected by these three categories of violations using the “**Respondents’ Preferred Data Set**” be annulled, again, John Dramani Mahama, the 1<sup>st</sup> respondent, would not secure the required 50% plus of valid votes cast. **Figure 5** below shows that where those votes are annulled, John Dramani Mahama’s total votes would be reduced by **1,118,202**, resulting in him securing **64%** of valid votes cast. Nana Akufo-Addo’s total votes, on the other hand, would be reduced by **489,233**, resulting in him securing **50.88%** of valid votes cast. The constitutional and statutory violations of over-voting, voting without biometric verification and absence of the signature of the presiding officer therefore would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent, **even if one accepts the**

**“Respondents’ Preferred Data Set”** . On the basis of the above, 1<sup>st</sup> petitioner ought to be declared President.

**Figure 5: IMPACT OF ANNULMENT OF VOTES DUE TO OVER-VOTING, VOTING WITHOUT BIOMETRIC VERIFICATION & ABSENCE OF PRESIDING OFFICERS’ SIGNATURE USING RESPONDENTS’ PREFERRED DATASET**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY OVER-VOTING & VOTING WITHOUT BIOMETRIC VERIFICATION & ABSENCE OF PRESIDING OFFICERS’ SIGNATURE	VALID VOTES	% OF VALID VOTES
John Mahama	5,574,761	1,118,202	4,456,559	47.64%
Henry Lartey	38,223	6,985	31,238	0.33%
Nana Akufo-Addo	5,248,898	489,233	4,759,665	50.88%
Paa Kwesi Nduom	64,362	10,784	53,578	0.57%
Akwasi Addai Odike	8,877	1,881	6,996	0.07%
Hassan Ayariga	24,617	6,315	18,302	0.20%
Abu Sakara	20,323	3,707	16,616	0.18%
Jacob Osei Yeboah	15,201	3,682	11,519	0.12%
<b>TOTAL</b>	<b>10,995,262</b>	<b>1,640,789</b>	<b>9,354,473</b>	<b>100.00%</b>

### 3. Over-voting and voting without biometric verification

The combined violations of over-voting and voting without biometric verification occurred in 3,371 polling stations (listed in **Table 6 of Volume 2A** with each polling station appearing only once, i.e. no double counting).



The combined impact of over-voting and voting without biometric verification on the results declared by the 2<sup>nd</sup> respondent is presented in **Figure 6** below which shows that the aggregate of votes in those polling stations as recorded on the pink sheets is **1,365,723**. Should the results from these polling stations be annulled, John Dramani Mahama, the 1<sup>st</sup> respondent, would not secure the required 50% plus of valid votes cast. In that event, John Dramani Mahama's total votes would be reduced by **932,501**, resulting in him securing **48.21%** of valid votes cast. Nana Akufo-Addo's total votes, on the other hand, would be reduced by **404,531**, resulting in him securing **50.31%** of valid votes cast. The constitutional and statutory violations of over-voting and voting without biometric verification, therefore, would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent. In the result, Nana Akufo-Akufo, 1<sup>st</sup> petitioner, ought to be declared validly elected as President.

**Figure 6: IMPACT OF ANNULMENT OF VOTES DUE TO OVER-VOTING & VOTING WITHOUT VERIFICATION**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY OVER-VOTING & VOTING WITHOUT BIOMETRIC VERIFICATION	VALID VOTES	% OF VALID VOTES
<b>John Mahama</b>	5,574,761	932,501	4,642,260	48.21%
<b>Henry Lartey</b>	38,223	6,123	32,100	0.33%
<b>Nana Akufo-Addo</b>	5,248,898	404,531	4,844,367	50.31%
<b>Paa Kwesi Nduom</b>	64,362	8,515	55,847	0.58%
<b>Akwasi Addai Odike</b>	8,877	1,678	7,199	0.07%
<b>Hassan Ayariga</b>	24,617	5,812	18,805	0.20%
<b>Abu Sakara</b>	20,323	3,188	17,135	0.18%
<b>Jacob Osei Yeboah</b>	15,201	3,375	11,826	0.12%
<b>TOTAL</b>	10,995,262	1,365,723	9,629,539	100.00%

Should the results from **3,154** polling stations (**Table 6A of Volume 2A**) affected by these two categories of violations using the “**Respondents’ Preferred Data Set**” be annulled, John Dramani Mahama, the 1<sup>st</sup> respondent, would not secure the required 50% plus of valid votes cast. **Figure 7** below shows that annulling the votes in those polling stations would mean that John Dramani Mahama’s total votes would be reduced by **868,156** resulting in him securing **48.41%** of valid votes cast. Nana Akufo-Addo’s total votes, on the other hand, would be reduced by **378,179**, resulting in him securing **50.10%** of valid votes cast. The constitutional and statutory violations of over-voting and voting without biometric verification, therefore, would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent, **even if one accepts the “Respondents’ Preferred Data Set”** . In this situation also, Nana Akufo-Addo, 1<sup>st</sup> petitioner, ought to be declared validly elected as President.

**Figure 7: IMPACT OF ANNULMENT OF VOTES DUE TO OVER-VOTING & VOTING WITHOUT BIOMETRIC VERIFICATION USING RESPONDENTS' PREFERRED DATASET**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY OVER-VOTING & VOTING WITHOUT BIOMETRIC VERIFICATION	VALID VOTES	% OF VALID VOTES
<b>John Mahama</b>	5,574,761	868,156	4,706,605	48.41%
<b>Henry Lartey</b>	38,223	5,712	32,511	0.33%
<b>Nana Akufo-Addo</b>	5,248,898	378,179	4,870,719	50.10%
<b>Paa Kwesi Nduom</b>	64,362	7,872	56,490	0.58%
<b>Akwasi Addai Odike</b>	8,877	1,561	7,316	0.08%
<b>Hassan Ayariga</b>	24,617	5,529	19,088	0.20%
<b>Abu Sakara</b>	20,323	2,973	17,350	0.18%
<b>Jacob Osei Yeboah</b>	15,201	2,991	12,210	0.13%
<b>TOTAL</b>	10,995,262	1,272,973	9,722,289	100.00%

#### **4. Over-voting and absence of signature of presiding officer**

The combined violations of over-voting and absence of signature of the presiding officer occurred in **3,069** polling stations (listed in **Table 7 of Volume 2A, with each polling station appearing only once, i.e. no double counting**).

The combined impact of over-voting and absence of the signature of the presiding officer on the results declared by the 2<sup>nd</sup> respondent is presented in **Figure 8** below. The Figure shows that the aggregate of votes in polling stations affected by over-voting and absence of the signature of the presiding officer, as recorded on the pink sheets, is **1,270,682**. Should the results from these polling stations be annulled, John Dramani Mahama, the 1<sup>st</sup> respondent, would not secure the required 50% plus of valid votes cast. **Figure 8** below shows that, in that event, John Dramani Mahama's total votes would be reduced by **861,775**, resulting in him securing **48.46%** of valid votes cast. Nana Akufo-Addo's total votes, on the other hand, would be reduced by **382,472**, resulting in him securing **50.04%** of valid votes cast. The constitutional and statutory violations of over-voting and absence of the signature of the presiding officer, therefore, would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent. In that circumstance, Nana Akufo-Addo, 1<sup>st</sup> petitioner, ought to be declared validly elected as President.

**Figure 8: IMPACT OF ANNULMENT OF VOTES DUE TO OVER-VOTING & ABSENCE OF PRESIDING OFFICERS' SIGNATURES**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY OVER VOTES & ABSENCE OF PRESIDING OFFICERS' SIGNATURE	VALID VOTES	% OF VALID VOTES
<b>John Mahama</b>	5,574,761	861,775	4,712,986	48.46%
<b>Henry Lartey</b>	38,223	5,284	32,939	0.34%
<b>Nana Akufo-Addo</b>	5,248,898	382,472	4,866,426	50.04%
<b>Paa Kwesi Nduom</b>	64,362	8,652	55,710	0.57%
<b>Akwasi Addai Odi</b>	8,877	1,435	7,442	0.08%
<b>Hassan Ayariga</b>	24,617	5,249	19,368	0.20%
<b>Abu Sakara</b>	20,323	2,866	17,457	0.18%
<b>Jacob Osei Yeboah</b>	15,201	2,949	12,252	0.13%
<b>TOTAL</b>	10,995,262	1,270,682	9,724,580	100.00%

Should the results from the **2,723** polling stations (**Table 7A of Volume 2A**) affected by these two categories of violations using the **“Respondents’ Preferred Data Set”** be annulled, John Dramani Mahama, the 1<sup>st</sup> respondent, would not secure the required 50% plus of valid votes cast. **Figure 9** below shows that annulling the votes where over-voting and absence of the signature of the presiding officer occurred, using the “Respondents’ Preferred Data Set” , would mean that John Dramani Mahama’s total votes would be reduced by **766,256**, resulting in him securing **48.76%** of valid votes cast. Nana Akufo-Addo’s total votes, on the other hand, would be reduced by **343,444**, resulting in him securing **49.74%** of valid votes cast. The constitutional statutory violations of over-voting and absence of the signature of presiding officers, therefore, would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent, **even if one accepts the “Respondents’ Preferred Data Set”** . In that situation, there ought to be a second election between the two leading candidates.

**Figure 9: IMPACT OF ANNULMENT OF VOTES DUE TO OVER-VOTING & ABSENCE OF PRESIDING OFFICERS' SIGNATURES USING THE RESPONDENTS PREFERRED DATASET**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY OVER-VOTING & ABSENCE OF PRESIDING OFFICERS' SIGNATURE	VALID VOTES	% OF VALID VOTES
<b>John Mahama</b>	5,574,761	766,256	4,808,505	48.76%
<b>Henry Lartey</b>	38,223	4,613	33,610	0.34%
<b>Nana Akufo-Addo</b>	5,248,898	343,444	4,905,454	49.74%
<b>Paa Kwesi Nduom</b>	64,362	7,706	56,656	0.57%
<b>Akwasi Addai Odiaka</b>	8,877	1,232	7,645	0.08%
<b>Hassan Ayariga</b>	24,617	4,490	20,127	0.20%
<b>Abu Sakara</b>	20,323	2,523	17,800	0.18%
<b>Jacob Osei Yeboah</b>	15,201	2,420	12,781	0.13%
<b>TOTAL</b>	10,995,262	1,132,684	9,862,578	100.00%



## 5. Voting Without Biometric verification and Absence of Signature of presiding officer

The combined violations of voting without biometric verification and absence of the signature of the presiding officer occurred in **3,463** polling stations (listed in **Table 8 of Volume 2A**, with each polling station appearing only once, i.e. no double counting).

The combined impact of voting without biometric verification and absence of the signature of the presiding officer on the results declared by the second respondent is presented in **Figure 10** below. The Figure shows that the aggregate of votes in polling stations affected by voting without biometric verification and no signature of the presiding officer, as recorded on the pink sheets, is **1,349,851**. Should the results from these polling stations be annulled, John Dramani Mahama, the 1<sup>st</sup> respondent, would not secure the required 50% plus of valid votes cast. Where these votes are annulled, John Dramani Mahama's total votes would be reduced by **924,278**, resulting in him securing **48.21%** of valid votes cast. Nana Akufo-Addo's total votes, on the other hand, would be reduced by **396,635**, resulting in him securing **50.31%** of valid votes cast. The constitutional and statutory violations of voting without biometric verification and absence of the signature of the presiding officer, therefore, would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent. In that situation, Nana Akufo-Addo, 1<sup>st</sup> petitioner, ought to be declared validly elected as President.

**Figure 10: IMPACT OF ANNULMENT OF VOTES DUE TO VOTING WITHOUT BIOMETRIC VERIFICATION & ABSENCE OF PRESIDING OFFICERS' SIGNATURES**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY VOTING WITHOUT BIOMETRIC VERIFICATION & ABSENCE OF PRESIDING OFFICERS' SIGNATURE	VALID VOTES	% OF VALID VOTES
John Mahama	5,574,761	924,278	4,650,483	48.21%
Henry Lartey	38,223	6,025	32,198	0.33%
Nana Akufo-Addo	5,248,898	396,635	4,852,263	50.31%

<b>Paa Kwesi Nduom</b>	64,362	9,133	55,229	0.57%
<b>Akwasi Addai Odi</b>	8,877	1,682	7,195	0.07%
<b>Hassan Ayariga</b>	24,617	5,614	19,003	0.20%
<b>Abu Sakara</b>	20,323	3,029	17,294	0.18%
<b>Jacob Osei Yeboah</b>	15,201	3,455	11,746	0.12%
<b>TOTAL</b>	10,995,262	1,349,851	9,645,411	100.00%

Where the results from the **3,128** polling stations (**Table 8A of Volume 2A**) affected by these two categories of violations, using the “**Respondents’ Preferred Data Set**”, are annulled, John Dramani Mahama, the 1<sup>st</sup> respondent, would not secure the required 50% plus of valid votes cast to be elected President. **Figure 11** below shows that, where these votes are annulled on the basis of the Respondents Preferred Data Set, John Dramani Mahama’s total votes would be reduced by **836,658**, resulting in him securing **48.49%** of valid votes cast. Nana Akufo-Addo’s total votes, on the other hand, would be reduced by **361,018**, resulting in him securing **50.02%** of valid votes cast. The constitutional and statutory violations of voting without biometric verification and absence of the signature of the presiding officer, therefore, would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent, **even if one accepts the “Respondents’ Preferred Data Set”**. In the circumstance, the 1<sup>st</sup> petitioner ought to be declared validly elected President.

**Figure11: IMPACT OF ANNULMENT OF VOTES DUE TO VOTING WITHOUT BIOMETRIC VERIFICATION & ABSENCE OF PRESIDING OFFICERS' SIGNATURES USING RESPONDENTS' PREFERRED DATASET**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY VOTING WITHOUT BIOMETRIC VERIFICATION & ABSENCE OF PRESIDING OFFICERS' SIGNATURE	VALID VOTES	% OF VALID VOTES
<b>John Mahama</b>	5,574,761	836,658	4,738,103	48.49%
<b>Henry Lartey</b>	38,223	5,350	32,873	0.34%
<b>Nana Akufo-Addo</b>	5,248,898	361,018	4,887,880	50.02%
<b>Paa Kwesi Nduom</b>	64,362	8,302	56,060	0.57%
<b>Akwasi Addai Odiike</b>	8,877	1,494	7,383	0.08%
<b>Hassan Ayariga</b>	24,617	4,878	19,739	0.20%
<b>Abu Sakara</b>	20,323	2,709	17,614	0.18%
<b>Jacob Osei Yeboah</b>	15,201	2,906	12,295	0.13%
<b>TOTAL</b>	10,995,262	1,223,315	9,771,947	100.00%

## **6. Over-voting and Duplicate Serial Numbers**

The combined violations of over-voting and the use of duplicate serial numbers occurred in **9,397** polling stations (listed in **Table 9 of Volume 2B, with each polling station appearing only once in the analysis, i.e. no double counting**).

The combined impact of over-voting and the use of duplicate serial numbers on the results declared by the 2<sup>nd</sup> respondent is presented in **Figure 12** below. The Figure shows that the aggregate of votes in polling stations affected by over-voting and the use of duplicate serial numbers, as recorded on the pink sheets, is **3,675,411**. Should the results from these polling stations be annulled, John Dramani Mahama, the 1<sup>st</sup> respondent, would not secure the required 50% plus of valid votes cast. Where these votes are annulled, John Dramani Mahama's total votes would be reduced by **2,452, 270**, resulting in him securing **42.66%** of valid votes cast. Nana Akufo-Addo's total votes, on the other hand, would be reduced by **1,152,903**, resulting in him securing **55.96%** of valid votes cast. The violations, malpractices and irregularities of over-voting and the use of duplicate serial numbers, therefore, would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent. In that circumstance, Nana Akufo-Addo, 1<sup>st</sup> petitioner, ought to be declared validly elected President.

**Figure 12: IMPACT OF ANNULMENT OF VOTES DUE TO DUPLICATE SERIAL NUMBERS & OVER-VOTING**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY DUPLICATE SERIAL NUMBERS & OVER-VOTING	VALID VOTES	% OF VALID VOTES
<b>John Mahama</b>	5,574,761	2,452,270	3,122,491	42.66%
<b>Henry Lartey</b>	38,223	15,390	22,833	0.31%
<b>Nana Akufo-Addo</b>	5,248,898	1,152,903	4,095,995	55.96%
<b>Paa Kwesi Nduom</b>	64,362	25,902	38,460	0.53%
<b>Akwasi Addai Odike</b>	8,877	3,542	5,335	0.07%
<b>Hassan Ayariga</b>	24,617	10,130	14,487	0.20%
<b>Abu Sakara</b>	20,323	8,411	11,912	0.16%
<b>Jacob Osei Yeboah</b>	15,201	6,863	8,338	0.11%
<b>TOTAL</b>	10,995,262	3,675,411	7,319,851	100.00%

Where the results from the **8,383** polling stations (**Table 9A of Volume 2B**) affected by these two categories of violations and malpractices using the **“Respondents’ Preferred Data Set”** are annulled, again, John Dramani Mahama, the 1<sup>st</sup> respondent, would not secure the required 50% plus of valid votes cast to be elected. **Figure 13** below shows that annulling the results based on **“Respondents’ Preferred Data Set”** would mean that John Dramani Mahama’s total votes would be reduced by **2,197,161**, resulting in him securing **43.91%** of valid votes cast. Nana Akufo-Addo’s total votes, on the other hand, would be reduced by **1,044,014**, resulting in him securing **54.66%** of valid votes cast. The constitutional and statutory violations and malpractices of over-voting and the use of duplicate serial numbers, therefore, would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent, **even if one accepts the “Respondents’ Preferred Data Set”**. In this circumstance also, 1<sup>st</sup> petitioner ought to be declared validly elected President.

**Figure 13: IMPACT OF ANNULMENT OF VOTES DUE TO DUPLICATE SERIAL NUMBERS & OVER-VOTING USING THE “RESPONDENTS’ PREFERRED DATA SET”**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY DUPLICATE SERIAL NUMBERS & OVERVOTING	VALID VOTES	% OF VALID VOTES
<b>John Mahama</b>	5,574,761	2,197,161	3,377,600	43.91%
<b>Henry Lartey</b>	38,223	13,602	24,621	0.32%
<b>Nana Akufo-Addo</b>	5,248,898	1,044,014	4,204,884	54.66%
<b>Paa Kwesi Nduom</b>	64,362	23,448	40,914	0.53%
<b>Akwasi Addai Odi</b>	8,877	3,077	5,800	0.08%
<b>Hassan Ayariga</b>	24,617	8,514	16,103	0.21%
<b>Abu Sakara</b>	20,323	7,086	13,237	0.17%
<b>Jacob Osei Yeboah</b>	15,201	5,530	9,671	0.13%
<b>TOTAL</b>	10,995,262	3,302,432	7,692,830	100.00%

**Results of Impact of Each Violation, Malpractice or Irregularity on its Own (Stand Alone).**

To complete the statistical analysis, the petitioners also present the impact of the annulment of votes for each violation, malpractice or irregularity on its own.

## 7. Over-voting

Annuling votes based solely on over-voting will affect **1,722** polling stations in the following categories: MB-C, MB-D, MB-E, MB-U, MB-F, MB-G, MB-H, MB-X, MB-J, MB-AA, and MB-K (see **Table 10 of Volume 2B** for a list of polling stations where over-voting occurred along with votes affected).

The impact of over-voting on the results declared by the 2<sup>nd</sup> respondent is presented in **Figure 14** below, which shows that the aggregate number of votes in polling stations as affected by over-voting, as recorded on the pink sheets, is **745,569**.

Should the results from these polling stations where over-voting took place be annulled, neither 1<sup>st</sup> respondent nor 1<sup>st</sup> petitioner would secure the required 50% plus of valid votes cast. In the event, John Dramani Mahama's total votes would be reduced by **504,014**, resulting in him securing **49.47%** of valid votes cast. Nana Akufo-Addo's total votes, on the other hand, would be reduced by **226,198**, resulting in him securing **49.0%** of valid votes cast. The constitutional and statutory violation of over-voting, therefore, would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent. In that event, there ought to be a second election between the two leading candidates, in accordance with **article 63(4)** of the Constitution.

**Figure 14: IMPACT OF ANNULMENT DUE TO OVER-VOTING**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY OVER-VOTING	VALID VOTES	% OF VALID VOTES
<b>John Mahama</b>	5,574,761	504,014	5,070,747	49.47%
<b>Henry Lartey</b>	38,223	3,179	35,044	0.34%
<b>Nana Akufo-Addo</b>	5,248,898	226,198	5,022,700	49.00%
<b>Paa Kwesi Nduom</b>	64,362	4,623	59,739	0.58%
<b>Akwasi Addai</b>	8,877	866	8,011	0.08%

<b>Odike</b>				
<b>Hassan Ayariga</b>	24,617	3,109	21,508	0.21%
<b>Abu Sakara</b>	20,323	1,738	18,585	0.18%
<b>Jacob Osei Yeboah</b>	15,201	1,842	13,359	0.13%
<b>TOTAL</b>	10,995,262	745,569	10,249,693	100.00%

Should the results from **1,588** polling stations (**Table 10A of Volume 2B**) from the **“Respondents’ Preferred Data Set”** where over-voting occurred be annulled, again neither the 1<sup>st</sup> respondent nor 1<sup>st</sup> petitioner would secure the required 50% plus of valid votes cast. **Figure 15** below shows that annulling these votes means that John Dramani Mahama’s total votes would be reduced by **462,094**, resulting in him securing **49.59%** of valid votes cast. Nana Akufo-Addo’s total votes, on the other hand, would be reduced by **208,722**, resulting in him securing **48.88%** of valid votes cast. The constitutional and statutory violation of over-voting, therefore, would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent **even if one accepts the “Respondents’ Preferred Data Set”**. In that circumstance, there ought to be a second election between the two leading candidates, in accordance with **article 63(4)** of the Constitution.

**Figure 15: IMPACT OF ANNULMENT OF VOTES DUE TO OVERVOTING USING RESPONDENT’S PREFERRED DATASET**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY OVER-VOTING	VALID VOTES	% OF VALID VOTES
<b>John Mahama</b>	5,574,761	462,094	5,112,667	49.59%
<b>Henry Lartey</b>	38,223	2,949	35,274	0.34%
<b>Nana Akufo-Addo</b>	5,248,898	208,722	5,040,176	48.88%
<b>Paa Kwesi Nduom</b>	64,362	4,248	60,114	0.58%



<b>Akwasi Addai Odi</b>	8,877	797	8,080	0.08%
<b>Hassan Ayariga</b>	24,617	2,950	21,667	0.21%
<b>Abu Sakara</b>	20,323	1,621	18,702	0.18%
<b>Jacob Osei Yeboah</b>	15,201	1,551	13,650	0.13%
<b>TOTAL</b>	10,995,262	684,932	10,310,330	100.00%

The respondents have further argued that pink sheets for which the number of ballots papers issued to voters eligible to vote at the polling station (column C1 on the pink sheet) was left blank (or filled as zero) should be excluded, because ballot accounting is not possible. There are **223** such pink sheets in the “**Respondents’ Preferred Data Set**” (**Table 10B of Volume 2B**). If these pink sheets are excluded, as argued, the impact of the annulment of votes as a result of over-voting still leaves the 1<sup>st</sup> respondent short of 50% plus of valid votes cast required. **Figure 16** below shows that excluding the pink sheets for which C1 is zero or blank would mean that John Dramani Mahama’s total votes would be reduced by **399,518**, resulting in him securing **49.74%** of valid votes cast. Nana Akufo-Addo’s total votes, on the other hand, would be reduced by **179,917**, resulting in him securing **48.72%** of valid votes cast. The constitutional and statutory violation of over-voting, therefore, would have had a material effect on the election results declared by the 2<sup>nd</sup> Respondent. Again, in that circumstance, there ought to be a second election between the two leading candidates, in accordance with **article 63(4)** of the Constitution.

**Figure 16 : IMPACT OF ANNULMENT OF VOTES DUE TO OVER-VOTING WHERE C1 IS ZERO OR BLANK USING RESPONDENTS' PREFERRED DATA SET**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY OVER-VOTING	VALID VOTES	% OF VALID VOTES
<b>John Mahama</b>	5,574,761	399,518	5,175,243	49.74%
<b>Henry Lartey</b>	38,223	2,455	35,768	0.34%
<b>Nana Akufo-Addo</b>	5,248,898	179,917	5,068,981	48.72%
<b>Paa Kwesi Nduom</b>	64,362	3,815	60,547	0.58%
<b>Akwasi Addai Odiaka</b>	8,877	688	8,189	0.08%
<b>Hassan Ayariga</b>	24,617	2,637	21,980	0.21%
<b>Abu Sakara</b>	20,323	1,296	19,027	0.18%
<b>Jacob Osei Yeboah</b>	15,201	1,333	13,868	0.13%
<b>TOTAL</b>	10,995,262	591,659	10,403,603	100.00%

## **8. Voting without Biometric Verification**

Annuling votes based solely on the statutory violation of voting without biometric verification will affect **2,131** polling stations in the following categories: MB-D, MB-E, MB-U, MB-F, MB-

G, MB-L, MB-M, MB-N, MB-Z, MB-O and MB-Y (see **Table 11 of Volume 2B**, for a list of polling stations where voting without biometric verification occurred along with votes affected).

The impact of voting without biometric verification on the results declared by the 2<sup>nd</sup> respondent is presented in **Figure 17** below which shows that the aggregate of votes in polling stations affected by voting without biometric verification as recorded on the pink sheets is **813,866**. Should the results from these polling stations be annulled, neither the 1<sup>st</sup> respondent nor the 1<sup>st</sup> petitioner would secure the constitutionally required 50% plus of valid votes cast. Should these votes be annulled, John Dramani Mahama's total votes would be reduced by **560,399**, resulting in him securing **49.25%** of valid votes cast. Nana Akufo-Addo's total votes, on the other hand, would be reduced by **234,970**, resulting in him securing **49.25%** of valid votes cast. The statutory violation of voting without biometric verification, therefore, would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent. In that event, there ought to be a second election between the two leading candidates.

**Figure 17: IMPACT OF ANNULMENT OF VOTES DUE TO VOTING WITHOUT BIOMETRIC VERIFICATION**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY VOTING WITHOUT BIOMETRIC VERIFICATION	VALID VOTES	% OF VALID VOTES
John Mahama	5,574,761	560,399	5,014,362	49.25%
Henry Lartey	38,223	3,959	34,264	0.34%
Nana Akufo-Addo	5,248,898	234,970	5,013,928	49.25%
Paa Kwesi Nduom	64,362	5,222	59,140	0.58%
Akwasi Addai Odiwe	8,877	1,145	7,732	0.08%
Hassan Ayariga	24,617	3,908	20,709	0.20%
Abu Sakara	20,323	1,946	18,377	0.18%
Jacob Osei Yeboah	15,201	2,317	12,884	0.13%
<b>TOTAL</b>	<b>10,995,262</b>	<b>813,866</b>	<b>10,181,396</b>	<b>100.00%</b>

Again, were the results from **2,009** polling stations (**Table 11A of Volume 2B**) from the “**Respondents’ Preferred Data Set**” be annulled, neither the 1<sup>st</sup> respondent nor the 1<sup>st</sup> petitioner would secure the required 50% plus of valid votes cast. **Figure 18** below shows in such a situation, John Dramani Mahama’s total votes would be reduced by **526,416**, resulting in him securing **49.35%** of valid votes cast. Nana Akufo-Addo’s total votes, on the other, hand would be reduced by **221,678**, resulting in him securing **49.14%** of valid votes cast. The statutory violation of voting without biometric verification would therefore have had a material effect on the election results declared by the 2<sup>nd</sup> respondent, **even if one accepts the “Respondents’ Preferred Data Set”**. In that circumstance, there ought to be a second election between the two leading candidates.

**Figure 18: IMPACT OF ANNULMENT OF VOTES DUE TO VOTING WITHOUT BIOMETRIC VERIFICATION USING RESPONDENTS' PREFERRED DATASET**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY VOTING WITHOUT BIOMETRIC VERIFICATION	VALID VOTES	% OF VALID VOTES
<b>John Mahama</b>	5,574,761	526,416	5,048,345	49.35%
<b>Henry Lartey</b>	38,223	3,702	34,521	0.34%
<b>Nana Akufo-Addo</b>	5,248,898	221,678	5,027,220	49.14%
<b>Paa Kwesi Nduom</b>	64,362	4,884	59,478	0.58%
<b>Akwasi Addai Odiaka</b>	8,877	1,077	7,800	0.08%
<b>Hassan Ayariga</b>	24,617	3,735	20,882	0.20%
<b>Abu Sakara</b>	20,323	1,827	18,496	0.18%
<b>Jacob Osei Yeboah</b>	15,201	1,988	13,213	0.13%
<b>TOTAL</b>	10,995,262	765,307	10,229,955	100.00%

## 9. Absence of the Signature of Presiding officer

Annuling votes based solely on the constitutional and statutory violation of absence of the signature of a presiding officer will affect **1,638** of polling stations in the following categories: MB-F, MB-G, MB-J, MB-AA, MB-K, MB-N, MB-Z, MB-O, MB-Y, MB-S, MB-Q and MB-W (see Table 12 in Volume 2B, for a list of polling stations where there was the absence of the signature of a presiding officer along with votes affected).

The impact of the absence of the signature of a presiding officer on the results declared by the 2<sup>nd</sup> respondent is presented in **Figure 19** below, which shows that the aggregate of votes in polling stations affected is **659,814**. Where the results from the affected polling stations are annulled, neither the 1<sup>st</sup> respondent nor the 1<sup>st</sup> petitioner would secure the required 50% plus of valid votes cast. In such a situation, John Dramani Mahama's total votes would be reduced by **448,153**, resulting in him securing **49.60%** of valid votes cast. Nana Akufo-Addo's total votes, on the other hand, would be reduced by **197,890**, resulting in him securing **48.87%** of valid votes cast. The constitutional and statutory violation of the absence of presiding officers' signatures, therefore, would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent. In that event, there ought to be a second election between the two leading candidates.

**Figure 19: IMPACT OF ANNULMENT OF VOTES DUE TO THE ABSENCE OF PRESIDING OFFICERS' SIGNATURES**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY ABSENCE OF PRESIDING OFFICERS' SIGNATURE	VALID VOTES	% OF VALID VOTES
<b>John Mahama</b>	5,574,761	448,153	5,126,608	49.60%
<b>Henry Lartey</b>	38,223	2,660	35,563	0.34%
<b>Nana Akufo-Addo</b>	5,248,898	197,890	5,051,008	48.87%
<b>Paa Kwesi Nduom</b>	64,362	4,754	59,608	0.58%
<b>Akwasi Addai Odi</b>	8,877	735	8,142	0.08%
<b>Hassan Ayariga</b>	24,617	2,773	21,844	0.21%
<b>Abu Sakara</b>	20,323	1,385	18,938	0.18%
<b>Jacob Osei Yeboah</b>	15,201	1,464	13,737	0.13%
<b>TOTAL</b>	10,995,262	659,814	10,335,448	100.00%

Should the results from **1,384** polling stations (**Table 12A of Volume 2B**) from the **“Respondents’ Preferred Data Set”** be annulled, again, neither the 1<sup>st</sup> respondent nor 1<sup>st</sup> petitioner would secure the required 50% plus of valid votes cast. **Figure 20 below** shows that, in that event, John Dramani Mahama’s total votes would be reduced by **382,088**, resulting in him securing **49.78%** of valid votes cast. Nana Akufo-Addo’s total votes, on the other hand, would be reduced by **170,940**, resulting in him securing **48.68%** of valid votes cast. The constitutional and statutory violation of no signature of a presiding officer therefore would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent, **even if one accepts the “Respondents’ Preferred Data Set”**. In that circumstance, there ought to be a second election between the two leading candidates.



**Figure20: IMPACT OF ANNULMENT OF VOTES DUE TO ABSENCE OF PRESIDING OFFICERS' SIGNATURES USING RESPONDENTS' PREFERRED DATASET**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY ABSENCE OF PRESIDING OFFICERS' SIGNATURE	VALID VOTES	% OF VALID VOTES
<b>John Mahama</b>	5,574,761	382,088	5,192,673	49.78%
<b>Henry Lartey</b>	38,223	2,140	36,083	0.35%
<b>Nana Akufo-Addo</b>	5,248,898	170,940	5,077,958	48.68%
<b>Paa Kwesi Nduom</b>	64,362	4,108	60,254	0.58%
<b>Akwasi Addai Odi</b>	8,877	581	8,296	0.08%
<b>Hassan Ayariga</b>	24,617	2,091	22,526	0.22%
<b>Abu Sakara</b>	20,323	1,131	19,192	0.18%
<b>Jacob Osei Yeboah</b>	15,201	1,181	14,020	0.13%
<b>TOTAL</b>	10,995,262	564,260	10,431,002	100.00%

## 10. Duplicate Serial Numbers

Annuling votes based solely on duplicate serial numbers will affect **8,987** polling stations in the following categories : MB-E, MB-U, MB-F, MB-H, MB-X, MB-J, MB-AA, MB-M, MB-N, MB-Z, MB-P, MB-Q, MB-V and MB-W (see **Table 13 in Volume 2B** for a list of polling stations where the use of duplicate serial numbers occurred along with votes affected).

The impact of the use of duplicate serial numbers on the results declared by the 2<sup>nd</sup> respondent is presented in **Figure 21** below, which shows that the aggregate of votes in polling stations affected by the use of duplicate serial numbers, as recorded on the pink sheets, is **3,508,491**. Should the results from these polling stations be annulled, the 1<sup>st</sup> respondent would not secure the required 50% plus of valid votes cast to be elected. Where these votes are annulled, John Dramani Mahama's total votes would be reduced by **2,344,540**, resulting in him securing **43.15%** of valid votes cast. Nana Akufo-Addo's total votes, on the other hand, would be reduced by **1,097,169**, resulting in him securing **55.45%** of valid votes cast. The malpractice and irregularity of the use of duplicate serial numbers therefore would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent. In that event, the 1<sup>st</sup> petitioner ought to be declared validly elected President.

**Figure 21: IMPACT OF ANNULMENT OF VOTES DUE TO DUPLICATE SERIAL NUMBERS**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY DUPLICATE SERIAL NUMBERS	VALID VOTES	% OF VALID VOTES
<b>John Mahama</b>	5,574,761	2,344,540	3,230,221	43.15%
<b>Henry Lartey</b>	38,223	14,697	23,526	0.31%
<b>Nana Akufo-Addo</b>	5,248,898	1,097,169	4,151,729	55.45%
<b>Paa Kwesi Nduom</b>	64,362	24,865	39,497	0.53%
<b>Akwasi Addai Odike</b>	8,877	3,285	5,592	0.07%
<b>Hassan Ayariga</b>	24,617	9,492	15,125	0.20%
<b>Abu Sakara</b>	20,323	7,994	12,329	0.16%
<b>Jacob Osei Yeboah</b>	15,201	6,449	8,752	0.12%
<b>TOTAL</b>	10,995,262	3,508,491	7,486,771	100.00%

On the other hand, were the results from **7,995** polling stations (**Table 13A in Volume 2B**) from the “**Respondents’ Preferred Data Set**” to be annulled, again, the 1<sup>st</sup> respondent, would not secure the required 50% plus of valid votes cast. **Figure 22** below shows that, in that situation, John Dramani Mahama’s total votes would be reduced by **2,095,045**, resulting in him securing **44.32%** of valid votes cast. Nana Akufo-Addo’s total votes, on the other hand, would be reduced by **990,881**, resulting in him securing **54.23%** of valid votes cast. The malpractice and irregularity of the use of duplicate, triplicate and quadruplicate serial numbers, therefore, would have had a material effect on the election results declared by the 2<sup>nd</sup> respondent, **even if one accepts the “Respondents’ Preferred Data Set”**. In that circumstance, the 1<sup>st</sup> petitioner ought to be declared validly elected as President.

**Figure 22: IMPACT OF ANNULMENT OF VOTES DUE TO DUPLICATE SERIAL NUMBERS USING RESPONDENTS’ PREFERRED DATASET**

CANDIDATE	EC RESULTS	VOTES AFFECTED BY DUPLICATE SERIAL NO	VALID VOTES	% OF VALID VOTES
<b>John Mahama</b>	5,574,761	2,095,045	3,479,716	44.32%
<b>Henry Lartey</b>	38,223	12,975	25,248	0.32%
<b>Nana Akufo-Addo</b>	5,248,898	990,881	4,258,017	54.23%
<b>Paa Kwesi Nduom</b>	64,362	22,511	41,851	0.53%
<b>Akwasi Addai Odi</b>	8,877	2,836	6,041	0.08%
<b>Hassan Ayariga</b>	24,617	7,915	16,702	0.21%
<b>Abu Sakara</b>	20,323	6,692	13,631	0.17%

Jacob Osei Yeboah	15,201	5,138	10,063	0.13%
<b>TOTAL</b>	10,995,262	3,143,993	7,851,269	100.00%

## 11. Duplicate Polling Station Codes

Annulling votes based solely on duplicate polling station codes will affect 17 polling stations with 35 pink sheets in the following categories: MB-U, MB-X, MB-AA, MB-Z, MB-Y, MB-V, MB-W and MB-T (see **Table 14 in Volume 2B** for a list of polling stations with two or more different results/pink sheets for the same polling station codes along with votes affected). These polling stations were captured in the KPMG report, as well as used by the respondents in their cross-examination of the 2<sup>nd</sup> petitioner.

The aggregate of votes in polling stations affected by duplicate polling station codes recorded on the pink sheets is **13,317** and, on a stand-alone basis, is statistically insignificant in its effect on the results declared by the 2<sup>nd</sup> respondent, though a serious malpractice.

## 12. Unknown Polling Stations

Annulling votes based solely on the statutory violation of unknown polling stations will affect **22** polling stations in the MB-AB category. (see **Table 15 in Volume 2B** for a list of unknown polling stations along with votes affected). These polling stations were **captured** in the KPMG report as well as used by the respondents in their cross-examination of the 2<sup>nd</sup> petitioner.

The aggregate of votes in polling stations affected by unknown polling stations recorded on the pink sheets is **9,522** and, on a stand-alone basis, is statistically insignificant in its effect on the results declared by the 2<sup>nd</sup> respondent, though a grave statutory violation and malpractice.

### **13. Summary of votes to be annulled**

Figure 23 below provides a summary of the votes that the petitioners are praying this Honourable court to annul as a result of the various constitutional and statutory violations, malpractices and irregularities:

**Table 23: VOTES TO BE ANNULLED BY CATEGORY**

<b>VIOLATION/IRREGULARITY</b>	<b>EXHIBIT CATEGORY</b>	<b>VOTES TO BE ANNULLED</b>
Over-voting only	MB-C	107,540
Over-voting, Voting without Biometric Verification	MB-D	29,672
Over-voting, Voting without Biometric Verification, Duplicate Serial Number	MB-E	128,245
Over-voting, Voting without Biometric Verification, Duplicate Serial Number, Duplicate Polling Station Code	MB-U	581
Over-voting, Voting without Biometric Verification, Duplicate Serial Number, Absence of the Signature of Presiding officer	MB-F	28,983
Over-voting, Voting without Biometric Verification, Absence of the Signature of Presiding officer	MB-G	6,231
Over-voting , Duplicate Serial Number	MB-H	341,732
Over-voting , Duplicate Serial Number, Duplicate Polling Station Code	MB-X	3,098
Over-voting, Duplicate Serial Number, Absence of the Signature of Presiding officer	MB-J	74,928
Over-voting, Duplicate Serial Number, Absence of the Signature of Presiding officer, Duplicate Polling Station Code	MB-AA	1,082
Over-voting, Absence of the Signature of Presiding officer	MB-K	23,477

<b>VIOLATION/IRREGULARITY</b>	<b>EXHIBIT CATEGORY</b>	<b>VOTES TO BE ANNULLED</b>
Voting without Biometric Verification only	MB-L	120,547
Voting without Biometric Verification, Duplicate Serial Number	MB-M	410,321
Voting without Biometric Verification, Duplicate Serial Number, Absence of the Signature of Presiding officer	MB-N	69,048
Voting without Biometric Verification, Duplicate Serial Number, Absence of the Signature of Presiding officer, Duplicate Polling Station Code	MB-Z	793
Voting without Biometric Verification, Absence of the Signature of Presiding officer	MB-O	18,774
Voting without Biometric Verification, Absence of the Signature of Presiding officer, Duplicate Polling Station Code	MB-Y	671
Absence of the Signature of Presiding officer	MB-S	105,727
Duplicate Serial Number only	MB-P	2,112,817
Duplicate Serial Number, Absence of the Signature of Presiding officer	MB-Q	330,458
Duplicate Serial Number, Duplicate Polling Station Code	MB-V	6,092
Duplicate Serial Number, Absence of the Signature of Presiding officer, Duplicate Polling Station Code	MB-W	313
Duplicate Polling Station Code only	MB-T	687
Unknown Polling Station	MB-AB	9,522
Total		3,931,339



## O. CONCLUSION

On 28<sup>th</sup> December 2012, the Petitioners filed this petition, challenging the validity of the election of 1<sup>st</sup> respondent, John Dramani Mahama, as President of the Republic. They sought two main reliefs, a declaration that John Dramani Mahama was not validly elected President of the Republic, and that Nana Addo Dankwa Akufo-Addo, the 1<sup>st</sup> petitioner, rather, was validly elected President. Petitioners also prayed for such consequential orders as to this Honourable Court may seem meet.

The petitioners grounded their reliefs on widespread violations, malpractices and irregularities apparent on the face of the pink sheets, the primary record of the election results. These infractions took the form of over-voting; voting without biometric verification; the absence of signatures by of the presiding officers on the pink sheets; the use of pink sheets with the same serial numbers for the same or different polling stations; the use of the same polling station code for different polling stations or the same polling station, with different results; and the unlawful conduct of the election at twenty-two (22) locations, which were not part of the list of 2,602 polling stations created by the 2<sup>nd</sup> respondent for the conduct of the election.

The issues set down by this Honourable Court were two, namely:

1. whether or not there were violations, omission, malpractices and irregularities; and
2. whether or not these violations, malpractices and irregularities affected the outcome of the 2012 presidential election.

To prosecute their case, the petitioners filed and relied on 10,119 pink sheets, which spoke to the nature of the violations, malpractices and irregularities grounding the petition. The respondents, on the other hand, failed or refused to file any pink sheet, except the 17 pink sheets 2<sup>nd</sup> respondent was compelled to tender in evidence on the penultimate day of the end of the trial, in an attempt to rebut damning evidence led against it. This was so, even though 2<sup>nd</sup> respondent is the body constitutionally mandated to conduct public elections and referenda, including this petition, and notwithstanding the fact that it is the official custodian of the pink sheets in the election.

Undoubtedly, the petitioners bore the burden of proving the allegations of violations, malpractices and irregularities grounding the petition and demonstrating that these infractions, in fact, had a material effect on the outcome of the presidential election. It is the respectful submission of the petitioners that, at the close of trial, the petitioners had, through the 10,119 pink sheets they are relying on, succeeded in producing a mountain of evidence, sufficient to discharge the burden of proof that the law placed on them and to obtain a decision in their favour. This evidence is documentary and manifest on the primary record of the election, the pink sheets. Beyond reliance on inconsequential reports of election observers, the respondents, in effect, tendered no evidence of substance of their own. They all sought to whittle down and reduce the number of pink sheet exhibits petitioners had filed on technical grounds of defects in the labelling of the pink sheet exhibits. They seized the slightest occasion to hurl baseless attacks of criminality, forgery, the manufacturing and smuggling of pink sheets into evidence, even though unsubstantiated, on petitioners.

It is the humble submission of petitioners that, at the close of trial, the evidence adduced by petitioners remained unchallenged in all material effects. The Chairman of the 2<sup>nd</sup> respondent, who was the returning officer of the presidential election, with respect, cut an unconvincing figure with his bundle of evasive, inconsistent and contradictory answers during cross-examination. His credibility by the end of the trial was all but gone.

**“Elections are at the heart of democracy. They are the instrument for the people to choose leaders and hold them accountable. At the same time, elections are a core public function upon which all other government responsibilities depend. If elections are defective, the entire democratic system is at risk...”** *Courtesy of covering letter co-authored by former US President Jimmy Carter and former US Secretary of State, James A. Baker, in the report titled: BUILDING CONFIDENCE IN US ELECTIONS-REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM (September, 2005).*

These insightful observations about the vital importance of elections as a critical touchstone of democracy and accountability assume their full significance, when account is taken of the fact that this petition is the first of its kind in our history as a people. The decision that this Honourable Court will finally arrive at will have fundamental and far-reaching consequences for the future of future of democracy in this country. It will either affirm the commitment of citizens to our democratic journey and bolster their confidence in democratic institutions and the rule of law, or undermine their belief in political and legal institutions of the nation. It is

the respectful submission of petitioners that what all citizens expect from the highest court of the land is the interpretation and enforcement of the Constitution and the law and their application to the evidence adduced in this trial without fear or favour, as the judicial oath of the learned justices of this Honourable Court requires of them.

Some fifty-one (51) years ago, this country was on the threshold of making history in the now infamous case of **Re Akoto**. The hopes and aspirations of the country were in the hands of the three justices of the Supreme Court, as it was then constituted, either to pronounce a judgment that would strengthen the democratic foundations of Ghana's political system and ensure accountability of public official and institutions, thereby placing constitutional, democratic limits to executive power, or to succumb to the politics of *raison d'état*, irrespective of the injunction of the Constitution and the law. It is not in dispute today that the decision of the Korsah Court had far-reaching and unedifying consequences for our people's march towards a better future of respect for rights, democratic development and the accountability of leadership to the people. There is consensus today that had that court risen to the occasion that history made it a handmaid of, the history of Ghana in the last fifty years would have been radically different and its development greatly enhanced.

Today, the people of Ghana once more stand at the threshold of history, not only for Ghana but the rest of Africa. Whether we succeed as a people lies in the hearts and minds of the honourable justices of this Court. We pray for Ghana that this Court will find the wisdom and fortitude to arrive at a decision based solely on the evidence adduced before it over the last six months and the faithful and scrupulous application of the Constitution and the law thereto in order to meet the legitimate expectations of Ghanaians of the highest court of the land and enshrine the abiding principles of the rule of law and accountability in the body politic. This way, your lordships would have answered the call to which history beckons Ghana's judiciary and give meaning to the immortal words inscribed in the nation's coat of arms, Freedom and Justice.

The petitioners have shown by the sheer depth and weight of the evidence adduced at trial and the force of legal arguments advanced in this address that there were, indeed, substantial constitutional and statutory violations, malpractices and irregularities in the 2012 presidential election and that these violations, malpractices and irregularities had a material effect on the results of the election as declared by 2<sup>nd</sup> respondent.

It is accordingly the respectful submission of petitioners that a case worthy of the all reliefs that they seek has been made out.

The Constitution insists that only valid votes be taken into account in the determination of the validity of the election of the President of the Republic. That is the clear teaching of article 63(3). The consequence is that if the invalid votes, totalling **2,622,551**, attributed to the 1<sup>st</sup> respondent are taken out of the votes declared for him of **5,574,761**, the total valid votes 1<sup>st</sup> respondent, in fact and in law, obtained is **2,952,210**, representing **41.79%** of the valid votes cast in the 2012 election. The declaration made on 9<sup>th</sup> December, 2012 by the 2<sup>nd</sup> respondent and set out in the Constitutional Instrument of the President Elect Instrument, 2012 (C.I. 80), made under the hand of the Chairman of 2<sup>nd</sup> respondent, was, therefore, made wrongfully and this Court is respectfully invited to hold that his election was invalid and to set aside same as null and void. In the premise, this Honourable Court is respectfully invited to hold that the 1<sup>st</sup> petitioner, having obtained **4,0157,12** valid votes cast, as a result of the annulment of **1,233,186** invalid votes from the figure of **5,248,898** declared for him by the 2<sup>nd</sup> respondent, resulting in 1<sup>st</sup> petitioner obtaining **56.85%** of the valid votes cast, should be declared by this Honourable Court as the winner of the 2012 presidential election.

In addition, the Court is hereby respectfully invited to make such other consequential orders as it may deem meet.

This Address is filed in both electronic and hard copy pursuant to Rule 69B of C. I. 74.

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**DATED AT KWAKWADUAM CHAMBERS, ACCRA, THIS 30<sup>TH</sup> DAY OF JULY 2013**

.....  
Akufo-Addo, Prempeh & Co  
Lawyers for the Petitioners

**The Registrar  
Supreme Court  
Accra**

**AND TO THE ABOVE-NAMED:**

1. 1<sup>ST</sup> RESPONDENT OR HIS COUNSEL, TONY LITHUR ESQ., LITHUR BREW & CO.; NO. 110B KADE AVENUE, KANDA ESTATES, ACCRA.
2. 2<sup>ND</sup> RESPONDENT OR ITS COUNSEL, LYNES QUASHIE-IDUN & CO, H/NO. E128/2, KOJO THOMPSON, ROAD, ADABRAKA, ACCRA
3. 3<sup>RD</sup> RESPONDENT OR ITS COUNSEL, SAMUEL CODJOE, LAW TRUST COMPANY, 5<sup>TH</sup> FLOOR, TRUST TOWERS, ACCRA

