IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE HUMAN RIGHTS DIVISION ONE, HELD IN ACCRA, ON MONDAY, THE 31ST DAY OF MAY 2021, BEFORE HER LADYSHIP, JUSTICE GIFTY AGYEI ADDO, HIGH COURT JUDGE.

SUIT NO. HR/0055/2021

TYRON IRAS MARHGUY - APPLICANT
(SUING BY THE NEXT FRIEND AND FATHER TEREO KWAME MARHGUY)

VERSUS

1. BOARD OF GOVERNORS ACHIMOTA SENIOR HIGH SCHOOL

2. THE ATTORNEY-GENERAL - RESPONDENTS

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JUDGMENT

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INTRODUCTION

This novel suit invites the Court to ascertain the contours of two pertinent rights of the individual: the right to education and the freedom to profess one's religion. Strikingly, the Applicant in this suit is a minor. He sues through his next friend his father, to fight a second-cycle institution as well as the state, for the enforcement of his fundamental human rights. It is very intriguing that notwithstanding the proclamation and acceptance of fundamental human rights as inalienable by the comity of nations, our courts are still fraught with disputes between individuals and the state as regards the extent of the enjoyment of a particular right.

Indeed, human rights anywhere do not exist as absolute rights. These individual rights are generally subject to the public good or public interest. In this case, this Court will consider whether the rights alleged by the Applicant before the Court to have been breached have indeed been violated. The Court shall further interrogate the contours of derogation of the rights and whether the alleged deviations of the rights, according to the Applicant, on the part of the Respondent, are without constitutional justification.

BACKGROUND

On the 31st of March 2021, the Applicant before the court, Tyron Iras Marhguy, suing per his next friend and father, Tereo Kwame Marhguy, invoked the jurisdiction of this Court per an originating motion for the enforcement of his fundamental human

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rights under the 1992 Constitution. In the supporting affidavit, the Applicant prayed for the following reliefs:

i. A declaration that the failure and or refusal of the 1st Respondent, to admit or enroll the Applicant on the basis of his Rastafarian religious inclination, beliefs and culture characterised by his keeping of rasta is a violation of his fundamental human rights and freedoms guaranteed under the 1992 Constitution particularly Articles 12 (1); 23; 21 (1) (b) (c); 26(1)); 17 (2) and (3);

ii. A declaration that the failure and or refusal of the 1st Respondent, to admit or enroll the Applicant on the basis of his Rastafarian religious inclination, beliefs and culture characterised by his keeping of rasta is a violation of his right to education guaranteed under Articles 25 (1) (b), 28 (4) the 1992 Constitution;

iii. A declaration that the order directed at the Applicant by the representative of the 1st Respondent to step aside during the registration process on the basis of his religious belief characterized by the keeping of rasta is a violation of his right to dignity guaranteed under Articles 15 (1) and 35 (4), (5) of the 1992 Constitution;

iv. A declaration that there is no lawful basis for the 1st Respondent to interfere with the Applicant's right to education based on his rasta through which he manifests or expresses his constitutionally guaranteed right to religion and to practice and manifest same;

v. An order directed at the 1st Respondent to immediately admit or enroll the Applicant to continue with his education unhindered.

vi. An order of perpetual injunction restraining the 1st Respondent either by themselves, servants and/or agents from, in any way, interfering in the Applicant's senior secondary school education on the basis of his religious belief and practice as a Rastafarian.

vii. An order directed at the 1st and 2nd Respondents to jointly and severally compensate the Applicant for the inconvenience, embarrassment, waste of time and violation of his fundamental human rights and freedoms.

On the 22nd day of April 2021, the 2nd Respondent filed an affidavit in opposition to the Applicant's application. On the 7th day of May 2021, the 1st Respondent filed an affidavit in answer to the Applicant's application.
All parties filed written submissions in this action pursuant to an order of the Court.

THE FACTS

THE CASE OF THE APPLICANT

In the affidavit in support of the Applicant's application deposed to by his father, it was contended that the Applicant is a child of seventeen (17) years of age and attended The Lord Shines International School and Omega School. The Applicant contends that before registering with the West African Examination Council to sit for the June 2020 Basic Education Certificate Examination (BECE), he was required to select and did select several schools amongst which is the 1st Respondent school. According to him, this selection was for purposes of the Computerized School Selection and Placement System (CSSPS). The CSSPS is an automated merit-based system for the selection of schools and placement of pupils or candidates in various senior high schools based on their choices of schools and performance in the examination.

According to the Applicant, at all material times, he was a Rastafarian by religion. Rastafarianism, according to the Applicant, is a religious movement which began in Jamaica in the 1930s and adopted by many groups around the globe that combines protestant Christianity, mysticism and a pan-African political consciousness. The Applicant emphasised that a key tenet of Rastafarianism is the wearing of dreadlocks which, according to him, is drawn from the Nazarite vow in the Old Testament of the Bible, specifically, Numbers 6:5 which states "All the days of the vow of his separation there shall no razor come upon his head: until the days be fulfilled, in which he separateth himself unto the LORD, he shall be holy, and shall let the locks of the hair of his head grow."

The Applicant further justified the wearing of dreadlocks by referring to the biblical Sampson as an epitome of same. According to the Applicant, the Old Testament recites the story of Samson's mother who was visited by Jah and was told: "For, thou shall conceive, and bear a son; and no razor shall come on his head: for the child shall be a Nazarite unto God from the womb: and he shall begin to deliver Israel out of the hands of the Philistines (Judges 13:5). As he grew, Samson possessed extraordinary strength. He then married Delilah, and because she would not believe him when he spoke about the reason for his locks, she made him to sleep upon her knee; and she called for a man, and she caused him to shave off the seven locks of his head; and she began to afflict him, and his strength went form him (Judges 16:19)."

The Applicant says that he has worn his hair in dreadlocks throughout his studies at the Junior High School, where he excelled academically and was a model student and became a senior prefect. The Applicant also says that the dreadlocks caused no problems for him, his mates, his teachers or the school.

According to the Applicant, he selected the Achimota Senior High School as his first choice school because of its historical ethos of which the school, from its very

beginning, was committed to challenging received ideas of the inferiority of African customs, values and cultural tapestry, its well documented embrace of African diversity and identity, as well as the school's well-known alumni. The Applicant continues that the school's history of pan-Africanism tied in very closely with the Rastafarian belief in a pan-African political consciousness.

According to the Applicant, after serious studies, he successfully passed the BECE, obtaining aggregate six (6). The CSSPS posted him to the Achimota School.

The Applicant says he proceeded to the school, obtaining the prospectus and purchased every necessary item. That all this while, he was never questioned by anyone about wearing his hair in religious dreadlocks. That on the day of reporting, he went earlier and his father joined later and saw that he was isolated from his fellow students who were in the queue undertaking the necessary protocols for admission or enrolment. The Applicant states that one of the female teachers asked him to step aside since she did not want to deal with him because of his religious dreadlocks.

According to the Applicant, he felt ashamed, embarrassed and humiliated by the directive to isolate himself by reason only of his religious dreadlocks, a religious belief he had practised all his life. The Applicant contends further that the assistant-head teacher also insisted that until he cuts his religious dreadlocks, he would not be enrolled into the school notwithstanding his placement by the CSSPS and his acceptance of the admission offer by the school. For the Applicant, despite his academic achievements, leadership positions held and his placement to the Achimota School by the CSSPS, he is being denied enrolment because he is maintaining his hair according to the dictates of his religion.

The Applicant contends that the school's authority refused to grant any religious exemptions to him. The Applicant deposes further that the school has failed to provide the objectives it seeks to achieve by insisting on hair-cut. According to the Applicant, he is committed to observing all the school's rules and regulations as he has done throughout his schooling at the Junior High School level.

According to the Applicant, the school's failure to reverse its stand caused him to complain publicly and following the interest of the media, the Ghana Education Service (GES), on the 20th day of March 2021, requested the school to enroll him. Interestingly, GES reversed its earlier directive to the school. Yet, the Minister of Education indicated in various media reports that the GES had not rescinded its directive to Achimota School over the admission of the Applicant. Despite this clarification, the school has failed to enroll him.

According to the Applicant, by the insistence of the 1st Respondent that he cuts his dreadlocks or he will not be admitted to the school, the 1st Respondent has failed to effectively manage the admission process which failure has led to the denial of his enrolment in the school. The Applicant contends that the 1st Respondent has failed to

provide compelling reason to justify why its enrolment practice should be allowed as a reasonable limitation of his religious beliefs. The Applicant, from the foregoing, contends that he is constitutionally guaranteed to, among others, the:

a. Right to equal educational opportunities and facilities.

b. Freedom of thought, conscience and belief.

c. Freedom to practice any religion and to manifest such practice.

d. Right to his human dignity.

e. Right to enjoy, practice, profess, maintain and promote any culture, tradition or religion subject to the provisions of the 1992 Constitution.

f. Right not to be deprived by any to other person of education by reason only of religious and other reliefs.

g. Right to administrative fairness.

The Applicant contends that the keeping of his hair in its natural dreadlocked state is not a flippant display of stylistic preference. According to him, it is about his religion and manifestation of the dictates of that religion. The Applicant argues that the insistence of the 1st Respondent that he gets rid of his religious dreadlocks in default of which he will not be enrolled would deny him his constitutionally guaranteed right to education and the right to practise or manifest his religious belief. The Applicant further contends that granted the said insistence is premised on the rules and regulations of the school, same cannot derogate from the fundamental rights and freedoms guaranteed under the 1992 Constitution. That the 1st Respondent being an administrative body, according to the Applicant, must act fairly and reasonably when making rules and regulations for prospective students of the school, which rules are required to be fair, reasonable and transparent, underscored by objectivity, legality, rationality, opportunity to be heard, legal competence, absence of bias or caprice or ill-will and procedural impropriety.

According to the Applicant, his colleagues who were admitted into the school by virtue of the CSSPS placement have commenced classes while he is discriminatorily denied the same right and is currently at home simply because of his expression of his religious faith, without injury to any other person. The Applicant further contends that he has always been of good behavior and in recent interviews, his former teachers attested to this fact. The Applicant states that his fundamental human rights have been or are likely to be violated by the 1st Respondent, its officials, teachers and other authorities if this Court does not intervene.

THE 1ST RESPONDENT'S CASE

The 1st Respondent denied the contentions of the Applicant that he was denied admission to Achimota School because of his religion and described them as falsehoods and fabrications. According to the 1st Respondent, the fabrications are calculated to misrepresent the rules and regulations that have been applied in Achimota School in respect of all students that have attended and continue to attend the school. The 1st Respondent contends that the rules and regulations of the school have been developed over many generations of students and are consistently revised through progressive thoughts and without reference to race, colour, or the creed of the tens of thousands of students who have been educated and trained by Achimota School.

According to the 1st Respondent, the Achimota School is not aligned to, associated with, or does not originate from any particular religion or belief. That the school has been managed by the 1st Respondent guided solely by academic excellence and leadership in social and community organisation. The 1st Respondent therefore contends that the various depositions in the paragraphs of the Applicant's affidavit on this score are baseless and irrelevant to the determination of the instant action as regards the lawfulness or otherwise of the rules and regulations in operation in Achimota School. The 1st Respondent states that Achimota School currently has a student population of 4,166 with no classification whatsoever as to religious beliefs and or how such religions are expressed or practised. That the entire student population ranges from the youngest being 14 years and the oldest being 21 years and all of whom conform to the school's rules and regulations without exception.

According to the 1st Respondent, the school currently has 1,758 boys all of whom conform to the rules and regulations of the school relating to boys. The 1st Respondent states that without regard to age, colour, race, religion, among others, all the successful students including the Applicant were offered admission by Achimota School on a standard form that specified among others that the admission is conditioned on "good academic work, good conduct and strict observance of all the School Rules and Regulations". The 1st Respondent states that the Applicant accepted the offer by voluntarily completing the Admission Acceptance Form-2021 and signed same to affirm his "promise to abide by all regulations governing students in the school" and that if he disobeyed "authority, the school authorities reserved the right to apply the appropriate sanctions against him." The 1st Respondent states that on the day of reporting, the Applicant was in the prescribed uniform and proceeded to undergo the reporting procedures but was called aside by the school's authority and directed to comply with regulation "H 1" of the school's Revised Rules and Regulations, which provide that [moustaches, sideburns, beards and whiskers are definitely forbidden and boys must keep hair low and neatly trimmed."

According to the 1st Respondent, the regulation never mentioned or singled out the Applicant's hairstyle except to require all boys in Achimota School to "keep their

hair low" and on countless occasions overgrown hairs of all manners and styles have been trimmed and kept in conformity with this particular regulation, without any allegation of abuse of human rights. According to the 1st Respondent, the Applicant and his father-next friend have been misrepresenting the general statement on all boys to keep hair low as targeted at the Applicant's specific hairstyle and have proceeded to allege discrimination against persons wearing such hairstyles.

It is the case of the 1st Respondent that the school painstakingly explained the regulations to the Applicant and his next friend but they were just adamant. That the requirement to "keep hair low" like the other rules and regulations regarding general comportment of students, school uniforms, house uniforms, sportswear, footwear, Sunday wear, general appearance, have no reference or in any way or manner linked to the human rights of any student but only targeted at the orderly management and proper regulation of the students who voluntarily choose to attend Achimota School. The 1st Respondent argues that the rules are fair, reasonable and are within the context of public pre-tertiary institution enrolling minors and young persons. Also, that the rules do not offend or violate any statutory or constitutional provision. The 1st Respondent further contends that the choice of the Applicant's father-next friend to subject the son who is a minor to a hairstyle that does not accord with the regulation of the school to "keep hair low" is a private matter for the father-next friend and his son/Applicant and not in any way connected with the school's rule.

According to the 1st Respondent, granting the Applicant's application will amount to elevating the Applicant and his religion, beliefs, or creed to a different category from the other students who belong to other religions and are abiding by all the school rules and regulations without reference to the dictates of the other religions and would be tantamount to discrimination of the other students and unlawful. The 1st Respondent therefore called for the dismissal of the application.

THE CASE OF THE 2ND RESPONDENT

The 2nd Respondent, in substance, also denied that the Applicant's rights have been violated. The 2nd Respondent stated that as part of the admission requirement and process, the Applicant, like all newly enrolled students was required to submit the following to the administration of the school:

a. The completed Acceptance Form-2021.

b. The completed Personal Record Form.

c. A copy of BECE Results Slip.

d. Placement Form.

e. A photocopy of a valid (not expired) Health Insurance Card.

f. A photocopy of a Birth Certificate.

g. Six recent passport size photographs.

h. A photocopy of a Hepatitis B Card.

According to the 2nd Respondent, all newly admitted students who fully complied with the above-mentioned requirements were made to sign a requirement checklist sheet. The Applicant, according to the 2nd Respondent, has to date, neither completed nor returned to the Administration of Achimota School, the required Acceptance of Admission Form. The 2nd Respondent argues that the submission of the Acceptance Form is a necessary condition and a positive indication of the admission of a student into Achimota School. According to it, in the absence of a submission of the Acceptance Form to the school, the Applicant has never been admitted into the school. For this reason, the 2nd Respondent contends that in the circumstances, the Applicant is bereft of capacity to institute the instant action.

The 2nd Respondent states further that it was impossible for the Applicant to have been isolated by a female staff, since during the admission process, female teaching staff attend to female students and male staff to male students. That the Applicant, as part of the admission process, is required to abide by all the rules and regulations of the school and under Section H.3. of the Achimota School's Revised Rules and Regulations, 2019, "students must keep their hair low, simple and natural…". According to the 2nd Respondent, the 1st Respondent by insisting that the Applicant conforms to the school rules on general appearance has not discriminated against the Applicant on religious grounds as alleged by the Applicant. The 2nd Respondent therefore argues that the Applicant's right to education has not been infringed upon, neither has he been denied enrolment into Achimota Senior High School as his name is still on the admission list of the school.

The 2nd Respondent states that despite the school's practice of dialoguing with parents and wards on issues, it was surprising to the school's authorities, the allegations by the Applicant's father in the media when the father had never engaged the school on the issue. The 2nd Respondent states that it is not the place of the state to meddle with religious matters of its citizens in its bid to protect their religious freedom and as such rules such as that of the school are provided to ensure uniformity at the educational level. If the Applicant is allowed to break the school rules and regulations because of his religion, it will result in giving him preferential treatment over his contemporaries.

According to the 2nd Respondent, the Applicant in paragraph 33 alleges his willingness to abide by the school rules and regulations yet his failure or refusal to keep his hair short and neat flagrantly disregards the school rules and demonstrates a clear intention not to abide by the school rules and regulations.

The 2nd Respondent states further that the Applicant has adduced no evidence to show a denial of the right to worship or receive the teachings of his faith. Neither has he been able to show that he is being discriminated against in any manner. On the contrary, according to the 2nd Respondent, the Applicant is being given equal recognition and status as all students of the school who practise their religion in conformity with school rules and regulations. The Respondent also submits that a grant of the Applicant's reliefs would require subsequent exceptions for other students with various religious practices, beliefs, culminating in a general breakdown of the school structure, which will lead to far greater hardships and inconvenience.

The 2nd Respondent contends further that a restriction of the personal liberties of a child under the age of 18 entails a further prerogative in school authorities to lay down rules and regulations governing the conduct and behaviour of students for their own welfare and in the public interests. The 2nd Respondent recognises that these limitations legitimately imposed on school children for their welfare, orderly training and general discipline on campuses may only be questioned if same are not in the public interest, or are overboard or disproportionate or are discriminatory, which is not the case in relation to the instant application.

For the 2nd Respondent, the rule imposed by Achimota School relating to hair, ensures discipline and uniform hygiene on campus. That the real issue at stake here is a student evidently electing to choose and pick which school rules to observe and not religion. According to the 2nd Respondent, there are students in the school who belong to various religious sects but have elected to prioritise their education over the other considerations by submitting entirely to school rules and regulations. The 2nd Respondent contends that it is in the public interest that school authorities maintain a high level of discipline and decorum by putting in place rules and regulations. That the grant of the instant application, according to the 2nd Respondent, will serve as a recipe for confusion, chaos in public schools, and such a precedent will cause the management of public schools to become unduly difficult and challenging.

THE ISSUE OF CAPACITY

In his affidavit in opposition, written submission and oral submissions before the Court, the 2nd Respondent challenged the Applicant's capacity to mount the instant action. According to the 2nd Respondent, the Applicant has to date not submitted the required Acceptance of Admission Form which is a necessary condition and positive indication of the admission of a student into Achimota School. The 2nd Respondent contends that in the absence of such submission, the Applicant has never been admitted into the school. The Learned Attorney-General submitted before the Court that it is consequent upon the accrual of the status of a student that a person becomes entitled to either assert a right of a student or in the same way question the propriety or enforcement of a rule in relation to that person. According to him, the action being predicated on **Article 33 (1)** of the **Constitution of the Republic of**

Ghana, 1992, the Court's jurisdiction is specially linked to a contravention or a prospective contravention in relation to that person. That the Applicant has not placed himself in a position in which he can assert a violation. The learned Attorney-General concludes that the Applicant cannot also assert that he is coming to Court on the basis of an apprehension of a right in relation to him. For the Attorney-General, the Applicant's form not having been submitted and approved therefore, merely to apprehend a violation in relation to other students clearly shows that the Applicant is not properly before the Court. Hence, the Applicant is incapacitated to maintain the instant action.

In response to these arguments, Counsel for the Applicant relied on the case of **TUFFOUR VRS: ATTORNEY GENERAL [1980] GLR 637** and submitted that constitutional issues (including this human rights action) do not deal with contractual or minor rights. According to Counsel, the fact that human rights actions are constitutional actions is stated in the case of **ACKAH VRS: AGRICUTURAL DEVELOPMENT BANK [2016-2017] 1 GLR 542** at page 600. He argued that Exhibit "TN3" is the admission acceptance form completed by the Applicant. It was at the point of submission that the facts leading to the institution of the instant action arose. Therefore, the Exhibit evinces the offer as accepted. Learned Counsel for Applicant argued further that **Article 33 (1)** is not only concerned with past violations but also prospective violations. That the Applicant's stated contravention, according to him, pertains to a breach and a prospective breach.

ANALYSIS

The courts are proscribed from giving recognition to a person who, in the eyes of the law, is alien to be accorded a hearing. Where a person is bereft of the requisite capacity to mount an action, the trial must abate and any attempt to accelerate into the merits of the matter is waste. Capacity, as the authorities teach, is fundamentally germane to the foundation of an entire case. A challenge to capacity goes to the jurisdiction of the court. For the court's jurisdiction cannot be invoked by a person not of the desirable capacity. As observed by the Supreme Court speaking through Anin Yeboah JSC (as he then was) in the case of **ALFA MUSAH VRS: DR. FRANCIS ASANTE APPEAGYEI, CIVIL APPEAL NO. J4/32/2017 DATED 2ND MAY, 2018:**

> We think the law is that, when a party lacks the capacity to prosecute an action the merits of the case should not be considered. However, the two lower courts, with due respect, proceeded at length to discuss all the issues raised as if the appellant's case should be considered don the merits. If a suitor lacks capacity it should be construed that the proper parties are not before the court for their rights to be determined. A judgment, in law, seeks to establish the rights of parties and declaration of existing liabilities of parties.

The law is equally that where a person's capacity is challenged, he must establish same before the matter can be considered. The onus, in the context of the instant

action, is on the Applicant, and not even the 2nd Respondent who has challenged the Applicant's capacity. See the case of **ASANTE-APPIAH VRS: AMPONSAH ALIAS MANSA [2009] SCGLR 90**, at page 95.

The allegations undergirding the capacity challenge is simple. The 2nd Respondent contends that the Applicant has failed to demonstrate that he is a student of the 1st Respondent. This is by virtue of the default of the Applicant in signing and submitting the acceptance form to the school. Therefore no relationship is created between the 1st Respondent and the Applicant, for the Applicant to trigger **Article 33 (1)** of the 1992 Constitution.

The Applicant thinks otherwise. He contends that the ambit of **Article 33 (1)** is in two folds as regards the issue at stake: first, upon breach of his right, and second, upon an apprehension or threatened breach of his right. According to the Applicant, he duly completed the acceptance form and it was at the point of submitting that he was subjected to the ordeal leading to the commencement of the instant action. He argues that either ways, he satisfied the twin considerations of a breach of his right and a threatened breach of his right.

I must state from the onset that I am at sea as to merit of the challenge to the Applicant's capacity. **Article 33 (1)** of the 1992 Constitution provides:

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

From the Article, all that an Applicant needs to satisfy to invoke this Court's jurisdiction is that he is a person alleging that his right has been, is being or is likely to be violated. The frivolity or otherwise of such allegation must be left to be determined by the Court. Unless the Learned Attorney-General is contending that the Applicant has made no allegation of a violation or likely violation of his human rights (which the processes before the Court glaringly exposes otherwise), then he is far stretching the argument.

In fact, the preposterousness of the Learned Attorney-General's submission lies in the 1st Respondent's own refusal to accept the acceptance form, yet the Attorney-General blames it on the Applicant as having failed to attain the studentship status. How can the Applicant establish the student-institution relationship when as alleged, the institution has refused to accept his forms? Such thinking is too simplistic and unattractive.

I must reiterate that a person's right need not be breached to invoke the jurisdiction of this Court under **Article 33 (1)** of the 1992 Constitution. Once there is a threatened breach of the person's right also, the cause of action is ripe. The provision is simple,

that is, any person who alleges that his right has been, or is being breached or is likely to be breached is capacitated to invoke the jurisdiction of this Court. An allegation is one thing, the proof of the allegation, is another. Accepting the argument of the learned Attorney-General is tantamount to establishing an erroneous principle that in human rights applications such as the instant, the Applicant must prove his allegation of a breach or likely breach of a violation of his human rights first to be deemed capacitated to mount the action. The logic and thinking is flawed and same is rejected.

In this case, I am satisfied that the refusal of the 1st Respondent to accept the Applicant's acceptance form which the Applicant contends is a violation of his right ripens into a cause of action for the Applicant to seek redress. I am further satisfied, per the facts, that as alleged by the Applicant, if such refusal threatens the future breach of his right, then he is constitutionally capacitated in terms of **Article 33 (1)** of the 1992 Constitution to invoke the jurisdiction of this honourable Court for redress.

I therefore find no difficulty at all in dismissing the challenge to the Applicant's capacity to mount this action as same is wholly meritless.

THE MERITS

The institution at the centre of the instant action is the Achimota School, a school ascribed reputable in many respect in our country. The reputation of the school has not been lost on the Judiciary as well. Justice Dotse, speaking on behalf of the majority of the Supreme Court in the case of the **BOARD OF GOVERNORS, ACHIMOTA SCHOOL VRS: NII AKO NORTEI II & ORS CIVIL APPEAL NO. J4/09/2019 DATED 20TH MAY 2020,** at pages 10 to 11 of the report noted of the 1st Respondent's school as follows:

> Achimota School, formerly Prince of Wales College and School, later Achimota College, now Achimota Senior High School is a co-educational boarding school located at Achimota in Accra, Ghana and nicknamed MOTOWN.
>
> The school was founded in 1924 by Sir Frederick Gordon Guggisberg, Dr. James Emman Kwegyir Aggrey and Rev. Alec Garden Fraser.
>
> It was formally opened in 1927 by Sir Frederick Guggisberg, then Governor of the British Gold Coast Colony. Achimota, modelled on the British Public school system, was the first mixed-gender school to be established in the Gold Coast.
>
> The school has educated many African leaders, including **Kwame Nkrumah, Edward Akufo-Addo, Jerry John Rawlings and John Evans Atta Mills, all of whom are former Heads of State of Ghana, and Sir Dawda Jawara, first head of state of The Gambia.**

> Achimota School occupies over two square miles (525 hectares) of prime real estate in the middle of the Achimota Forest Reserve, in the Accra Metropolitan Area. It is a great co-educational boarding school where boys and girls receive complete and total education. It used to be a secondary school, teacher training college and University all rolled into one. But now only the secondary school exists at this site. It possesses a swimming pool, extensive playing fields, a nature reserve, a demonstration farm, and a model village for the school's employees. It also has its own hospital, museum, library and printing press.
>
> Close to the school's central campus are the Golf Club, the Achimota School Police Station, a staff village for non-teaching staff called Anumle, a forest reserve, a large farm and a 45 bed Achimota Hospital.
>
> From the above description, it is an undeniable fact that Achimota School is one of Ghana's most foremost educational institutions. They have served at various times as a Training College, a Secondary School which it still is, and the cradle of the University of Ghana.

These fine characteristics of the school are indeed admirable. In the context of the instant case however, the contest is between internal rules of the school as against the alleged violations of religious rights vis-à-vis the right to education of the Applicant.

The processes before the Court dispel any contest among the parties in relation to these facts:

a. That Rastafarianism is a religion.

b. That the Applicant belongs to and subscribes to the tenets of the Rastafarian religion.

c. That the Applicant has a right to manifest his religion.

d. That the Applicant has a right to education.

That is, before this Court, the Respondents do recognise that the right to education and religion, in this context, Rastafarianism (the religion of the Applicant) is guaranteed under the 1992 Constitution. As argued by the Learned Attorney-General, the choice of religion and the manifestation of same are not matters to which the state is concerned with since they are very private. More so, it is far from dispute that the fundamental human rights guaranteed under the Constitution are not absolute rights. Indeed, if Applicant assumes that there are no limitations to the enjoyment of his religious and or educational rights, then, such assumptions will fly in the face of the very Constitution 1992, which he relies on. In applications of this nature, the Court is obliged to undertake a balancing activity between the

individual's right and the public interest. The reason, as noted, is that rights are not absolute. Therefore any invitation to enforce a right that sins or will be at odds with the interest of the public must be shunned by the courts as same will not be in consonance with the spirit of the Constitution. Authorities are rife on the duty of courts to balance the alleged violated right of the Applicant vis-à-vis that of the interest of the public.

In the case of **RAPHAEL CUBAGEE VRS: MICHAEL YEBOAH ASARE AND 2 OTHERS REFERENCE NO. 16/04/2017 DATED 28TH FEBRUARY 2018,** cited to me by Counsel for the 2nd Respondent, the Supreme Court speaking through Pwamang JSC stated as at page 10 of the report as follows:

> Enforcement of human rights is not a one way street since no human right is absolute. There are other policy considerations that have to be taken into account when a court in the course of proceedings is called upon to enforce human rights by excluding evidence and that explains why more jurisdictions have now adopted the discretion rule approach.

The Court further continued at page 15 in relation to **Article 12 (2)** that:

> This provision in our opinion is an explicit direction to the court to undertake a balancing exercise in the enforcement of the human rights provisions of the Constitution...The public interest, to which all constitutional rights are subject by the provisions of Article 1 2(2), in having persons who commit crimes apprehended and punished would require the court to balance that against the claim of rights of the perpetrator of the crime. Similarly, civil proceedings always involve competing rights of the parties such that relevant evidence that was obtained in violation of the constitutional rights of one party is usually offered in a bid to protect the rights of the other party or parties in the action.

Likewise in the case of **THE REPUBLIC VRS: EUGENE BAFFOE-BONNIE AND 4 OTHERS REFERENCE NO J1/06 /2018,** the Supreme Court underscored the essence to at all times engage in a balancing exercise as regards competing rights with that of the public interest. The Court speaking through Adinyra JSC (as she then was) noted:

> This provision in our opinion is an explicit direction to the court to undertake a balancing exercise in the enforcement of the human rights provisions of the Constitution. We must therefore consider whether, the competition rights of others to immunity and privileges as well as public interest in respect of, state secrecy, and national security, when compared with the duty or right to disclosure, constitutes legitimate grounds for restriction of disclosure.

Finally, in the case of **CIVIL AND LOCAL GOVERNMENT STAFF ASSOCIATION OF GHANA (CLOSSAG) VRS: THE ATTORNEY-GENERAL & 2**

ORS CIVIL APPEAL N: J1/16/2016 DATED 14TH JUNE 2017, a case cited again by the Learned Attorney-General, the Supreme Court speaking through Sophia Akufu JSC (as she then was) proclaimed at page 14, as follows:

> Every constitution has its letter, as well as its spirit, which is gleaned from the intention of the framers of the constitution. Clearly, if the framers of the Constitution had intended the enjoyment of the fundamental human rights and freedoms to be absolute, they would have expressly stated same. Granting limitations on the exercise of these rights is a clear indication that the framers of the Constitution must have contemplated certain overriding interests i.e. the public interest in respect of the exercise of these rights as well as the public interest in assurance that public officers will as much as possible serve the public rather than political interests.

These authorities establish clearly that any cry in respect of an alleged violation of a person's right must be interrogated within the constitutional limitations, that is, the respect of the rights of others as well as the public interest. The court must engage in an exercise that ensures that both the private and public spaces are well balanced. It is these principles regarding the consideration of the rights alleged to have been violated, which will guide the Court in its resolution of this matter.

According to the Respondents, it is in the public interest that regulations are made for the schools. That argument sits well with the Court as institutions, such as the 1st Respondent, cannot pursue its public mandate without any proper and functioning rules and regulations. Rules, regulations, codes of conduct, are germane and healthy in ordering the affairs of every society. In a society of young boys and girls who receive academic training, the absence of rules and regulations will cascade indiscipline and pollute the academic environment. It is therefore critical that rules and regulations must be made and respected by students in second-cycle institutions. But does this mean that the authorities of the 1st Respondent can make any rule as they deems fit? Absolutely not! Every rule, regulation, order or even a law can operate legitimately only if it conforms to the constitutional tenets. For instance, where a rule is made which rule frowns or seeks to restrict a person without any legitimate or justifiable basis from professing his religious faith, such a rule clearly will cease to be efficacious. That is, rules must be justified within the 1992 Constitution or the enabling statute that allows their making.

In this case, the Respondents make a monument of the rules and regulations of the 1st Respondent institution. The question I ask myself is whether these rules are consistent with the Constitution? Are the alleged offensive parts of the rules, justified under the Constitution? It is only the Constitution 1992 that must be sought to test whether the rules are in consonance and not adverse to the enjoyment of a person's rights and freedoms. That is, any seeming exception to a person's enjoyment of his or her fundamental human rights must emanate from the very Constitution that proclaimed and guaranteed that right. Where the Constitution

does not allow such an exception yet same finds its way into any rule or regulation of a school, then such a rule ceases to be efficacious.

I shall therefore proceed to weigh the rules and regulations of the 1st Respondent as against the 1992 Constitution of the Republic of Ghana to ascertain whether they are in tune with the 1992 Constitution as regards the enjoyment of the constitutionally guaranteed rights of the Applicant, specifically, the Applicant's right to profess any religion. Before that, I shall consider the constitutional ambit of the right of a person to manifest and profess his or her religion.

THE RIGHT TO PROFESS AND MANIFEST ANY RELIGION

The 1992 Constitution proclaims and guarantees the right of people to practise and manifest whatever religion that they associate with and ascribe to. Like all human rights, religious rights must be respected by all persons in Ghana and no person must be discriminated against for the reason of the practice and or manifestation of his religion. This however is subject to the respect of the rights and freedoms of others and for the public interest. **Article 12 (2)** of the Constitution 1992 provides:

> Every person in Ghana, whatever his race, place of origin, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter **but subject to respect for the rights and freedoms of others and for the public interest.** (My emphasis).

Article 21 (1) (c) of the 1992 Constitution proclaims religious rights as follows:
"All persons shall have the right to (c) freedom to practice any religion and to manifest such practice."

It is important to read this constitutional provision together with **Article 28 (4)** of the 1992 Constitution which provides that "No child shall be deprived by any other person of medical treatment, **education or any other social or economic benefit by reason only of religious or other beliefs."** (My emphasis).

The Constitution in no equivocal terms guarantees the right of all persons to practise any religion and to manifest such practice. The Constitution thus does not only guarantee the right of a person to belong to a particular religion, but also, allows the manifestation of the practice of that religion.

On the freedom of people to profess and manifest their religion, the Supreme Court in the case of **JAMES KWABENA BOMFEH JNR. VRS: ATTORNEY-GENERAL WRIT NO. J1/14/2017 DATED 23RD JANUARY 2019** stated, per Adinyra JSC (as she then was) that:

> The combined effect of the letter and spirit of these provisions [Articles 17, 21(1) (b) (c), 35 ( ) (6) (a), 37 (1), 56, 58 (1) and (2), 258 (1) and (2) and 265]

guarantees the fundamental freedoms of the citizen including the right to practice any religion and to manifest such practice. By the letter and spirit of these provisions religious pluralism and diversity which are features of a secular state are clearly recognized and thereby discrimination on any ground is prohibited. By the Directive Principles of State policy in articles 35 and37, the State is to actively promote, within reasonable limits; and facilitate the aspiration and opportunities by every citizen to exercise his fundamental freedoms as a way of ensuring national cohesion.

Any attempt to discriminate against any person as regards the practice and manifestation of the person's religion is clearly unconstitutional. The Applicant has contended that the Respondents' insistence that he cuts his hair, against the manifestation of his religion, is discriminatory. Is that really the case? **Article 17 (1)** of the 1992 Constitution proclaims the equal treatment of persons. **Article 17 (2)** further proclaims that "A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status."

According to **Article 17 (3)** of the 1992 Constitution to discriminate is to:

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

Determining therefore whether a person has been discriminated against, in relation to the practice and manifestation of the person's religion, must be contextually construed and not generalised. That is, it will be legally flawed to contend that all Ghanaians must be treated equally. Rather, the construction must be hinged on treating equal persons equally and unequal persons unequally. His Lordship Date-Bah JSC (as he then was) made this observation in the case of **NARTEY VRS: GATI (2010) SCGLR 745** when at page755 of the report he stated thus:

> To our mind, it is clear what article 17 does not mean. It certainly does not mean that every person within the Ghanaian jurisdiction has, or must have, exactly the same rights as all other persons in the jurisdiction. Such a position is simply not practicable. Soldiers, policemen, students and judges, for instance, have certain rights that other persons do not have. The fact that they have such rights does not mean that they are in breach of article 17. The crucial issue is whether the differentiation in their rights is justifiable, by reference to an object that is sought to be served by a particular statute, constitutional provision or some other rule of law. In other words, article 17(1) is not to be construed in isolation, but as part of article 17. This implies that the equality referred to in article 17 (1) is in effect freedom from unlawful discrimination. Article17 (2) makes it clear that not all discrimination in

> unlawful. It proscribes discrimination based on certain grounds. The implication is that discrimination based on other grounds may not be unlawful, depending on whether this Court distils from article 17 (1) other grounds of illegitimate discrimination which are not expressly specified in article 17 (2).

Translating this reasoning within the present case, it will be no discrimination for rules of the 1st Respondent to be applied to all students including the Applicant. It will however be discriminatory if the rules of the school are applied to some of the students, but not all the students based on, amongst others, their religious beliefs. It is within this context that the Respondents argue that accepting the Applicant's case will amount to discriminating against all the other students. Bluntly stated, what the Respondents seem to suggest is that it matters not the mandates of the rules and regulation of the school. In so far as the rules are applicable to all the students, then same is not discriminatory. This argument indeed appears consistent with the meaning of discrimination as regards the application of the school rules to all the students in the school. The argument however, fails to properly situate and or balance the efficacy of the school's rules as against the freedom of the Applicant to practise and manifest the Rastafarianism religion. That is, it is pertinent to consider whether the school's rules, by its insistence that the Applicant should cut his hair, which as the Applicant alleges is how to manifest his religion, is a violation of the right to religion of the Applicant. It is to this that I turn.

I have already resolved that any attempt to restrict a person from the enjoyment of that person's right to manifest and profess a religion must be gleaned from the very Constitution that guaranteed that right. Indeed, it is in the public interest, that people are able to manifest and profess their religious practice. At the same time, it is also in the public interest, that proper rules and regulations are made to ensure discipline in our second-cycle institutions. But can these rules be made to restrict the manifestation of the religion of another without legitimate or justifiable reasons? I think not!

Before this Court, the Respondents do not challenge, that the Rastafarian religion does not manifest itself through the keeping of dreadlocks. The Applicant stated the practice of this in his affidavit in support as follows:

> 12. The Applicant at all material times was a Rastafarian by religion.
>
> 13. Rastafarianism is a religious movement, begun in Jamaica in the 1930s and adopted by many groups around the globe, that combines protestant Christianity, mysticism and a pan-African political consciousness.
>
> 14. A key tenet of Rastafariansim is the wearing of dreadlocks, which is drawn from the Nazarite vow in the Old Testament of the Bible. In particular, at Numbers 6:5, where it is said "All the days of the

vow of his separation there shall no razor come upon his head: until the days be fulfilled, in which he separateth himself unto the LORD, he shall be holy, and shall let the locks of the hair of his head grow."

15. The biblical Sampson epitomizes this wearing of dreadlocks. The Old Testament recites the story of Samson's mother, who was visited by Jah and was told: "For, lo thou shall conceive, and bear a son; and no razor shall come on his head: for the child shall be a Nazarite unto God from the womb: and he shall begin to deliver Israel out of the hands of the Philistines (Judges 13:5). As he grew, Samson possessed extraordinary strength. He then married Delilah, and because she would not believe him when he spoke about the reason for his locks. she made him to sleep upon her knee; and she called for a man, and she caused him to shave off the seven locks of his head; and she began to afflict him, and his strength went from him (Judges 16:19)"

16. The Applicant has therefore worn his hair in dreadlocks throughout his studies at the Junior High School, where he excelled academically, was a model student, and was made Senior Prefect. The dreadlocks have caused no problems for him, his mates, his teachers or the schools.

The Respondents all rely on the 1st Respondent's rules to insist that the Applicant can only be enrolled in the school if, in my view, he suspends the manifestation of his religion for the time he remains in the school. The rules and regulations of the 1st Respondent, which was reviewed in 2019, states at Section H.3. as follows: "**students must keep their hair low, simple and natural...**"

Where do these rules derive their legal source? The 2nd Respondent argues that it is a misconception for the Applicant to allege that the 1st Respondent is not clothed with capacity to make rules. The Learned-Attorney General refers to **Section 37** of the **Pre-Tertiary Education Act, 2020 (Act 1049)** and submits that that section establishes the Board of Governors and vests the Board with management functions over a Senior High School. In a sharp rebuttal to this argument, Counsel for the Applicant submits that under **Section 37 (2),** those rules are to emanate from the Minister of Education and not the Board of Governors. The Court will therefore interrogate the legality of the 1st Respondent's rules and regulations. It must be emphasised that the Respondents do not dispute that the rules and regulations are made by the Board of Governors.

Section 37 of the Pre-Tertiary Education Act, 2020 (Act 1049) enacts as follows:

(1) The Education Service shall establish

(a) a School Management Committee for the management of a public basic school; or

(b) a Board of Governors for the management of a public senior high school.

(2) A School Management Committee or a Board of Governors shall ensure that a public basic or senior high school is managed in accordance with laid down rules and regulations of the Education Service.

Clearly, **Section 37 (2) of Act 1049** vests the Board of Governors of the 1st Respondent and not the Minister of Education with the power to make rules and regulations for the management of the 1st Respondent. This duty imposed on the Board must be discharged with constitutional circumspection to avoid violating the provisions of the Constitution. The essence of the rules, clearly, is for purposes of the management of the rules and regulations of the Education Service, which aims at discipline in schools. What therefore has the keeping of dreadlocks by way of manifesting of a person's religion got to do with indiscipline in a school? The Respondents have justified further that the uniform cutting of hair in the school brings uniformity and hygiene. But can that supplant the manifestation of the religion of the Applicant as guaranteed under the 1992 Constitution?

While, as already pointed out, rules and regulations are essential to ordering discipline in schools, the rules must be consistent with the Constitution. Where the rule sins against the constitutional guarantee of a person to practise and manifest any religion without legitimate justification, then, in my respectful view, same is unconstitutional. To insist, that a person should suspend the manifestation of his religion by cutting his dreadlocks before being enrolled in your institution, in my view, is clearly unconstitutional and sins against the Constitution, 1992, if same is without reasonable justification. In other words, without any shadow of doubt, the Constitution allows for the restriction of fundamental human rights so long as there are justifiable grounds for the restriction.

Religious intolerance is undemocratic. Any state that fails to tolerate the practice and manifestation of religions of its citizens and people within the state portends a serious anarchy in the state. Therefore, any attempt to project a rule or regulation to a character that expediently frowns upon the manifestation of a person's religion without reasonable grounds, must be frowned upon in our democracy. The said rule must therefore be construed with the necessary subjection to the 1992 Constitution. I reject the argument of the Respondents that this finding will amount to discriminating against the other students of the school who apparently have conformed to the rule without complaint. Rather, I hold the view that rules and regulations of the school should only be viewed in the lens of the provisions of the Constitution to ensure that they do not sin against people's rights to manifest and practise any religion they subscribe to, except on reasonable justification for the public good, in this case the community of students.

While there is no reported Ghanaian decision on the Rastafarian religion and its manifestation with the keeping of dreadlocks, Counsel for the Applicant in this case has assisted with some authorities as well as the Court has also endeavoured to come across some other foreign decisions which interestingly are substantially on all accord with the facts of the present case and for which their persuasive effect cannot be glossed over.

To begin with is the case of **JWM (ALIAS P) VRS: BOARD OF MANAGEMENT HIGH SCHOOL & 2 ORS [2019] EKLR,** decided by the Kenyan High Court. In this case, the Petitioner, the father to MNW, a 15 year old Rastafarian girl, brought a petition against a High School, the Minister of Education and the Attorney General for the denial of her child the right to receive education because she wore dreadlocks due to her religious belief of Rastafarianism. The High Court pronounced as follows:

> Where genuine held religious beliefs clash with school rules, both sides must strike a balance between religion and education for the good of the learner and the institution. **School rules must appreciate genuinely held religious beliefs and should not be applied as though they are superior to the text of the Constitution. They should not be a bar to full realization and enjoyment of rights and fundamental freedoms guaranteed by the Constitution.** (My emphasis).
>
> ....
>
> In that regard, school rules and regulations, though necessary for proper governing the conduct and discipline of students, must not be applied in a manner that infringes on rights guaranteed by the Constitution. School rules and regulations are intended to 'regulate and guide students' conduct and discipline for their well-being and proper management of the school but not to punish them. They should not therefore undermine substantive constitutional rights and being subordinate to the Constitution, they should not be applied so as to override constitutional provisions. Rather, they should augment those provisions. The fact that rule 7 does not allow keeping of dreadlocks, is not to say MNW must give up her religious beliefs and do away with rastas given that shaving hair is against her religious beliefs.

Also in the Zimbabwean case of **DZOVA VRS: MINISTER OF EDUCATION, SPORTS NAD CULTURE AND OTHERS (2007) AHRLR 189 (ZWSC 2007),** the Applicant was the father of a six year old child who, at the beginning of March 2005, was enrolled in grade 0. The child graduated from the pre-school system and was enrolled in the primary school system. According to the father, while in pre-school, the child never cut her hair and kept the dreadlocks. The child's father was called to discuss the issue of the child's hair with the teacher in charge. At the time, the child was detained and was no longer allowed to the classroom with the other children. Attempts to settle the matter did not yield as the school insisted that they could not

accept the child's continuous learning in the school so long as his hair was not cut to a length acceptable by the school. The Supreme Court of Zimbabwe observed as follows:

> The provisions of S1 362 of 1998 deal with discipline in the school and obedience to the school staff. It has not been suggested, nor can it be argued, that having long hair at the school is indiscipline or disobedience to the school staff.
>
> It is only a manifestation of a religious belief and is not related to the child's conduct at school. I therefore do not agree that these regulations are relevant to the matter complained of by the applicant.

See also, the South African case of **DEPARTMENT OF CORRECTIONAL SERVICES & ANORTHER VRS: POLICE AND PRISONS CIVIL RIGHTS & 5 ORS [2013] ZASCA 40.**

The facts of this case which travelled all the way to the Supreme Court of Appeal of South Africa, is as follows:

The Respondents herein were male and former correctional officers of the first Appellant. All were members of the first respondent, a trade union, and held various positions at Pollsmoor Prison, Cape Town at the time of their dismissals in June 2007. They each had long service with the department and were exemplary employees. A common feature among them was they all wore dreadlocks albeit for different reasons. Their refusal to cut their hair when ordered to do so under the department's Corporate Identity Dress Code led to their dismissal.

According to the Respondents, the instruction to cut their hair undermined their freedom of religion, which was recognized and protected by the Constitution.

The Labour Court accepted that the respondents were dismissed because they wore dreadlocks and disobeyed the commissioner's instruction to cut them. That they wore the dreadlocks in pursuance of sincerely held religious or cultural beliefs and that their female counterparts were not prohibited from wearing dreadlocks. In the Court's view, it was 'beyond doubt that the impact of the instruction would have a devastating impact on their beliefs' and faith.

The Court therefore ordered the reinstatement of those respondents who sought it and compensation for those who no longer wanted their jobs.

On further appeal to the Supreme Court of Appeal of South Africa, Appellants' case distilled simply to the fact that the discrimination was justifiable because it sought to eliminate the risk and anomaly posed by placing officers who subscribe to a religion or culture that promotes criminality-in the form of the use dagga-in control of a high regulation, quasi-military institution such as a prison. It was contended that the

department's real problem lay not with the hairstyle worn by the Rastafari and 'intwasa' initiates as such but that their faiths which require the use of dagga, an illegal and harmful drug, as an integral ritual in their observance.
The appellants' counsel pointed out that South Africa expands huge effort in the discharge of its international obligation to combat the drug war to which the use of dagga is central. The risk posed by dreadlocks, it was argued, is that they render Rastafari officials conspicuous and susceptible to manipulation by Rastafari and their inmates to smuggle dagga into correctional centers. That is would negatively affect discipline and the rehabilitation of inmates. It was further submitted that the department was not particularly concerned with female officials who wore dreadlocks. This was so because the risk in females was significantly reduced as it is not unusual for them to wear long hair.

The Court pronounced at page 11 of the report as follows:

> Without question, a policy that effectively punishes the practice of a religion and culture degrades and devalues the followers of that religion and culture in society; it is a palpable invasion of their dignity which says their religion or culture is not worthy of protection and the impact of the limitation is profound. That impact here was devastating because the respondents' refusal to yield to an instruction at odds with their sincerely held beliefs cost them their employment.

At page 12, the court held further:

> Even assuming otherwise, no evidence was adduced to prove that the Respondents' hair, worn over many years before they were ordered to shave it detracted in any way from the performance of their duties or rendered them vulnerable to manipulation and corruption. Therefore it was not established that short hair, not worn in dreadlocks, was an inherent part requirement of their jobs. **A policy is not justified if it restricts a practice of religious belief-and by necessary extension, a cultural belief-that does not affect an employee's ability to perform his duties, or jeopardise the safety of the public or other employees, nor cause undue hardship to the employer in a practical sense. No rational connection was established between purported purpose of the decimation and the measure taken. Neither was it shown that the department would suffer an unreasonable burden if it had exempted the respondents. The appeal must therefore fail.** (My emphasis).

These authorities from the various jurisdictions recognise that the constitutional right of an individual or individuals is not absolute and therefore same can be restricted by statute or by way of a policy or rules and regulations, as in the instant case. The proviso however is that, where a constitutional right is sought to be restricted, then there must be some concrete or reasonable justification for such restriction. That the public good must outweigh an individual right constitutionally guaranteed.

The international jurisprudence seems to accord with our **Article 12 (2)** and the expatiation given it by our apex Court in the case of **CIVIL AND LOCAL GOVERNMENT STAFF ASSOCIATION OF GHANA (CLOSSAG)**, supra. In this case, the core issue was whether the limitations sought to be imposed on the political activities of the Plaintiff by the Civil Service Code of Conduct, Local Government Service Code of Conduct and **Section 26** of the **Political Parties Act, 2000 (Act 574)** were consistent with the Constitution. The Apex Court outlined the litmus test to be applied when deciding when to trump a constitutional right of an individual or individuals for a restrictive act of parliament, policy, rules or regulations for the public good. At page 14 of the report, the Supreme Court held.

> Granting limitations on the exercise of these rights is a clear indication that the framers of the Constitution must have contemplated certain overriding interests i.e. the public interest in respect of the exercise of these rights as well as the public interest in assurance that public officers will as much as possible serve the public rather than political interests.

The Court also stated at page 12 of the report as follows:

> Prima facie constitutional rights and freedoms are to be enjoyed fully but subject to the limits which the Constitution itself places thereon, in the terms of Article 12 (2). However, in recognition of the fact that the enjoyment of political rights must be also governed by certain regulations and standards Article 2 1(3) makes room for 'laws and qualifications' so as to assure that, in the enjoyment of the fundamental freedom to form or join political parties, there will be order as well as proper service to the public good. This is an important aspect of good governance. **Hence, in determining the validity of any statutory or other limitation placed on a constitutional right, the questions that need to be determined are:**
>
> **a. Is the limitation necessary? In other words is the limitation necessary for the enhancement of democracy and freedoms of all, is it for the public good?**
>
> **b. Is the limitation proportional? Is the limitation over-broad such as to effectively nullify a particular right or freedom guaranteed by the Constitution?** (My emphasis).

Guided by the principles enunciated by the Supreme Court, the question that I pose is that in the face of the undeniable right of the Applicant to practise and manifest his religion, what reasonable and proportionate justification has been placed before this Court by the Respondents so that in balancing the two competing interests, this Court is obligated to tip the balance in favour of the Respondents? No doubt the burden rests on the Respondents to prove that the regulation or rule that requires

the Applicant herein to keep his "hair low, simple and natural..." is reasonable, proportionate and not over-broad vis a vis the Applicant's constitutional right.

Per the evidence before the Court, the Respondents have a high obligation placed on them to set up standards for the operation of the Achimota School. The ultimate aim of these rules is to enhance the quality of education for the benefit and academic excellence of the students they enroll. What this Court is enjoined to examine at this stage is that by the basic object of the Respondents to put rules in place in order to manage and enhance Achimota School as a public educational institution, what will be the compelling disadvantage to the community of students if a student who states he maintains dredlocks in practice and manifestation of his religious belief is permitted to maintain same in the school?

In answer to this question, the combined evidence of the Respondents is to the effect that the rule in issue is for the welfare of the students, to maintain discipline, uniformity and also hygiene amongst the students in the school. It is to be noted that the content of the said discipline, uniformity and hygiene that results from students keeping their hair low, simple and natural has not been told to this Court. Further, how the present state of hair of the Applicant will impact negatively on his own educational good or those of the community of students has not been demonstrated to this Court to weigh on the mind of the Court to trump the constitutionally guaranteed right of the Applicant for the public good or interest of the community of students. In the absence of such compelling justification grounded on the public good of the school as a whole in the face of a constitutionally guaranteed right, I am unable to tip the balance in favour of the implementation of the rule of the Respondents to restrict the fundamental human right of the Applicant to practise and manifest his religious belief. In all that there is, what is pertinent is whether the rule is efficacious or advantageous to the enhancement of the ultimate goal or object of the institution for which it is made. I see none from the Respondents' case. Indeed, the Respondents' aim or objective for the said rule are so omnibus that the ultimate results they seeks to achieve per the rule as an educational set up is lost on the Court. Questions left unanswered is how the rule is for the welfare, discipline and hygiene of the students, the non-compliance with which will detract from the ultimate goal of the school as an educational institution? I am unable to see from the evidence before me the compelling disadvantage to the good of the community of students and the objects of Achimota School as an educational entity to permit the restriction of the constitutional right of the Applicant to practise and manifest his religious belief.

Accordingly, the 1st Respondent's insistence that the Applicant cuts his hair before being admitted to the school amounts to an illegal and unconstitutional attempt to suspend the manifestation of the Applicant's constitutionally guaranteed freedom to practise and manifest his religion. This Court will not fold its arms and watch such violation. The conduct is nothing, but unlawful and unconstitutional.

The Applicant contends that the unlawfulness of the 1st Respondent conduct violated his dignity as a human being. **Article 15** of the 1992 Constitution makes the dignity of all persons inviolable. The Applicant argued that while seeking to complete the protocols concerning his registration with the 1st Respondent, he was asked to step aside. Interestingly, the 1st Respondent corroborated this aspect of the Applicant's case by stressing that the Applicant was isolated. This ordeal the Applicant was subjected to by isolating him from the other students, in my view, constituted an embarrassment and caused much inconvenience to the Applicant. His sin was his insistence to hold on to his religion and the manifestation thereof. The conduct of the 1st Respondent in the treatment of the Applicant, does not accord administrative prudence and fairness. **Article 23** of the 1992 Constitution states that:

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

Under our current Constitution, administrative justice is a human right. Persons wielding administrative authority must exercise same in tune with the law. The 1st Respondent failed to properly act in tune with the dictates of administrative justice by refusing to accept the Applicant's acceptance form and enroll him, simply because he stood by the manifestation of his religion. The refusal of the 1st Respondent, as already pointed out, was not in accord with the due process of law.

In the circumstance I find and declare as follows:

i. The failure and or refusal of the 1st Respondent, to admit or enroll the Applicant on the basis of his Rastafarian religious inclination, beliefs and culture characterised by his keeping of rasta is a violation of his fundamental human rights and freedoms guaranteed under the 1992 Constitution, particularly Articles 12 (1); 23; 21 (1) (b) (c); 26 (1)); 17(2) and (3).

ii. The failure and or refusal of the 1st Respondent, to admit or enroll the Applicant on the basis of his Rastafarian religious inclination, beliefs and culture characterised by his keeping of rasta is a violation of his right to education guaranteed under Articles 25 (1) (b), 28 (4) of the 1992 Constitution.

iii. The order directed at the Applicant by the representative of the 1st Respondent to step aside during the registration process on the basis of his religious belief characterised by the keeping of rasta is a violation of his right to dignity guaranteed under Articles 15 (1) and 35 (4), (5) of the 1992 Constitution.

iv. There is no lawful basis for the 1st Respondent to interfere with the Applicant's right to education based on his rasta through which he

manifests or expresses his constitutionally guaranteed right to religion and to practise and manifest same.

v. I order the 1st Respondent to immediately admit or enroll the Applicant to continue with his education unhindered by the manifestation of his Rastafarian religion.

vi. I further restrain the 1st Respondent either by themselves, servants and or agents from in anyway, interfering in the Applicant's senior secondary school education on the basis of his religious belief and practice as a Rastafarian.

There shall be no order as to compensation for the suffered violations as prayed as well as Costs in favour of the Applicant having in mind the future relationship that shall exist between the Applicant as a student and the Respondents who are charged with the management of the school he is so desirous to attend.

(SGD)
JUSTICE GIFTY AGYEI ADDO.
HIGH COURT JUDGE.

COUNSEL

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