

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
CAPE COAST – A. D. 2021**

IN THE MATTER OF ARTICLE 99 OF THE 1992 CONSTITUTION
OF THE REPUBLIC OF GHANA

AND

IN THE MATTER OF SECTION 16 OF THE REPRESENTATION OF THE
PEOPLE ACT, 1992 (PNDCL 284) AS AMENDED

AND

IN THE MATTER OF PARLIAMENTARY ELECTIONS FOR THE ASSIN
NORTH CONSTITUENCY HELD ON 7TH DECEMBER, 2020

AND

IN THE MATTER OF PETITION BY MICHAEL ANKOMAH-NIMFAH
CHALLENGING THE DECLARATION BY THE ELECTORAL COMMISSION
OF JAMES QUAYSON, A.K.A. JAMES GYAKYE QUAYSON AS MEMBER
OF PARLIAMENT FOR THE ASSIN-NORTH CONSTITUENCY PURSUANT
TO THE PARLIAMENTARY ELECTIONS HELD ON 7TH DECEMBER 2020

BETWEEN

JAMES GYAKYE QUAYSON ****1ST RESPONDENT/APPELLANT/APPLICANT
HSE. NO. SD/16 SDA
ASSIN-BEREKU

VRS

1. MICHAEL ANKOMAH-NIMFAH – PETITIONER/RESPONDENT/RESPONDENT
H/NO. 65 OB APIATUAA STREET,
ASSIN-BEREKU
2. THE ELECTORAL COMMISSION – 2ND RESPONDENT/RESP./RESPONDENT
HEAD OFFICE
RIDGE, ACCRA

MOTION ON NOTICE FOR STAY OF EXECUTION PENDING APPEAL

(Rule 27 of C. I. 19 as amended by C. I. 132)

TAKE NOTICE that this Honourable Court will be moved by **JUSTIN PWAVRA TERIWAJAH, ESQ.** counsel for the 1st Respondent/Appellant/Applicant (hereinafter referred to as “the

Applicant”) praying this Court to stay execution of the judgment of the High Court, Cape Coast [Coram: Kwasi Boakye J.] delivered on 28th July, 2021, pending the determination of an appeal filed in this Court of Appeal;

UPON the grounds contained in the accompanying supporting affidavit;

AND for such further order(s) as this Honourable Court may deem fit.

COURT TO BE MOVED on the day of 2021 at 9 o'clock in the forenoon or so soon thereafter as counsel for and on behalf of the Applicant may be heard.

DATED AT KAPONDE & ASSOCIATES, SUITES 606/607, GHANA SUPPLY CO. BUILDING, REPUBLIC HOUSE, OPPOSITE COCOBOD, CMB – ACCRA THIS 5TH AUGUST, 2021.

LAWYER FOR THE APPLICANT
JUSTIN PWAVRA TERIWAJAH, ESQ.
SOLICITOR’S LICENCE NO. **eGAR 00031/21**
CHAMBER’S REGISTRATION NO. **ePP00739/20**

THE REGISTRAR
COURT OF APPEAL
CIVIL DIVISION
CAPE COAST

AND FOR SERVICE ON:

1. THE ABOVE-NAMED PETITIONER/RESPONDENT/RESPONDENT; AND
2. THE ABOVE-NAMED 2ND RESPONDENT/RESPONDENT/RESPONDENT.

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**AFFIDAVIT IN SUPPORT
OF MOTION FOR STAY OF EXECUTION PENDING APPEAL**

I, JAMES QUAYSON A.K.A. JAMES GYAKYE QUAYSON, of digital address number CR-2523-3742 and also of H/No. SD/16 SDA, Assin Bereku in the Central Region of the Republic of Ghana do hereby make oath and say as follows:

1. That I am the Applicant herein and the deponent hereto.
2. That the facts deposed hereto are matters within my personal knowledge, information or belief unless otherwise stated.
3. That in the course of hearing this application, my counsel shall seek leave of this Court to refer to all processes filed in this suit as if same were exhibited in extenso herein and sworn to on oath.
4. That I hail from Assin North Constituency in the Central Region of the Republic of Ghana, and I am a citizen of the Republic of Ghana by birth.
5. That I met all the legal requirements for becoming a candidate for parliamentary elections in the Republic of Ghana as spelt out under section 9 of the Representation of People Act, 1992 (PNDCL 284), as I am advised by counsel and verily believe same to be true.
6. That I successfully filed my parliamentary nomination form with the 2nd Respondent/Respondent/Respondent (hereinafter called "the 2nd Respondent") to participate in the 7th December, 2020 parliamentary elections.
7. That I did not owe allegiance to a country other than Ghana at the material time provided for under the Constitution and the Representation of People Act, 1992 (PNDCL 284), as I am advised and verily believe.
8. That I was declared elected and my name was *gazetted* by the 2nd Respondent as the Member of Parliament-elect for the Assin North Constituency.
9. That a copy of the *gazette* evidencing and confirming my election as a member of Parliament is hereby attached and is marked "Exhibit JQ 1".
10. That I was subsequently sworn in as the Member of Parliament for the Assin North Constituency aforesaid on 7th January, 2021 and I have since been representing the people of the Assin North Constituency in the Parliament of the Republic of Ghana.

11. That after being sworn in as a Member of Parliament of the Republic of Ghana, I was served with a suit initiated in the High Court, Cape Coast, by the above-named Petitioner/Respondent/Respondent (hereinafter referred to as "the Petitioner") challenging my election as the Member of Parliament for Assin North Constituency. Annexed hereto and marked as "EXHIBIT JQ 2" is a copy of the petition.
12. That I filed an answer to the said petition. Annexed hereto and marked as "EXHIBIT JQ 3" is a copy of my answer to the petition which I filed in the High Court and in which important jurisdictional and constitutional issues were raised.
13. That on 28th July, 2021, the High Court gave judgment granting all the reliefs of the Petitioner, and declaring my election as a Member of Parliament for the Assin North Constituency void.
14. That a copy of the judgment of the High Court is hereby attached and is marked as "EXHIBIT JQ 4".
15. That on 2nd August, 2021, I caused my lawyers to file an Appeal against the said judgment at the registry of the High Court for transmission to this Honorable Court. Annexed hereto and marked as "EXHIBIT JQ 5" is a copy of the Notice of Appeal setting out the grounds of appeal.
16. That I am advised by counsel and I verily believe same to be true that the decision of the High Court is clearly in error and the grounds of error indicated in the Notice of Appeal are unanswerable.
17. That, for instance, I am advised by counsel and I verily believe same to be true that the issue of whether I owe allegiance to a country other than Ghana under article 94(2)(a) of the 1992 Constitution is a matter that can only be properly determined by recognizing that this is a question of fact by virtue of the Evidence Act, 1975 (NRCD 323) and evidence has to be led, in this case, of Canadian law on the matter.
18. That His Lordship, I am advised by counsel and verily believe same to be true, did not also appreciate that this matter of owing allegiance to a country other than Ghana is not the same as having citizenship of another country in addition to that of Ghana.

19. That I am advised by counsel and I verily believe that His Lordship's attempt to determine the matter of Canadian law by himself and quoting from a Canadian statute on citizenship without taking evidence on the Canadian law as to allegiance, was in clear error.
20. That I am advised by counsel and verily believe that the framers of both article 94(2)(a) of the Constitution and section 9(2)(a) of the Representation of People Act, 1992 (PNDCL 284) expressly differentiated disqualifications arising from, for instance, owing allegiance to another country other than Ghana, from qualifications, such as Ghanaian citizenship and registration as a voter, under article 94(1)(a) of the Constitution and section 9(1)(a) of the Representation of People Act, respectively.
21. That I am also advised by Counsel and verily believe same to be true that the decision of the High Court is *per incuriam* the Supreme Court decision in *Republic v. High Court (Commercial Division), Accra; Ex Parte Electoral Commission (Nduom Interested Party) [2015-2016] 2 SCGLR 1091*, and accordingly same must be set aside.
22. That I am advised by counsel and I verily believe same to be true that, indeed, the issue of the interpretation and enforcement of article 94((2)(a) in respect of owing allegiance to a country other than Ghana is a matter that the High Court ought to have referred to the Supreme Court under Article 130 (1)(a) and 130(2) of the 1992 Constitution and the refusal or failure of the High Court to do so vitiates the purported decision.
23. That I am advised by Counsel and verily believe same to be true that the 2nd Respondent which conducted the election, including making a determination that I was not disqualified from being a candidate, acted properly and within its powers in all the steps that it took, particularly when an attempt was made to have me disqualified.
24. That the 2nd Respondent duly considered and determined the petition brought against me having regard to the Constitution and laws of Ghana and declared me eligible to contest the election.

25. That the decision of the High Court, I am advised by counsel and verily believe same to be true, wrongfully undermines the constitutional role of the 2nd Respondent.
26. That the stay herein sought is necessary based on the exceptional circumstances arising from the numerous serious errors of law and constitutional infringements in the decision of the High Court.
27. That if a stay of execution is not granted until the determination of the appeal, it would, I am advised and verily believe same to be true, amount to the High Court being allowed to infringe upon the 1992 Constitution and statutes and ignore binding decisions of the Supreme Court with impunity, thus undermining fundamental tenets of constitutional governance and the rule of law from the time of the clearly erroneous decision until the hearing of the appeal.
28. That I am advised by Counsel and verily believe same to be true that if execution of the judgment is not stayed, the people of the Assin North Constituency will lack representation in Parliament for a significant period.
29. That, even if, as a result of the erroneous decision of the High Court, a by-election were held, I would, for instance, pending the determination of my appeal in this Court of Appeal, be able to seek an injunction to restrain the 2nd Respondent from gazetting any other person as a Member of Parliament for Assin North when I am duly gazetted as such, giving rise to a multiplicity of suits in respect of the representation in Parliament of the people of the Assin North Constituency.
30. That, if the High Court decision is not stayed, it could give rise to considerable political tension in the Assin North Constituency and possible disturbances of the peace.
31. That if the High Court decision is not stayed and my appeal succeeds, as, I am advised by counsel and verily same to be true, is inevitable, the decision of this Court of Appeal on my appeal would be rendered nugatory simply by the passage of time.
32. That a failure to stay execution of the judgment would not only occasion an irreparable injustice and damage to the people of the Assin North Constituency and me, but would also lead to the 2nd

Respondent having to expend significant financial resources in organizing a by-election when the errors of the High Court mean that it is not justified to hold such a by-election.

33. That if the 2nd Respondent organizes a by-election pursuant to the judgment of the High Court and I win my appeal in this Court of Appeal, it could lead to an anomalous situation whereby there would be two elected members of Parliament for the Assin North Constituency, a situation which will be alien to the laws of Ghana.

34. That I am advised by counsel and I verily believe same to be true that the foregoing circumstances constitute exceptional circumstances for which reason this Honorable Court ought to grant an order of stay of execution of the judgment of the High Court pending the determination of my appeal.

35. **WHEREFORE** I swear to this affidavit in support of my application for stay of execution pending appeal.

DEPONENT

Sworn in Accra this
day of August, 2021.

BEFORE ME

COMMISSIONER FOR OATHS

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CERTIFICATE OF EXHIBITS

I
of Cape Coast do hereby certify that the underlisted documents have been
exhibited to the affidavit of **James Gyakye Quayson** which has been
sworn before me:

Commissioner for Oaths

1. **“Exhibit JQ 1”** which is a copy of the *gazette* evidencing and confirming my election as a member of Parliament;
2. **“Exhibit JQ 2”** which is a copy of the Petitioner’s parliamentary election petition;
3. **“Exhibit JQ 3”** which is a copy of Applicant’s answer to the petition;
4. **“Exhibit JQ 4”** which is a copy of the judgment of the High Court; and
5. **“Exhibit JQ 5”** which is a copy of the Applicant’s Notice of Appeal against the judgment of the High Court.

DATED AT CAPE COAST THIS 5TH AUGUST, 2021.

BEFORE ME

COMMISSIONER FOR OATHS

THE REGISTRAR
COURT OF APPEAL
CAPE COAST