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17<sup>TH</sup> DECEMBER, 2024.

HIS EXCELLENCY,  
THE PRESIDENT OF THE REPUBLIC OF GHANA,  
JUBILEE HOUSE,  
ACCRA.

Dear Mr. President:

**PETITION FOR THE REMOVAL OF THE HONOURABLE CHIEF JUSTICE OF THE  
REPUBLIC OF GHANA [HER LADYSHIP GERTRUDE SACEY TORKORNOO CJ]  
PURSUANT TO THE PROVISIONS OF ARTICLE 146 OF THE 1992  
CONSTITUTION OF THE REPUBLIC OF GHANA.**

**I. INTRODUCTION.**

1. I, Professor Stephen Kwaku Asare, a citizen of the Republic of Ghana, respectfully submits this petition to your Excellency the President of the Republic of Ghana, seeking the removal of Her Ladyship Gertrude Sacey Torkornoo, the Chief Justice [CJ] of the Republic of Ghana, on grounds of:
  - i. stated misbehavior; and
  - ii. incompetence.
2. The legal basis of my petition is article 146(1) of the 1992 Constitution of the Republic of Ghana [the Constitution]. For the avoidance of doubt, my petition focuses on stated misbehavior and incompetence related to the Chief Justice's administrative functions as head of the judiciary responsible for its supervision and administration under article 125(4) of the Constitution.
3. My petition does not arise from the Chief Justice's exercise of her judicial functions. Accordingly, the petition does not challenge any decisions, orders or directives issued by the Chief Justice in the performance of her duties as a Justice of the Supreme Court, including those made to enforce judgments, decrees or orders in cases she has adjudicated. I fully understand, respect, and value the importance of decisional independence.
4. It is my understanding that upon the receipt of this petition, your Excellency shall, acting in consultation with the Council of State, appoint a committee consisting of two Justices of the Supreme Court, one of whom you shall appoint as chairman, and three other persons who are not members of the Council of State, nor members of Parliament, nor lawyers. See article 146(6) of the Constitution.
5. It is my further understanding that the committee shall inquire into the petition and recommend to you whether the Chief Justice ought to be removed from office on the grounds maintained in this petition. I affirm my understanding that all proceedings herein shall be held in camera, and the Chief Justice is entitled to be heard in her defense by herself or by a lawyer or other expert of her choice.

6. It is therefore my understanding that your Excellency the President of the Republic of Ghana [your Excellency] shall act in accordance with the recommendations of the committee (see article 146(6)-(9)).

## **II. BACKGROUND.**

### **A. Request for the appointment of five (5) Justices of Appeal to the Supreme Court.**

7. By a letter dated 30<sup>th</sup> May 2024, the Honourable Chief Justice of the Republic of Ghana formally wrote to your Excellency, specifically requesting the appointment of the following five Judges of the Court of Appeal to the Supreme Court of Ghana:

- i. His Lordship Justice Edward Amoako Asante, JA.
- ii. Her Ladyship Justice Angelina Mensah Homiah, JA.
- iii. His Lordship Justice Eric Kyei Baffuor, JA.
- iv. Her Ladyship Justice Cyra Pamela C.A. Koranteng, JA.
- v. Her Ladyship Justice Afia Asare Botwe, JA.

8. Regarding His Lordship Edward Amoako Asante, the Honourable Chief Justice wrote that:

“Justice Asante’s term of office at the ECOWAS Court ended on 31<sup>st</sup> July, 2022. He was requested to remain at post on account of the withdrawal of Mali, Guinea and Burkina Faso from the community. His current tenure is expected to end in 2026 or earlier when he is expected to return to Ghana’s judiciary.”

9. The letter goes on to say that:

“His Lordship has provided excellent leadership as President of the ECOWAS Court and will undoubtedly be an invaluable asset on the Supreme Court of Ghana.”

10. Regarding His Lordship Justice Eric Kyei Baffuor and their Ladyships Angelina Mensah Homiah, Cyra Pamela Koranteng, and Afua Asare Botwe, however, her Ladyship the Chief Justice wrote that they:

“... are currently working as Judges of the Court of Appeal. Their work has been distinguished by outstanding service, courage and competence.”

11. The grave nature of the Chief Justice’s role in requesting the appointment of the said Justices to the Supreme Court became evident when subsequently

social media published another letter dated 7<sup>th</sup> February, 2024 from the Chief Justice to your Excellency.

12. The letter of 7<sup>th</sup> February 2024 is captioned “Brief on the need for the minimum number of twenty judges on Ghana’s Supreme Court Bench.” In the said letter, the Chief Justice states that

“[I] write in reference to our previous discussion on the Chief Justice’s proposal for an increase in the number of Justices of the Supreme Court of Ghana. Kindly find attached a paper justifying the need for the request. Thank you very much.”

13. The above quotation suggests that there has been a previous discussion on the subject between the Chief Justice and the President.
14. Of concern to your Petitioner is the fact that both letters — one proposing an increase in the minimum number of Justices on the Supreme court of Ghana and the other requesting five specific Judges to be appointed to the Supreme Court — were written on the letterhead of the Chief Justice and clearly expressed itself as the Chief Justice’s personal request on the matter. The letter did not refer to any consultation or involvement of the Judicial Council [the Council] of which the Chief Justice is a member and within whose constitutional mandate it lies to deal with matters relating to the appointment of Justices of the Supreme Court.
15. Your petitioner is further concerned by the reference to an earlier discussion between the Chief Justice and Your Excellency the President on the proposal to increase the number of Justices on the Supreme Court. Your petitioner also notes that the question of minimum number of Justices on the Supreme Court is settled by article 128(1) of the Constitution, which provides that

“the Supreme Court shall consist of the Chief Justice and not less than nine other Justices of the Supreme Court.”

16. The plain meaning of article 128(1) is that the minimum number of Justices for the Supreme Court is ten (10). Thus, an amendment of the Constitution is the lawful way to change the minimum, not by a private discussion or communications between the Chief Justice and the President. It is Parliament that has the power to amend the Constitution (article 289 of the 1992 Constitution).
17. Further, your Petitioner has reliable information that at a meeting of the Judicial Council held on 14<sup>th</sup> June 2024, the Chief Justice expressed her desire to increase the number of Supreme Court Justices, whereupon the Council advised Her Ladyship to pursue broader consultations with other institutions on the matter, especially the Parliament of the Republic of Ghana.
18. At the said Council meeting, the Chief Justice did not disclose the fact that her desire to increase the number of Supreme Judges had been the subject of a previous discussion and a communication with Your Excellency. This fact became evident only after the letter dated 7<sup>th</sup> February 2024 from the Chief Justice to your Excellency appeared on social media. It follows from these

facts that the Council had no knowledge of or involvement in the attempt to increase the minimum number of Justices beyond the constitutional specified number.

19. In any event, your Petitioner has reliable information that on the 24<sup>th</sup> of June 2024 the Council met once again, and Her Ladyship then presented the names of the five Justices for the Council's approval. In so doing, Her Ladyship gave the impression that the names presented to the Council for approval emanated from your Excellency which then would mask her role in requesting for the appointment of the Judges.
20. The Constitution requires the President to act on the advice of the Council, in consultation with the Council of State when nominating Supreme Court Judges for parliamentary approval. The Chief's Justice elaborate scheme of requesting the President to appoint specific Judges and later presenting these names for the Council's approval subverts the constitutional scheme and converts both the Council and the President into rubber stamping her preferred Judges. As it turned out, this scheme was fortuitously undone by the Council's concern about the timing of the nominations. **When the petition is being considered at any stage members of the Judicial Council will be subpoenaed to testify on the matter.**
21. The Chief Justice's request for the appointment of the aforementioned judges to the Supreme Court was done in brazen violation of the constitutional rules for the appointment of Justices of the Supreme Court, amounted to abuse of her office, and was done without fair and/or reasonable criteria.
22. The Chief Justice's request for the appointment of the aforementioned judges to the Supreme Court also points to her incompetence as Chief Justice of the Republic of Ghana as she is completely ignorant of or utterly disregards the constitutional and administrative rules which deal with such matters.
23. The Chief Justice, as the head of the judiciary, must understand that she has no direct role in recommending individuals for appointment or promotion to the Supreme court. If the Chief Justice makes recommendations for promotion or appointment to the Supreme Court, it strongly indicates either a shocking lack of understanding or utter disregard for the constitutional process and established promotion procedures. Further, the Chief Justice ought to know that she cannot have a side deal with the President to raise the minimum number of Justices to the Supreme Court, side-stepping the minimum that is specified by the Constitution.

**B. Arbitrary reconstitution of panels and transfer of Justices.**

24. There have been reported incidences of the Chief Justice's direct interference with duly constituted panels with no explanations or public interest reasons for so doing. We consider the reconstitution of panels to be beyond the Chief Justice's administrative power and amounts to a direct interference with the impartiality and independence of duly constituted judicial panels.
25. The Chief Justice's constitutional and/or legal authority to constitute and reconstitute panels for the hearing of cases must be guided by the

constitutional and common law principles which regulate the exercise of such power, and so is the power to transfer judges and other officials of the service.

26. The fundamental inability to distinguish between the exercise of her administrative power and interference with a panel's judicial work confirms her incompetence, quiet apart from the dangers that it poses to the integrity and independence of the judiciary. Inability to understand or perform the duties of an office adequately constitutes incompetence.
27. It is my contention that reconstitution of judicial panels is the ultimate way to interfere with or control the impartiality and independence a panel's judicial work guaranteed by article 127(2) and 19(13) of the Constitution [1992].
28. The Constitution is clear that no person, including the President, Parliament, and the Chief Justice, shall interfere with Judges or judicial officers or other persons exercising judicial power, in the exercise of their judicial functions (see article 127(2)). Thus, the reconstitution, under the guise of exercising administrative power, is a glaring abuse of her office and a fundamental misunderstanding of the boundaries of the Chief Justice's administrative authority. The abuse of her administrative power to interfere with panels' judicial function meets the threshold of stated misbehavior.
29. The instances listed below are illustrative of how the Chief Justice has interfered with the judicial power of duly constituted court panels that are seized with a case.

**i. The Opuni trial.**

30. The ongoing case involving Mr. Opuni (*The Republic v. Stephen Kwabena Opuni, Seidu Agongo, Agricult Ghana Ltd*) is a glaring example of the Chief Justice abusing his administrative powers to reconstitute a duly constituted Supreme Court panel that is seized of matter on the judicial side. In this case, Justice Honyenuga, who presided over the matter at the trial level, proceeded on retirement.
31. The trial was reassigned to Justice Kwasi Anokye Gyimah, who at the time presided over the Division of the High Court, in Accra before which the case was placed. The Court presided over by Anokye Gyimah J ruled on April 4, 2023, that the trial should start afresh (de novo), considering the need to observe witness demeanor and the fairness concerns raised by the defense. This has always been the practice in criminal trials, in contrast to civil trials where the parties had the option to adopt the proceedings or start the trial de novo. This common law position is reiterated in *The Republic v High Court (Criminal Division): Ex Parte Stephen Kwabena Opuni et al.*, (Civil Motion No. J5/87/2023, judgment delivered on 24<sup>th</sup> January 2023). The judge's ruling therefore fell within the expectations of many legal practitioners and judges.
32. The Attorney General appealed this ruling at the Court of Appeal. On July 3, 2023, a three-member Court of Appeal panel led by Justice Philip Bright Mensah, with Justices Jennifer Abena Dadzie and Ernest Owusu Dapaah,

overturned Justice Gyimah's ruling. The Court of Appeal directed that the High Court should adopt the proceedings from the trial conducted by Justice Honyenuga, emphasizing that the High Court's decision to start the case afresh was a misdirection.

33. In the meantime, the Chief Justice transferred Justice Anokye Gyimah to Kumasi and moved Justice Aboagye Tandoh from the High Court in Winneba to replace him. Several commentators linked the sudden transfer of Justice Anokye Gyimah to his disagreement with the Attorney-General on commencing the trial de novo. They publicly questioned whether Justice Anokye's was transferred because he could not be trusted to conduct the trial in a manner pleasing to the Attorney-General.
34. It is submitted that the Chief Justice's failure to provide any reason for the transfer fueled the public perception that the transfer was actuated by malice. It is well established that the arbitrary power to transfer judges is as damaging to judicial independence as the arbitrary power to appoint and dismiss them. Sound administrative practice requires that judicial transfers be based on objective and verifiable criteria to protect independent and impartial judges.
35. Further fueling the perception that the Chief Justice is abusing her power to attain a predetermined outcome in the Dr. Opuni case, the Chief Justice again abused her administrative powers to interfere with the judicial function of another judicial panel involving the Dr. Opuni case.

**ii. Reconstitution of panel for the hearing of Dr. Opuni's appeal.**

36. Dr. Opuni's legal team, led by lawyer Samuel Codjoe, filed an interlocutory appeal at the Supreme Court on July 7, 2023, arguing that the Court of Appeal erred in its judgment. Several months after the appeal was filed, parties appeared before the Supreme Court on January 17, 2024, for a hearing. The Court presided over by Justice Mariama Owusu, along with Justices Yaw Darko Asare, Emmanuel Yonny Kulendi, George Kingsley Koomson, and Henry A. Kwofie ordered the parties to file written submissions.
37. On May 8, 2024, the Chief Justice controversially reconstituted the panel hearing Dr. Opuni's appeal, presiding over the new panel, which included Justices Mariama Owusu, Henrietta Mensa-Bonsu, Yaw Darko Asare, and Ernest Gaewu. Only two of the original five justices remained. Lawyer Samuel Codjoe objected to the new panel, citing Article 157(3) of the Constitution, which stipulates that a judge or panel cannot withdraw from a case after hearing arguments until judgment is delivered.
38. Despite his objection, the Chief Justice-led panel overruled him, and the case proceeded with the new panel. On June 19, 2024, the Supreme Court dismissed Dr. Opuni's appeal, ruling that the Court of Appeal was correct in directing the High Court to adopt the previous proceedings.
39. There was no administrative authority for the Chief Justice to reconstitute the panel in the Opuni case without assigning any justifiable reasons. It once again generated public and adverse discussions on the judiciary led by the

Chief Justice. The Chief Justice literally run a one-person show by exercising unconstitutional powers to interfere with the judicial functions of a duly constituted court panel that had previously issued directives to the parties.

40. The power to dispense with court panels at will is not only unknown to the Constitution but it is also anachronistic, antithetical to judicial norms, makes the judicial system susceptible to the abuse of power, and erodes public confidence in the judiciary as an independent arbiter of disputes.

### **iii. The Ablakwa case.**

41. On 25<sup>th</sup> June, 2024 lawyers for the Honourable Member of Parliament for North Tongu objected to a reconstituted panel of the Court of Appeal. They contended that to the best of their knowledge the panel to which the case was assigned are: Senyo Dzamefe (Presiding), Afia Serwaa Asare-Botwe, and Archer JJA. They however observed that the panel had been reconstituted by the substitution of Dzamefe and Archer JJA for Pamela Koranteng (Presiding) and Kweku Ackaah Boafo JJS leaving Asare-Botwe JA as the only Justice of the original panel. The reconstituted panel dismissed the objection holding that there was no evidence to suggest bias as the basis for the reconstitution.
42. Subsequently, however, evidence emerged that Justice Dzamefe was initially empanelled to preside over the matter but was written to, to return the docket to the Chief Justice. **Justice Senyo Dzamefe will be subpoenaed to testify in the matter.**

### **iv. Republic v Elisha Mahama & 2 others.**

43. On Wednesday the 22<sup>nd</sup> of May 2024 the prosecution in a case numbered UW/WA/DC/B1/10/2024, intituled *Republic v Elisha Mahama Akpanyiche & 2 Others* appeared in the High Court, sitting in Wa for the hearing of the case. It was announced in Court that the Chief Justice had directed that on the completion of the committal proceedings before the Wa district court “any further proceedings shall be transferred to Kumasi.” This directive to transfer the matter to be heard in Kumasi justifiably outraged many indigenes of the Upper West because of the venue of the crime and the residence of the parties.
44. The Chief Justice’s decision was questioned on grounds of reasonableness given the fact that the hearing of the matter in Wa was proper, more convenient and understandable having regard to the High Court Wa’s proximity to the place where the crime was committed, the residence of many of the witnesses and also the prosecution.
45. Although the Chief Justice subsequently rescinded her decision, her exercise of administrative power to transfer the case to Kumasi was in this instance exposed as arbitrary.

### **v. Usurping the functions of the rules of Court Committee.**

46. In April this year [2024] the Chief Justice issued about ten [10] Practice Directions to regulate some aspects of practice and procedure of certain Courts in Ghana. This function is by article 157 of the Constitution reserved exclusively to the Rules of Court Committee.
47. In the exercise of such function by the Rules of Court Committee, the said Committee is required to make the rules by constitutional instrument but not by any other instrument.
48. The Practice Directions issued by the Chief Justice to regulate practice and procedure in certain matters in some of the courts were neither issued by the Rules of Court Committee nor by constitutional instrument as prescribed by the Constitution. In issuing the said directions, the Chief Justice usurped a function constitutionally reserved to the Rules of Court Committee.
49. It is important to add that the Chief Justice issued the directions at a ceremony to which several persons were invited, and state resources expended to launch them. In so doing, the Chief Justice willfully caused financial loss to the State as the said directions have no force of law. The disregard of the Constitution's clearly laid out process for issuing Practice Directions fits into the pattern of the Chief Justice's utter contempt for due process, rule of law, and the Constitution that she is enjoined to protect, preserve, and defend.
50. Notwithstanding her attention having been drawn to the unconstitutionality of her actions by discussions in the media and publications on the subject, Her Ladyship has issued a circular to all Justices dated 10<sup>th</sup> July 2024 by which she has directed all Judges and Magistrates to implement the directions.

**vi. Making of administrative guidelines unconstitutionally.**

51. By article 159 of the Constitution, the Chief Justice is empowered to make Regulations for the efficient performance of the functions of the Judicial Service and the Judicial Council.
52. The constitutional provision however says that such Regulations must be made by the Chief Justice:
  - a. acting in accordance with the advice of the Judicial Council, and
  - b. with the approval of the President, and
  - c. by constitutional instrument.
53. Further by article 157, the Rules of Court Committee is empowered to make rules and regulations for regulating the practice and procedure of all courts in Ghana by constitutional instrument. In May 2024, when the Chief Justice launched her Practice Directions, they were launched with administrative guidelines. These directions were made contrary to the constitutional



provisions which regulate the making of such guidelines. Those practice directives that were related to the practice and procedure of the courts were not only to be made by *constitutional instrument* but also by the *Rules of Court Committee*. The failure to use a constitutional instrument shows a disdain for collaborative rulemaking and a preference for running a one-person show. So too is the usurpation of the functions of the Rules of Court Committee. The Constitution and our history clearly frown upon a judiciary that depends on the solitary decision of one person.

54. In the circular dated 10<sup>th</sup> July 2024, Her Ladyship has directed, unlawfully, that the administrative guidelines be implemented.

**vii. Daniel Ofori v Ecobank.**

55. In July 2018 Daniel Ofori won a case against Ecobank Ghana Limited. The judgment was delivered by the Supreme Court. The bank made several applications to the Supreme Court to have the judgment set aside on grounds of fraud. The Supreme Court dismissed all of them. In one such application, the Chief Justice was empanelled to hear the application but Daniel Ofori's lawyers objected on the ground that the Chief Justice had virtually made pronouncements in an earlier judgment against Daniel Ofori and which were reflected in some of the depositions the bank relied on to pray the Supreme Court to set aside its judgment. The Chief Justice refused to recuse herself resulting in a judgment of the Supreme Court disqualifying her from sitting with the panel to determine the bank's application.
56. Undaunted, the bank then commenced fresh proceedings in the High Court [General Jurisdiction 6] to set aside the judgment of the Supreme Court based on the very facts rejected by the Supreme Court in the several applications filed by the bank. The High Court presided over by..... dismissed the bank's application on grounds of abuse of the process. The bank appealed to the Court of Appeal and applied to the High Court for stay of execution.
57. When the Chief Justice took office, she transferred from the High Court [General Jurisdiction 6] to General Jurisdiction-8 of the High Court. The High Court now differently constituted, granted an application by the bank for stay of execution and in its ruling suggested the stay granted applied not only to the ruling of the High Court but also that of the Supreme Court. The Supreme Court later clarified that the stay ruling of the High Court could not extend to the Supreme Court decision.
58. The Chief Justice also transferred garnishee proceedings pending in respect of Daniel Ofori and the bank and in respect of which the Commercial Division of the Court had made an order nisi, to the High Court General Jurisdiction 8.
59. After the decision of the Supreme Court, the bank returned to the same High Court General Jurisdiction 8 presided over by the same judge who granted the bank's first application which was blunted by the Supreme Court decision and made the same application. The High Court completely oblivious of the Supreme Court ruling to which its attention was drawn, granted the bank's

application for stay of execution and in it reiterated expressly that the High Court had stayed the judgment of the Supreme Court and also the garnishee proceedings transferred from the Commercial Division of the court.

60. There can be no doubt whatsoever that the Chief Justice is the reason for the seeming boldness of the High Court Judge whose attention having been drawn to the Supreme Court's ruling that the High Court's earlier ruling could not affect the Supreme Court ruling still went ahead to brazenly and purportedly stay the Supreme Court ruling. If the Chief Justice's intervention was merely suspected, it is reasonably well established by her transfer of the case involving the same parties from the Judge in Commercial Division of the High Court-7 where the garnishee proceedings were pending to the Judge in General Jurisdiction 8 who was willing to stall Mr. Daniel Ofori's right to enjoy the judgment of the High Court.

### **III. GROUNDS FOR REMOVAL OF THE CHIEF JUSTICE – ARTICLE 146.**

#### **C. The Constitution.**

61. Article 146 (1) of the 1992 Constitution provides that, a Justice of the Superior Court or a Chairman of a Regional Tribunal shall not be removed from office except for:

- i. stated misbehavior, **or**
- ii. incompetence, **or**
- iii. on ground of inability to perform the functions of his office arising from infirmity of body or mind.

62. As already stated, your Petitioners' instant petition is grounded on the first two which are stated misbehaviour and incompetence. The two words are not defined by the Constitution. In discerning their meanings however, recourse will be had to their literal, ordinary, and grammatical meanings.

63. The reason for the recourse to the literal meaning of the words used in the Constitution is that the courts have repeatedly held that regard be paid first to the literal rule of the words used in a statute, unless recourse to such meaning leads to absurdity.

64. Further, the principle of removing judges for misbehavior and incompetence has roots in English common law, where it was established to protect the judiciary's integrity and independence.<sup>1</sup> Their definitions may therefore be discerned from common law sources under article 11 of the Constitution.

#### **D. Meaning of stated misbehavior.**

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<sup>1</sup> See the Hon Geoffrey Nettle AC QC Removal of Judges from Office. Melbourne University Law Review Vol 45(1): 241-276.

65. The definition of misbehavior has evolved over time, but it typically includes:
- i. **Abuse of Office:** using administrative powers in a manner which brings the administration of justice into disrepute.
  - ii. **Incompetence:** demonstrating a lack of ability or capacity to perform judicial duties in accordance with the standards required and/or expected of the office.
  - iii. **Unreasonableness:** behaving in a manner that undermines public confidence in the judiciary, such as making decisions that are irrational, arbitrary, or engaging in inappropriate relationships.
  - iv. **Corruption:** engaging in bribery or other forms of corruption.
  - v. **Moral Turpitude:** engaging in conduct that is morally unacceptable, such as fraud or dishonesty.
66. Misbehavior is to be interpreted from a constitutional context that involves the separation of powers; the role of judges as persons vested with judicial power and subject to restrictions flowing from the investiture of judicial power; the institutional integrity of the courts; and public confidence in the administration of justice.
67. From this perspective, misbehavior is concerned with conduct that materially undermines either independence or impartiality or that otherwise impairs the institutional integrity of the courts.
68. We reiterate that that the subject of this petition has arisen in the context of the Chief Justice's administrative duties under article 125 (4) of the Constitution, which vests in her the responsibility for the supervision and administration of the judiciary. The allegation of stated misbehavior will therefore be discussed in this context.

**E. Meaning of Incompetence.**

69. Although not defined in the Constitution, there can be no dispute at all regarding its meaning. Incompetence refers to the inability to perform the duties of the office adequately. This can include a lack of understanding of legal procedures, poor administrative skills, or consistent failure to adhere to judicial norms and rules.
70. From a common law perspective, incompetence has historically been grounds for the removal of judges, emphasizing the importance of maintaining high administrative and judicial standards. The word is properly applicable to situations where a person in office or a particular situation discharges their duty in a manner that exposes their incapacity to discharge the functions of office arising from:

- i. superintending over the matters pertaining to their office oblivious to the rules which regulate the institution inclusive of practice and convention, or
- ii. abuse of their office, or
- iii. acting in a manner contrary to the Wednesbury principles of measuring administrative discretion.

71. Article 125(4) of the Constitution assigns the Chief Justice the role of administering and supervising the judiciary, and any failure in these duties can be considered incompetence. As the head of the judiciary, the Chief Justice must exhibit a high level of competence in several key areas:

- i. Knowledge [or lack thereof] of Promotion Procedures:
  - a. The Chief Justice must understand the procedures for judicial promotions, ensuring they are conducted fairly and in accordance with established rules.
  - b. The Chief Justice has no direct role in recommending individuals for promotion to the Supreme Court, which should be done by the Judicial Council, in collaboration with the Council of State, the President, and subject to the approval of Parliament.
- ii. Adherence [nonadherence] to Rules and Regulations:
  - a. The Chief Justice must be well-versed in the rules regulating the making of court rules and guiding judicial officers.
  - b. Any breach of these rules undermines the administration of justice and can be seen as incompetence.

#### **IV. EXPLANATION OF GROUNDS OF THE PETITION.**

##### **F. Stated Misbehavior**

###### **i. Brazen constitutional violations.**

72. During her short tenure, the Honourable Chief Justice has exhibited clear disregard for the Constitution and the fundamental principles of due process, the exercise of discretion, and administrative Justice. Specifically, the Chief Justice has acted in violation of articles 144(2), 157, and 159 of the Constitution by directly requesting the appointment of specific Justices of the Court of Appeal to the Supreme Court, making rules to regulate practice and

procedure in the courts, and issuing administrative guidelines without proper constitutional authority.

73. In the instances earlier enumerated as basis for this petition, the Chief Justice acted oblivious of the constitutional requirements which regulate the manner for dealing with the specific matters in which she got involved.
74. In the first place, the Chief Justice has no power to directly recommend to Your Excellency to appoint specific Justices of the Court of Appeal to the Supreme Court. The appointment of Justices of the Supreme Court is directly regulated by the provisions of article 144(2) of the Constitution. The constitutional provision requires that Your Excellency exercise the power acting on the advice of the Judicial Council of which the Chief Justice is a member and in consultation with the Council of State. The Chief Justice's decision to act outside the constitutional provision not only constitutes a violation of the Constitution but undermines the existence and functions of the Judicial council.
75. The Chief Justice also acted in violation of the provisions of article 157(2) when she singularly made rules "for regulating the practice and procedure of all Courts in Ghana." The function is constitutionally reserved to the Rules of Court Committee. The Chief Justice's launch of what she called Practice Directions in breach of the constitutional provision just referred to at state expense to guide practice and procedure in the courts breached the constitutional provisions just referred to with impunity. It also undermined the existence and functions of the Rules of Court Committee.
76. Finally, the Honourable Chief Justice breached the provisions of article 159 when she *suo moto* launched administrative guidelines for some officials of the Judicial Service.
77. By virtue of the article 159 of the Constitution, regulations for the efficient performance of the functions of the Judicial Service and the Judicial Council under this Chapter are made only by constitutional instrument in accordance with the advice of the Judicial Council and with the approval of Your Excellency.
78. The Chief Justice breached this constitutional provision by making administrative guidelines to guide the performance of some officials of the Judicial Service without any advice of the Judicial Council or the approval of Your Excellency the President and without laying it in Parliament to ripen into a constitutional instrument. This clearly suggests a pattern of undermining the institutions meant to safeguard judicial integrity and independence.
79. It is our contention that the Chief Justice's violation of articles 144(2), 157(2), and 159 of the Constitution demonstrate a clear and consistent disregard for the supreme law of the land, rising to the level of stated misbehavior that warrants her removal from office. While a single violation might be construed as an oversight, a pattern of violating multiple constitutional provisions indicates a willful disregard of the supreme law. This pattern suggests intentional misconduct rather than inadvertent mistakes.

**ii. Abuse of office.**

80. In respect of the letter requesting the appointment of specific Justices to the Supreme Court, the Honourable Chief Justice acted completely oblivious of and *ultra vires* the constitutional provisions of article 144(2) of the 1992 Constitution which provides the procedure for the appointment of Supreme Court Justices.
81. The Honourable Chief Justice's letter was written on her letterhead and not the Judicial Council's letterhead. The letter was not expressed to have emanated from the Judicial Council which she is head of. The Chief Justice did not indicate that she was expressing or conveying the views of the Council.
82. The Chief Justice's direct request to Your Excellency completely undermines the role of the Judicial Council in respect of which she is head and defeats the consultative and the collaborative requirements of article 144(2) of the Constitution because it essentially bypasses the Judicial Council's advice and the constitutionally mandated process, thereby compromising the constitutional framework designed to prevent undue influence and maintain judicial impartiality.
83. The reasons stated in the Chief Justice's letter for requesting that your Excellency appoint the specific Justices to the Supreme Court will reveal that the stated reasons are necessarily arbitrary, unreasonable, and devoid of candor. The grounds for recommending Justice Amoako Asante are quite different from the other four, who have been described by the Chief Justice as Judges of the Court of Appeal, whose work has been distinguished by outstanding, service, courage and competence.
84. A test of the factors relied on by the Chief Justice to recommend to Your Excellency the appointment of the specific Justices against the true state of affairs among the other Judges of the Court of Appeal will reveal that if fairly applied, the said four Justices will not outrank longer serving Justices on the Court of Appeal and others which on the basis of merit can demonstrate that their work in the same Court is deserving of higher commendation, than those recommended by the Chief Justice.
85. The Chief Justice's request for the appointment of the said Justices therefore carries with it a real likelihood of bias or vested interests influencing her recommendations, raising serious questions about the Chief Justice's misuse of her power in the discharge of her administrative functions relative to the constitutional principles on the exercise of discretion and administrative justice. It can reasonably be argued that the request, whether by design or effect, undermines the nominees' independence and impartiality.
86. The actions of the Chief Justice in nominating judges based on criteria that deviate from the established constitutional procedures and conventions can send a concerning signal to other Justices and Judges. Specifically, it can imply that loyalty to the Chief Justice, rather than merit or adherence to judicial principles, can result in favorable recommendations for

appointments. When recommendations for appointments appear to be based on loyalty, rather than merit, it can fuel the perception that professional competence and judicial integrity are less important than personal allegiance.

87. Further, if judges believe that their career advancement is tied to the loyalty to the Chief Justice, they may feel pressured to make decisions that align with the Chief Justice's preferences. This compromises their independence and the impartiality of their rulings.
88. Perceptions of favoritism or bias in judicial appointments erode public trust in the judicial system, undermining its legitimacy and authority. A pattern of appointments based on loyalty can create a culture of patronage within the judiciary, where judges seek to curry favor with higher authorities rather than focus on their judicial duties and ethical obligations. This can lead to a decline in overall judicial standards and effectiveness.
89. I contend that the Chief Justice's reasons for requesting the appointment of the five judges to the Supreme Court constitute an abuse of power, as they bypassed established constitutional procedures, reflect favoritism or lack of transparency, disregard the merit and qualifications of other equally eligible judges, and undermine judicial independence. Such unprecedented recommendations compromise the integrity, impartiality, and independence of the judiciary, representing a serious departure from constitutional principles and fostering a toxic culture within the judicial system.

### **iii. Reconstitution of Panels and transfer of Judges.**

90. Reconstitution of court panels violates the provisions of articles 128(2) and 136(2) of the Constitution. Under these constitutional provisions, the Supreme Court and the Court of Appeal are duly constituted when the full complement of Judges constitutional quorate to hear a matter has been empaneled. A subsequent reconstitution of the panel, without any reasonable or public interest ground for so doing, undermines public confidence in the justice system. Such reconstitutions also violate article 157(3), which specify that no person sitting in a Superior Court for the determination of any cause or matter shall, having heard the arguments of the parties to that cause or matter and before judgment is delivered, withdraw as a member of the court or tribunal, or as a member of the panel determining that cause or matter, nor shall that person become functus officio in respect of that cause or matter, until judgment is delivered.
91. Once a court panel is formed, the cause list is issued, and hearings begin, the Chief Justice (CJ) no longer has administrative authority over the panel's composition. This authority transfers to the judicial domain of the panel. Any panel member can recuse themselves for personal reasons or be unavailable due to prior commitments or illness. This principle is clear and must not be crossed. The subsequent arbitrary removal of Justices by the CJ and the reconstitution of the panels constitutes abuse of power and is inconsistent with the provisions of article 296 (a) and (b) of the Constitution as to what is expected of holders of discretionary power "in this Constitution or in any other law."

92. The CJ traversed this sacred principle when she reconstituted duly constituted court panels and, in the Opuni case, inserted herself as the President of the reconstituted panel, and in the Ablakwa case, inserted Her Ladyship Pamela Addo, who also serves as the judicial secretary, as the President of the reconstituted panel.

**iv. Disrepute.**

93. The Chief Justice's acts so far discussed have endangered the level of respect accorded to the judiciary as the seat to which the ordinary Ghanaian citizen must resort to for justice.

94. **Compromising of Judicial Independence:** A panel, and for that matter the bench, must remain independent from administrative interference to ensure fairness and impartiality. The Chief Justice's reconstitution of the panel, without cause or explanation, undermines this independence and erodes public trust in the judicial process.

95. **Compromising of Procedural Integrity:** Adhering to established legal procedures is essential for upholding the rule of law. By reconstituting the panel after hearings had begun, the CJ violated procedural norms, setting a dangerous precedent that could lead to arbitrary decision-making.

96. **Compromising of Judicial Integrity:** Allowing such an overreach irreparably compromises the integrity of the judicial system. Judges must be able to deliberate and decide cases free from administrative manipulation.

97. **Compromising Right to Fair Trial:** The parties involved in a case have the right to a fair trial by a duly constituted bench. Changing the composition of the panel mid-trial can be seen as prejudicial and may affect the outcome of the case.

98. **Compromising Legal Consistency:** Judicial decisions must be based on consistent and predictable application of the law. Administrative interference disrupts this consistency, potentially leading to erratic legal precedents.

99. **Compromising Checks and Balances:** The judiciary functions as a check on the other branches of government, including administrative actions. If the CJ's overreach is allowed to stand, it weakens this critical system of checks and balances.

100. **Compromising Public Confidence:** The public's confidence in the judicial system depends on its transparency and adherence to legal norms. Administrative overreach and opacity damage this credibility, leading to a loss of faith in our legal institutions.

101. **Compromising Due Process:** Legal procedures exist to protect the rights of all parties involved. Bypassing these procedures through administrative actions undermines due process and can lead to unjust outcomes.



102. **Separation of Powers:** The Chief Justice's actions blur the lines between administrative and judicial functions, undermining the judiciary's role as an independent arbiter. The communications with the President, in an attempt, to consummate side deals on the minimum number of Justices and requesting certain appointments severely undermine separation of powers and seriously affronts the checks and balances needed to ensure the rule of law.

**v. Judicial Oath.**

103. **Compromising the Constitution:** Article 127(2) of the Constitution protects judges from interference by providing that "Neither the President nor Parliament nor any person acting under the authority of the President or Parliament nor any other person whatsoever shall interfere with Judges or judicial officers or other persons exercising judicial power.
104. Reconstituting panels are per se interference with the panel's exercise of judicial power. Article 157(3) of the Constitution clearly prohibits a judge or panel from withdrawing from a case after hearing arguments until judgment is delivered. It stands to reason that no person can remove a judge from a case that they are hearing without cause. The CJ's actions are unconstitutional and is a willful violation of her judicial oath to preserve, uphold, and defend the Constitution of the Republic of Ghana [1992].

**vi. Conflict of interest.**

105. Article 284 of the Constitution prohibits public officers from placing themselves in positions where their personal interests conflict, or are likely to conflict, with their official functions. By using her personal preferences to make appointment requests to the President, contrary to the well-established constitutional scheme for such appointments, the Chief Justice put herself in an inextricable conflict-of-interest situation.
106. By virtue of article 144(2) of the Constitution, appointments to the Supreme Court are made by Your Excellency the President acting on the advice of the Judicial Council, in consultation with the Council of State and with the approval of Parliament. This process ensures a collaborative and impartial selection of Supreme Court Justices, involving multiple stakeholders to preserve the judiciary's independence and integrity.
107. The Chief Justice's constitutional role in the appointment process is delineated clearly in article 144(4), which provides that "panel members of regional tribunals other than the chairmen shall be appointed by the Chief Justice in consultation with the Regional Coordinating Council for the region and on the advice of the Judicial Council."
108. The Chief Justice's failure to understand the boundaries of her administrative authority, lack of understanding of appointment procedures, and consistent failure to adhere to the Constitution, judicial norms, and rules are evidence of incompetence and meet the threshold for removal as specified in the Constitution.

## **G. Acts of Incompetence.**

109. As the head of the Judiciary, the elementary breaches of the Constitution and the statutory provisions on the Judiciary and the basic rules on the exercise of administrative discretion undermine her competence as head of the Judiciary in charge of its administration and supervision within the meaning of article 125(4) of the Constitution.
110. The Honourable Chief Justice is or should be aware of the constitutional provisions referred to by reason of the procedure by which she was herself appointed as a Justice of the same Court, her over a decade service in the Judicial Service, and her several years of experience as a lawyer. The actions of the Chief Justice in nominating judges based on extra constitutional criteria send a troubling signal that can negatively impact the judiciary in several ways. It can erode the meritocratic basis of judicial appointments, compromise judicial independence, undermine public confidence, and foster a culture of patronage. Such implications highlight the importance of adhering to constitutional norms and principles in judicial appointments to maintain the integrity and credibility of the judicial system.
111. In so doing the Honourable Chief Justice has acted in violation of her Judicial Oath provided for in the Second Schedule of the 1992 Constitution “to truly and faithfully perform the functions of my office without fear or favour, affection or ill-will; and to uphold, preserve, protect and defend the Constitution and the Laws of the Republic of Ghana.” Further, these deliberate violations meet the threshold of misbehavior stipulated in article 146(1) of the Constitution and under the definitions at *supra*.


## **V. CONCLUSION.**

112. The Chief Justice’s actions discussed herein not only breach constitutional provisions but also constitute stated misbehaviour and confirm acts of incompetence. These actions undermine judicial independence and impartiality, represent an abuse of power, and create a conflict of interest. Such actions meet the threshold of “stated misbehavior” and “incompetence” as outlined in Article 146(1) and therefore constitute grounds for removal.
113. The Chief Justice’s role is to interpret and uphold the law, not to influence the selection process of other justices of the Supreme Court or to interfere in the operations of duly constituted panels. Her overreach is contemptuous of the power of the judicial council, which she chairs. Her involvement in the appointment process could unduly influence the President's decision, undermining the objectivity of the nomination process. Her attempts to make side deals with the President puts her in a position where the President can make reciprocal demands. She is therefore fatally compromised. The Constitution and established protocols dictate the process for judicial nominations, and any deviation from these procedures is unlawful.
114. Similarly, her reconstitution of panels impairs parties’ right to a fair trial, and could unduly influence the panel’s decision, undermining the impartiality of

the adjudication process. It strikes at the core of article 157(3), which is intended to prevent any interruptions in the judicial process and ensure continuity and accountability until a final decision is made. Her reconstitution of panels is an abuse of power, in violation of the constitutional benchmark for the exercise of discretion power. The Chief Justice has no administrative role once a panel is formed and cannot interfere with the judicial function of a panel by changing members of the panel.

115. Public confidence in the judicial system relies on the perception of fairness and impartiality. The Chief Justice' actions described *supra* would further erode this confidence, suggesting favoritism or partiality and introducing needless friction within the judiciary.
116. Judicial ethics require judges to avoid actions compromising their independence or the judiciary's independence. Proposing nominees could be seen as engaging in political activities, generally discouraged, if not barred, for judges.
117. Professor Gyandoh warned us of the dangers of an unrestrained Chief Justice when he opined that "if we were so unfortunate as to get for our Chief Justice a cynical, mischievous, and obstinate individual who also had the ear of the President, at least a sizeable section of the judiciary could be subject to mayhem, with a not too remote consequence of bedlam."<sup>2</sup> The mayhem is already upon the judiciary and the bedlam will follow unless swift actions are taken to remove the Chief Justice from office on the grounds prayed and in accordance to article 146 of the Constitution [1992].
118. I, therefore, petition the President to initiate proceedings to remove the Chief Justice from office to uphold the Constitution, maintain the integrity of the judiciary, and restore public confidence in our judicial system.
119. Please do not hesitate to contact me for any further information or clarification.

Respectfully submitted.



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<sup>2</sup> Gyandoh, S. O. The Role of the Judiciary under the Constitutional Proposals for Ghana, 5 U. Ghana L.J. 133 (1968).