



COMMUNITY COURT OF JUSTICE, ECOWAS
COUR DE JUSTICE DE LA COMMUNAUTÉ, CEDEAO
TRIBUNAL DE JUSTIÇA DA COMUNIDADE, CEDEAO

**IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC
COMMUNITY OF WEST AFRICAN STATES (ECOWAS)**

In the Matter of

GERTRUDE ARABA ESAABA SACEY TORKORNOO

V.

THE REPUBLIC OF GHANA



Application No: ECW/CCJ/APP/32/25

Judgment No. ECW/CCJ/RUL/04/25

RULING

ABUJA

19 November 2025

THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC
COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

HOLDEN AT ABUJA, NIGERIA

Application No. ECW/CCJ/APP/32/25

Judgment No. ECW/CCJ/RUL/04/25

GERTRUDE ARABA ESAABA SACKEY

TORKORNOO

APPLICANT

V.

THE REPUBLIC OF GHANA

RESPONDENT

COMPOSITION OF THE COURT

Hon. Justice Sengu Mohamed KOROMA	- Presiding
Hon. Justice Dupe ATOKI	- Member/Judge Rapporteur
Hon. Justice Gberi-Be OUATTARA	- Member

ASSISTED BY:

Dr. Yaouza OURO-SAMA	- Chief Registrar
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REPRESENTATION OF PARTIES:

Femi Falana SAN	
Funmi Falana SAN	
Marshall Abubakar (Esq)	- Counsel for the APPLICANT
Dr. Justice Srem Sai	- Counsel for the RESPONDENT

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RULING

1. This is the ruling of the Court read virtually in open Court pursuant to Article 8 (1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

I. DESCRIPTION OF THE PARTIES

2. The Applicant is a citizen of the Republic of Ghana, and hence a Community citizen. She resides in Accra, Ghana.
3. The Respondent is the Republic of Ghana; a Member State of the Economic Community of West African States (ECOWAS).

II. INTRODUCTION

4. The subject matter of this case relates to allegations by the Applicant that, by her arbitrary suspension as the Chief Justice of Ghana, the Respondent has violated her rights under the African Charter on Human and Peoples' Rights.

III. PROCEDURE BEFORE THE COURT

5. The case commenced with the filing of an Initiating Application, together with a Request for Assigning Provisional Measures, both dated 30 June 2025, on 04 July 2025. These were served on the Respondent on 07 July 2025.
6. The Respondent filed an Objection to the Request for Provisional Measures, dated 10 July 2025, on 11 July 2025. This was served on the Applicant on 11 July 2025.
7. The Respondent also filed a Preliminary Objection against Jurisdiction for Enforcement of Fundamental Human Rights, dated 11 July 2025. This was filed and served on the Applicant on 14 July 2025.
8. The Applicant, in response, filed a Reply to the Notice of Preliminary Objection, dated and filed on 14 July 2025, and served on the Respondent on the same day.
9. On 14 July 2025, the Court held a virtual hearing in the case. Both Parties were represented by Counsel. The Respondent's Counsel sought an opportunity to

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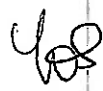
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present his objection on the jurisdiction of the Court and urged the Court to first hear the Objection, which questioned the jurisdiction of the Court, before entertaining the Applicant's Application for Provisional Measures. The Applicant's Counsel, however, urged the Court to hear all the pending Applications together. The Court guided the Parties by directing the Respondent's Counsel to move his Preliminary Objection first. The Respondent's Counsel presented his Preliminary Objection and made oral submissions accordingly. The Applicant's Counsel, in response, made submissions arguing against the Preliminary Objection. The Applicant's Counsel then adopted his application for Provisional Measures and made oral submissions thereto. The Respondent's Counsel presented his Objection to the Applicant's Application for Provisional Measures and urged the Court to dismiss same. Applicant's Counsel responded by presenting a rebuttal. The Court delivered a Bench Ruling in Open Court holding that it will rule on the request for Provisional Measures along with the Preliminary Objection.

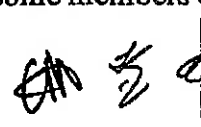
IV. APPLICANT'S CASE

i. Summary of Facts

10. The averment of the Applicant is that she is the Chief Justice of Ghana. On 25 March 2025, she learnt from news reports that the Spokesperson to the President of the Republic of Ghana had released a press statement titled "President Mahama Consultations with the Council of State on three (3) petitions for the removal of the Chief Justice". On receipt of a copy of the press release, she realized that there were three petitions seeking her removal as Chief Justice of Ghana, a fact she was not aware of prior to this press release.

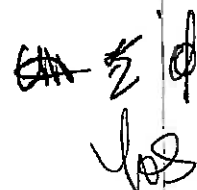
  


11. On 27 March 2025, she wrote to the President requesting for copies of the petition. The President on 29 March 2025 provided her with the copies of the said petitions. She then responded in detail to each of the petitions, demonstrating that none of them disclosed a valid basis for her removal as Chief Justice.
12. On 27 March 2025, a Member of the Ghanaian Parliament filed a suit invoking the original jurisdiction of the Supreme Court of Ghana, to challenge the constitutionality of the process instituted against the Applicant and seeking the Court to grant an interim injunction to stop the process. This suit was served on the Attorney-General of Ghana, who filed processes in response.
13. However, while the application for injunction was yet to be determined by the Court, the President issued a press release stating that, following the conclusion of consultations with the Council of State, it was decided that the three petitions against the Applicant established a prima facie case against her. She was thus suspended as Chief Justice via a letter from the Office of the President on 22 April 2025. Immediately thereafter, a five-member committee was established to inquire into the matter.
14. Around that same time, a pollster known to be closely aligned with the ruling party published an opinion poll in which it was alleged that the Applicant was so unpopular that she had to be removed as Chief Justice of Ghana. The Applicant alleges that the publication of the opinion poll is alien and offensive to the provisions of the Respondent's Constitution on the appointment and removal of the Chief Justice.
15. Furthermore, there were multiple leaks in the media of documents purporting to be the petitions against the Applicant and her responses to them. The Applicant claims that these leaks, coupled with media commentary, particularly by Government agents, caused enormous prejudice against her.
16. The Applicant also alleges that the composition of the Committee charged with the task of investigating the petitions against her is in itself unconstitutional and in violation of the requirements of justice. This is because some members of the panel

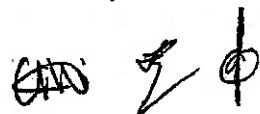
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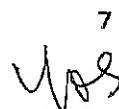
have conflicts of interest, while others did not take the constitutionally required oaths before commencing the discharge of their functions.

17. The Applicant further alleges that other violations of her human rights occurred during the hearings by the investigative committee. For instance, on its first day of sitting, the Applicant's lawyer was present, having been served with a hearing notice. However, the Committee excluded her lawyer from planning and making arrangements for the hearing of the petitions, considering that the Applicant was not personally present. Moreover, on the next day of hearings, the Committee refused to recognise the lawyer and proceeded to schedule future hearings without his participation.
18. On 21 May 2025, the Applicant filed an action at the Supreme Court against the Attorney-General and members of the Committee challenging the constitutionality of actions taken against her, and seeking an interlocutory injunction.
19. On 22 May 2025, the Applicant appeared before the Committee in person, together with her lawyers, and informed members of the Committee about the suit she had instituted. The Committee requested copies of the court processes and adjourned its sitting to the next day.
20. However, on 23 May 2025, the Committee indicated its firm resolve to continue with the proceedings against the Applicant notwithstanding the case pending against it. At its sitting on that day, the Committee, contrary to rules regulating proceedings of committees and commissions of inquiry in Ghana, indicated its intention to conduct the hearing not as an inquiry as directed by the Ghanaian Constitution but as a regular litigation in the Courts of Ghana, thereby applying the High Court Civil Procedure Rules 2004 rather than the Commissions of Inquiry (Practice and Procedure) Rules 2010.
21. In that regards, the Committee proceeded to permit the petitioners to call other witnesses to testify on their behalf rather than give evidence themselves.



22. The Applicant avers that in the absence of evidence on oath from the petitioners, the petitions cannot be deemed to have been properly admitted into the records of the Committee.
23. The Applicant also alleges that the venue of the hearings in a high security zone in a place known as Adu Lodge was chosen to subject her to mental torture and public humiliation, as the venue was where her uncle, a military officer, was murdered alongside three High Court judges several years ago.
24. Additionally, she alleges a number of demeaning and discriminatory treatments during the hearing, including denial of access to the hearing room for her husband and children, subjection to body search, and denial of access to her mobile phones and laptops.
25. She further alleges that at the time of filing this Application, she had not been informed of the basis for the finding of a prima facie case against her, or the specific allegations forming that basis, to enable her to prepare a defence. Thus, she is convinced that the proceedings against her are calculated to unjustly remove her from office. She concludes that allowing the Committee to continue with the process will cause irreparable damage to her person, the Ghanaian Judiciary, and constitutional order in Ghana.
26. Based on the above alleged facts, she submits that the Respondent has violated her:
 - (i) right to fair hearing, defence and an impartial tribunal, as provided for in Article 7 of the African Charter on Human and Peoples' Rights and Article 9 (1) and (2) of the International Covenant on Civil and Political Rights (ICCPR);
 - (ii) right to dignity and protection from arbitrary measures, as provided for in Article 5 of the African Charter on Human and Peoples' Rights and Article 7 of the ICCPR;
 - (iii) guarantee of judicial independence and security of tenure as provided for in Article 4 (g) and (j) of the ECOWAS Protocol on Democracy and Good Governance.



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ii. Pleas in Law

27. The Applicant relies on the following legal provisions:

- i. Article 21 of the 1991 Protocol of the Court, as amended by the 2005 Supplementary Protocol;
- ii. Article 79 of the Rules of Procedure of the ECOWAS Community Court of Justice.

iii. Reliefs Sought

28. The Applicant seeks for the Court to order:

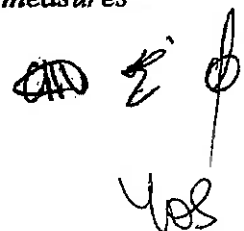
- a. A DECLARATION that the suspension of the Applicant as the Chief Justice of the Republic of Ghana by the President of the Respondent's State on April 22, 2025 violated the Applicant's human rights to fair hearing guaranteed by Article 7 of the African Charter on Human and Peoples Rights.
- b. A DECLARATION that the panel instituted by the Respondent to investigate and determine the allegations of misconduct against the Applicant was not constituted to guarantee its independence and impartiality and, as such has violated the Applicant's human right to fair hearing guaranteed by Article 7 of the African Charter on Human and Peoples' Rights.
- c. A DECLARATION that the purported suspension of the Applicant as the Chief Justice of the Republic of Ghana by the President of the Respondent State on April 22, 2025 constitutes a violation of her human right to fair equitable and satisfactory conditions guaranteed by Article 15 of the African Charter on Human and Peoples' Rights.
- d. A DECLARATION that the purported suspension of the Applicant as the Chief Justice of the Republic of Ghana by the President of the Respondent State on April 22, 2025 has exposed her to public ridicule and odium locally and internationally and the said act

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constitutes a violation of her human right to dignity guaranteed by Article 5 of the African Charter on Human and Peoples' Rights.

- e. A DECLARATION that by subjecting the Applicant to an illegal and an unfair investigation and trial since April 2025, the Respondent has inflicted injuries on her professional standing and image, thereby exposing her and her family to immeasurable public ridicule.
- f. AN ORDER to the Respondent Republic to act immediately to prescribe the rule of procedure to govern the investigation of allegations of misconduct against the Chief Justice of the Republic of Ghana in conformity with the right to fair hearing guaranteed by the Constitution of Ghana and the African Charter on Human and Peoples' Rights.
- g. AN ORDER directing the Respondent to immediately lift the suspension and restore the Applicant to full office until the conclusion of fair constitutional proceedings.
- h. AN ORDER restraining the Respondent from continuing with the purported inquiry for the removal of the Applicant as the Chief Justice of the Republic of Ghana in its current form, until it conforms to fair hearing guarantees.
- i. An award of USD 10 million as compensation for moral and reputational damage suffered by the Applicant as a result of her illegal suspension and unfair investigation.
- j. Any other relief(s) as the Honourable Court deems just.

Applicant's case for the grant of an order of provisional measures

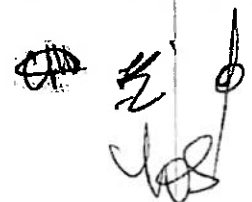

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29. In addition to the Initiating Application, the Applicant, the Chief Justice of the Respondent, filed an additional document requesting for a grant of provisional measures in line with the requirement in Article 79 of the Rules of the Court. Therein, she alleges that the President of Ghana suspended her from office on the 22nd of April 2025 based on his receipt of three petitions of alleged misconduct levied against her. She further states that a Committee of Inquiry was equally composed on that day to investigate the petitions that triggered the suspension. She submits that if the investigative process is allowed to continue, and she is removed from office as the Chief Justice and replaced with another, her return to office in that capacity will be near impossible. In that regard, she submits that a favourable judgment of this Court in the substantive application would be rendered nugatory by her removal from office.
30. She therefore prays the Court to grant the following orders: That the Respondent suspend her disciplinary/removal from office pending the hearing and determination of the complaint on the merits; to ensure that she continues to enjoy the paraphernalia and entitlements of her office as the Chief Justice of Ghana pending the hearing and determination of the case and for the Respondent to refrain from taking any other measures that may harm the claim and /or aggravate or extend the dispute submitted to the Court, or compromise the implementation of any decision that the Court may render.

V. RESPONDENT'S CASE

a. Summary of Facts

31. The Respondent did not file a defence to the substantive suit, rather they filed an objection to the application for the grant of the provisional measures sought by the Applicant and later a preliminary objection to the jurisdiction of the Court to entertain the Initiating application. Nevertheless, the summary of the facts as narrated by the Respondent is as follows:



32. That on March 25, 2025, the President of the Republic of Ghana announced that he had received from private persons three different petitions seeking the removal of the Applicant from the office of the Chief Justice. In line with the provisions of the 1992 Constitution of the Ghana, the petition was transmitted to the Council of State. Two days later, on March 27, 2025, the Applicant requested and was given copies of these petitions. Subsequently, on April 4, 2025, the Applicant submitted to the Council of State and the President her response to the three petitions.
33. On, April 22, 2025, and as part of the constitutionally required consultation process between the President and the Council of State, the President announced that his consultation with the Council of State had established that each of the three Petitions has established a *prima facie* case against the Applicant.
34. Consequently, a committee of 5 persons was set up to investigate the allegations in the petitions. Furthermore, based on the advice of the Council of State, The President suspended the Applicant from performing the functions of the Chief Justice, pending the outcome of the committee's investigation.
35. Since this notice, the Applicant has brought or caused to be brought not less than five cases in the High Court and in the Supreme Court challenging the constitutional validity of her suspension.
36. In response to Applicant's claim that the President acted unilaterally in determining that a *prima facie* case had been made against her, and suspending her from office, the Respondent claims that the President did not act unilaterally but acted in consultation with the 25-member Council of State.
37. The Respondent submits that the suspension of the Applicant from the office of the Chief Justice was done strictly in accordance with the provisions of Ghana's Constitution.

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b. Pleas in Law

38. The Respondent cites no pleas in law.

c. Reliefs sought

39. The Respondent prays the Court that the Request for assigning Provisional Measures be refused in its entirety.

40. In examining this application presented in its different segments, the Court will proceed to first determine its jurisdiction same having been contested ahead of examining the application for the grant of a provisional measures sought by the Applicant, following which the substantive application will be examined.

VI. JURISDICTION

41. Article 9 (4) of the Court's 1991 Protocol, as amended by the Supplementary Protocol of 2005, gives the Court jurisdiction to determine cases of violation of human rights that occur in any ECOWAS Member State.

42. In the instant case, the Applicant alleges that her arbitrary suspension as the Chief Justice of Ghana by the Respondent violated her rights to work, dignity, and fair hearing contrary to the provisions of the African Charter on Human and Peoples' Rights. A mere allegation of human rights violation suffices to invoke the jurisdiction of the Court. THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC & ACCOUNTABILITY PROJECT (SERAP) V. FEDERAL REPUBLIC OF NIGERIA, ECW/CCJ/JUD/12/22. @ para 29.

43. By these allegations, the Court is clothed with the jurisdiction to determine whether the alleged rights have been violated.

44. However, the Respondent raised a preliminary objection to the jurisdiction of the Court which will now be considered below.

Preliminary Objection

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45. The Respondent filed a Preliminary Objection to the exercise of the Court's jurisdiction based on the following arguments:

- i. The Court lacks jurisdiction to entertain the application for enforcement of fundamental human rights as the Court cannot sit in a suit that involves the interpretation of the constitution of a member state in respect of which a municipal court of the member state has delivered a decision;
- ii. The Court lacks jurisdiction to entertain this application as the Court cannot sit in a suit that is sub-judice of a municipal court of a member state; and to determine reliefs which are substantially the same reliefs being sought in the municipal court of a member state.

The Court will address these arguments in seriatim.

i. Interpretation of the constitution of a member state in respect of which a municipal court has delivered a decision

46. The Respondent claims that the Applicant's case involves the interpretation of the constitution of the Respondent in respect of which its municipal court has delivered a decision. It claims that the Supreme Court of Ghana has, in three of the cases before it, decided on the reliefs sought in this case. In those decisions, the Supreme Court of Ghana decided not to grant interlocutory injunctive reliefs sought by the Applicant seeking to suspend the entire removal proceedings and challenge the legality of the constitution of the investigating committee. Thus, if this Court exercises its jurisdiction to hear the case, it will be sitting in an appellate function over the decision of the municipal court.

Analysis of the Court

47. In addressing the preliminary objection of the respondent as submitted under this head, it presupposes that the Applicant is seeking this court to interpret the constitution of the respondent on a matter which has been decided by the national courts. This they claim is outside the mandate of the Court.

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48. In this regard and based on the objection of the Respondent on the above grounds, the Court notes, on the examination of the submissions of the Applicant that the subject-matter of this case is not premised on a review of a decision of the Ghanaian local court as alleged by the Respondent. The applicant's relief in the initiating application is summarized as follows: alleged the violation of her rights to a fair hearing, dignity, and work, due to several procedural irregularities in the process of the investigation of the allegations made against her in the petitions submitted to the office of the President of the Republic of Ghana.
49. The incontrovertible interpretation of these reliefs is that the Applicant was dissatisfied with the process of her suspension and particularly with the procedure of the investigation committee, the sum total of which culminated in the reliefs sought. The Court is not unable to decipher from the reliefs claimed where the Applicant has sought a re-examination of the judgment of the domestic court neither did the Respondent exhibit any such final judgement of the national court.
50. The court is of the considered opinion that the Respondent either misconstrued or misunderstood the context within which the Applicant's initial application was premised upon.
51. Assuming that the Application was indeed meant to urge the Court to interpret the Constitution of the Respondent on a matter which has been decided by the national courts, the Court has held in a plethora of decision with a proviso that it is not empowered to interpret national constitutions or local laws. *OBINNA UMEH & 6 ORS v. FEDERAL REPUBLIC OF NIGERIA* ECW/CCJ/JUD/10/20 @ pg. 15.
52. This proviso clarifies that this rule is not absolute. Where the Applicant alleges that the provisions or application of the national constitution or local laws of an ECOWAS Member State has occasioned a violation of human rights, this Court will examine the national legislation in that context only and pursuit of protection of the human rights concerned. *MUHAMMAD KABINE JA'NEH V. THE REPUBLIC OF LIBERIA & 1 ANOR* ECW/CCJ/JUD/28/20 @ para 60.

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53. Additionally, the Court re-affirms that while it does not have the competence to review judgments of national courts and other quasi-judicial bodies of Member States *in abstracto*, it has the jurisdiction to examine any human rights issues emanating from any activities which take place in Member States and their outcomes, with the view to determining their compatibility with human rights obligations imposed by the African Charter and other human rights instruments to which they are parties. MUHAMMAD KABINE JA'NEH V. THE REPUBLIC OF LIBERIA, *supra*, paras 69 -70.
54. Furthermore, while this Court cannot serve in an appellate jurisdiction over the decisions of local courts, the decision of a domestic court cannot hinder the intervention of this Court where the violation of human has been alleged during the proceedings of the Court. Only a previous referral to another international court can oust the jurisdiction of this Court. MR. KHALIFA ABABACAR SALL & 5 ORS V. REPUBLIC OF SENEGAL ECW/CCJ/JUD/17/18 @ pg. 27.
55. Therefore, since the crux of this Application concerns allegations of human rights violations occasioned by the Respondent in the course of the proceedings of the investigating committee, the Court holds that it retains the jurisdiction to determine whether there have been violations of the alleged human rights.
56. Consequently, the objection of the Respondent under this head same being unsubstantiated, fails and is hereby dismissed.

ii. Sub-judice

57. The Respondent submits that this Court lacks the jurisdiction to entertain the substantive suit because these are cases before the domestic courts in Ghana based on the same facts alleged and reliefs sought in the instant case. Thus, if this Court assumes jurisdiction, the result would be that this Court and the courts in Ghana would be hearing the same subject matter involving same parties, issues, and reliefs simultaneously raising issues of sub-judice.



58. The Respondent further argued that the Court exercising jurisdiction in this case would amount to the Court examining decisions made by the domestic courts in Ghana, as against the dictum of the Court that it has no mandate to examine decisions made by the domestic courts of member states, much less to interpret the provisions of their domestic law. The Respondent on this point cites the judgments of the Court in *AGRILAND CO. LTD. V. THE REPUBLIC OF COTE D'IVOIRE*, ECW/CCJ/JUD/07/15 @ page 14 and *DR. MAHAMAT SEID ABAZENE V THE REPUBLIC OF MALI & 2 OTHERS*, ECW/CCJ/JUD/02/10.

Analysis of the Court

59. The court notes a nexus between this preliminary objection and the earlier objection canvassed as both interrelate on the issue of power of the court to entertain cases already decided by or before national court.
60. The Court is of the opinion that the argument of the Respondent is convoluted. On one hand they argue that the matter before the national courts are sub-judice being ongoing and undecided cases. On the other hand they argue that entertaining the instant Application will amount to this Court sitting on appeal to examine decisions of the national court.
61. The phrase "sub-judice" is a Latin phrase meaning "under a judge" and refers to a matter that is currently before a court and awaiting adjudication. It means the case has not yet been decided — it is pending. The legal effect is that discussion or publication about the matter may be restricted to avoid prejudicing the court's decision. *OLUWATIMILEHIN ADEBAYO V. FEDERAL REPUBLIC OF NIGERIA* ECW-CCJ-JUD-44-24 PARAS 38-39.
62. Appeal on the other hand refers to a legal process by which a party dissatisfied with a court's decision requests a higher court to review and possibly overturn or modify that decision which stands unless and until it is set aside or varied by the appellate court. This process presupposes that the case has been decided by a lower

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court, and one party is challenging that decision in an appellate court. STELLA IFEOMANNALUE & 20 ORS V NIGERIA ECW/CCJ/24/15 @pg.6.

63. In examining the objection on the sub-judice rule, the Court recalls the Respondent's submission that this Court lacks the jurisdiction to entertain the substantive suit because there are cases before the domestic courts in Ghana based on the same facts alleged and reliefs sought in the instant case. Thus, if this Court assumes jurisdiction, the result would be that this Court and the courts in Ghana would be hearing the same subject matter involving same parties, issues, and reliefs simultaneously raising issues of sub-judice.
64. It seems to the Court that the Respondent misconstrued the essence and use of the sub-judice rule. Therefore ahead of examining the facts adduced by the Respondent to support the claim that the cases at the national court are of sub-judice, thus precluding the examination of the instant Application, The Court finds it imperative to expound the historical and legal the import of the rule of sub-judice.
65. As earlier indicated, sub-judice refers to matters that are currently before a court and awaiting final determination. The rule grew out of English common law principles protecting the integrity of judicial proceedings. Historically, it was part of the law of contempt of court, designed to prevent prejudicial publications that might influence judges or juries, and also executive or legislative interference with ongoing judicial matters.
66. The underlying rationale was separation of powers: courts must be free to decide cases impartially, without public or political pressure. By the 17th–18th centuries, English courts began penalising anyone who made public comments about ongoing trials that could prejudice the outcome. It was considered "sub-judice contempt" — one branch of the broader contempt of court doctrine.
67. As common law spread through the British Empire, the sub-judice principle was adopted into the legal systems of the colonies (e.g., Nigeria, Ghana, India, etc.). It became embedded in both Judicial ethics (prohibition on public commentary by judges), and Media law (press restrictions on commentary about pending cases). In

post-colonial systems, it continued to serve the purpose of protecting the fairness of proceedings and preserving respect for the courts.

68. The historical essence of the sub-judice rule therefore lies in two fundamental objectives:

i. To prevent extrajudicial influence — political, social, or media — that could affect judicial reasoning or outcomes. The courts must appear, and be, independent and impartial.

ii. Preservation of public confidence in the judiciary - If cases could be argued publicly while still before the court, it would erode confidence in judicial impartiality and finality. The rule therefore demands that once a matter is before a court, parties and the public must refrain from commentary or parallel adjudication elsewhere.

69. The Court is of the opinion that this context of the use of the sub-judice rule has not shifted in the contemporary legal system and will now examine the facts submitted and grounds pleaded to justify the invocation of this rule by the Respondent as a ground of objection to the jurisdiction of this Court.

70. The Court recalls again that the concern of the Respondent is that because the facts and relief of the cases before the two courts are the same, if this Court assumes jurisdiction, the result would be that this Court and the courts in Ghana would be hearing the same subject matter involving same parties, issues, and reliefs simultaneously raising issues of sub-judice.

71. As earlier indicated, two cases with similar facts and relief do not qualify for the invocation of the rule of sub-judice as a basis to question the jurisdiction of the latter court. Its essence is the protection of the integrity of the judiciary and to engender fair hearing in the cases involved.

72. This position is in line with The Court's reasoning when it had occasion to make a pronouncement on the pleas of sub-judice in a recent case where it held as follows:

'The Respondent also raised an objection that the case before the magistrate Court is sub-judice thus preventing this Court from entertaining the instant

Application. The opinion of the Court is that this submission shows a clear misunderstanding of the context of the application of the principle of sub-judice. This principle is a Latin term meaning "under judgment." It refers to a matter that is under judicial consideration and, therefore, prohibited from public discussion or media commentary to avoid prejudicing the court's decision.

'This principle is particularly important in legal systems where the right to a fair trial is protected. The concept ensures that ongoing legal proceedings are not influenced by public opinion or external pressures'. OLUWATIMILEHIN ADEBAYO V. FEDERAL REPUBLIC OF NIGERIA ECW-CCJ-JUD-44-24 PARAG 38-39.

73. The Court, while re-affirming its position that it does not sit as an appellate court over national court judgments *in abstracto*, in further explanation held that because a matter is pending in a domestic court does not *ipso facto* prevent the examination of a human-rights claim before the ECOWAS Court — so long as the Court's jurisdictional requirements are met. OLUWATIMILEHIN ADEBAYO V. FEDERAL REPUBLIC OF NIGERIA, *supra*.
74. Based on the forgoing reasoning, the Court therefore holds that the basis of the objection of the Respondent that the court lacks jurisdiction to entertain the instant application for reasons that the alleged similar national courts are sub-judice is not consistent with its jurisprudence.
75. With regards to the objection based on the Court sitting on appeal, the concern of the Respondent is that the ongoing cases at the national court will suffer jeopardy if this Court entertain them as it will amount to sitting on appeal for which in their opinion the court lacks jurisdiction. As earlier indicated, the concept of appeal presupposes that a **decided** (emphasis ours) case is transferred to a higher court, so as to adjudicate on the same facts and to examine the same arguments of the parties.
76. The fundamental of an appeal process is that a court must have made a determination of the case in a decision which is appealed by a dissatisfied party. The Court has not been presented in any case with a final determination by a court

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in any of the national cases referred to. Indeed, the Respondent annexed the domestic court processes to their application, with all indicating that the matters before the Supreme Court of Ghana are still ongoing.

77. Having found these national cases are undecided, it is totally impracticable for the Court to sit on appeal at the ongoing stages they currently are. An appeal can only be initiated on a decision, the matter of which has been concluded.
78. The Court therefore holds that the Respondent's objection that the Court lacks jurisdiction to entertain the instant initiating application as it amounts to sitting on appeal is unsubstantiated. Therefore, the Respondent's objection under this head, not being substantiated is hereby dismissed.
79. The Court, having found that the rule of sub-judice is wrongly invoked and that the objection on exercise of appellate jurisdiction in the instant application is misconstrued, holds that the totality of the Respondent's objections is unsubstantiated.
80. The preliminary objection of the Respondent is hereby dismissed in its totality.

VII. ADMISSIBILITY

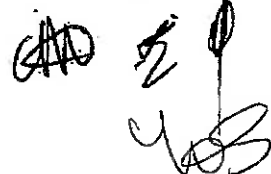
81. The Applicant canvassed that the initiating Application meets the admissibility eligibility, but the Respondent contests same, declaring that the said application is manifestly inadmissible.
82. By virtue of Article 10 (d) of the Protocol of the Court, as amended by the 2005 Supplementary Protocol, human rights cases before the Court will be admissible on the fulfilment of three conditions which are: i. The applicant must prove his/her victim status, ii. The application must not be anonymous, and iii. The matter must not have been submitted to another international court for adjudication.
83. In this case, the Applicant is not anonymous as her name and address are clearly provided. Moreover, there is no indication that the case has been filed before another international court.

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84. Furthermore, the Applicant claims that her rights to fair hearing, work, and dignity as provided for under the African Charter on Human and Peoples' Rights have been violated. This makes her a *prima facie* victim of the rights violations alleged.
85. Therefore, the Initiating Application satisfies the cumulative requirements for admissibility of human rights cases before this Court, and the Court declares the Application as admissible.

Applicant's case for the grant of an order of provisional measures.

86. As earlier indicated, in addition to the Initiating Application, the Applicant, the Chief Justice of the Respondent, filed an additional document requesting for a grant of provisional measures in line with the requirement in Article 79 of the Rules of the Court. Therein, she alleges that the President of Ghana suspended her from office on the 22nd of April 2025 based on his receipt of three petitions of alleged misconduct levied against the Applicant.
87. She further stated that a Committee of Inquiry was composed on the same day to investigate the petitions that triggered the suspension. She submits that if the investigative process is allowed to continue, and she is removed from office as the Chief Justice and replaced with another, her return to office in that capacity will be near impossible. In that regard, she argued that a favourable judgment of this Court in the substantive application would be rendered nugatory by her removal from office.
88. It is thus the Applicant's case that the suspension, coupled with ongoing reputational harm and exclusion from judicial functions, will amount to an irreparable loss which justifies the grant of Provisional measures to avert the damage.
89. She therefore prays the Court to grant the following orders:
- i. That the Respondent suspend her disciplinary/removal from office pending the hearing and determination of the complaint on the merits;


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- ii. To ensure that she continues to enjoy the paraphernalia and entitlements of her office as the Chief Justice of Ghana pending the hearing and determination of the case,
- iii. For the Respondent to refrain from taking any other measures that may harm the claimed and / or aggravate or extend the dispute submitted to the Court, or compromise the implementation of any decision that the Court may render.

The reply of the Respondent to the Applicant's request for provisional measures

90. As also earlier indicated, The Respondent in addition to the preliminary objection raised on the jurisdiction of the court in respect of the Initiating Application, also objected to the grant of the Provisional Measures. The Respondent, while not denying the suspension or the composition of the committee, argued among others, that the Applicant is still the Chief Justice of the country, enjoying all the privileges thereto save the performance of the duty of that office.
91. Furthermore, they insist that the suspension of the Applicant by the President was carried out in strict compliance with the provision of the Constitution of the country. Additionally, they argue that the delay in approaching the Court undermines the Applicant's claim of urgency as no exceptional circumstances was provided to justify the grant of interim measures at this stage of the proceeding of the enquiry.

Relief sought

92. The Respondent urged the court to refuse the application for assigning Provisional Measures in its entirety

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Analysis of the Court.

93. A precautionary measure (also called interim, provisional, or protective measure) is a temporary judicial order aimed at safeguarding the rights of parties during the pendency of a case. It ensures that the subject matter of the dispute is not altered, frustrated, or rendered nugatory before the court delivers its final judgment. The essence is to preserve the status quo ante and prevent actions that may cause irreparable prejudice to the rights under litigation. As elucidated by the ICJ- "*The essence of a precautionary measure is not to determine rights, but to preserve them — to ensure that the final judgment of the court is not rendered nugatory by the occurrence of irreparable harm during the pendency of proceedings*". *PASSAGE THROUGH THE GREAT BELT (FINLAND V. DENMARK) PROVISIONAL MEASURES*, ICJ REPORTS 1991.
94. In recognition of the importance of the preserving the status quo ante and safeguarding the rights of parties during the pendency of a case, Article 21 of the 1991 Protocol (as amended) empowers the Court to order any provisional measures it may consider necessary.
95. In furtherance of which Article 79 of the Rules of the Court elaborates the condition precedent for the grant of an order of a provisional measures as follows: Article 79(1) provides that "*an application under Article 20 of the Protocol shall state the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of facts and law establishing a prima facie case for the interim measures applied for.*"
96. In this regard, the combined reading of Articles 21 of the Court's Protocol, as amended, and Article 97 of the Rules of Court contemplates the following conditions precedent for the grant of an order of provisional measures:
- A prima facie case (*fumus boni juris*) establishing that the main application is not manifestly unfounded
 - The existence of urgency;

- The threat of irreparable harm;

97. The Court will now proceed to examine these conditions to determine the reliefs sought by the Applicant.

- A prima facie case (fumus boni juris) establishing that the main application is not manifestly unfounded.

98. Having determined that it has jurisdiction over this case, and that the case is admissible, the Court considers it established that the Applicant is a *prima facie* victim of the human rights violations alleged on the Initiating Application, and that the Application is not manifestly unfounded.

- The existence of urgency

99. Urgency relates specifically to *imminence* — the risk that harm will occur *before the final decision*, unless the court intervenes immediately. Several international human rights Courts have ruled in consonance with above in emphasizing the essence of urgency in a grant of a provisional measure.

100. Consequently, the justification for an order of provisional measures rests on the urgency of measures required and the necessity of ordering measures aimed at preventing an imminent damage, or at ending a manifestly illegal harm. See *KHALIFA ABABACAR SALL AND OTHERS V REPUBLIC OF SENEGAL*, ECW/CCJ/ORD/02/18.

101. Therefore, in deciding a grant a of provisional measures, the Court must determine whether the reasons claimed demonstrate that the Applicant is in an extremely serious situation of urgency and whether there is a need to avoid an irreparable damage. *ALEX NAIN SAAB MORÁN V, REPUBLIC OF CAPV VERDE* ECW/CCJ/RUL/07/20 @ pg. 23 para 93.

102. The International Court of Justice ruled that "Provisional measures are justified only when there is urgency in the sense that action prejudicial to the rights of either party is likely to be taken before the Court has given its final decision." *PASSAGE*

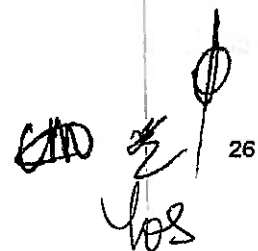
THROUGH THE GREAT BELT (FINLAND V. DENMARK) PROVISIONAL MEASURES, ICJ REPORTS 1991, P. 12.

103. In that regard, in addressing the existence of urgency in the matter, the Court notes the undisputed fact that on the 22nd of April 2025, the President of Ghana issued a press release stating that a prima facie case has been established in respect of the three petitions against Chief Justice. She was therefore suspended from office with immediate effect. A Committee was also constituted on the same day to investigate allegations of the said wrongdoing.
104. The Applicant alleges that the said Committee is incompetent and that allowing the committee to proceed with the flawed process will lead to her removal from office. This, she submits will impose a fait accompli on the pending case before the Court and render any favourable decision nugatory. Consequently, the damage the Applicant faces is thus irreparable.
105. The Court is of the opinion that the undisputed facts of the Applicant's suspension and the immediate constitution of an investigative Committee present an urgency which the Applicant is entitled to approach the Court for an intervention to prevent the continuation of the work of the said Committee pending the final determination of the Court in the substantive action. This is more so that the Applicant has alleged a breach of the Constitutional procedure for such investigation which violates some of the guaranteed rights in the African Charter.
106. Having established the existence of an urgency, it beholds on the Applicant to demonstrate expedition. However, where an applicant fails to act promptly in seeking such measures, courts are weary to grant such orders and have consistently held that such delay undermines the alleged urgency.
107. The implication of this special procedure of provisional measures is to avail an Applicant who perceive an eminent breach of his/her fundamental rights the opportunity to promptly approach the court for a redress without any hesitation. Any hesitation on the part of such Applicant will defeat the purpose of the special

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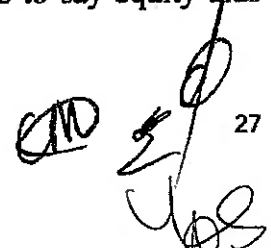
procedure. An applicant must act promptly once a risk is known; failure to act timely defeats urgency.

108. From the facts available to the Court, the Applicant in the instant matter was suspended on the 22nd of April 2025, a Committee was also inaugurated same day to investigate the alleged wrongdoing.
109. The Applicant admitted that the Committee commenced hearing of the petition on the 15th of May 2025 but prevented her counsel from taking part *"in the planning and making arrangements for the hearing."* She further alleged that subsequent hearings demonstrated pattern of consistent multiple procedural and constitutional irregularities.
110. From the instant Application, the facts available to the Court is that the Applicant was suspended on the 22nd of April 2025 with the commencement of hearing on the 15th of May 2025. The Application for precautionary measures was filed on the 4th of July more than eight weeks after the suspension and more than six weeks after the hearing commenced.
111. The Applicant is a judicial officer versed in the practice and procedure of administration of justice. She ought to be conversant with the rules guiding the operationalization of Commissions set up to investigate allegations of wrongdoing and be aware that process is usually time specific and short-lived, unlike the normal court process that may be prolonged. Consequently, recognizing that time is not on her side, the situation in which the Applicant found herself ought to have generated an urgency of action.
112. Therefore, a suspension backed immediately with the composition of a committee of enquiry to investigate the alleged petitions raises a red flag of imminent danger of termination of her employment. This situation in the opinion of the Court presents an emergency of utmost urgency requiring a speedy intervention by the affected party to avert albeit temporarily the impending harm without delay.

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113. Urgency in an application for precautionary measures is the fundamental catalyst that moves the Court to grant an interim measure to avert an impending irreparable harm, damage of loss.
114. While the matter may have presented the existence of an emergency at the time of the suspension and especially at the commencement of the enquiry proceedings, the Applicant displaced complacency in not running with the urgency at that time or so soon thereafter to immediately seek a legal intervention. The applicant's own conduct defeated its claim of imminent and irreparable harm.
115. The consistent theme across jurisdictions is that urgency must be both real and self-proving. A party who is aware of a threat yet fails to act promptly cannot invoke the extraordinary jurisdiction of the court for immediate protection. Delay is antithetical to urgency.
116. European Court of Human Rights declined the interim measures sought to stop deportation of the Applicant, the Application having been considerably delayed and found that the applicant's delay contradicted the claim of urgency. Timeliness is a precondition to invoking the emergency jurisdiction of the Court. See *APPLICATION ECHR NO. 11593/12 (2012)*.
117. The burden of demonstrating urgency lies squarely on the applicant. Where there is unexplained or significant delay between the occurrence of the alleged threat and the filing of the application, courts will infer that the situation is not urgent and will decline to grant precautionary or interim measures. In this regard, the Court notes that the Applicant did not provide any explanation for the delay, nor demonstrate any sudden change in circumstances to justify urgency at this late stage of the enquiry which according to the Respondent is at the tail end.
118. Accordingly, promptness in seeking judicial intervention is an essential element in establishing the condition of urgency required for the grant of such relief.
119. The Court reiterates that it is trite that the law does not aid the indolent. The maxim *Vigilantibus Non Dormientibus Jura Subveniunt* is apt, that is to say equity aids

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the vigilant, not those who slumber on their rights. Delay undermines any claim of immediate necessity in such circumstances.

120. Under these circumstances, the Court is satisfied that the Applicant has not demonstrated the existence of imminent or exceptional circumstances that would justify the urgency of the application, filed almost three months after the act complained of.

121. In the light of the failure to meet the requirement of urgency, the Court finds no basis to assess the remaining criteria for provisional measures being cumulative.

122. The request for provisional measures as outlined by the Applicant same not being substantiated is therefore dismissed.

I. OPERATIVE CLAUSE

123. For the reasons stated above, the Court sitting in public and after hearing both Parties:

Declares that it has jurisdiction to hear the Application

Dismisses:

- a. the preliminary objection of the Respondent on all grounds
- b. The application for provisional measures for lacking in urgency.

Orders:

- c. The Respondent to file its defence to the Initiating Application within 30 days of the delivery of this Ruling.

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Hon. Justice Sengu Mohamed KOROMA- Presiding -----

Hon. Justice Dupe ATOKI - Member / Judge Rapporteur -----

Hon. Justice Gberi-Be OUATTARA- Member -----

Dr. Yaouza OURO-SAMA- Chief Registrar -----

Done in Abuja, this 19th day of November 2025 in English language and translated into French and Portuguese.

