IN THE HIGH COURT OF JUSTICE, WESTERN REGION HELD AT SEKONDI ON MONDAY THE 21ST DAY OF NOVEMBER, 2022 BEFORE HIS LORDSHIP DR. RICHMOND OSEI-HWERE J.

SUIT NO: E12/11/21.

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

AND

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

AND

IN THE MATTER OF PARLIAMENTARY ELECTIONS FOR THE JOMORO CONSTITUENCY HELD ON 7TH DECEMBER, 2020.

AND

IN THE MATTER OF A PETITION BY JOSHUA EMUAH KWOFIE CHALLENGING THE DECLARATION BY THE ELECTORAL COMMISSION OF DORCAS TOFFEY AS MEMBER OF PARLIAMENT ELECT FOR THE JOMORO CONSTITUENCY PURSUANT TO THE PARLIAMENTARY ELECTIONS HELD ON 7TH DECEMBER 2020.

BETWEEN:

JOSHUA EMUAH KOFIE

GPS ADDRESS-WJ-2837- 0697: ..... PETITIONER

NUBA-MPATABA

VRS:

1. DORCAS TOFFEY ..... 1ST RESPONDENT

BONNYERE

2. THE ELECTORAL COMMISSION OF GHANA

HEAD OFFICE, RIDGE ACCRA: ..... 2ND RESPONDENT

JUDGMENT

Election and its related matters present a phenomenal sense of passion amongst considerable number of people in a democratic state. This explains the heightened interest in election petitions. However, misgivings about the outcome of judicial adjudication of electoral disputes is a regular feature in some jurisdictions. Ghana has had its fair share of such controversies in the aftermath of electoral litigations and other disputes. It is fair to state that as judges, we are undaunted by controversies in general because we are used to resolving them. Ultimately, it is fidelity to the law and fidelity alone that would vindicate the court. In this respect, I am inspired by the words of Osei-Hwere JSC of blessed memory in the Supreme Court case of Gyewu v Asare II (1991) 1WASC 169 where the eminent jurist once delivered himself thus, at page 186 of the Report:

> "A court of justice called upon to resolve a dispute, I repeat, must neither play the role of the 'artful dodger' (of Dicknesian creation) nor indulge in 'diplomatic double talk' (intending to hurt no one) but must seize the bull by the horns and hand down the decision the dispute demands ..."

This judgment relates to the qualification of an elected member of parliament to participate in the parliamentary election that elected her into office. The election petition flowing from the qualification complaint is anchored on Article 94 (2)(a) of the 1992 Constitution of Ghana. It provides:

"A person shall not be qualified to be a member of Parliament if he a. owes allegiance to a country other than Ghana; ..."

This constitutional provision is repeated verbatim in section 9(2)(a) of the Representation of the Peoples Act, 1992 (PNDCL 284).

Closely related to the above constitutional and statutory provisions is Regulation 8(1)(a)(i) of the Public Elections Regulation, 2020 (C.I.127), the Constitutional Instrument that regulated Ghana's 2020 Presidential and Parliamentary Elections. It also provides as follows:

"A candidate for Presidential and Parliamentary election shall, at the time of nomination of the candidate,

(a) deliver or cause to be delivered to the returning officer

(i) a statutory declaration stating that, that candidate is qualified to be elected as President or a Member of Parliament and is not disqualified from being elected as such; ..."

BACKGROUND OF THE PETITION AND RELIEFS SOUGHT

On 7th of December, 2020 the 2nd Respondent herein, the Electoral Commission, conducted parliamentary election in the Jomoro Constituency of the Western Region of Ghana. At the end of the exercise, the 2nd Respondent declared Madam Dorcas Toffey a.k.a. Dorcas Afo Toffey, 1st Respondent herein (candidate of the National Democratic Congress) as the winner of the election and was

subsequently sworn in as the Member of Parliament for the Jomoro Constituency on 7th January, 2021.

On 8th January, 2021 Joshua Emuah Kwofie, the Petitioner herein caused an action to be instituted against Madam Dorcas Toffey and the Electoral Commission (hereinafter called the 1st and 2nd Respondents respectively). In the action, the Petitioner prays jointly and severally against the Respondents for:

a. A declaration that the filing of Parliamentary nomination forms by 1st Respondent when she held an Ivorian and American Citizenships at the time of filing the said nomination form between 5th – 9th October, 2020 violate Article 94(2)(a) of the Constitution of the Republic of Ghana 1992, Section 9(2)(a) of Representation of the Peoples Act1992 (PNDCL 284) as Amended, as well as Regulation 8(1)(a)(i) of the Public Elections Regulations, 2020 (C.I.127) and same is illegal, void and of no effect whatsoever.
b. A declaration that the decision of the 2nd Respondent to clear the 1st Respondent to contest Parliamentary Elections in the JOMORO Constituency when the 1st Respondent was not qualified as a candidate on account of her holding multiple nationalities violates Article 94(2)(a) of the Constitution of the Republic of Ghana 1992, Section 9(2)(a) of the Representation of the Peoples Act 1992 (PNDCL 284) as Amended, as well as Regulation 8(1)(a)(i) of the Public

Elections Regulations, 2020 (C.I.127) and same is void and of no effect whatsoever.

c. A declaration that the decision by the 2nd Respondent to allow the 1st Respondent to contest Parliamentary Elections in the JOMORO Constituency when she held Ivorian and American Citizenships at the time of filing her nomination form violates Article 94(2)(a) of the Constitution of the Republic of Ghana 1992, Section 9(2)(a) of the Representation of the Peoples Act 1992 (PNDCL 284) as Amended, as well as Regulation 8(1)(a)(i) of the Public Elections Regulations, 2020 (C.I. 127) and same is illegal, void and of no effect whatsoever.

d. A declaration that 1st Respondent's election as Member of Parliament for the JOMORO Constituency is null and void and of no effect whatsoever as same violates Article 94(2)(a) of Constitution of the Republic of Ghana 1992, section 9(2)(a) of the Representation of the Peoples Act 1992, (PNDCL 284) as Amended, as well as Regulation 8(1)(a)(i) of the Public Elections Regulations, 2020 (C.I.127) being laws regulating Parliamentary Elections in Ghana.

e. A declaration that 1st Respondent at the time of the Parliamentary Elections in the JOMORO Constituency was not qualified to contest as a candidate for the JOMORO Constituency in accordance with the electoral laws for the time being in force in Ghana.

f. An order of this Court cancelling the Parliamentary Elections in the JOMORO Constituency and further orders directed at

2nd Respondent to conduct fresh Elections in the JOMORO Constituency.

g. An Order of Perpetual Injunction restraining 1st Respondent from holding herself out as Member of Parliament for the JOMORO Constituency.

PETITIONER'S CASE

Petitioner's case is spelt out in a twenty (20) paragraph Petition and a ten (10) paragraph response to 1st Respondent's Answer to the Petition.

Petitioner describes himself as an Entrepreneur and resident of Nuba-Mpataba. He also avers that he is a constituent of the Jomoro Constituency and a registered voter with Voter Registration Number 8203005633. Petitioner indicates that 1st Respondent was the National Democratic Congress Candidate for the Jomoro Constituency in the 7th December, 2020 Parliamentary Elections whilst 2nd Respondent is the constitutional body set up and mandated by Article 43 of the Constitution of the Republic of Ghana, 1992; the Electoral Commission Act, 1993 (Act451); and the Representation of the Peoples Act, 1992 (PNDCL 284) as amended, to supervise and conduct all public elections and referenda in the Republic of Ghana.

It is Petitioner's case that the 1st Respondent was declared by 2nd Respondent as Member of Parliament elect for the Jomoro Constituency and has been sworn in as Member of Parliament.

Petitioner says that on 5th October, 2020 2nd Respondent opened nominations for the filing of Parliamentary forms by candidates who intended to contest the 2020 Parliamentary Elections at the offices of the Electoral Commission and that the filing of nominations for Parliamentary Elections with the 2nd Respondent closed on 9th October, 2020.

Petitioner contends that as part of the content of her nomination forms, 1st Respondent solemnly declared that she is otherwise not disqualified from standing for elections by any law for the time being in force in Ghana. That at all material times, 1st Respondent was required to append her signature before a Judicial Officer in a Statutory Declaration prior to filing her nomination forms with 2nd Respondent.

Petitioner avers that 1st Respondent held Ivorian, American and Ghanaian citizenships at the time of filing her nomination forms to contest the Parliamentary Election for the Jomoro Constituency. He states categorically that at the close of the filing of Parliamentary nomination forms for Jomoro Parliamentary Election with 2nd Respondent on 9th October, 2020, 1st Respondent had not renounced her Ivorian and American citizenships.

It is Petitioner's case that the incidence of non-renunciation of the Ivorian and American citizenships by 1st Respondent prior to the filing of her Parliamentary nomination forms with 2nd Respondent, renders 1st Respondent not qualified to contest for Parliamentary Elections in Ghana and her participation offends Article 94(2)(a) of

the Constitution, 1992, as she owed allegiances to Ivory Coast and the United States of America at the time of filing her nomination forms and any subsequent renunciation is of no legal effect whatsoever.

Petitioner contends that the Parliamentary Election organized by 2nd Respondent is regulated by law i.e. the Constitution of the Republic of Ghana, 1992, the Representation of the Peoples Act, 1992 (PNDCL 284) as amended as well as the Public Elections Regulations, 2020 (C.I.127).

Petitioner's case is that the process of becoming a Member of Parliament commences with the filing of nomination forms of a prospective candidate with 2nd Respondent and terminates with the due election and swearing in of the elected candidate as a Member of Parliament. Consequently, the qualification of a person to become a Member of Parliament commences from the time 2nd Respondent sets in motion the electoral process inclusive of the provision of time frame for the Parliamentary nomination forms to be submitted.

It is Petitioner's case that the requirement of Section 9(2)(a) of PNDCL 284 kicks in as soon as a person takes the first official step in the Parliamentary Election process by filing her nomination with 2nd Respondent. That not having renounced her Ivorian and American citizenships at the time of filing the nomination forms with 2nd Respondent, 1st Respondent was not qualified to contest for election as a Member of Parliament in the Parliamentary Elections for

the JOMORO Constituency organized by 2nd Respondent on 7th December, 2020.

Consequently, Petitioner contends that 2nd Respondent violated the 1992 Constitution and other laws regulating elections in Ghana by allowing 1st Respondent to participate in the Parliamentary Elections and proceeding to declare her as a Member of Parliament Elect for the Jomoro Constituency and also entered into the Gazette the Notice of Results of the Parliamentary Elections on 22nd December, 2020 when she was not qualified to be elected as a Member of Parliament.

Again, Petitioner avers that 1st Respondent was not qualified to contest as a Parliamentary candidate in the Parliamentary Election in the Jomoro Constituency on account of her multiple nationalities. That the Parliamentary Election organized by 2nd Respondent in the Jomoro Constituency ought to be cancelled and a re-run of the election ordered. That 1st Respondent must also be restrained from holding herself out as the Member of Parliament of the Jomoro Constituency.

1ST RESPONDENT'S CASE

In an amended answer to the petition, 1st Respondent says that she was validly elected and declared by the 2nd Respondent as the lawfully elected Member of Parliament for the Jomoro Constituency.

1st Respondent states that she complied with the Constitution and the electoral laws of Ghana when she filed her nomination forms with the 2nd Respondent in October 2020.

1st Respondent contends that when she filed her nomination forms with the 2nd Respondent, contested the election on 7th December 2020 and sworn in as a Member of Parliament for the Jomoro Constituency on 7th January, 2021 she owed no allegiance to any other country other than Ghana. She further asserts that she had never been an American citizen. In terms of the Ivorian citizenship, 1st Respondent says that she renounced and/or lost her Ivorian citizenship in a letter dated 24th January, 2019.

1st Respondent pleads Article 48 of the Nationality Code and Law on the Identification of Persons of the Ivory Coast, which is to the effect that once a person who holds an Ivorian nationality expresses an interest in not being an Ivorian national in order to become a national of another country exclusively, the person forfeits his or her Ivorian nationality automatically.

It is the 1st Respondent's case that on the strength of her letter dated 24th January, 2019 and in the light of Article 48 of the Nationality Code, she ceased to be an Ivorian national on the 24th January 2019. She indicates that she would call an expert on Ivorian law to testify on the law regulating the renunciation and/or loss of Ivorian citizenship particularly Article 48 of the Ivorian Nationality Code.

1st Respondent therefore prays the Honourable Court to uphold her election as lawful and dismiss the Petition filed by the Petitioner.

2ND RESPONDENT'S CASE

2nd Respondent's case in answer to the petition is simply that, it adjudged the 1st Respondent qualified to contest for election as a Member of Parliament for the Jomoro Constituency based on the statutory declaration submitted together with the nomination forms of the 1st Respondent.

ISSUE FOR DETERMINATION

From the pleadings, Petitioner alleged that 1st Respondent held Ivorian and American citizenships in addition to her Ghanaian citizenship when she filed her nomination forms to contest the Jomoro Constituency seat. The plaint was that, beside the Republic of Ghana, 1st Respondent also owed allegiances to Ivory Coast and the United States of America when she filed her nomination forms.

Petitioner subsequently abandoned the allegation that 1st Respondent was an American citizen when he (Petitioner) testified on oath. This is what transpired on 7th June, 2022 during cross examination of the Petitioner:

Q. Now, in your petition you also indicated that the 1st Respondent is the holder of American citizenship, correct?

A. Yes, my Lord.

Q. Do you still stand by that?

A. No, my Lord.

By these answers, Petitioner admitted 1st Respondent's answer to the petition that she has never held American citizenship.

Admission is defined by the 7th edition of the Black's Law Dictionary as a voluntary acknowledgment of the existence of facts relevant to an adversary's case. Justice Brobbey in his book, ***Essentials of Ghana Law of Evidence at page 112*** explained admissions to mean the fact or issue which has been conceded and is no longer in contention.

In the Supreme Court decision of **In re Asere Stool; Nikoi Olai Amontai IV (Substituted by) Tafo Amon II vrs Akotia Owirsika III (Substituted by) Laryea Ayiku III [2005-2006] SCGLR 637 at 656**, which was quoted with approval in **Fynn v Fynn [2013-2014] SCGLR 727 at 738**, it was held that there cannot be any better proof than an adversary admitting a fact in contention. Thus, where a matter is admitted, proof is dispensed with and it no longer becomes an issue for determination by the court. See **Okudzeto Ablakwa (No. 2) v Attorney General and Anor [2012] 2 SCGLR 845 at 867**.

In view of this, the singular issue that stands for determination is: whether or not 1st Respondent had renounced and/or lost her Ivorian Nationality before she filed her nomination forms to contest the 2020 Parliamentary Election in the Jomoro Constituency?

Determination of this issue would assist the court in arriving at a decision as to whether the 1st Respondent was in the first place qualified to contest the parliamentary election within the meaning of Article 94 (2)(a) of the 1992 Constitution and whether she was validly elected as a Member of Parliament.

In compliance with the court's order, learned counsel for the Petitioner, Mr. Bright Okyere-Adjekum and learned counsel for the 1st Respondent, Mr. Godwin Kudzo Tameklo have filed their written addresses. These addresses have comprehensively dealt with the issue at stake.

I shall proceed to discuss the issue to ascertain whether the Petitioner has led cogent evidence to establish his claim. In doing so, I shall advert my mind to the addresses filed by counsel in the analysis.

BURDEN OF PROOF

As in all civil suits, the legal burden of proof is placed on the party who asserts the existence of a fact in issue or any relevant fact. Depending on the admissions made, the party on whom the burden of proof lies is enjoined by the provisions of sections 10, 11(4), 12 and 14 of the Evidence Act, 1975 (NRCD 323) to lead cogent evidence such that on the totality of the evidence on record, the court will find that party's version in relation to the rival accounts to be more probable than its non-existence. These sections on the burden of

proof, burden of persuasion and burden of producing evidence, which apply equally to election petitions, provide thus:

Section 10—Burden of Persuasion Defined.

(1) For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.

(2) The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

Section 11—Burden of Producing Evidence Defined.

(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue ...

(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.

Section 12—Proof by a Preponderance of the Probabilities.

(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.

(2) "Preponderance of the probabilities" means that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence.

Section 14—Allocation of Burden of Persuasion.

Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.

This basic principle of proof in civil suits, is expounded in **Zambrama v Segbedzie (1991) 2 GLR 221** and the same has been applied in numerous cases including **Takoradi Floor Mills v Samir Faris (2005/06) SCGLR 882**; **Continental Plastics Ltd v IMC Industries (2009) SCGLR 298 at pages 306 to 307**; **Abbey v Antwi (2010) SCGLR 17 at 19 (holding 2)**; and **Ackah v Pergah Transport Limited and Others [2010] SCGLR 728**.

In **Ackah v Pergah Transport Limited and Others** supra, Adinyira JSC succinctly summed up the law, at page 736 of the Report as follows:

"It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail...It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so

that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under section 10 (1) and (2) and 11 (1) and (4) of the Evidence Act, 1975 (NRCD 323)."

In the Supreme Court case of **Bisi and Others v. Tabiri alias Asare [1987-88] 1 GLR 372**, Osei-Hwere JA (as he then was) commented on the standard of proof in civil proceedings as follows:

"The standard of proof required of a plaintiff in a civil action is to lead such evidence as will tilt in his favour the balance of probabilities on the particular issue. The rampant encounter with the pleader's demand for strict proof has never been taken to call for an inflexible proof either beyond reasonable doubt or with mathematical exactitude or with such precision as would fit a jig-saw puzzle. With the definition supplied, preponderance of evidence, in short, becomes the trier's belief in the preponderance of probability. An American decision Norton v. Futrell, 149 Cal App. 2d 586 (1957) has explained that: The term 'probability denotes an element of doubt or uncertainty and recognizes that where there are two choices, it is not necessary that the jury be absolutely certain or doubtless, but that it is sufficient if the choice selected is more probable than the choice rejected'."

There is a clear distinction between the legal burden of proof and evidential burden of proof. Whilst the legal burden of proof is

mostly borne by the plaintiff or whoever makes an assertion, evidential burden exists to produce evidence in support of an assertion or exists in the form of tactical onus to contradict or weaken the evidence that has been led by an adversary.

The above legal principles were affirmed by the Supreme Court as applicable to election petitions. See the cases of:

John Dramani Mahama v. Electoral Commission and Nana Addo Dankwa Akufo-Addo, Suit No. J1/5/2021 (delivered 4th March, 2021) and

Akufo-Addo, Bawumia & Obetsebi Lamptey v. Mahama & Electoral Commission (No. 4) (2013) SCGLR (Special Edition) 73

In **Akufo-Addo, Bawumia & Obetsebi Lamptey v. Mahama & Electoral Commission** supra, Ansah JSC at page 161 stated as follows:

> "The burden of proof in election petition lies on the petitioner; and a petitioner who sought to annul an election bears the legal burden of proof throughout the proceedings. In other words, he who asserts is required to prove such facts by adducing credible evidence in support and if he fails to do so his case must fail."

Thus, at the trial the Petitioner bore the legal burden of proof on the alleged invalidity of the election of 1st Respondent. This comes with the burden of producing evidence and the burden of persuasion on the issue. In the instant case, the petitioner, must not only prove non-compliance with the electoral laws – that the 1st Respondent

breached Article 94 (2)(a) of the 1992 Constitution and other electoral laws, as she was not qualified to contest the elections by virtue of her Ivorian Nationality – but must also establish that the non-compliance rendered her election void. The Respondents were also at liberty to introduce evidence to contradict the assertions of the Petitioner. 1st Respondent in particular bore the evidential burden on the fact that she was qualified to contest the election prior to filing her nomination forms in respect of the parliamentary election in the Jomoro Constituency. In fact, 1st Respondent also bore the legal burden on the issue since she made a positive assertion in her pleadings that she had renounced and/or lost her Ivorian nationality by virtue of the Ivorian law. The success or failure of 1st Respondent's case depended on proof of the above assertion. The burden of proof imposed on 1st Respondent is emphasized in the case of **Bank of West Africa Ltd. v. Ackun [1963] 1 GLR 176**, where the Supreme Court at holding 2 stated as follows:

> "The onus of proof in civil cases depends upon the pleadings. The party who in his pleadings raises an issue essential to the success of his case assumes the burden of proof."

EVALUATION OF THE EVIDENCE ON RECORD, THE LAW AND RESOLUTION OF THE ISSUE

The Petitioner testified in person and called no other witness. Petitioner relied on his witness statement and the numerous documents attached to the witness statement as exhibits. Not a

single objection was raised against any of the exhibits. Petitioner's documents in the French language had English translation versions. Again not a single translation was questioned.

In his testimony, the Petitioner repeated the averments captured in his pleadings and tendered documents which border on the Ivorian nationality and the Ghanaian nationality of the 1st Respondent. Reference would be made to some of the documents in due course in the analysis of the issue.

It must be stated at this stage that prominent amongst the exhibits tendered by the Petitioner was the Ivorian Nationality Code – the French version was admitted as Exhibit "E" and the certified English Translation version was marked Exhibit "E1". Petitioner tendered these documents in a bid to establish that per Ivorian law, 1st Respondent had not renounced her Ivorian citizenship when she filed her nomination forms to contest the parliamentary election. In paragraph 19 of his witness statement, Petitioner stated as follows:

> "19. 1st Respondent on her own showing being Ivorian by birth and having been an Ivorian Citizen for more than fifteen (15) years, any request for renunciation of her Ivorian Citizenship is subject to Authorization through a Decree as contained in Article 48 of the Ivorian Nationality Code. I categorically say that no such decree was sought and or issued to 1st Respondent by the relevant Ivorian Authorities before October, 2020 when 1st Respondent filed her nomination forms to contest the 2020 Parliamentary Elections for the Jomoro Constituency.

Annexed herewith are copies of the **relevant portions of the Ivorian Nationality Code in French and English translated versions marked Exhibits 'E & E1'**."

Petitioner, however, conceded under cross examination that he is not an expert in Ivorian law and that his testimony is based on the advise of his lawyers.

1st Respondent also testified. In her testimony to the court, she reiterated the averments in her pleadings. 1st Respondent maintained that on the strength of her letter dated 24th January 2019 and in the light of Article 48 of the Nationality Code, she a *fortiori* ceased to be an Ivorian national on the 24th January 2019. She relied on the Ivorian Nationality Code attached to the witness statement of the Petitioner marked as Exhibits "E" and "E1".

In support of her case, the 1st Respondent called an Ivorian lawyer by name DADJE Ange Rodrigue to testify as an expert on the Ivorian law regulating the renunciation and/or loss of Ivorian citizenship i.e. Exhibits "E" and "E1".

2nd Respondent also testified through its representative who essentially said that, the Electoral Commission admitted 1st Respondent's Nomination Forms after she had sworn to a statutory declaration that she did not owe allegiance to any other country other than Ghana.

2nd Respondent as a public body is entitled to a presumption of regularity in the conduct of public elections and its electoral

declarations shall not be disturbed unless they are procured by fraud or mistake. This is one of the rebuttable presumptions provided for in section 37(1) of the Evidence Act, 1975 (NRCD 323) as follows: "It is presumed that official duty has been regularly performed."

It is obvious from the pleadings and evidence on record that the sole issue before this court can only be determined by reference to the Ivorian law on the renunciation and/or loss of Ivorian nationality. Failure to establish Ivorian law in this case would mean that the Ivorian law is deemed to be the same as the Ghanaian law on renunciation of nationality. See section 40 of the Evidence Act, 1975 (NRCD 323).

Proof of foreign law – Ivorian law

The starting point for the ascertainment of foreign law in Ghana by our courts is recourse to Section 1(2) of the Evidence Act, 1975 (NRCD 323) which says as follows: "The determination of the law of an organisation of states to the extent that such law is not part of the law of Ghana, or of **the law of a foreign state** or sub-division of a foreign state, **is a question of fact, but it shall be determined by the court**."

It is well settled under common law that knowledge of foreign law is not to be imputed to a judge. This is because the courts of a country are presumed to be acquainted only with their own laws. A court can only apply local law: foreign law when relevant operates not as law but as fact. Therefore, in an action before a court, a party who relies on foreign law must plead and prove it. See the **Sussex Peerage**

Case, 11 Cl. & Fin. 85, 8 Eng. Rep. 1034 (H.L. 1844) and **Monroe v. Douglass 5 N.Y. 451 (1851)**.

It is also the law that a particular rule of foreign law must be proved afresh each time it is pleaded. This legal precaution is based on the notion that the foreign law might have changed since the previous occasion on which it was proved and accepted by the court. What it means is that the holding of a court on questions of foreign law in one case cannot be used as evidence in other cases involving the same foreign law issue. Also, the holdings of appellate courts on foreign law do not have the force of *stare decisis*. The courts will not take judicial notice of the rules of foreign law. Foreign law must be proved as a fact on case by case basis.

The position of Ghanaian law on the application of foreign law in our courts reflects the common law position and it was made clear in the unreported Supreme Court case of **Ama Serwaa vrs. Gariba Hashimu and Another, Civil Appeal No. J4/31/2020 (dated 14th April, 2021)** where Kulendi JSC stated as follows:

> "Foreign law, is a question of fact ought to be pleaded and proven at the trial stage. The method of proving foreign law, is by offering expert witnesses. Merely presenting a lawyer with the text of a foreign law will not be sufficient. Although the question of who is an expert witness would be decided by the Court. See the cases of **Godka Group of Companies v. P.S. International [1999-2000] 1 GLR 409** and **Khoury v. Khoury [1958] 3 WALR 52**."

Expert witnesses play a key role in proving foreign law in our courts. These witnesses do not in any way usurp the role of the judge in the adjudication of disputes. For, the evidence of an expert witness is not binding on the court. It is at best persuasive. In **Fenuku v John Teye [2001-2002] SCGLR 985,** the Supreme Court per Ampiah JSC held thus:

> "The principle of law regarding expert evidence was that the judge need not accept any of the evidence offered. The Judge was only to be assisted by such expert evidence to arrive at a conclusion of his own after examining the whole of the evidence before him. The expert evidence was only a guide to arrive at the conclusions."

In **Guaranty Trust Co of New York v Hannay & Co [1918] 2 KB 623 at 667, CA** which was cited with approval by our Court of Appeal in **Godka Group of Companies v. P.S. International [1999-2000] 1 GLR 409**, Scrutton LJ remarked:

> "Foreign law is a question of fact to an English [a Ghanaian] Court; the judgment of a foreign judge is not binding on an English Court, but is the opinion of an expert on the fact to be treated with respect, but not necessarily conclusive."

Also, in the case of **Tetteh & Another v Hayford (substituted by Larbi) & Decker [2012] 2 SCGLR 417,** which was cited by counsel for the 1st Respondent, the Supreme Court speaking through Dotse JSC had this to say on expert evidence:

"It is generally understood that a court is not bound by the evidence given by an expert such as the Surveyor, in this case. See case of Sasu v White Cross Insurance Co. Ltd [1960] GLR 4 and Darbah & another v Ampah [1989-90] 1 GLR 598 (CA) at 606 where Wuaku JA (as he then was) speaking for the court also reiterated the point that a trial Judge need not accept evidence given by an expert. **But the law is equally clear that a trial court must give good reasons why an expert evidence is to be rejected.**"

The *ratio decidendi* of the decided cases relating to the role of expert witnesses in determining foreign law is compatible with section 1(2) of the Evidence Act, which plainly stipulates that foreign law is a question of fact, but it shall be determined by the court. The use of the phrase "but it shall be determined by the court" indicates in no uncertain terms that the court has the final word when it comes to the determination of foreign law and that the opinion of an expert witness is not binding on the court. Indeed, the court can adopt an ambivalent approach in the treatment of expert evidence, especially if the expert witness was called by a disputing party. The court must, however, tread cautiously and desist from treating an expert's evidence lightly – the court must only reject the expert evidence if and only if the justice of the case demands.

In the instant case, the 1st Respondent gave a clear indication in her pleadings that she intends to rely on the Ivorian law relating to citizenship, particularly Article 48 of the Ivorian Nationality Code.

She rightly pleaded the Ivorian law as a fact to be proven during the trial. In furtherance of this, she served notice that she will call an expert witness to prove the foreign law (Ivorian law). 1st Respondent satisfied the first step contained in the requirement of the pleadings in her procedural journey to prove her case.

DADJE Ange Rodrigue, the expert witness called by the 1st Respondent described himself as an Ivorian lawyer of sixteen (16) years' experience – duly registered with the Bar Association of *Cote d'Ivoire* since 2006 with registration number 2006/481. He also told the court that he is an Advocate of the International Criminal Court (ICC). He attached to his witness statement documents relating to his qualification.

One of the issues that can arise during an inquiry into the application of foreign law is the question of who is qualified to prove foreign law. It is established that foreign law must be proved by expert evidence but the qualification of an expert witness can be contentious. In his written address, counsel for the Petitioner took aim at the qualification and/or competence of Mr. DADJE as an expert witness when he stated:

> "... to put it mildly, he was no expert witness, but rather a witness of fact, fed with information by 1st Respondent to repeat same in the box. We urge the court not to place any weight at all on what he claims Ivorian Law is on the subject before the court"

Interestingly, counsel for the Petitioner did not challenge the qualification of Mr. DADJE when he crossed examined him. Counsel's cross examination was not focused on the witness' qualification or competence but rather centered on his (Mr. Dadje's) evidence on the Ivorian law regulating the renunciation and/or loss of Ivorian citizenship/nationality. The witness' qualification was not impeached in any way.

Our law of evidence does not make specific provision for the qualification of an expert witness in relation to proof of foreign law. Section 67(1) of NRCD 323 only makes provision for the general qualification of an expert as: "A person is qualified to testify as an expert if he satisfies the court that he is an expert on the subject to which his testimony relates by reason of his special skill, experience or training". The general rule is that a witness may be qualified as an expert based on knowledge, skill, experience, training, or education relating to the subject matter of his testimony. The common law recognizes as an expert, a lawyer practicing in the foreign country whose law is the focus of inquiry before the court. See the Botswanan case of **Mtui v. Mtui 2000(1) BLR 406 at 413**.

Citing with approval Cheshire and North's Private International Laws (12th ed), at pp 109-110, the Court of Appeal per Forster JA in the case of **Godka Group v. P.S. International (1999-2000) 1 GLR 409 at page 424** had this to say:

> "The general principle has been that no person is a competent witness unless he is a practicing lawyer in the particular legal

system in question, or unless he occupies a position or follows a calling in which he must necessarily acquire a practical working knowledge of the foreign law."

It is my considered opinion that Mr. DADJE being an Ivorian lawyer – practicing law in Ivory Coast since 2006 – is suitably qualified to give expert evidence as to the law of Ivory Coast on account of his knowledge and experience. His evidence is therefore worthy of consideration by this court.

Evidence of DADJE Ange Rodrigue (Expert Witness)

Before I proceed to highlight and assess the evidence of the expert witness, it is prudent to reproduce the relevant provisions of the Ivorian Nationality Code in order to place the discussion in a proper context. The relevant provisions (i.e. Articles 48, 49, 52, 57, 59, 60 and 62) as captured in Exhibit E1 (the English Translation version of the Ivorian Nationality Code) are as follows:

Title IV

Chapter 1–Loss of Ivorian Nationality

Art. 48. An Ivorian who has reached the age of majority and who voluntarily acquires a foreign nationality, or who declares that he/she recognizes such a nationality, loses his/her Ivorian Nationality.

However, for a period of fifteen years from the date of registration on the census, the loss of nationality is subject to the authorization of the Government by decree issued on the basis of a report by the Minister of Justice and after consultation with the Minister of Public Health and the Minister of National Defence.

Art. 49. New (Law of 21/12/72)

An Ivorian, even if he is a minor, who, by the effect of a foreign law, possess a dual nationality by right, may be authorized by decree to lose his Ivorian status.

The minor must, where applicable, be authorized or represented under the conditions laid down in article 30

...

Art. 52. An Ivorian who behaves in fact as the national of a foreign country may, automatically, if he/she also has the nationality of that country, be declared by decree to have lost the status of Ivorian. In this case, he is released from his allegiance to Cote' d'Ivoire on the date of the decree. The measure taken against him may be extended to his spouse and minor children if they themselves have foreign nationality. It may not, however, be extended to minor children if it is not also extended to the spouse.

...

Title V – Conditions and form of acts relating to the acquisition or loss of Ivorian Nationality

Declarations of nationality and registration

Art. 57. New (Law of 21/12/72)

Any declaration with a view to

1 – Declining Ivorian Nationality;

2 – Repudiating Ivorian Nationality in the cases provided for by the law, shall be made before the presiding Judge of the Court of first instance, or an appointed magistrate, or the Judge of the division of the Court of the juris-diction in which the declarant has his residence.

...

Art. 59. Any declaration of nationality, made in accordance with the preceding articles, must be registered at the Ministry of Justice, otherwise it would be void.

Art. 60. If the person concerned does not meet the conditions required by law, the Minister of Justice shall refuse to register the declaration. The decision to refuse shall be notified to the declarant, together with the reasons for the refusal.

Art. 61. Repealed (Law of 21/12/72)

Art. 62. New (Law of 21/12/72)

If at the expiration of a period of six months after the date on which the declaration was made, no decision of refusal of registration has been taken, the Minister of Justice shall deliver to the declarant, at his request, a copy of the declaration with an indication of the registration made.

The crux of Mr. Dadjo's expert evidence is best told in his own words, as found in paragraphs 4-17 of his witness statement as follows:

4. By letter dated January 24, 2019, received on January 29, 2019 by the Ministry of Justice of Cote' d'Ivoire, the 1st Respondent formally addressed the Minister of Justice of Cote' d'Ivoire to declare, unequivocally, that she was renouncing her Ivorian citizenship with immediate effect.

5. I testify that based on the effect of this act of express renunciation of the Ivorian Citizenship as induced by this letter, the 1st respondent filed her nomination with the Electoral Commission of the Republic of Ghana to contest the December 2020 Parliamentary Elections in the Jomoro Constituency.

6. I state that by a second letter dated March 5, 2021 and received on April 12, 2021 by the Ministry of Justice of the Republic of Cote' d'Ivoire under number 202/DACP, the 1st respondent requested that a document be issued to her certifying that she has effectively renounced her Ivorian Citizenship.

7. I testify that by a certificate dated April 12, 2021, in Abidjan, the Director of Civil and Criminal Affairs of the Republic of Cote' d'Ivoire in charge of matters of citizenship replied to the 1st respondent's request by specifying that, in view of article 48 of the Ivorian Citizenship Code, stating that the said request was "irrelevant insofar as any Ivorian of legal age who voluntarily takes on a foreign citizenship thereby loses his or her citizenship." Attached is a copy of the attestation marked Exhibit 3.

8. Indeed, under Article 48 of Law No. 61-415 of December 14, 1961 on the Ivorian Citizenship Code, as amended by Law No. 72-852 of December 21, 1972, Law No. 2004 – 662 of December 17, 2004, Decision No. 2005 – 03/PR of July 15, 2005 and Decision No. 2005 – 09/PR of August 29, 2005:

> "Any Ivorian shall lose his/her citizenship, in case he/she being of age, voluntarily acquires a foreign citizenship, or if he/she declares that he/she recognizes such a citizenship."

9. In this case, by acquiring the Ghanaian Citizenship the 1st respondent lost her Ivorian Citizenship as of that date, automatically.

10. There is a formality prescribed by law, to renounce to the Ivorian Nationality, in particular the combination of articles 57, 59, et 62 of the Act of Nationality.

11. Articles 57 and 59 of the Act of Nationality require the filing of a letter renouncing one's nationality, and you must have an acknowledgement of receipt from the Ministry of Justice.

12. Article 62 provides that the Ministry of Justice has 6 months from the date of the receipt of the letter of renouncing to react.

13. After the 6 months period and in the absence of any reaction from the Ministry of Justice, you are definitively considered to have renounced your Ivorian Nationality.

14. Therefore, the 1st respondent, by this letter dated January 24, 2019, has given express form to her renunciation of Ivorian Citizenship.

15. Having received no reaction from the Ministry of Justice, after the expiration of the 6 months from 24 January 2019, the 1st Respondent is considered to have definitively renounced to her Ivorian nationality.

16. It follows that at the time of contesting the parliamentary elections of December 2020 in the constituency of Jomoro, the 1st Respondent had already lost her Ivorian citizenship.

17. Therefore, when the 1st Respondent filed her nomination with the Electoral Commission of Ghana to contest as a Member of Parliament for the Jomoro Constituency in the December 2020 parliamentary elections, she was not a citizen of Côte d'Ivoire.

DADJE Ange Rodrigue reiterated his position on the procedure for renouncing and/or losing Ivorian nationality when he was cross-examined by Counsel for the Petitioner on 24th October, 2022. The following transpired:

Q. Under Ivoirian law, loss of Ivoirian nationality can be by various means. Is that not it?

A. Yes. There are two ways by which one can lose his or her Ivoirian nationality. There is a distinction between a renunciation and loss of the nationality. The losing of one's nationality is under Title IV and Title V is on renunciation. Article 48 says that where one acquires a foreign nationality, he or she loses her Ivoirian nationality. In this case, Madam Toffey upon acquiring a Ghanaian nationality lost her Ivoirian nationality. Thus, once she obtained a Ghanaian nationality, she lost her Ivoirian nationality automatically. The only exception under article 48 of Title IV is that when a young person is on the reserve lists of the army. Persons on the reserve list who have taken another nationality, the Minister of Justice and Defense decide on the loss of nationality whether the person can regain Ivoirian nationality or not. Title V speaks on the voluntary renunciation of Ivoirian nationality. The principle is that if you want to renounce your

nationality, you write a letter to the Minister of Justice saying that you want to renounce your Ivoirian nationality. Article 57, 59, 60, 62 are on this. When you send the letter or renunciation to the Minster of Justice, one must obtain a discharge which can be done immediately or on the same day or they have six months to respond if they have any objection to give. If I send my letter and they give me a registration or stamp the same day, then the renunciation is definitive or finished. But the Minister can say that I have received your letter, give me time to do the registration. The Minister has six months to object if they want to object. If after six months and the Minister does not object to the renunciation, article 62 says that your renunciation is definitive or is done. In this case, 1st Respondent sent her letter on the 24th January 2019 and she received a stamp some days later. In March 2021, she wrote a second letter to confirm her renunciation of Ivoirian nationality and she received an attestation. In the letter, she asked the Minister to give her a certificate to prove that she has renounced her Ivoirian nationality. The Minister gave her a written answer in April 2021 title ATTESTATION. In the attestation, the Minister of Justice said two things: She lost her Ivoirian nationality the day she took on Ghanaian nationality. Also, we received your 2nd letter of confirmation. The Minister said that it was not necessary to have any letter because to them, Mrs. Toffey satisfied both scenarios.

Mr. Dadje's evidence also touched on Articles 49 and 52 of the Ivorian Nationality Code. Under cross examination, he insisted that

Article 49 is applicable to minors and that under the provision there is the possibility that a minor can keep or lose his Ivorian nationality if he becomes a citizen of another country but the government has to back it with a decree. Also, under Article 52, the government can take away the Ivorian nationality of a citizen by decree if he the citizen becomes a citizen of another country.

Mr. Dadje's testimony brought out the following discernible factual matters for consideration by this court:

1. That under the Ivorian Nationality Code, there is a distinction between renunciation of Ivorian nationality/citizenship and loss of Ivorian nationality/citizenship.
2. Title V of the Code, specifically Articles 57, 59, 60 and 62 provide for renunciation of Ivorian nationality. The various provisions involve formal application renouncing one's nationality and issuing of decree by government in recognition of the renunciation.
3. Title IV of the Code specifically, Articles 48, 49 and 52 make provision for loss of Ivorian nationality.
4. By Article 48 where an Ivorian citizen acquires a foreign nationality or declares an intention to acquire a foreign nationality, he or she automatically loses his or her Ivorian nationality.
5. That the exception under Article 48 is only applicable to young persons on the reserve list of the Army. That for such persons, the Minister of Justice and Defense decide on the

loss of nationality – whether the person can regain Ivoirian nationality or not.

6. That the 1st Respondent's circumstances fall under Article 48. That is, by acquiring the Ghanaian Citizenship, the 1st Respondent automatically lost her Ivorian Citizenship as of that date.

Analysis of the Evidence

The prevailing common law technique for proving foreign law in England originated from the **Sussex Peerage Case** supra. This case established in 1884 that the foreign law should be proved by the testimony of an expert witness and not by merely producing a copy of a statute or legislative text. The emphasis of Ghanaian law concerning the proof of foreign law has been on the oral testimony of witnesses qualified to speak as experts upon the law in question. See the **Ama Serwaa case** supra.

In the instant case, 1st Respondent has satisfied the requirement of the rule insofar as proof of foreign law is concerned by calling an expert witness to give evidence on the foreign law in issue. However, the same cannot be said about the Petitioner. By the very nature of the issue at stake, the Petitioner was also required to call an expert witness to controvert the evidence of 1st Respondent's expert. After all, he (Petitioner) was also required to prove that the 1st Respondent had not renounced and/or lost her Ivorian nationality under Ivorian law. Merely tendering a copy of an authenticated

foreign law (Ivorian Law), as was done by the Petitioner in the present case, is not the proper method of proving foreign law.

In **Berger v New York Life Assurance Co (1927) 96 LJKB 930** which was cited with approval in the **Godka case** supra, the defendant claimed that the contract between the parties had been annulled by Russian law. The plaintiff called an expert in Russian law. The defendant, however, offered no expert evidence to controvert that fact. Scrutton LJ in his judgment for the plaintiff, having stated that the issue was a question of fact, then, continued:

> "Now this being the uncontradicted evidence of a Russian Lawyer and the Russian Department of Justice, as to what the law is in Russia today, the defendants, without calling any evidence asks us to say the lawyer and department are mistaken ... Such a result would appear to go far beyond the law and practice relating to the proof of foreign law. It is not sufficient to prove a foreign statute or code by a translation, and then leave the court to place its own construction on it. The code must be interpreted by an expert in the foreign law in the first instance."

In the instant case, there is no rival expert evidence to the expert evidence of Mr. Dadje, an Ivorian lawyer, as to what the law is in Ivory Coast today in relation to the subject matter. In his address to the court, Petitioner's lawyer made considerable effort to give his own interpretation of the Ivorian law relative to the issue. The catch is that the opinion of a party's lawyer is not relevant in proof of foreign

law; it is the opinion of an expert witness that matters. Let us remember that foreign law is a question of fact not law. Though not conclusive, the opinion of an expert witness is treated with respect.

In the instant case, I have no reason to reject the evidence of 1st Respondent's expert witness. I accept his opinion hook, line and sinker – most importantly, the evidence that by Article 48 of the Ivorian Nationality Code, an Ivorian citizen who acquires a foreign nationality or declares an intention to acquire a foreign nationality automatically loses his or her Ivorian nationality. I have come to this conclusion devoid of slavish devotion to Mr. Dadje's (expert witness') opinion but based on the probative value of his uncontradicted evidence.

1st Respondent has placed great reliance on the letter dated 24th January, 2019 addressed to the Office of the Ivorian Minister of Justice as the underlying reason for the renunciation of her Ivorian nationality. This letter was admitted into evidence without objection and marked Exhibit "1". On the face of the letter, it was received, stamped and signed by the Ministry of Justice of the Ivory Coast. In her testimony relating to the letter (Exhibit "1"), 1st Respondent stated that she declared in the letter that she is renouncing her Ivorian citizenship since she had decided to run for parliamentary elections in Ghana. The document was in the French language and there was no English Translation version during the case management conference. From the record, the English Translation version was subsequently attached to the witness statement of the

1st Respondent and both documents were tendered in evidence without objection and marked Exhibits "1" and "2".

In his written address, counsel for the Petitioner maintained that the said letter, Exhibit "1" is an afterthought and that the stamps on the letter are indecipherable. Counsel submitted that since 1st Respondent failed or refused to furnish the court with an English Translation version of the letter, the court was thus denied the opportunity of appreciating what the substance of the letter was. In effect counsel is inviting the court to disregard Exhibit "1".

On the issue of the admissibility of the document, counsel for the 1st Respondent submitted that Petitioner did not object to Exhibit "1" when it was tendered into evidence hence he impliedly admitted the said letter to be authentic within the meaning of section 137 of NRCD 323. Therefore, the 1st Respondent's letter dated 24th January, 2019 which was signed and stamped by the Ministry of Justice of the Ivory Coast on the 29th January, 2019 met the condition precedents set out in section 136 of NRCD 323. Most importantly, no person from the Ivorian Ministry of Justice was brought before the Court to state that the signature and the stamp on the letter did not emanate from the Ivorian Ministry of Justice.

Section 6 (1) of NRCD 323 provides that: "In every action, and at every stage thereof, any objection to the admissibility of evidence by a party affected thereby shall be made at the time the evidence is offered".

In **Aryeh & Kakpo v Ayaa Iddrisu [2010] SCGLR 891**, the Supreme Court held, applying NRCD 323, s 6(1), that a party should object to evidence at the time it is offered:

> "If a party looked on and allowed the inadmissible evidence to pass without objecting, it would form part of the court record and the trial judge would be entitled to consider it in evaluating the evidence on record for what it is worth."

Section 6(1) emphasizes that the objection should be raised timeously and specifically. Petitioner failed to object to Exhibit "1" when it was offered. Once it has been received without objection, it forms part of the evidence and the Petitioner is precluded from objecting thereafter to the evidence: see **Phipson on Evidence (9th ed.), chapter 50 at p. 711**; **Aboaba v Adeshina (1946) 12 W.A.C.A. 18**; and **Bank of West Africa Ltd v. Ackun (1961) JELR 67606 (SC)**.

The court is, however, duty bound to consider and evaluate Exhibit "1". It has no discretion in the matter. The court's duty is to reject the evidence if it was indeed inadmissible. **Akufo-Addo v. Catheline [1992] 1 GLR 377** expands the rule in **Abowaba v. Adeshina** supra that if evidence which is inadmissible goes on record without objection, the court can *suo motu* exclude it.

Section 8 of Evidence Act, 1975 (NRCD 323) grants the courts the power to exclude legally inadmissible evidence which would be inadmissible if objected to by a party on its own motion.

By paragraphs 7&8 of her witness statement, 1st Respondent testified as follows:

> *"7. I did renounce my Ivorian citizenship in a letter dated 24th January 2019 addressed to the Attorney – General and Minister of Justice of the Ivory Coast. In the said letter I informed the Attorney – General and Minister of Justice I was renouncing my Ivorian Citizenship with immediate effect to enable me to contest as a Member of Parliament in Ghana.*
>
> *8. The Attorney-General and Minister of Justice of the Ivory Coast acknowledged receipt of my letter dated the 24th January, 2019 on the 29th January 2019 informing the Ivorian Authorities of my decision to immediately renounce my Ivorian Citizenship to enable me to contest as a Member of Parliament in Ghana. Attached is a copy of my letter and the acknowledgment of receipt marked Exhibit "DT 2".*

It goes without saying that 1st Respondent explained the content of the document, Exhibit "1" (which is in the French language) when she tendered same in evidence. Petitioner never objected to the oral evidence that accompanied the tendering of Exhibit "1". The content of the document was thus made known to the court. Therefore, if the English Translation version had not been attached it could not in any way affect the admissibility of the document.

It is not in doubt that the relevancy of Exhibit "1" depends upon its authenticity or identity, and that the authentication or identification is required as a condition precedent to admission. The

requirement of authentication is satisfied by evidence or any other showing which is sufficient to support a finding that the matter in question is what its proponent claims. See section 136 (1) of NRCD 323.

In the instant case, 1st Respondent identified the document (Exhibit "1") in her evidence-in-chief. She described the salient and characteristic features of the document – the fact that it is a communication between her good self and the Ministry of Justice of Ivory Coast and the fact that the Ministry acknowledged receipt of the document by signing and affixing their stamp on it. The document was admitted without objection and Petitioner also failed to lead cogent evidence to negate its authenticity. The fact that Exhibit "F4" (a subsequent communication from the Ministry of Justice) never referred to Exhibit "1" does not mean the latter document is not authentic. The stamp and signature captured on the document speak for themselves. No evidence was led to show that the stamp and signature never emanated from the Ministry of Justice of Ivory Coast. In this era of filing of witness statements, ambush litigation has to a large extent been curtailed. Petitioner was duly notified of the existence of 1st Respondent's Exhibit "1" when it was filed sometime before the trial commenced. In fact, Petitioner was also aware of 1st Respondent's case that she wrote a letter (Exhibit "1") to the Ivorian Minister of Justice that she was renouncing her Ivorian Citizenship with immediate effect to enable her contest parliamentary elections in Ghana. If the Petitioner believed that the letter (Exhibit "1") was forged, he could have called an officer (or

sought the assistance of the court to call an officer) of the Ivorian Ministry of Justice to testify in court to expose the forged document. The law is that where corroborative evidence exists, the law expects a party to call such evidence in proof of his case: See Majolagbe v. Larbi & Others (1959) GLR 190. In the result, the court accepts 1st Respondent's evidence that Exhibit "1" was communicated to the Ministry of Justice of Ivory Coast and same was received by the Ministry. Flowing from the above, it is my considered opinion that the document is authentic within the meaning of Part IX of the Evidence Act, 1975 (NRCD 323), specifically section 145 which states as follows:

> "Authentication or identification of a communication, whether written or otherwise, may be by evidence that the communication was received in response to a communication sent to the alleged author of the communication in question."

Consequently, I conclude based on the opinion of the expert witness that by Article 48 of the Ivorian Nationality Code, 1st Respondent's letter to the Ivorian authorities dated 24th January, 2019 is evident of loss of her Ivorian nationality. By operation of Article 48 of the Code, 1st Respondent who per the evidence on record was an Ivorian by birth automatically lost her Ivorian nationality when she acquired Ghanaian citizenship. Thus, the formal step taken by the 1st Respondent in the 24th January, 2019 letter was unnecessary.

Exhibit F, is an Attestation issued by the Ministry of Justice of Ivory Coast. This document was tendered by the Petitioner. In fact, 1st Respondent's expert witness also tendered the same document as Exhibit "3". The document is dated 12th April, 2021 and it was in response to 1st Respondent's letter requesting for attestation regarding the renunciation of her Ivorian nationality. The English translation version tendered by the Petitioner is marked Exhibit "F4" and it reads:

"ATTESTATION

Subject: Application for renunciation of Ivorian nationality.

I, the undersigned, Klofanhan N'Golo DANIOGO, Magistrate, Director of Civil and Penal Affairs at the Ministry of Justice and Human Rights in charge of managing nationality issues, hereby certify that on 12th April 2012, I received from Ms. TOFFEY Dorcas, born on 04 May 1971 in Adzope, economic operator, daughter of TOFFEY Aka and NIAMKE Malan Cecile, a request by which she expresses her desire to renounce Ivorian nationality.

It should be noted, however, that the request to renounce Ivorian nationality is, in the light of article 48 of the Ivorian Nationality Code, irrelevant insofar as any Ivorian of legal age who voluntarily takes on a foreign nationality loses, ipso facto, Ivorian nationality.

In testimony whereof, the present certificate is issued to her to serve all rightful purposes.

Done in Abidjan on 12 APRIL, 2021

[Stamped & Signed]

Klofanhan N'golo DANIOGO MHH" [Emphasis mine]

The evidence of the expert witness, Dadje Ange Rodrigue upon which the court draws its conclusion on 1st Respondent's loss of her Ivorian citizenship is corroborated by the Petitioner's own Exhibit "F4" which states in part:

> "It should be noted, however, that the request to renounce Ivorian nationality is, in the light of article 48 of the Ivorian Nationality Code, irrelevant insofar as any Ivorian of legal age who voluntarily takes on a foreign nationality loses, ipso facto, Ivorian nationality."

As rightly pointed out by counsel for 1st Respondent, the rule as espoused in **Banahene v. Adinkra & Ors [1976]1 G.L.R. 346 at p. 350** is that where the evidence of a party on a point in a suit is corroborated by witnesses of his opponent, whilst that of his opponent on the same issue stands uncorroborated even by his own witnesses, a court ought not to accept the uncorroborated version in preference to the corroborated one unless for some good and apparent reason the court finds the corroborated version incredible, impossible or unacceptable. I agree with counsel for the 1st Respondent that the overall effect of Exhibit "F4" rendered the

Petitioner's case less weighty or simply incredible in the light of Petitioner's allegation that the 1st Respondent did not renounce her Ivorian nationality before she filed her nomination forms with the 2nd Respondent to contest the 2020 Parliamentary Elections. It is the evidence led by the expert witness on the issue which has been confirmed by the Ivorian authorities per Exhibit "F4" that holds sway in this court.

Has a new Case emerged?

At the outset of this petition, the complaint as captured in Petitioner's pleadings hinged on the fact that 1st Respondent held multiple nationalities when she filed her nomination forms to contest the Jomoro parliamentary seat. From the pleadings, the specific allegation was that beside her Ghanaian nationality, she held Ivorian and American nationalities in violation of our electoral laws relating to qualification to contest parliamentary election. When the trial commenced, Petitioner abandoned the allegation relating to 1st Respondent's American nationality. The issue for determination in this trial came down to 1st Respondent's alleged Ivorian nationality – whether she had renounced and/or lost it before filing her nomination forms. Her Ghanaian nationality was never questioned in the pleadings. Its validity was therefore not an issue.

From the evidence on record, 1st Respondent was an Ivorian by birth. 1st Respondent confirmed under cross examination that the particulars relating to her Ivorian passports are correct. From the

particulars of her Ivorian passports tendered in evidence by the Petitioner, she was born on 4th May, 1971 at a place known as Adzope in Ivory Coast. However, the particulars in her Ghanaian passports (both ordinary and diplomatic) show that she was born in Accra on 4th May, 1972. Under cross examination, 1st Respondent admitted that there are differences between her Ivorian records and Ghanaian records. She also admitted that in her applications for all the Ghanaian passports she confirmed that she is not a citizen of any other country apart from Ghana. 1st Respondent also tried to explain away the differences between her Ivorian records and Ghanaian records with a tale that she acquired her first Ivorian passport in 1991 when she was 16 years and that her date of birth, her mother's name, place of birth and other information that were given by her relatives in Ivory Coast were all incorrect. This evidence complicates matters for 1st Respondent since it is obvious from her conflicting dates of birth that she was not 16 years in 1991.

The pieces of evidence highlighted above tend to suggest among other things that 1st Respondent's Ghanaian passports and by extension her Ghanaian citizenship might have been fraudulently acquired.

In the preface to his written address, counsel for the Petitioner laid into the 1st Respondent and argued that based on the deceit and fraud relating to 1st Respondent's passports acquisition, she is not qualified and fit to be a Member of Parliament.

I would not venture into the legalities or otherwise relating to 1st Respondent's Ghanaian citizenship because that would alter the whole basis of the case.

First and foremost, fraud was not pleaded and particularized by the Petitioner. The law requires that allegations of fraud in civil matters must be specifically pleaded by the party who is making the allegation: see Order 11 rule 8 of the High Court (Civil Procedure) Rules, 2004 (CI 47). In the English case of **Three Rivers District Council v Governor and Company of the Bank of England [2001] UKHL 16**, Lord Millett identified two overarching principles guiding the pleading of fraud in civil cases as follows:

1. The pleading must give a party sufficient notice of the case being made against it, and consequently, in the case of a fraud claim, it may not be sufficient to say "wilfully" or "recklessly".

2. An allegation of fraud or dishonesty must be sufficiently particularised; and therefore, in the case of dishonesty, it is necessary to plead the facts which will be relied upon at trial to justify inferences of dishonesty."

I am aware that by sections 5 and 6 of NRCD 323, failure of a party to plead fraud does not preclude the court from considering it, if there is evidence to that effect on the record. In the case of **Santeng v Acquah and Others (J4 36 of 2019) [2020] GHASC 57 (25 November 2020)**, the Supreme Court speaking through Honyenuga JSC held that failure of the plaintiff to plead fraud did not preclude

the court from considering it, if there was evidence to that effect on the record. His Lordship further stated that, even if fraud was not pleaded, but evidence is admitted on the record without objection and the evidence is not rendered inadmissible on legal grounds, the court cannot ignore it unless it will result in a miscarriage of justice. Other authorities including **Edward Nasser & Co. Ltd. v McVroom & Another [1996-97] SCGLR 468**; **Amuzu v Oklikah [1998-99] SCGLR 141**; **Appeah & Another v Asamoah [2003-2004] 1 SCGLR 226**; and **Gautret v Egerton 15 WR 638** where fraud was not pleaded but the record disclosed that some evidence was led on fraud at the hearing of the case, the court accepted and relied on the evidence to establish fraud because the allegation of fraud bordered on an issue set down for trial. The principle is that fraud cannot be ignored in the circumstances stated above if it would assist in the resolution of an issue; anything short of this would amount to a miscarriage of justice. It would, therefore, be wrong for the court to launch an inquiry into fraud relative to the acquisition of 1st Respondent's Ghanaian citizenship (based on the evidence on record) when her Ghanaian citizenship is not in issue.

The present suit was fought on the clear and unmistakable basis that 1st Respondent is a Ghanaian citizen but still owed allegiance to Ivory Coast. The parties are bound by this issue which emanated from the pleadings. Consequently, circumstances leading to the acquisition of 1st Respondent's Ghanaian nationality albeit intriguing, is a red herring which has no bearing on the issue at stake.

In the case of **Mohammed Odartey Lamptey v. Lands Commission & 3 Ors** Civil Appeal No. J4/18/2015 dated 28th November 2018, the Supreme Court in emphasizing the importance of pleadings in civil trials had this to say through Yeboah JSC (as he then was):

> "It should be noted that in civil proceedings commenced by writ of summons, the parties file pleadings to guide the court to know before the trial their respective cases and the evidence that may be led. Parties are therefore confined to their respective pleadings in course of trials and would be permitted to lead evidence usually within the confines of their pleadings. See HAMMOND v ODOI [1982-83] 2GLR 1215 SC. Pleadings also assist the court to know the real issues and the applicable law to be applied to the facts. A judge is not permitted to suo motu raise a point of law and base his judgment on it. The court, like the parties, is also bound by the pleadings filed on record, and pleadings guide both the trial and appellate courts, throughout the case. Before the often-quoted case of ESSO PETROLEUM CO. LTD v SOUTHPORT CORPORATION [1956] AC 218 HL was decided, SCRUTTON LJ had cautioned trial judges in the case of BLAY v POLLARD & MORRIS [1930] I KB 628 CA at 634 as follows:
>
> > "Cases must be decided on the issues raised on the record; and if it is desired to raise other issues they must be placed on the record by amendment. In the present case the issue

on which the judge decided was raised by himself without amending the pleading and in my opinion he was not entitled to take such a course."

Having examined the testimonies relating to the disparities between 1st Respondent's Ivorian records and Ghanaian records, I am struck somehow that something appears wrong somewhere, so far as her Ghanaian nationality matters are concerned. However, since these testimonies are of no relevance to the issue set down for determination, I find them unworthy for any consideration in the settlement of the present suit; which is why the court is unable to interrogate the matter further. Doing so would amount to setting out a new case by the court and that would be unfair to 1st Respondent. She has the right to fully defend her Ghanaian citizenship if it was set down as an issue.

As judges, the justice we are called upon to administer is justice according to law and not based on emotions. Due regard must always be had to the rules of procedure and substantive law in the justice we dispense. This is what the rule of law is about and that is what we have subscribed to as a democratic nation.

CONCLUSION

It is concluded that the Petitioner has failed to demonstrate that the 1st Respondent was not qualified to contest the 2020 Parliamentary Election organised by the 2nd Respondent in the

Jomoro Constituency. The Petitioner has not produced any evidence to rebut the presumption of regularity enjoyed by 2nd Respondent in the conduct of the 2020 Parliamentary Election in the Jomoro Constituency.

By virtue of Article 48 of the Ivorian Nationality Code, 1st Respondent had lost her Ivorian nationality when she filed her nomination forms to contest the parliamentary election. 1st Respondent was validly elected as the Member of Parliament for the Jomoro Constituency. I have no reason to order for a re-run of the election as prayed by the Petitioner.

Accordingly, the petition is dismissed.

In the circumstances of this case, there will be no order as to costs.

SGD

DR. RICHMOND OSEI-HWERE

JUSTICE OF THE HIGH COURT

COUNSEL

FRANK DAVIES FOR THE PETITIONER

GODWIN KUDZO TAMEKLO WITH SILAS OSABUTEY FOR THE 1ST RESPONDENT

EMMANUEL FOR 2ND RESPONDENT

CERTIFIED TRUE COPY

REGISTRAR
HIGH COURT SEKONDI