

**A SUMMARY OF THE SUPREME COURTS
108 PAGE RULING
ON THE SPEAKER DECLARING
4 PARLIAMENTARY SEATS VACANT**

**Amanda Akuokor Clinton Esq.
Head of Chambers, The Law Office of Clinton Consultancy.
Msc. In African Politics (SOAS).**

1. The Supreme Court's ruling
2. The Speaker did not have legal representation in court.
3. An inconsistent ruling?
4. Five times the Supreme Court has ruled against Parliament in Ghana
5. Concerns about parliamentary operations and constitutional adherence.
6. Impact on Voter Perception and Choice
7. Conclusion ahead of the 2024 Presidential elections

(1) The Supreme Court's Ruling

In the recent Supreme Court ruling concerning the declaration of four parliamentary seats as vacant, the Court delivered a 5-2 majority decision, deeming the Speaker's action unconstitutional.

OVERALL

The Supreme Court of Ghana, in a 5-2 majority decision, ruled that Speaker Alban Bagbin's declaration of four parliamentary seats as vacant was unconstitutional. The Court's reasoning centered on the interpretation of Articles 97(1)(g) and (h) of the 1992 Constitution, which pertain to the conditions under which a Member of Parliament (MP) must vacate their seat.

Key Points from the Supreme Court's Ruling:

1. **Timing of Political Affiliation Change**
2. **Constitutional Boundaries**

In summary, the Supreme Court determined that Speaker Bagbin's declaration was unconstitutional because it misapplied the relevant constitutional provisions, lacked procedural fairness, and overstepped the constitutional limits of the Speaker's authority

DETAIL

The Supreme Court has given a thorough justification for its ruling.

Majority Opinion:

Chief Justice Gertrude Torkornoo:

Justice Mariama Owusu:

Justice Samuel Kwame Adibu Asiedu:

Justice Ernest Yao Gaewu:

Justice Yaw Darko Asare:

- A Member of Parliament (MP) who switches parties and continues to serve in Parliament under a new party identification is considered to have resigned from their seat, according to the highest court.
- This decision upholds the Majority Leader's lawsuit and makes it clear that the pertinent constitutional clauses only apply during the present legislative session. The court clarified that future parliamentary terms—such as when an MP competes for office under a different political party in later elections—are not covered by Article 97(1)(g) and (h) of the Constitution.
- The Supreme Court emphasized that if an MP changes parties while serving in the same parliamentary term, their seat must be vacated.
- Stated differently, if a member of Parliament changes their political allegiance while still serving, they will lose their seat.
- The ruling also addressed the issue of independent Members of Parliament, emphasizing that they must resign from their seat if they join a political party while still in office.
- The verdict clarified that the current term of Parliament should be taken into consideration while interpreting the constitutional requirements.
- They have no intention of controlling MPs' future aspirations to run for office under other political parties or their future candidacies.
- As a result, the court said, "the only tenable conclusion that must necessarily flow from a holistic and contextual reading of Article 97(1)(g) and (h) is that an MP's seat shall be vacated upon departing from the cohort of his elected party in Parliament to join another party in Parliament while seeking to remain in that Parliament as a member of the new party."
- The decision also made it clear that future elections are not covered by the relevant constitutional sections.
- They don't account for potential future election situations; they only address the time frame in which an MP currently occupies their seat.
- The Supreme Court's ruling, which focuses solely on changes in political affiliation within the same parliamentary term, definitively establishes the conditions under which an MP must resign from office.

Dissenting Opinion:

Justice Avril Lovelace Johnson dissented and Justice Amadu Tanko dissented, aligning with Justice Lovelace Johnson's reasoning. Lovelace and Tanko said the Supreme Court has no Jurisdiction on the matter.

(2) The Speaker did not have legal representation in court.

The Attorney-General, Godfred Yeboah Dame, has raised concerns regarding Speaker Alban Bagbin's engagement of private legal counsel, Thaddeus Sory, without adhering to public procurement laws. Specifically, the Public Procurement Authority (PPA) denied a request to appoint Sory@Law as the sole retained solicitor for Parliament, indicating that the necessary permits were not obtained.

However, the feasibility of Speaker Bagbin utilizing the Attorney-General as his legal representative, given their distinct constitutional roles, is questionable. The potential conflict of interest is that the Attorney-General serves as the government's principal legal advisor, while the Speaker represents the legislative arm, and they both hold different views on this matter.

The absence of the Speaker's legal team in court proceedings and their failure to file a defense could have significant implications:

1. **Unchallenged Arguments:** Without representation, the Speaker's position remained undefended, allowing the court to proceed based solely on the plaintiff's submissions.
2. **Procedural Consequences:** Non-compliance with court procedures, such as filing necessary documents or appearing in court, lead to judgments being made in default, potentially unfavorable to the absent party.
3. **Perception of Legitimacy:** The Speaker's non-participation might be perceived as a disregard for judicial processes, potentially undermining the legitimacy of his stance.

To mitigate these risks, it was crucial for the Speaker to ensure proper legal representation, either by resolving procurement issues or by seeking alternative counsel, to effectively present his case and uphold the integrity of the legal process.

(3) AN INCONSISTENT RULING?

The Supreme Court's recent ruling, which declared the Speaker's action of vacating four parliamentary seats unconstitutional, has raised questions about potential inconsistencies, especially considering the New Patriotic Party's (NPP) prior actions. The NPP has previously enforced Article 3(9)(1) of its constitution, leading to the automatic forfeiture of membership for members who stood as independent candidates or supported non-NPP candidates.

Key Considerations:

1. **Party Constitution vs. National Constitution:**
 - o The NPP's internal rules, such as Article 3(9)(1), govern party membership and discipline.

- The Supreme Court's decision interprets the national Constitution, specifically Articles 97(1)(g) and (h), which outline conditions under which a Member of Parliament (MP) must vacate their seat.
- 2. **Scope of Authority:**
 - The NPP can determine the status of its members within the party framework.
 - The Speaker's authority to declare parliamentary seats vacant is bound by constitutional provisions and due process.
- 3. **Due Process and Fair Hearing:**
 - The Supreme Court emphasized that the affected MPs were not granted a fair hearing before their seats were declared vacant, violating principles of natural justice.
 - In contrast, the NPP's internal processes for membership forfeiture are governed by its constitution and may include provisions for due process.

While the NPP has the right to enforce its internal rules regarding membership, the Supreme Court's ruling underscores the necessity for constitutional adherence and due process in parliamentary matters. The Court's decision highlights that actions affecting parliamentary representation must comply with national constitutional standards, regardless of party policies. Therefore, the ruling is not necessarily hypocritical but rather reflects the distinct legal frameworks governing party membership and parliamentary representation.

(4) FIVE TIMES THE SUPREME COURT HAS RULED AGAINST PARLIAMENT IN GHANA

The Supreme Court of Ghana has, on several occasions, ruled against actions or decisions made by Parliament, underscoring the judiciary's role in upholding constitutional principles. Notable instances include:

1. **2014: Overturning the Reinstatement of Richard Anane**
 - Parliament reinstated Richard Anane as Minister of Roads and Transport after he was dismissed by the Commission on Human Rights and Administrative Justice (CHRAJ) over corruption allegations. The Supreme Court ruled that Parliament's action was unconstitutional, affirming CHRAJ's mandate.
2. **2017: Nullification of the Gitmo 2 Agreement**
 - Parliament approved the agreement to host two former Guantanamo Bay detainees without the requisite parliamentary ratification. The Supreme Court declared the agreement unconstitutional, emphasizing the need for parliamentary approval for such international agreements.
3. **2019: Striking Down the Age Limit for Special Prosecutor**
 - Parliament enacted a law setting an age limit of 65 for the Special Prosecutor position. The Supreme Court invalidated this provision, ruling that it was discriminatory and violated the Constitution.
4. **2020: Annulment of the 2018 Public Universities Bill**

- Parliament passed the Public Universities Bill, which sought to give the government more control over public universities. The Supreme Court struck down the bill, stating that it infringed on academic freedom and autonomy guaranteed by the Constitution.
5. **2024: Reversal of Speaker's Declaration of Vacant Seats**
- Speaker Alban Bagbin declared four parliamentary seats vacant after the MPs announced their intention to run as independent candidates. The Supreme Court ruled this action unconstitutional, stating that the Speaker overstepped his authority.

These cases highlight the Supreme Court's pivotal role in maintaining the balance of power and ensuring that parliamentary actions align with constitutional mandates.

(5) Concerns about parliamentary operations and constitutional adherence.

The current indefinite suspension of Ghana's Parliament, following multiple suspensions in recent weeks, raises significant concerns about parliamentary operations and constitutional adherence.

Impact of NDC's Absence on Parliamentary Business:

Parliament may find it difficult to achieve the quorum requirements for conducting business if members of the National Democratic Congress (NDC) abstain from the upcoming session (assuming Parliament be recalled, and in light of the NPP's abstention from parliament last week). According to Article 102 of the 1992 Constitution, a quorum for Parliament, excluding the person presiding, is one-third of all members. Without sufficient attendance, legislative activities could be stalled, potentially leading the Speaker to suspend sessions due to the inability to proceed.

Potential for Increased Judicial Interventions:

The current situation sets a precedent where parliamentary disputes are frequently referred to the Supreme Court for interpretation. While judicial oversight is essential for upholding constitutional principles, excessive reliance on the judiciary to resolve parliamentary matters may impede the legislative process. This could lead to delays in lawmaking and governance, as well as potential tensions between the legislative and judicial branches.

Speaker's Compliance with Supreme Court Decisions:

Article 2 of the Constitution mandates adherence to Supreme Court rulings. Failure to comply constitutes a high crime, punishable by up to ten years' imprisonment without the option of a fine, and disqualification from holding public office for ten years post-imprisonment. If the Speaker does not comply with the Court's decision regarding the four seats, he could face such penalties. However, the Speaker might attempt to navigate this by suspending Parliament, citing

procedural or quorum issues, though this could be viewed as an indirect non-compliance with the Court's ruling.

The ongoing suspensions and potential non-compliance with judicial decisions pose significant challenges to Ghana's parliamentary effectiveness and constitutional governance. It is imperative for all branches of government to collaborate, ensuring adherence to constitutional mandates and the smooth functioning of democratic institutions.

(6) Impact on Voter Perception and Choice:

The Supreme Court's recent decision to overturn the Speaker's declaration of four parliamentary seats as vacant has significant implications for Ghana's political landscape, especially with the presidential election less than a month away.

Impact on Voter Perception and Choice:

- **Judicial Independence:** The ruling underscores the judiciary's role in maintaining constitutional checks and balances. This may enhance public confidence in democratic institutions, influencing voters to support candidates who advocate for strong institutional integrity. The public on the other hand may view this ruling as a decision reached by loyalists that pack the supreme court in favour of NPP.
- **Political Stability:** The decision restores the New Patriotic Party's (NPP) slim majority in Parliament, which may or may not affect perceptions of governmental stability and effectiveness particularly if Parliament fails to return effectively for the remainder of the years. Voters may consider this stability or instability when making their electoral choices.

Implications of a Clear Parliamentary Majority:

- **Legislative Efficiency:** A decisive majority in Parliament can facilitate smoother passage of legislation, reducing the likelihood of gridlock. This efficiency might appeal to voters seeking effective governance.
- **Checks and Balances:** Conversely, a dominant majority could diminish robust debate and oversight, potentially leading to unchecked executive power. Voters may weigh the benefits of efficiency against the need for balanced governance.

(7) Conclusion ahead of the 2024 Presidential elections

The Supreme Court's ruling and the current parliamentary dynamics are likely to influence voter considerations regarding leadership and governance. While a clear majority can streamline legislative processes, it also raises concerns about maintaining effective checks and balances. Voters will need to assess these factors in the context of Ghana's democratic principles and their aspirations for the nation's future.

The Supreme Court's decision on the Speaker's declaration of four vacant parliamentary seats may or may not reflect the court's commitment to constitutional interpretation and adherence to due process.

With Parliament facing challenges in maintaining quorum and continuity due to recent suspensions, this decision may signal the need for clear constitutional boundaries and consistent procedural adherence within parliamentary operations.

As Ghana approaches its presidential election, the ruling will likely shape voter perspectives on governance, stability, and judicial independence. While a decisive parliamentary majority could promote legislative efficiency, it also risks reducing oversight, which voters may consider in light of recent court interventions. Ultimately, this ruling underscores the importance of constitutional fidelity, procedural fairness, and institutional collaboration, as Ghanaians seek leaders who uphold these democratic values.