

**IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (HUMAN RIGHTS DIVISION) HELD IN ACCRA, ON 13<sup>TH</sup> JULY 2023, BEFORE HER LADYSHIP, JUSTICE BARBARA TETTEH-CHARWAY**

**SUIT NO. HR/0050/2023**

**IN THE MATTER OF AN APPLICATION INVOKING THE JURISDICTION OF THE HIGH COURT FOR THE ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS UNDER ARTICLE 33 OF THE 1992 CONSTITUTION AND ORDER 67 OF C.I.47**

**BETWEEN**

**KWABENA ADU GYAMFI  
(ALIAS VICTOR KUSI BOATENG)  
PLOT NO 26 OHWIMASI  
KUMASI**

**- APPLICANT**

**AND**

**1. SAMUEL OKUDZETO ABLAKWA  
NO. 565 AIRPORT HILLS  
ACCRA**

**- 1<sup>ST</sup> RESPONDENT**

**2. THE ATTORNEY-GENERAL  
MINISTRY OF JUSTICE  
ACCRA**

**- 2<sup>ND</sup> RESPONDENT**

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**JUDGMENT**

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**A. INTRODUCTION**

[1] Having aliases is a common phenomenon. Writers have been known to publish their works in pseudonyms for different reasons. However, when an individual actively

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HUMAN RIGHTS COURT "1" ACCRA, G/R**

and concurrently operates in two distinct identities in respect of which he or she has different identification documents, such as passports, voter identity cards and drivers' licenses, that is a different kettle of fish altogether. The issue before this court is whether the applicant, *Kwabena Adu Gyamfi alias Victor Kusi Boateng* actively operates in two separate and distinct identities, and if so, whether same is fatal to his case.

[2] By an originating motion which was filed on 30<sup>th</sup> January, 2023, the Applicant, Kwabena Adu Gyamfi, alias Victor Kusi Boateng, invokes the jurisdiction of this Court for the enforcement of his fundamental right to privacy as guaranteed under Article 18(2) of the 1992 constitution. The reliefs sought by the Applicant are as follows:

1. *A declaration that the 1<sup>st</sup> Respondent has interfered with the privacy of the applicant's property, correspondence and communication without any lawful authority*
2. *A declaration that the publication of the personal information and biological details of the applicant by the 1<sup>st</sup> Respondent without lawful authority is in breach of the applicant's right to privacy*
3. *An order of perpetual injunction restraining the 1<sup>st</sup> Respondent from further interfering in the privacy of the applicant's home, property, correspondence and communication without lawful authority*
4. *An order of perpetual injunction restraining the 2<sup>nd</sup> respondent from making public disclosures and communication of the applicant's private correspondence, communication, documents and property without lawful authority.*
5. *An order for the payment of damages by the 2<sup>nd</sup> respondent to the applicant for breach of the applicant's right to privacy*
6. *Costs*
7. *Any further order or orders as this honourable court may deem fit.*

[3] The background to this case is that the Applicant, *Kwabena Adu Gyamfi, alias Victor Kusi Boateng* is a Ghanaian citizen who serves as a member of the Board of Trustees of the National Cathedral of Ghana. The 1<sup>st</sup> respondent is a Member of Parliament for the North Tongu Constituency in the Volta Region of Ghana, while the 2<sup>nd</sup> Respondent is the legal advisor to the Government of Ghana.

[4] Sometime in January 2023, the 1<sup>st</sup> Respondent commenced various social media and mainstream media engagements in respect of the applicant in his capacity as a trustee of the National Cathedral Board and his connection to JNS Talent Centre. 1<sup>st</sup> Respondent submitted his findings to the Commission on Human Rights and Administrative Justice (CHRAJ) for investigations.

[5] The applicant claims that after the 1<sup>st</sup> respondent submitted his petition to CHRAJ for investigations, the 1<sup>st</sup> respondent went on to publish information relating to his personal identification details contained in his passports, driver's license, signature, companies he had incorporated and personal travel itinerary. He attached evidence of said publications to his affidavit in support as Exhibit VKB series.

[6] It is the applicant's further case that the details published by the 1<sup>st</sup> Respondent are very personal to him and ought not to have been put out for the consumption of the public.

[7] The applicant asserts that he has been informed by his counsel and believes same to be true that no person, including the 1<sup>st</sup> respondent, has a right to interfere with his private communication, documents, and property and make public disclosures of same without lawful authority.

[8] The applicant further asserts that he has been informed by his lawyer and verily believes same to be true that the publication of his personal biographical details has exposed him to the possibility and risk of identity theft and the commission of fraud by unscrupulous persons in clear breach of his right to privacy.

[9] Additionally, the applicant asserts that he has been informed by his lawyer and believes same to be true that this court has the jurisdiction to restrain the 1<sup>st</sup> Respondent from further breaches of his fundamental human rights by granting him the reliefs he seeks.

[10] The applicant asserts finally that he has been informed by his counsel and verily believes same to be true that no miscarriage *sic* will be occasioned the 1<sup>st</sup> respondent if the instant application is granted as the laws of Ghana provide the 1<sup>st</sup> respondent with legal recourse to pursue if he is of the conviction that applicant has perpetuated any crime in his private dealings instead of making public disclosures of his private documents and correspondences without any lawful authority or justification.

### **1<sup>st</sup> Respondent's Affidavit in Opposition**

[11] The 1<sup>st</sup> respondent filed an affidavit in opposition to the application in which he stated that the applicant's affidavit in support did not disclose any reasonable cause of action against him because the applicant had failed to show which specific acts he had taken which interfered with his right to privacy.

[12] He stated that "there is no deposition anywhere in the supposed applicant's affidavit in support of the application that show how any act(s) or omission(s) of mine interfere(s) with any private right of his relating to his property, correspondence or communication"

[13] He further contended that "in an application of the kind before the court, it is important that the supposed applicant state how the alleged violation relates to him by the name and identity in which he prosecutes the application or the supposed alias within the meaning of Article 33 of the 1992 constitution."

[14] He further stated that "by the supposed applicant's dual identities about which I depose subsequently in my present affidavit, it is important for the supposed applicant to have particularized which of his said identities my acts or omissions are alleged to have offended as to be violative of the constitutional provisions on human rights relating to his

privacy because the only person vested with capacity to invoke the court's jurisdiction for the enforcement of fundamental human rights is the person directly affected by the acts which have violated their fundamental human rights."

[15] The 1<sup>st</sup> respondent further stated that "to the extent that the applicant has two identities, the applicant's failure to specify how the acts complained about in the substantive application as violating his fundamental human rights, relate to any of his identities, is fatal to the application before the court."

[16] The 1<sup>st</sup> respondent further contended that contrary to the applicant's deposition that the 2<sup>nd</sup> respondent was a necessary party to the action, the rules of court require that the 2<sup>nd</sup> respondent and such other persons as the court may direct be served with the application before the court.

[17] It is the 1<sup>st</sup> respondent's further case that the instant application is a ruse by which the applicant seeks to prevent him from exercising his fundamental human right to free speech and to undermine the right of the public to be informed on matters of public interest.

[18] According to the 1<sup>st</sup> respondent, assuming that there was any violation of applicant's right to privacy, same was outweighed by the public interest and also the need to prevent potential crime on the part of the applicant. He therefore maintained that the "supposed applicant's right to protection of his fundamental human rights, if any, competes with my fundamental human right to free speech and the public's right to be informed on matters of public interest."

[19] It is the 1<sup>st</sup> respondent's further case that the applicant's involvement with the National Cathedral, which has generated huge national and public debate, completely diminishes his claim for the enforcement of his fundamental human rights.

[20] According to the 1<sup>st</sup> respondent, the National Cathedral of Ghana which was incorporated on 18<sup>th</sup> July 2019 (as evidenced by exhibits 1 and 1A) to own the assets and

administer the National Cathedral Project has been at the centre of public debate over whether or not public funds should be expended in its construction.

[21] The 1<sup>st</sup> respondent further claims that sometime in November and December 2022, the National Cathedral Secretariat presented to the Parliament of Ghana a report on the utilization of Three Hundred and Thirty Nine Million Ghana Cedis (**GHS339,000,000.00**) of public funds applied for the purpose of the National Cathedral Project as evidenced by the report of the Joint Committee on Trade, Industry and Tourism and Youth, Sports and Culture attached as Exhibits 2 and 3 to 1<sup>st</sup> respondent's affidavit in support.

[22] According to the 1<sup>st</sup> respondent, in the breakdown explaining payments of the GHS339,000,000.00 for the National Cathedral Project, he realized that a payment of Two Million, Six Hundred Thousand Ghana Cedis (**GHC2,600,000.00**) had been made to an entity known as JNS Talent Centre Limited under the heading, "*Contractors Mobilization*" The said payment attracted his curiosity because the said entity was not one of the contractors that had been disclosed to parliament as being involved in the construction of the National Cathedral. His investigations revealed a link between the said JNS Talent Centre Limited and the supposed applicant who is also a member of the Board of Trustees of the National Cathedral. According to the 1<sup>st</sup> Respondent, the applicant caused a publication (Exhibit 4) to be made in which he denied any wrong doing but the denial resulted in further investigations which revealed that the applicant had two identities.

[23] According to the 1<sup>st</sup> Respondent, on 3<sup>rd</sup> February 2023, the Ghana Revenue Authority (GRA) per exhibit 5, responded to his letter dated 25<sup>th</sup> January 2023 pursuant to the Right to Information Act and informed him that their records reflect the supposed applicant and his other name which he now presents as his alias as two separate tax payers. He further elaborated that in Exhibit 5, the GRA informed him that the supposed applicant had two separate and distinct Taxpayer Identification Numbers (TIN) captured on its Total Revenue Integrated Processing Systems (TRIPS), the first of which TIN was

issued to the supposed applicant on 13<sup>th</sup> August 2013 in the name of the alleged alias and the second TIN issued to him in the name in which he prosecutes the present application on 15<sup>th</sup> March 2016.

[24] It is the case of the 1<sup>st</sup> respondent that the Revenue Administration Rules of Ghana forbid a person who is a holder of a TIN from applying for another TIN for which reason the rules make it categorically clear that a person may have only one TIN at a time. The 1<sup>st</sup> respondent further stated that “indeed the Commissioner General of the GRA is forbidden from issuing a TIN to a person unless the said Commissioner is satisfied that the person applying does not have an existing TIN.” He therefore stated that the supposed applicant having applied for and having been issued with a TIN on 13<sup>th</sup> August 2013 in his other identity should not have applied for and obtained a second TIN on 15<sup>th</sup> March 2016 using the name by which he prosecutes the instant application, if indeed, he is the same person.

[25] It is the case of the 1<sup>st</sup> Respondent that the Commissioner General of GRA would not have issued to the supposed applicant the second TIN if the applicant had disclosed that the GRA had already issued one to him and that the Revenue Administration Act criminalizes making false and misleading statements to a tax officer. He attached the applicant’s application for TIN in 2013 and 2016 as exhibits 6 and 7.

[26] The 1<sup>st</sup> respondent further claimed that further investigations he conducted revealed that the applicant uses the name Kwabena Adu Gyamfi by which he prosecutes the instant application in documents exhibited and marked as exhibits 8,9, 10, 11, 12 and 13 which are the listed below;

- i. A Ghanaian passport numbered GO390695 issued on 12<sup>th</sup> September 2012 which expired on 11<sup>th</sup> September 2017 ( Exhibit 8)
- ii. A Ghanaian passport numbered G0886001 issued on 16<sup>th</sup> December 2014 and which expired on 15<sup>th</sup> December 2019 ( Exhibit 9)

- iii. A Ghanaian passport numbered G1262918 issued on 7<sup>th</sup> April 2016 and which expired on 6<sup>th</sup> April 2021 (exhibit 10)
- iv. A current Diplomatic passport numbered DX006845 issued on 25<sup>th</sup> November 2021 to expire on 24<sup>th</sup> November 2026 ( Exhibit 11)
- v. The Applicant's Ghana card numbered GHA- 71857198-2( Exhibit 12)
- vi. Applicant's Voter ID Card numbered 8907018142 issued in the Ashanti region in 2020 (Exhibit 13)

[27] Further, the 1<sup>st</sup> respondent asserts that the applicant's name Kwabena Adu Gyamfi has been used in registering at least eight companies at the Registrar of Companies as evidenced by exhibits 14, 15, 16, 17, 18, 19, 20 and 21 as demonstrated below;

- i. Dunamis Insurance Brokers Ltd incorporated on 16<sup>th</sup> January 2023 to provide insurance brokerage services among others (Exhibit 14)
- ii. Lloyds General and Risk Ltd incorporated to provide insurance brokerage and consultancy services ( Exhibit 15)
- iii. New Ware FM Ltd incorporated on 9<sup>th</sup> December 2021 to operate a radio FM station ( exhibit 16)
- iv. Great Speed Engineering and Construction Ltd incorporated on 19<sup>th</sup> April 2021 to provide road and building construction services among others (Exhibit 17)
- v. The four B's Company Ltd incorporated on 21<sup>st</sup> October 2020 to provide road construction services (Exhibit 18)
- vi. Anibeas Petroleum Ltd incorporated on 21<sup>st</sup> October 2020 to provide road construction services ( exhibit 19)
- vii. El Dunamis Limited incorporated on 19<sup>th</sup> May 2009 as a General Merchant to import and export general goods ( exhibit 20)
- viii. JNS Talent Centre Limited incorporated on 14<sup>th</sup> September 2015 to provide talent and skills development training ( Exhibit 21)



[28] The 1<sup>st</sup> Respondent further states that by his supposed alias, which is actually his other identity, Victor Kusi Boateng, the supposed applicant is involved in at least eight companies registered at the Office of the Registrar of Companies as evidenced below;

- i. Vibrant Generation Chapel Worldwide LBG incorporated on 14<sup>th</sup> May 2021 as a company limited by guarantee to preach the gospel (Exhibit 22)
- ii. Dunamis Chapel Worldwide LBG incorporated on 20<sup>th</sup> May 2021 as a company limited by guarantee to preach the gospel (Exhibit 23)
- iii. National Cathedral of Ghana incorporated on 18<sup>th</sup> July 2019 to own the assets of the National Cathedral of Ghana (Exhibit 1B)
- iv. El Dunamis Media Limited incorporated on 14<sup>th</sup> January 2019 to provide media services (Exhibit 24)
- v. Onpoint 1 Laundry Limited incorporated on 26<sup>th</sup> March, 2019 to provide Laundry services (Exhibit 25)
- vi. Kharis Football Academy FC incorporated on 19<sup>th</sup> June 2017 with the object of running a soccer academy (Exhibit 26)
- vii. Qharis Consortium Limited incorporated on 11<sup>th</sup> May 2017 to import and export general goods (Exhibit 27)
- viii. Duna Media Production registered as a sole proprietorship on 4<sup>th</sup> April 2014 (Exhibit 28)

[29] The 1<sup>st</sup> respondent claimed that the applicant also uses the name Victor Kusi Boateng in other official documents namely;

- i. A Voter identity card with number 4863016954 issued in the Ashanti Region in 2016 (exhibit 29); and
- ii. A driver's license issued on the 8<sup>th</sup> of April 2010 ( exhibit 30)

[30] Again the 1<sup>st</sup> respondent contended that the information concerning the applicant's dual identity extracted from several documents is of national and public interest because the funds that were paid to JNS Talent Centre were public funds.

[31] It is the 1<sup>st</sup> respondent's further case that payment of public funds to a private institution which plays no role whatsoever in the National Cathedral Project and whose only connection to the project is the supposed applicant must definitely interest the nation and the public and so also is the double and potentially criminal identities of the supposed applicant who is a trustee of a project of national interest and which has already spent public funds amounting to a colossal GHS339,000,000.00.

[32] The 1<sup>st</sup> respondent further stated that the information that the applicant is complaining about has already been published by the appropriate institutions and are readily accessible or available under the Right to Information Act to any member of the public.

**Applicant's supplementary affidavit in support**

[33] The applicant filed a supplementary affidavit in support in which he reacted to 1<sup>st</sup> Respondent's assertion that his affidavit did not disclose any cause of action against him by stating that 1<sup>st</sup> Respondents own paragraphs 7 -12 and 25-37 show that applicant was the target of unlawful publications of his personal data on 1<sup>st</sup> Respondent's social media handles.

[34] The applicant further stated that he had been informed by his counsel and verily believed same to be true that "per the laws of Ghana the fact that a person can be identified by two different sets of names is not a crime and such a person will not be denied the protection of his fundamental human rights enshrined in the 1992 constitution by virtue of the fact that he is identified by two different sets of names".

[35] In response to the 1<sup>st</sup> Respondent's contention that the 2<sup>nd</sup> respondent was not a necessary party to the action, the applicant stated that he had been informed by his counsel and believed same to be true that since the rules of court make it mandatory for the Attorney General to be served with an application for enforcement of fundamental human rights, it is only proper that the Attorney General is named as a party to the proceedings to ensure service is done in accordance with the rules.

[36] The applicant further stated that he had been informed by his lawyer and believed same to be true that Members of Parliament do not discharge their mandate on social media by publishing personal data of persons which were obtained in breach of the law as the rules which govern parliamentary affairs regulate how parliamentarians can bring issues that are of public interest to the floor of parliament.

[37] The applicant claimed that it was after the 1<sup>st</sup> respondent had made unlawful publications of his personal data on 16<sup>th</sup> January 2023 that he proceeded to file questions relating to the subject complained of in this action. He attached a copy of 1<sup>st</sup> respondent's post on his Facebook page on 7<sup>th</sup> February 2023 indicating that he had filed urgent questions relating to the subject of his earlier conduct as Exhibit VKB1. He therefore maintained that the 1<sup>st</sup> respondent's conduct did not conform to the rules of parliament.

[38] The applicant further contended that the manner in which 1<sup>st</sup> respondent published his personal data including the bio page of his passports, travel itineraries, application for Tax Identification Numbers, details of companies that he had an interest in and documents that he did not expect to be given to 1<sup>st</sup> respondent without due process of law at the time of filing them with the State Agencies that had custody of them, was reckless.

[39] The applicant further contended that his membership of the Board of the National Cathedral did not make him a public officer as defined by the laws of Ghana as he did not receive any payment from public funds and that his private affairs such as his date of birth, name of mother, passport details, flight itineraries and companies he had an interest in were distinct from the affairs of the National Cathedral. He further claimed that his personal data that 1<sup>st</sup> Respondent unlawfully published had no bearing on the allegations made by 1<sup>st</sup> Respondent against the National Cathedral or the payment of public funds to JNS Talent Centre.

[40] The applicant further contended that at the time the 1<sup>st</sup> respondent published his personal data on his social media handles on 16<sup>th</sup> January 2023, he had not written to the relevant state agencies which were in possession of the data and therefore 1<sup>st</sup> respondent

published his personal data in breach of the Data Protection Act and the Right to Information Act. He further contended that 1<sup>st</sup> respondent's subsequent application to the relevant state agencies for his personal data after he had published same was no justification for the prior unlawful publication of his personal data on his social media handles.

[41] The applicant further contended that at the time he obtained both Tax Identification Numbers in 2013 and 2016, the Revenue Administration Act had not become law and hence the provisions of that Act cannot be applied retrospectively to matters that occurred before the passage of that Act.

[42] The Applicant further stated that he had been informed by counsel and verily believed same to be true that the fact that 1<sup>st</sup> respondent suspected that he had committed a crime did not entitle 1<sup>st</sup> respondent to publish his personal data on his social media handle particularly when 1<sup>st</sup> respondent had not lodged any complaint with the appropriate state agency at the time he published his personal data.

[43] The applicant further claimed that in the event that he was exonerated by CHRAJ or any other state entity the 1<sup>st</sup> respondent would have unjustifiably put his personal data in the public domain merely on suspicion that he may have committed a crime.

### **Legal Arguments**

[44] The court notes that although not a requirement under Order 67 of the High Court (Civil Procedure) Rules, 2004 C.I 47, Counsel filed statements of case which in the court's view, replaced the need for oral arguments in the interest of saving time.

### **Applicant's Statement of case.**

#### **[45] Jurisdiction**

Counsel for the applicant argued that per Article 33 of the 1992 Constitution of Ghana and Order 67 of the High Court (Civil Procedure) Rules 2004 C.I 47, this court has jurisdiction to determine the instant application.

**[46] Whether 1<sup>st</sup> respondent is exempted from respecting the rights of other persons in Ghana**

Under this heading, counsel for applicant argued that per Article 12 of the 1992 constitution the fundamental human rights and freedoms enshrined in the 1992 Constitution are to be respected by every person in Ghana including the 1<sup>st</sup> Respondent.

**[46] The right to privacy**

Counsel for the applicant further submitted that Article 18(2) of the 1992 Constitution provides the right to privacy. He cited cases such as **SCANCOM V ADINYIRA [2016-2017] 1GLR 14** and **ACKAH V AGRICULTURAL DEVELOPMENT BANK [2016-2017] 1GLR 552** as well as **CUBAGEE V ASARE [2017-2018] 2 SCGLR 659** on the right to privacy. He also referred to the Data Protection Act, 2012 (Act 843) but did not cite any particular provision of the said Act that the applicant was relying on in support of his case.

**[47]** Counsel for the applicant again submitted that per the Supreme Court decision in **AWUNI V WEST AFRICAN EXAMINATIONS COUNCIL [2003-2005] 2GLR 381**, the applicant was entitled to damages for the publication of his personal data by 1<sup>st</sup> respondent without lawful authority.

**1<sup>st</sup> Respondent's statement of case**

**[48]** Counsel for 1<sup>st</sup> Respondent filed a statement of case in which he submitted that Article 18(1) and (2) of the 1992 constitution provided for the right to own property and freedom from interference with the privacy of one's home, property, correspondence or communication. He submitted that although the applicant claimed that his right to privacy of property, correspondence and communication had been breached by the media engagements of 1<sup>st</sup> respondent "there is nothing in his affidavit in support which shows how 1<sup>st</sup> respondent's social media posts and engagements interfere with the supposed applicant's privacy in so far as his property, correspondence or communication are concerned."

[49] As regards the applicant's relief for a declaration that the publication of his personal information without lawful authority amounted to a violation of his right to privacy, counsel for 1<sup>st</sup> respondent argued that per Article 21 of the 1992 constitution, all persons shall have the right to freedom of speech and expression which shall include freedom of the press and other media. He further submitted that section 16(1) of the Right to Information Act 2019 Act 989, exempts from disclosure, information concerning the personal affairs of an individual whether living or deceased which is unreasonable. He further submitted that under section 16(1) information which is unreasonable has been described as information about the individual's (a) physical or mental health; (b) business or trade secrets of commercial value; or (c) confidential professional, commercial or financial affairs. He submits that the applicant has not complained that the information disclosed by 1<sup>st</sup> respondent falls within the above categories.

[50] Counsel for 1<sup>st</sup> respondent further submits that, on the contrary, per sections 16(3), (c), (d), (f), (g), (h) and (j) of the Right to Information Act, it is reasonable to disclose information where;

- i. The disclosure is necessary in order to subject government activities to public scrutiny
- ii. The disclosure does not unjustifiably damage the reputation of any other person referred to in the information
- iii. The disclosure does not contravene a provision on exempt information specified in this Act
- iv. The disclosure would not have an adverse effect on the affairs of the individual
- v. The disclosure would not prejudice the future supply of information
- vi. The individual to whom the information relates was informed or made aware prior to supplying the information that the information will or might be made available to the public

[51] Counsel for the 1<sup>st</sup> respondent submitted that from the above, the disclosure of the applicant's personal data did not damage the applicant's reputation; did not contravene a

provision of an exempt information specified in the Act; did not have an adverse effect on the affairs of the applicant; did not prejudice the future supply of information as it will rather put public institutions on red alert to investigate information given to them by persons with whom they deal and encourage Ghanaians to be spectators and not citizens. He finally submitted that the applicant was informed or at least made aware by 1<sup>st</sup> respondent's posts that information will or might be made available to the public, a fact which the affidavit in support of applicant's application confirms.

**[52] The right to documents and property**

Under this heading, counsel for the 1<sup>st</sup> respondent submitted that the documents, the disclosure of which applicant complained about were his passports, drivers' license, companies incorporated by the applicant and his travel itinerary. Counsel for the 1<sup>st</sup> respondent submitted that "the court will easily take note of the fact that all passports and drivers' licenses are clearly indicated on them as properties of the Republic of Ghana and therefore the applicant has no personal right or property in them, they are properties of the appropriate public institutions" He again submitted that information relating to the companies registered by the applicant are readily available to the public on the online portal of the Registrar of Companies and that disclosure of such information is clearly permissible under section 16(3)ii of the Right to Information Act which states that disclosure of such information is reasonable if;

- (i) The information has already been made available to the public by the appropriate person, authority or body".

He further submitted that per section 375 (1) (b) of the Companies Act, 2020 Act 992, information relating to the details of companies registered by any person can be obtained from the Registrar of Companies by way of an application and payment of the appropriate fees. Counsel for 1<sup>st</sup> respondent also submitted that information regarding applicant's travel itinerary was only released in the course of disclosure relating to the applicant's passports and that 1<sup>st</sup> respondent indicated that he intended to file an urgent

question in parliament on the circumstances under which the applicant was issued with a diplomatic passport. He further submitted that it is a matter of public interest for Ghanaians to know the circumstances in which an individual travels on two different Ghanaian passports.

**[53] Correspondence and Communication**

Under this heading, counsel for the 1<sup>st</sup> Respondent submitted that the applicant has not demonstrated how his right to privacy in his correspondence and communication has been interfered with by 1<sup>st</sup> respondent.

**[54] Has the applicant established any right under Article 18(2) of the constitution?**

Under this heading, counsel for the 1<sup>st</sup> Respondent submits that applicant cannot assert a right to privacy in information that he has made available to public institutions because the details of the publication that the applicant complains about are contained in official public documents held by public authorities and were not taken from private documents like the applicant's baptismal certificate or bank details. He further submits that "the details complained about are also details which are readily available on the website of the Registrar of Companies and others and are accessible as of right pursuant to the Right to Information Act. Details of the National Cathedral and its trustees are public, so are the details of JNS Talent Centre Limited which is officially registered with a state institution."

**[55]** Counsel for 1<sup>st</sup> respondent further submits that the right to privacy guaranteed under Article 18 of the 1992 constitution is subject to law and as may be necessary in a free and democratic society for;

- i. Public safety
- ii. The economic wellbeing of the country
- iii. For the prevention of disorder or crime
- iv. For the protection of the rights or freedoms of others



He submitted that the publications complained of were made as a result of 1<sup>st</sup> respondent's investigations into payments made out of public funds to the National Cathedral Secretariat. The payment in question was made to a company that the applicant is associated with. He therefore argued that "there can be no doubt whatsoever that the exception relating to the economic wellbeing of the state is a good reason to deny this application even if the claim to privacy had any merits"

**[56] Mandatory disclosures in the public interest**

Under this heading, counsel for the 1<sup>st</sup> respondent submits that applicant's own case points to a clear issue of public interest. He submits that to the extent that applicant himself concedes that the 1<sup>st</sup> respondent published information in relation to his dealings in his capacity as trustee of National Cathedral Board and JNS Talent Centre, the court could have easily taken note of the public interest nature of the publication complained of. He further elaborates that in Exhibit VKB series that were attached to applicant's own affidavit in support, 1<sup>st</sup> respondent discusses applicant's membership of National Cathedral by referring to the details submitted by the applicant for his inclusion as a trustee of the National Cathedral by stating as follows;

" the story even gets even more fascinating. When the National Cathedral of Ghana was being incorporated on the 19<sup>th</sup> of July 2019, Reverend Victor Kusi Boateng used his driving license for registration. In a more bizarre twist, he uses a different date of birth..."

Counsel for 1<sup>st</sup> respondent further submits that on the second page of Exhibit VKB series the 1<sup>st</sup> Respondent makes the following statement;

"it's been very puzzling to further discover that the acclaimed man of God and confidant of President Akufo Addo illegally has two taxpayer identification numbers (TIN).."

He further stated that 1<sup>st</sup> respondent revealed the two illegally obtained Taxpayer Identification Numbers obtained by the applicant. He further submits that in any event on

the fourth page of applicant's own Exhibit VKB series, applicant exhibits 1<sup>st</sup> respondent's statements where 1<sup>st</sup> respondent says that:

- i. He will petition the Commission on Human Rights and Administrative Justice (CHRAJ) on the matter
- ii. File an urgent question in parliament to question the basis for the applicant having a diplomatic passport and;
- iii. File another question to find out exactly what work JNS did to warrant a colossal transfer of GHS2.6 million from our taxes.

Counsel for 1<sup>st</sup> respondent submits that the matters set out above are clearly matters of public interest.

[57] Counsel for 1<sup>st</sup> respondent further submits that section 17(1) of the Right to Information Act "thunderously" supports the 1<sup>st</sup> respondent's acts which is the subject of the present suit where it provides that information is not exempt from disclosure if the information reveals evidence of ;

- i. A contravention of, or a failure to comply with law
- ii. The prevention of crime or the protection of the rights and freedoms of others
- iii. Neglect in the performance of an official function
- iv. Any other matter of public interest, and
- v. The benefits of disclosure clearly outweigh the harm or danger that the disclosure will cause.

Counsel for the 1<sup>st</sup> respondent submits that "it is clear from the provisions of section 17(1) of the Right to Information Act that the acts complained about are justified by the aforesaid statute for the following reasons;

- I. Applying for and obtaining two TINs not only contravenes but reveals a failure to comply with law

- II. Disclosure of information is also necessary to enable the tax authorities investigate the reason for the applicant's decision to have two TINs to prevent the commission of any tax related offences
- III. The information complained about also reveals a neglect in the performance of official functions given that the applicant has two TINs and two passports.
- IV. Finally the benefits of the disclosure clearly outweigh the harm complained about in the proceedings"

He further submitted that as regards the prevention of crime, the 1<sup>st</sup> respondent's disclosures revealed that applicant obtained a TIN in 2013 in his supposed alias, Victor Kusi Boateng and further applied for and obtained another TIN in what he claims to be his proper name in this suit, ie Kwabena Adu Gyamfi in 2016 by failing to disclose that he had been previously issued a TIN in violation of the Revenue Administration Act section 13(4). He submits that the applicant succeeded in obtaining a second TIN by using two different names and two different dates of birth, two different mother's maiden names, two different residential addresses to apply for the TINs thereby contravening the provisions of section 74(a) of the Revenue Administration Act that states that " a person who makes a statement that is false or misleading in a material particular to a tax officer ... commits an offence" Counsel submitted that the above submissions "completely explode the argument made by the supposed applicant that the publication of his personal biographical details has exposed him to the possibility of risk of identity theft and commission of fraud by unscrupulous persons and is a breach of his right to privacy."

**[58] Right to privacy v freedom of speech**

Counsel for 1<sup>st</sup> respondent argues, under this heading that it is the 1<sup>st</sup> respondent whose right to freedom of speech as guaranteed under Article 21(1) (a) is threatened by this suit. Counsel for 1<sup>st</sup> respondent further submits that per Article 12 of the 1992 Constitution, the constitutional right to the enjoyment of all the constitutional provisions is subject only to respect for the rights and freedoms of others and for the public interest. He submits that to the extent that the issue raised by 1<sup>st</sup> respondent relates to the applicant's

involvement in an issue of potential criminality such as obtaining a diplomatic passport in his identity as Reverend Victor Kusi Boateng which he claims is his alias while going by the name Kwabena Adu Gyamfi, the public interest is implicated.

**[59] Data Protection Act**

Under this heading, Counsel for 1<sup>st</sup> respondent submits that although counsel for applicant cited the Data Protection Act, he did not make reference to any single provision in support of the applicant's case. He claimed that section 61 of the Data Protection Act makes the processing of personal data exempt from the Data Protection Act on grounds of public interest and sections 61(1) (a) and (c) provides that for the purpose of processing personal data same is exempt from the provision of the Act for (a) prevention or detection of crime or (c) assessment or collection of a tax or duty or of an imposition of a similar nature.

**[60] 1<sup>st</sup> respondent is immune from the present proceedings**

Under this heading, Counsel for the 1<sup>st</sup> Respondent submits that by a combined reading of sections 17(2) and 84 of the Right to Information Act, the disclosure of information which is in the possession or under the control or custody of a public institution does not make the person who discloses the information liable to any civil proceedings by reason of the disclosure. He therefore submits that the 1<sup>st</sup> respondent has immunity from the instant proceedings.

**[61] Application embarrasses 1<sup>st</sup> respondent**

Under this heading, counsel for 1<sup>st</sup> respondent submits that the instant application is an embarrassment to 1<sup>st</sup> respondent because, firstly, it is not clear in what manner 1<sup>st</sup> respondent's media publications and engagements have violated the supposed applicant and that of his alias's human rights, and secondly, it is not clear whether the alleged violation related to Kwabena Adu Gyamfi or Victor Kusi Boateng. "If one or the other is not affected then why do we have him on the face of the suit?" he asks. Counsel for 1<sup>st</sup> Respondent further submits that "it is not clear which of the supposed applicant's

identities satisfies the locus standi requirements of Article 33 clause (1) of the 1992 constitution. He cited the case of **MORRISON & ANOR V VICTORY BIBLE CHURCH [2015-2016] 2SCGLR** and asked the court to strike out the suit.

**[61] No cause of action**

Under this heading, Counsel for 1<sup>st</sup> respondent submits that beyond asserting that 1<sup>st</sup> respondent's media engagements had interfered with his right to privacy, applicant did not state how those media engagements violated his right to privacy. He therefore stated that there was clearly no cause of action. He submitted that a cause of action is a group of operative facts that give rise to a basis for suing. The set of facts on which an action will rest, must state the relevant facts to justify reliance on the constitutional provision rather than just stating the law. He further submits that the issue of capacity arises because the supposed applicant must demonstrate two things to the court. The first is that there are specific acts (not general statements) that violate the particular fundamental human rights provisions he is invoking and secondly that the said acts affect him directly. In the same vein, the court would have to balance the supposed applicants rights against 1<sup>st</sup> respondent's right to free speech, per Article 21(1) (a).

**[62] Joinder of Attorney General**

Under this heading, Counsel for 1<sup>st</sup> respondent submitted that the law requires service of a human rights application on the Attorney General and not joinder as a party to human rights applications as the applicant has done.

**[63] Supposed applicant**

Under this heading, Counsel for 1<sup>st</sup> respondent submits that his reference to the applicant as "supposed applicant" is based on his double identity which was uncovered by 1<sup>st</sup> respondent. He submits that Article 33 of the 1992 constitution confers *locus standi* only on the person who has a personal and direct interest in the matter. He refers to the case of **FEYDAG V PUBLIC UNIVERSITIES OF GHANA [2010] SCGLR 265** which underscores personal interest as a prerequisite condition for standing which would enable

a plaintiff to enforce his human rights and freedoms. He contends that a reading of the supposed applicant's entire affidavit in support does not reveal which of the supposed applicant's identities is offended by the acts which he alleges violates his fundamental human rights. He states that the closest that the supposed applicant comes to demonstrating how he is affected by the 1<sup>st</sup> respondent's acts is in paragraph 6 of his affidavit in support of this application where he alleges that the "1<sup>st</sup> respondent in January 2023 commenced various social media publications and mainstream engagements in respect of the dealings of the applicant in his capacity as a trustee of the National Cathedral Board and JNS Talent Centre" He submits that "there are no details about the specific nature of the social media publications and mainstream media engagements engaged in by the 1<sup>st</sup> respondent as to be violative of the supposed applicant's fundamental human right".

[64] Counsel for 1<sup>st</sup> respondent further submits that in respect of his being a trustee of the National Cathedral Board, the supposed applicant uses the name Victor Kusi Boateng but uses the name Kwabena Adu Gyamfi in relation to JNS Talent Centre. He urges the court to strike out the instant application.

**[65] Applicant's supplementary statement of case**

In his supplementary statement of case, counsel for applicant submits that the 1<sup>st</sup> respondent initially obtained and published the applicant's personal data without recourse to the procedure under the Right to Information Act. He submits that the 1<sup>st</sup> respondent should not be allowed to justify his unlawful procurement and publication of personal data of the applicant on the basis that those are information that he could have obtained any way if he had requested for them under the Right to Information Act.

[66] He further submitted that while issues raised by 1<sup>st</sup> respondent regarding disbursement of public funds to the JNS Talent Centre was of public interest, the disclosure of applicant's flight details, name of his mother, date of birth and forms filled to obtain Taxpayer Identification Numbers were not matters of public interest.

[67] In response to the 1<sup>st</sup> respondent's submission that the disclosures made about the applicant were justified in the interest of crime prevention, counsel for the applicant submitted that at the material time that the applicant obtained the Taxpayer Identification Numbers in question, the Revenue Administration Act was not in force and therefore the applicant cannot be prosecuted for an act that was not an offence when it was done.

[68] As regards the two different sets of names used by applicant, counsel for the applicant submits that there is no law in Ghana that prohibits an individual from identifying himself by two different names. He states that in the case of **KOFI SARPONG V FRANKLIN JANTUAH [2017-2020] 1SCGLR 739** the Supreme Court held as follows;

“the trial court also considered that it is not illegal for any person to acquire property in his native name. The Court of Appeal considered this and concluded it did not violate any law unless there was proof that it was done with a criminal purpose. It is common knowledge that among the Akans the name that is given at birth is often not the same name that the person carries especially when he goes to church and is baptized with a Christian name or the name that he carries into school. Meanwhile back home he is commonly known and called by his native name given at birth. Thus, it would not surprise anybody if such person acquired property in the native name. It is an age-old practice”.

Counsel for the applicant submitted that the 1<sup>st</sup> respondent had failed to prove any criminal intent or to demonstrate how the applicant had used the two sets of names to commit a crime, in respect of the allegations of performing oversight role over the National Cathedral. He further submitted that the 1<sup>st</sup> respondent's assertion that applicant had obtained a diplomatic passport in the name of Victor Kusi Boateng had not been substantiated.

[69] Counsel for the applicant maintains that the 1<sup>st</sup> Respondent has not provided any lawful justification for breaching the applicant's right to privacy and therefore the applicant's case must succeed.

## [70] ANALYSIS OF EVIDENCE AND OPINION OF COURT

### 1. Identity of applicant

Before proceeding to determine the merits of the instant application, if any, this court must first decipher the identity of the applicant before it. This is because while the applicant describes himself as *Kwabena Adu Gyamfi alias Victor Kusi Boateng*, the 1<sup>st</sup> respondent insists that the name Victor Kusi Boateng is not an alias but a separate and distinct identity used by the applicant in his public dealings.

[71] The court notes that in his supplementary affidavit in support, the applicant stated that he had been informed and verily believed same to be true that "per the laws of Ghana, the fact that a person can be identified by two different sets of names is not a crime and such a person will not be denied the protection of his fundamental human rights enshrined in the 1992 constitution by virtue of the fact that he is identified by two different sets of names"

[72] The court further notes that in his supplementary statement of case, counsel for the applicant submits that "there is no law in Ghana that prohibits an individual from identifying himself by two different names" and goes on to cite a Supreme Court decision which says that it is not illegal for a person to acquire property in his native name as authority for his statement.

[73] The 1<sup>st</sup> respondent, on the other hand, maintains that the applicant has two identities and that the applicant's failure to specify how the acts complained about in the substantive application as violating his fundamental human rights, relate to any of his identities, is fatal to the application before the court. Counsel for 1<sup>st</sup> respondent further contends, in his statement of case, that "a reading of the supposed applicant's entire



affidavit in support does not reveal which of the supposed applicant's identities is offended by the acts which he alleges violates his fundamental human rights.”

[74] From the foregoing, the critical question before this court is whether Victor Kusi Boateng is just another name by which Kwabena Adu Gyamfi is known or whether Victor Kusi Boateng is a separate and distinct identity from Kwabena Adu Gyamfi? In order to decipher the identity of the applicant before this court, it is important to evaluate the totality of the facts placed before the court.

[75] The genesis of this case as narrated by the 1<sup>st</sup> respondent is that sometime in November and December 2022, the National Cathedral Secretariat presented to the parliament of Ghana a report on the utilization of about Three Hundred and Thirty Nine Million Ghana Cedis (GHS339,000,000.00) of public funds applied for the purpose of the National Cathedral Project as evidenced by Exhibits 2 and 3. In the breakdown explaining the disbursement of the said amount, the 1<sup>st</sup> Respondent noticed that Two Million, Six Hundred Thouand Ghana Cedis (GHS2,600,000.00) had been paid to an entity known as **JNS Talent Centre** under the heading “constructors mobilization”. The said payment attracted his curiosity because he did not recall that JNS Talent Centre had been mentioned when parliament was informed about the identities of the contractors responsible for the National Cathedral. He therefore decided to conduct investigations into the reason behind the payment. His investigations led to the discovery of a link between **JNS Talent Centre** and the applicant, who is one of the trustees of the National Cathedral. Further investigations conducted by the 1<sup>st</sup> Respondent revealed that the applicant, who describes himself as *Kwabena Adu Gyamfi alias Victor Kusi Boateng*, operates actively and concurrently in the two separate identities.

[76] The court will proceed to determine the issue of identity based on the analysis below;

[77] Firstly, the court notes that the applicant who *describes himself as Kwabena Adu Gyamfi alias Victor Kusi Boateng* in the instant application, stated in paragraph 6 of his

affidavit in support that “the 1<sup>st</sup> respondent in January 2023, commenced various social media publications and mainstream engagements in respect of the dealings of the applicant in *his* capacity as trustee of the National Cathedral Board and JNS Talent Centre Ltd.”

[78] The court further notes that per Exhibit 1B which is the Regulations of the National Cathedral of Ghana, which was incorporated on 18<sup>th</sup> July 2019, one Victor Kusi Boateng, has been named as a member of the Executive Council. Further, per Exhibit 21, which is a copy of the company profile of JNS Talent Centre Limited, which was incorporated on 14<sup>th</sup> September 2015, one Kwabena Adu Gyamfi, has been named as one of the directors of JNS Talent Centre.

[79] It is significant to note that there is nothing on the face of Exhibit 1B, the Regulations of the National Cathedral that suggests, remotely, that Victor Kusi Boateng, who is named as a member of the Executive Council of the Board of the National Cathedral is also known as Kwabena Adu Gyamfi. Neither is there anything on the face of Exhibit 21, to suggest that Kwabena Adu Gyamfi, who is named as one of the directors of JNS Talent Centre is also known as Victor Kusi Boateng.

[80] But for the applicant’s description of himself in this application as *Kwabena Adu Gyamfi alias Victor Kusi Boateng* and his statement in paragraph 6 of his affidavit in support to the effect that 1<sup>st</sup> respondent’s investigations were in respect of *his* dealings in his capacity as trustee of the National Cathedral and JNS Talent Centre, one would have had no basis to suspect that Victor Kusi Boateng who is named in the Regulations of the National Cathedral as a member of the Executive Council is the same as Kwabena Adu Gyamfi who is named as one of the Directors of JNS Talent Centre Ltd the recipient of the amount of GHS2,600,000.00 which was disbursed out of public funds.

[81] It can thus be inferred from the facts above stated, that although the applicant describes himself in this application as *Kwabena Adu Gyamfi alias Victor Kusi Boateng*,

the applicant uses the name Kwabena Adu Gyamfi independent of the name Victor Kusi Boateng for the purpose of concealing his true identity.

[82] Further evidence of the applicant's independent and separate use of the two names by which he describes himself in this application, can be found in Exhibit 5, for example. Exhibit 5, is a letter written to the Hon. Samuel Okudzeto Ablakwa by the Ghana Revenue Authority based on his request for information pursuant to the Right to Information Act, on the two distinct Taxpayer Identification Numbers belonging to the same individual. The GRA's response on the details of the owners of the two distinct Taxpayer Identification Numbers is instructive;

- i. P.....X is registered for Victor Kusi Boateng  
Date of birth 07/09/1971  
Mother's maiden name: Agnes Attah  
Date of application: 13<sup>th</sup> August 2013  
Identification Information: Driver's license
- ii. P.....X is registered for Kwabena Adu Gyamfi  
Date of Birth: 30/12/1969  
Mother's maiden name: Yaa Gyamfua  
Date of application: 15<sup>th</sup> March 2016  
Identification information: Passport

The above shows that the applicant who describes himself as *Kwabena Adu Gyamfi alias Victor Kusi Boateng* possesses two Taxpayer Identification Numbers in his two names; one in the name of Kwabena Adu Gyamfi and the other in the name of Victor Kusi Boateng. It reveals further that the two names used by the applicant represent two separate and distinct identities because, from the records of the GRA, Victor Kusi Boateng was born on 7<sup>th</sup> September 1971 and his mother's maiden name is Agnes Attah while Kwabena Adu Gyamfi was born on 30<sup>th</sup> December 1969 and his mother's maiden name is Yaa Gyamfua. Once again, it is clear that the applicant, who describes himself as

*Kwabena Adu Gyamfi alias Victor Kusi Boateng*, used the two names independently and separately of each other in order to procure Taxpayer Identification Numbers for reasons best known to him.

[83] Additional evidence of the applicant's use of the two names separately and independently can be seen in the fact that the applicant who describes himself as *Kwabena Adu Gyamfi alias Victor Kusi Boateng* has used the name Kwabena Adu Gyamfi to procure, among others, a diplomatic passport which is yet to expire (See Exhibit 11), a Ghana Card (See exhibit 12) and a Voter Identity Card which was issued in 2020 (see exhibit 13). Other passports which were obtained in the name of Kwabena Adu Gyamfi have expired (See exhibits 8, 9 and 10). Again, the applicant who describes himself as *Kwabena Adu Gyamfi alias Victor Kusi Boateng* has been involved in the registration of a number of Companies using the name Kwabena Adu Gyamfi as shown below;

- a) Dunamis Insurance Brokers Ltd incorporated on 16<sup>th</sup> January 2023 to provide insurance brokerage services among others (Exhibit 14)
- b) Lloyds General and Risk Ltd incorporated to provide insurance brokerage and consultancy services ( Exhibit 15)
- c) New Ware FM Ltd incorporated on 9<sup>th</sup> December 2021 to operate a radio FM station ( exhibit 16)
- d) Great Speed Engineering and Construction Ltd incorporated on 19<sup>th</sup> April 2021 to provide road and building construction services among others (Exhibit 17)
- e) The four B's Company Ltd incorporated on 21<sup>st</sup> October 2020 to provide road construction services (Exhibit 18)
- f) Anibeas Petroleum Ltd incorporated on 21<sup>st</sup> October 2020 to provide road construction services ( exhibit 19)
- g) El Dunamis Limited incorporated on 19<sup>th</sup> May 2009 as a General Merchant to import and export general goods ( exhibit 20)

h) **JNS Talent Centre Limited** incorporated on 14<sup>th</sup> September 2015 to provide talent and skills development training ( Exhibit 21)

[84] The court further notes, that the applicant *who says he is Kwabena Adu Gyamfi and that Victor Kusi Boateng is an alias* has been involved in the registration of at least eight companies registered at the Office of the Registrar of Companies with the name Victor Kusi Boateng as evidenced below;

- a) Vibrant Generation Chapel Worldwide LBG incorporated on 14<sup>th</sup> May 2021 as a company limited by guarantee to preach the gospel (Exhibit 22)
- b) Dunamis Chapel Worldwide LBG incorporated on 20<sup>th</sup> May 2021 as a company limited by guarantee to preach the gospel (Exhibit 23)
- c) National Cathedral of Ghana incorporated on 18<sup>th</sup> July 2019 to own the assets of the National Cathedral of Ghana (Exhibit 1B)
- d) El Dunamis Media Limited incorporated on 14<sup>th</sup> January 2019 to provide media services (Exhibit 24)
- e) Onpoint 1 Laundry Limited incorporated on 26<sup>th</sup> March, 2019 to provide laundry services (Exhibit 25)
- f) Kharis Football Academy FC incorporated on 19<sup>th</sup> June 2017 with the object of running a soccer academy (Exhibit 26)
- g) Qharis Consortium Limited incorporated on 11<sup>th</sup> May 2017 to import and export general goods (Exhibit 27)
- h) Duna Media Production registered as a sole proprietorship on 4<sup>th</sup> April 2014 (Exhibit 28)

[85] There is further evidence of the fact that the applicant *who says he is Kwabena Adu Gyamfi and that Victor Kusi Boateng is an alias* possesses a Voter Identity Card which was issued in the Ashanti Region in 2016 (Exhibit 29); and a driver's license which was issued on the 8<sup>th</sup> of April 2010 (Exhibit 30) all in the name, Victor Kusi Boateng.

[86] Clearly the evidence before the court overwhelmingly demonstrates that the applicant who describes himself as *Kwabena Adu Gyamfi alias Victor Kusi Boateng* uses two names independent of each other for different purposes and does so concurrently. In the opinion of the Court, Counsel for the 1<sup>st</sup> Respondent is justified when in his statement of case, he argues that *“the name Victor Kusi Boateng which the supposed applicant refers to as his alias is not an alias. The name Victor Kusi Boateng is actually another identity actively used by the applicant”*

[87] In the face of such overwhelming evidence, the averment made by the applicant in his supplementary affidavit to the effect that he has been informed by his lawyer and verily believes same to be true that” per the laws of Ghana, the fact that a person can be identified by two different sets of names is not a crime and such a person will not be denied the protection of his fundamental human rights enshrined in the 1992 constitution by virtue of the fact that he is identified by two different sets of names” is, in the view of the court, completely misconceived.

[88] This is because the evidence placed before this court does not disclose a simple case of an individual who is identified by two different sets of names but rather, it discloses a case of an individual who deliberately uses two different identities in his public dealings either to conceal his true identity, to exploit a loophole in the law or for whatever reason best known to him, such that but for the revelations made by the 1<sup>st</sup> Respondent, it would be difficult for any public institution or person dealing with the Applicant to relate one identity with the other.

[89] The evidence before this court discloses a pattern of duplicity and lack of transparency on the part of the applicant which borders on criminality and the failure of applicant’s counsel to appreciate the import of his client’s conduct and to advise him appropriately is unfortunate, to say the least.

[90] As was stated earlier, this court has had to painstakingly comb through the totality of the evidence before it in order to decipher the identity of the applicant who

commenced this action because of the contention over his true identity. Having established that the applicant, who describes himself as *Kwabena Adu Gyamfi alias Victor Kusi Boateng* operates in two distinct and separate identities concurrently, the question which of the applicant's two identities is the originator of this action is relevant as that will enable the court to make specific orders at the end of the case. In other words, the court must know whether the applicant before it is Kwabena Adu Gyamfi who was born on 30<sup>th</sup> December 1969 and whose mother's maiden name is Yaa Gyamfua or Victor Kusi Boateng who was born on 7<sup>th</sup> September 1971 and whose mother's maiden name is Agnes Attah.

[91] In his statement of case, counsel for the 1<sup>st</sup> respondent submits, on the issue of the applicant's identity that "it is because of the applicant's double identity that the second respondent *sic* refers to him as the supposed applicant. The reason is that Article 33(1) of the 1992 constitution on which the supposed applicant anchors his application before the court confers *locus standi* only on the person who has a personal and direct interest in the matter the reason for which they invoke the aforesaid constitutional provision."

[92] He continues thus: "Article 33(1) of the 1992 constitution therefore provides thus;

"33. Protection of rights by the Courts

(1) "where a **person** alleges that a provision of this constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened **in relation to him**, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress. (emphasis supplied)"

Counsel for 1<sup>st</sup> respondent further submits that in the case of **FEDYAG V PUBLIC UNIVERSITIES OF GHANA [2010] SGLR 265** the Supreme Court, per Sophia Adinyira JSC (*as she then was*) held that under Article 33(1) which deals with protection of Human Rights and Freedoms and other rights by the courts, the personal interest

requirement is a prerequisite condition for standing which would enable a plaintiff to enforce his human rights and freedoms.

[93] The court notes that in a host of cases including **FEDYAG V PUBLIC UNIVERSITIES OF GHANA [2010] SGLR 265; ADJEI-AMPOFO V ACCRA METROPOLITAN ASSEMBLY & ATTORNEY GENERAL ( NO 1) [2007-2008] SCGLR 611; NEW PATRIOTIC PARTY V ATTORNEY-GENERAL (CIBA CASE) 1996-97 SCGLR 729 AND SAM (NO. 2) V THE ATTORNEY-GENERAL [2000] SCGLR 305**, the distinction between the High Court's jurisdiction to enforce fundamental human rights and the Supreme Court's jurisdiction to declare an act to be in contravention of or inconsistent with the Constitution per article 2(1) of the 1922 Constitution has been discussed. With particular reference to the case of Sam (No.2) v Attorney-General supra, the Supreme Court speaking through Bamford Addo JSC (*as she then was*) stated that:

“However under Article 33(1) which deals with protection of Human Rights and Freedoms and other rights by the courts, the personal interest requirement is a prerequisite condition for standing which would enable a plaintiff to enforce his Human Rights and Freedoms. The said article 33 (1) reads:

“33 (1) Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened *in relation to him*, then, without prejudice to any other action that is lawfully available, *that person may* apply to the High Court for redress.”(The emphasis mine)

The words in “*relation to him*” and “*that person*” imply that a plaintiff must have personal interest in the litigation. Therefore it is only when a person seeks the enforcement of his fundamental human rights and freedom that he ought to have “personal interest” in the case and this would invariably mean that there must have arisen a controversy or dispute concerning an infringement or intended infringement of the plaintiff's said rights which he seeks to enforce through the High Court.” (Emphasis Mine)

[94] In the recent case of **SPRINGFIELD EXPLORATION AND PRODUCTION LTD VRS ENI GHANA EXPLORATION AND PRODUCTION LTD AND VITOL UPSTREAM GHANA LIMITED UNREPORTED SUIT NO H1/91/2022 DATED**



29<sup>TH</sup> JUNE 2023, the Court of Appeal speaking through His Lordship Ackaah-Boafo, JA explained the distinction between capacity and *locus standi* in the following terms;

“Legal capacity to initiate an action and continue with same refers to the plaintiff’s status as a legal person. Capacity is not about the role of a party in the proceeding but to the party’s personal characteristics or status while standing is part of the larger subject of entitlement to seek judicial relief before a court of competent jurisdiction. Standing involves the acknowledgement of one’s right to come before the court to argue that his or her right has been violated or to enforce an unfulfilled obligation. Put another way standing involves the determination of whether or not a person has sufficient stake in the outcome of a matter to enable the one set in motion the judicial process. See professor Hogg Observation in Constitutional law of Canada (3<sup>rd</sup> ed. 1992 at 1263”

This court deduces from the above statement of the law that a person’s identity must first be disclosed and known to enable the court determine whether he or she has the requisite capacity to initiate an action or has standing in the matter.

[95] The law is that when a party lacks capacity, or locus standi, the court ought not to deal with the merits of the case. See the case of **EBUSUAPANYIN YAW STEPHENS VRS KWESI APOH [2010] 2 MLRG** where the Supreme Court, speaking through Anin Yeboah JSC (*as he then was*), reiterated the legal position that if an action succeeds on a plea of limitation, lack of jurisdiction, or lack of locus standi, the Trial Court and for that matter the Appellate Court *should not proceed* to determine the merits of the case irrespective of the evidence. See also: **AKRONG V BULLEY 1965 GLR 469**.

[96] Applying the law to facts of this case, this court is of the view that the issue of the exact identity of the applicant before the court relates to both the legal capacity of the applicant to maintain the instant action and his *locus standi*. This is because firstly, the court must be clear in its mind which of the applicant’s two names which, as has been demonstrated above, represent two separate and distinct identities, is the originator of this action. Based on the above analysis, it is not clear to the court, the specific identity in which the applicant prosecutes the instant application, as there is a person with two distinct identities presenting himself as the applicant before this court. Consequently,

there is no identifiable person with capacity to maintain the instant action. Therefore same is dismissed.

[97] Having regard to the nature of the issue raised in this application, the fact that 1<sup>st</sup> respondent engaged counsel and the voluminous submissions filed by counsel for 1<sup>st</sup> respondent, costs of GHS10,000 is awarded against applicant in favour of 1<sup>st</sup> respondent.

(SGD)

**BARBARA TETTEH-CHARWAY (MRS)**  
**JUSTICE OF THE HIGH COURT**

**COUNSEL**

BOBBY BANSON WITH EMMANUEL GYAN FOR THE APPLICANT – PRESENT

NUHELA SEIDU WITH RAPHAEL BANAANGMEN HOLDING BRIEF FOR

THADDEUS SORY FOR THE 1<sup>ST</sup> RESPONDENT - PRESENT

CERTIFIED TRUE COPY

  
REGISTRAR  
HUMAN RIGHTS COURT 1<sup>ST</sup> ACCRA, G. R.