

**IN THE HIGH COURT- BOLGATANGA**  
**ON 27<sup>TH</sup> NOVEMBER 2023**  
**BEFORE CHARLES ADJEI WILSON,**  
**JUSTICE OF THE HIGH COURT**

**UE/BG/HC/C3/02/2023**

**JOSEPH PWOAWUVI WEGURI**

**VS.**

- 1. C. K. TEDAM UNIVERSITY OF TECHNOLOGY AND APPLIED SCIENCES**
- 2. THE ATTORNEY GENERAL**
- 3. ERIC MAGNUS WILMOT**
- 4. VINCENT A. ANKAMAH LOMOTEY**

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**J U D G E M E N T**

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**Raphael Alijna for plaintiff**

**Louisa Babilah (Assistant State Attorney) for defendants**

**INTRODUCTION**

The plaintiff brought a suit against the four defendants on 20<sup>th</sup> March 2023, defendants claiming

- (a) Declaration that the purported appointment of 3<sup>rd</sup> and 4<sup>th</sup> defendants as vice-chancellor and the registrar of 1<sup>st</sup> defendant is null and void.*
- (b) An order compelling 3<sup>rd</sup> and 4<sup>th</sup> defendants refund all sums of money, including salaries and allowances, 3<sup>rd</sup> and 4<sup>th</sup> defendants received from the consolidated fund and /or from 1<sup>st</sup> defendant, and*
- (c) Costs including legal fees of plaintiff.*



## **BACKGROUND FACTS AND PROCEDURE**

The main thrust of the plaintiff's claim is that on or around December 2020, the 1<sup>st</sup> defendant, a tertiary public institution, appointed 3<sup>rd</sup> and 4<sup>th</sup> defendants as its vice chancellor and registrar respectively for a full term of 4 years after the two officers had retired from the public service.

According to plaintiff, the two officers have attained a compulsory retirement age of 60 years in April 2022 and August 2021 respectively, but they have remained in office, the plaintiff accused the defendants of acting unlawfully, illegally and arbitrarily. He indicated that he has served a petition of his complaint on the 1<sup>st</sup> defendant and the honorable minister of education, but the petition did not receive a favourable response.

In his statement the plaintiff avers inter alia

8. *The plaintiff contends that public service laws of Ghana, especially article 199 of the constitution, 1992 as amended by Act, 527, require public officers to retire from full-term service at the age of sixty (60).*
9. *Plaintiff contends that the Ghana Tertiary Education Commission (GTEC) and the Ministry of Finance cautioned public universities, including 1<sup>st</sup> defendant, on appointments and post retirement contracts in a circular dated 8<sup>th</sup> June 2021 and in a written directive issued by the minister.*
10. *Plaintiff contends that on 1<sup>st</sup> December 2020, 1<sup>st</sup> defendant, by letters, appointed 3<sup>rd</sup> defendant as Vice-Chancellor and 4<sup>th</sup> defendant as registrar of 1<sup>st</sup> defendant for a full-time of four (4) years.*
11. *Plaintiff contends that before his appointment as the substantive vice-chancellor of 1<sup>st</sup> defendant, 3<sup>rd</sup> defendant, who had retired as a public officer of the university of Cape Coast in the year 2019, was first appointed as an interim vice-chancellor of 1<sup>st</sup> defendant.*
13. *Plaintiff contends that the continues occupation of office, and withdrawal of salaries and allowances from the consolidated fund by 3<sup>rd</sup> and 4<sup>th</sup> defendants as public officers in full-term employment of the university after they have attained the age of compulsory retirement and after 3<sup>rd</sup> defendant retired from the public service is not only unlawful but also illegal.*

14. Plaintiff contends that 1<sup>st</sup> and 2<sup>nd</sup> defendants have acted in an unlawful, arbitrary and capricious manner by giving full-term employment of the university to 3<sup>rd</sup> and 4<sup>th</sup> defendants and by allowing 3<sup>rd</sup> and 4<sup>th</sup> defendants have attained compulsory retirement age, and after 3<sup>rd</sup> defendant had retired from public service.
17. Plaintiff contends that he petitioned the honourable minister of education and 1<sup>st</sup> defendant for removal of 3<sup>rd</sup> and 4<sup>th</sup> defendants and minister directed governing council of 1<sup>st</sup> defendant to consider the petition.
18. Plaintiff contends that on 12<sup>th</sup> January 2023, the governing council of 1<sup>st</sup> defendant issued an unfavourable determination of the petition stating that 3<sup>rd</sup> and 4<sup>th</sup> defendants were appointed in accordance with law.
19. Plaintiff contends that the unlawful, arbitrary, and illegal actions of defendants will continue unless they are compelled by orders of the honourable court.

It is relevant to refer to the statement of defence of the defendants, portions which read:

4. Defendants admit **paragraph 7** of the statement of claim in part and state that though act 1000 mandates 1<sup>st</sup> defendant to appoint its officers including vice-chancellors and registrars, the provisions in the university's statute referenced by the plaintiff **does not apply** to the appointment of foundation vice-chancellors and registrars. This is because the interim appointment of the 3<sup>rd</sup> and 4<sup>th</sup> defendants as vice-chancellor and registrar in April 2020 was converted by the university council of 1<sup>st</sup> defendant to full time appointment on December 1<sup>st</sup>, 2020. The appointment of foundation vice-chancellors and registrars as is the case of 3<sup>rd</sup> and 4<sup>th</sup> defendants is not novel in Ghana and there are several examples of such appointments which will be cited in the course of the trial..
8. Furthermore, the appointments of 3rd and 4 Defendants commenced with a one-year interim period in April 2020 Before the end of the one-year appointment the Governing Council of 1st Defendant set up a Senior Management Candidates Evaluation Committee or what is commonly known as a search

*party to interview 3rd and 4th Defendants in order to ascertain the duration of the full-term appointments of 3rd and 4th Defendants. This was done in line with all the relevant laws governing or regulating public services in Ghana.*

- 14 *This class of appointees are generally classified as critical staff who play sensitive roles in the governance structure of the country and have their tenure fixed in term of years of service specified in the laws appointing them or in their letters of appointment and therefore do not fall under the class of persons who ought to retire from public office at the age of sixty (60) years.*

### **THE ISSUES IN CONTENTION**

At the application for direction stage 5 issues were set down for trial

- a. *Whether or not 3<sup>rd</sup> and 4<sup>th</sup> defendants can remain in office after they attained the compulsory retirement age of 60 years.*
- b. *Whether or not the appointment of 3<sup>rd</sup> and 4<sup>th</sup> defendants as vice-chancellor and registrar of 1<sup>st</sup> defendant is unlawful.*
- c. *or not the 3<sup>rd</sup> and 4<sup>th</sup> defendants belong to the special class of public officers that have been exempted from retirement at sixty (60) years.*
- d. *Whether or not the compulsory retirement age of sixty (60) years applies to 3<sup>rd</sup> and 4<sup>th</sup> defendants.*
- e. *Whether or not 3<sup>rd</sup> defendant having voluntarily retired from public service can be re-appointed into public service,*

**Order 1 rule 2 of the High Court (Civil Procedure Rules) C.I. 47** requires that the rules be construed to ensure simplicity in procedure, fairness in the administration of justice and the elimination of unjustifiable expenses and delays, counsel for the parties agreed to dispose off the contentions issues by legal submissions.

### **Submissions**

The learned counsel for the plaintiff Mr. Raphael Alijina submitted that in **Ayine Vs. Attorney General** (supra) the Supreme Court interpreted article 199 of the constitution of 1992 in the following terms:

*“Interpreting further, the language of article 199, it is our opinion that when read carefully and purposively, it will leave no one in doubt that fixed retirement age of sixty (60) years was never contemplated for all classes of public officers. The opening sentence of the article gave a proviso “except as otherwise provided in this constitution”. This implies that the framers contemplated a situation where other*

*retirement ages would be provided other public officers. These other officers have been excepted from retirement at sixty (60) years in article 199(1). Again, the emphasis on ‘public officer’ retiring from the “public service” clearly limits the sixty (60) years retirement to public officers who work in the public services and who are not excepted by other retirement ages in other provisions of the constitution such as article 70”.*

The court further observed, “

*The institutional tenure of public service workers is fixed in terms of retirement age which survives changes of political leadership. Article 199(1) of the constitution prescribes a retirement age of sixty (60) years, and depending on the exigencies of the office a worker is entitled to a maximum of five (5) years post-retirement contract”*

Counsel contended on behalf of the plaintiff that by this interpretation of article 199 of the constitution 1992, public officers would retire at the age of sixty years. Public officers who are not supposed to retire are those whose appointments are made by the president pursuant to article 70 of the constitution.

The learned counsel also made reference to the case of **Appiah Ofori Vs. AG (2010) 2 GLR 294 Wood CJ** (as she then was) said at page 9

*“Public officials appointed under article 195(1) are the persons contemplated under article 199(1) and therefore the provisions of article 199(1) are not applicable to him”.*

It was argued on behalf of the plaintiff that the 2<sup>nd</sup> /3<sup>rd</sup> defendant have not been appointed under article 70 of the constitution 1992. The retirement age of the 3<sup>rd</sup> and 4<sup>th</sup> defendants therefore is sixty (60) years subject to a contract engagement which shall not exceed five years, he argued.

\Further, it was argued on behalf of the plaintiff that the 3<sup>rd</sup> and 4<sup>th</sup> defendants were appointed pursuant to statutes 10 and 12 of the university statute and article 195 of the constitution 1992. It becomes

absolutely clear that the 3<sup>rd</sup> and 4<sup>th</sup> defendants were not appointed under article 70 of the constitution.

It is the case of the plaintiff that the general retirement age for public servants in article 199, of the constitution is sixty years. 3<sup>rd</sup> and 4<sup>th</sup> defendants are therefore enjoined to leave office upon attainment of the age sixty (60) years and it is not contemplated by the framers of the constitution that the 3<sup>rd</sup> and 4<sup>th</sup> defendants will be employed on full time basis after they have already retired to earn both salary and pension.

It is the case of the defendants that the 3<sup>rd</sup> and 4<sup>th</sup> defendants belong to the special class of public office. On this point the learned state attorney submitted that article 70 (1) (e) recognizes the right of parliament to make laws not inconsistent with the constitution by vesting in the president the power to make appointments of key public office holders in consultation with or on the advice of the council of state.

Learned counsel quoted from the judgment of

**Ayine vs. Attorney General Write No. J1/05/2018 of 15<sup>th</sup> May 2020.**

*“We declare that by a true and proper interpretation of articles 190 (1) (d), 199(1), 199(4), and 295 of the constitution 1992, the retirement age of all holders of public offices in the public services created pursuant to article 190(1) (d) is sixty (60) years for majority of the core administrative staff who are pensionable officers. In the case of other public office holders who are classified as critical staff appointed under articles 70 or 195, their tenure is fixed in terms of years of service specified in the law appointing them or in their letters of appointment as the case may be “.*

The learned state attorney strongly contended that the terms and conditions of service that are applicable to the vice chancellor and the registrar are those specified in the letters of appointment and they have their tenure fixed in terms of years of service in the letter of appointment, because, they fell within the special classes of public officers.

Pursuant to this, the appointment of the 3<sup>rd</sup> and 4<sup>th</sup> defendants and their continues stay in public office despite attaining the age of 60 years is neither unlawful or arbitrary, Mrs. Louisa Babila the learned state attorney for the defendants argued that, the 3<sup>rd</sup> defendant retired voluntarily in 2019, at the age of 57 from the university of Cape Coast travelled to the US to pursue a research programme and returned to the country as a foundation vice chancellor of the 1<sup>st</sup> defendant institution, thus he was reengaged in the public service.

The learned state attorney said he was appointed in accordance with article 70 of the constitution which makes him part of the special class of public officers exempted from the compulsory retirement age of 60 years.

The learned state attorney also submitted that the university statute did not exist prior to the 3<sup>rd</sup> and 4<sup>th</sup> defendants appointment, therefore the argument that the 3<sup>rd</sup> and 4<sup>th</sup> defendant were appointed in accordance with the statute is misconceived. The vice chancellor and the registrar were appointed in 2020, and the said statute came into force in May 2021 she argued.

The learned state attorney submitted that article 70 (1) © recognizes the right of parliament to make laws not inconsistent with the constitution by vesting in the president power to make appointments of key public office holders in consultation with or on the advice of the council of state.

## **ANALYSIS AND OPINIO**

I have summarized the arguments of counsel as carefully and fully as I can on which the case of either party rest.

The general principle of law is that, it is a duty of the plaintiff to prove his case

**See Section 11 and 14 of the Evidence Act, NRCD 325.**

**Ababio Vs. Akwasi iii (1994-95) I GLR 274.**

The constitution makes it unlawful to appoint a person above the retirement age, therefore the plaintiff must first present a prima facie case of unlawful appointment, if the plaintiff meets this burden, then the defendants must rebut the plaintiffs proof by articulating a legitimate means for the appointment of a vice chancellor and registrar respectively.

What then is the position in the present case before us?

We must look at some of the decided cases to see what interpretation, the courts have placed on the term of public office.

In the case of **Ayine Vs. Attorney General (2020) dlsc 8799 at page 21** that dealt with article 70 office holders Amegatcher JSC held that the president is entrusted with powers to appoint even retirees if he so thinks that their services are required to serve the nation under article 195 and 199) of the 1992 constitution.

*“We find from persuing the totality of the various articles that framers of the constitution in their wisdom prescribed different retirement ages for*

*different category of key public office holders. Reading, therefore, the constitution as a whole, the conclusion that the framers did not prescribe one retirement age of sixty (60 years for all classes of public officers is without question. In our opinion, if the framers had intended one retirement age for all classes of public office holders, the constitution would have stated so explicitly and unequivocally”.*

The letter of appointment of the 3<sup>rd</sup> defendant dated 1<sup>st</sup> December 2020 EXH ‘K’ reads as follows:

*“Prof Eric Magnus Wilmot  
Department of Science and Mathematics Education  
C. K. Tedam University of Technology and Applied Sciences  
Navrongo*

*Dear Prof Wilmot,*

**APPOINTMENT AS VICE CHANCELLOR**

*I write on behalf of the Governing Council of C.K. Tedam University of Technology and Applied Sciences to appoint you as Vice-Chancellor of the*



*university for a full-term appointment of four (4) years with effect from September 1, 2020. This appointment will elapse on August 2024.*

- 1. The duties as the Vice-Chancellor shall be as specified in Act1000, the Act that established the university, as well as statutes of the university. The terms and conditions of your service as Vice-Chancellor are attached.*
- 2. The university reserves the right to terminate your appointment by giving you notice of not less than six (6) months. That notwithstanding, the university reserves the right to terminate your appointment upon shorter notice for misconduct, negligence or incompetence.*
- 3. The appointment of full-time, and you may not accept additional remuneration for activities outside its scope without the prior written approval of the chairman of council.*
- 4. It will appreciated if you will acknowledge and confirm your acceptance or otherwise of this offer under the terms indicated.*
- 5. This supersedes my earlier appointment letter to you dated July13, 20200*

*Please accept my congratulations and best wishes.*

*Yours faithfully*

*Professor Gordon A. Awandare  
Chairman of Council  
CKT-UTAS*

*Cc  
The Exexutive Secretary NOTE  
Pro Vice-Chancellor, CKT-UTAS  
The Director of Finance , CKT-UTAS  
Internal Auditor, CKT-UTAS  
Universities of Ghana Oversees Office*

The constitution stipulates that the retirement age is 60 years in public service. The exception to this rule is stated in the Ministry of Education letter dated 19<sup>th</sup> May 2020 titled:

**“Approval of Proposal for Management of Post-retirement Contracts in Public service which states that:**

*“Due to the constraints imposed by the constitution, the mandatory retirement age for academic staff of public universities cannot be changed at this time .*

*Like all other public sector employees, it shall remain to be 60 years”.*

- *Professional grade staff. (Associate professors and professors) shall be eligible for post retirement contracts until age 70).*
- *Universities are however, to note that the retention of highly skilled and experienced staff primarily to boost graduate enrollment and research, over all faculty research output and training of young faculty among others.*

A letter from the Deputy Director – General dated 15<sup>th</sup> June 2021 with the title Circular on post retirement contracts and related appointment states that:

Public Funded Higher Education Institutions, (PFHE) are to note that persons who are re-engaged after retirement, subject to permission, cannot be assigned position holding roles (my emphasis).

The directive of the Ministry of Education also empowered the NCTE (then) and now GTEC to develop post-retirement contracts and get approval to appoint retired vice chancellor and registrar as in the case of the 3<sup>rd</sup> defendant.

In other words the 3<sup>rd</sup> and 4<sup>th</sup> defendants should have been considered for contract employment than to remain at post in their capacities as vice chancellor and registrar respectively. The university council is not clothed with authority to extend the term of office of the 3<sup>rd</sup> and 4<sup>th</sup> defendants”.

The argument that the retirement age of 60 does not apply to the 3<sup>rd</sup> and 4<sup>th</sup> defendants because they are foundation officers of the institution is not captured in the C.K. Tedam University of Technology And Applied Sciences Act, 2019, Act 1000 the guiding document for appointing principal officers for the 1<sup>st</sup> defendant institution.

There is no evidence to support the proposition of the learned state attorney that foundation officers of the institution were exempted from the retiring age requirement. I find myself unable to agree with this view. The mere use of the term foundation members in law, does not give rise to a contract to the 3<sup>rd</sup> and 4<sup>th</sup> defendants.

To compare officers of other tertiary institutions with that of these two officers does not create a prima facie proof or sufficient evidence in law.

The council of the C.K. Tedam University of Science and Technology and Applied Sciences therefore, erred in appointing the 3<sup>rd</sup> defendant vice chancellor and the 1<sup>st</sup> defendant registrar for a 4 year term, when they could not serve full terms before they attained the age of 60.

It appears that neither the university council nor the 3<sup>rd</sup> /4<sup>th</sup> defendants regarded the proposed continuity in the letters of appointment as unlawful.

3<sup>rd</sup> defendant's letter of retirement is before the court it reads as follows:-

*“Mathematics & ICT Education Department  
University of Cape Coast  
Cape Coast*

*June 13, 2019*

*Dear Vice Chancellor,  
NOTIFICATION OF EARLY RETIREMENT*

*I write to cancel my earlier letter of June 11, 2019 in which I requested for substantial leave next academic year and which to instead inform you of my*

*decisions to take an earlier retirement at the end of the current academic year (i.e after July 31, 2019).*

*As my records indicate, I reached the age of 57 years on the 28<sup>th</sup> April 2019, In addition, by the end of the current academic year, I would have served the university for 21 years and 6 months in various positions. As a result, I wish to take a voluntary retirement instead of the substantial leave I earlier request for.*

*I thank the university in general for the platform it offered for me to serve her in all these years. I also express my sincerest appreciation to colleagues and staff who I got the opportunity to work with and who supported me in every aspect of my work for the university.*

*I wish the university and its members the best in their quest to serve our dear country.*

*Thank you.*

*Yours truly,*

*Prof. Eric Magnus Wilmot*

*Cc: Pro- vice chancellor, university of Cape Coast  
Registrar, university of Cape Coast  
Director, Directorate of finance, university of Cape Coast  
Director, Directorate of Internal Audit, university of Cape Coast  
Director, Directorate of human Resource, university of Cape Coast  
Provost, College of Education Studies, university of Cape Coast  
Dean, Faculty of sciences & Technology Education, university of Cape Coast  
Head, Department of Mathematics & ICT education, university of Cape Coast.*

Certainly the 3<sup>rd</sup> and 4<sup>th</sup> defendants do not fall under Article 70 office holders. The only basis on which a public officer of tertiary institution can continue in office after he has attained the retirement age is by virtue of a contractual employment.

In this case as far as this court is able to ascertain, no contract was sought nor was obtained by the 3<sup>rd</sup> and 4<sup>th</sup> defendants for the grant of extension of time to remain in office beyond the retirement age.

Where an enactment that prescribed a special procedure by which something was to be done it is that procedure alone that was to be followed.

**Boyefio vs. NTHC properties Ltd (1997-98) IGLR 768 holding 3.**

I agree therefore with the contention that the 3<sup>rd</sup> defendant and 4<sup>th</sup> defendant cannot remain in office and continue to perform the duties of vice chancellor and registrar after attaining the mandatory retirement age of 60.

I am in accord with the principles enumerated in **Appiah Ofori Vs. A.G.** (supra) and there is no logical reason that the principles should not apply to the case herein.

The plaintiff rightly filed this suit against the defendants every citizen had a standing in public interest litigation to prevent some abuse of power.

**Ampofo Adjei vs. AMA Supreme Court 2008**  
**Sumaila Bielbei vs. Dramani 1 SCGLR, 132.**

In the U.K. Court of Appeal case of

**London Artist Ltd**

**Vs.**

**Liffler And Associated Actions (1969) 2 All E.R 193**

Lord Denning defined

*“Public interest as “a matter which is such as to affect people at large, so that they may be legitimately interested in it or concerned at what is going on, or what may happen to them or others “page 198.*

The plaintiff is a well respected, outspoken, forthright citizen who has a genuine, serious interest and demonstrable willingness to litigate the issue in public interest and in the service of upholding the constitution and the rule of law.

I am satisfied that the petition is not an abuse of the process of the court and as such it is not unreasonable that, it should be pursued.

For this reason I am of the opinion that the plaintiff's relief should be upheld.

Now looking at the 3<sup>rd</sup> and 4<sup>th</sup> defendants letters of appointments, it is unlikely that the defendants would be able to pay back all arrears of salary, for the reasons herein given I dismiss the plaintiff's reliefs for a refund of salary and allowances from the consolidated fund.

### **Consequential Orders**

- (1) An order of perpetual injunction is hereby made restraining the 3<sup>rd</sup> and 4<sup>th</sup> defendants from holding themselves out as vice chancellor and registrar of the C.C. Tadam University of Technology and Applied Sciences.
- (2) The 3<sup>rd</sup> and 4<sup>th</sup> defendants are prohibited from taking any steps to perform any duties and functions on the appointed post forthwith.
- (3) The University Governing Council shall nominate/appoint an interim management board for the general administration and management pending the fresh appointment of a vice chancellor and registrar to replace the retired officers.

**I would make no order as to cost.**

**CHARLES A. WILSON  
HIS LORDSHIP**

