

ECW/CCJ/APP/32/25

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

In the matter between:

Suit No. ECW/CCJ/REG/ /25

BETWEEN

GERTRUDE ARABA ESAABA SACKY TORKORNOO

- APPLICANT

AND:

THE REPUBLIC OF GHANA

- RESPONDENT

REQUEST FOR ASSIGNING PRECAUTIONARY MEASURES

I. APPLICANT

1. The Applicant, Gertrude Araba Esaaba Sackey Torkornoo, is the Chief Justice of the Republic of Ghana and a citizen of Ghana residing at Chief Justice's Residence, Cantonments, Accra, Ghana.

II THE RESPONDENT

The Republic of Ghana is part of the Treaty on the Economic Community of West African States ("ECOWAS") (the "**Treaty**"), which establishes under Article 15 (1) a Community Court of Justice (the "**Court**"). Ghana is also part of the ECOWAS Protocol on the Court of Justice (the "**Protocol**").

III. INTRODUCTION

The Applicant has the honour to refer to the Communication presented to the Court on 30th June 2025 (the "**Main Communication**"), which institutes proceedings against the Republic of Ghana ("Ghana" or the "Respondent"), and pursuant to Article 20 of the Protocol A/P. I/7/91 on the Community Court of Justice ("**Protocol**") and Article 79 of the Rules of Procedure of the Court of Justice of the Economic Community of West African States ("**Rules of Procedure of the Court**"), to submit an urgent request to the Court for assigning precautionary measures in order to preserve her rights under the African Charter on Human and Peoples' Rights (the "**Charter**") and international law, pending a decision on the merits of the main Communication request. This Request for assigning precautionary measures is made in light of, but is not limited to, the desire of the president of the Respondent to unilaterally remove the Applicant from her position as the Chief Justice of the Respondent, a distinct arm of Government and institution.

IV. PRIMA FACIE COMPETENCE OF THE COURT

9. *Prima facie* jurisdiction exists when (i) the respondent is a party to the Protocol, and (ii) the purpose of the request concerns rights whose protection is within the jurisdiction of the Court.
10. Therefore, the court is competent whenever the alleged violations concern human rights. Indeed, Article 9 (4) of the Additional Protocol stipulates that “[the] Court has jurisdiction to determine cases of human rights violations that occur in any Member State”. In addition, Article 10 of the same Protocol provides that individuals may consult the Court in order to obtain compensation for human rights violations, provided that the request is not anonymous and that the same case is not pending before another competent international court.
11. The Applicant claims that the present Request meets the requirements of Article 9 (4) and 10 (d) of the Additional Protocol. First of all, the Applicant considers that her human rights have been violated and, therefore, she relies on the jurisdiction of this Court to hear a case of a violation of her human rights by a Member State. Secondly, as mentioned above, the Applicant is a citizen of and resident in a member state. In addition to this, the Applicant has not resorted to any other international body of a judicial or quasi-judicial nature. The Court is the only body of this nature to which the Applicant has appealed.

V. ADMISSIBILITY

12. The admissibility of this Request for assigning precautionary measures is not impeded by any requirement regarding the exhaustion of internal domestic remedies. Furthermore, the admissibility test for a request for assigning precautionary measures is whether such a measure is “*necessary or desirable*”. As will be explained later, there is a situation of extreme gravity and urgency that justifies the adoption of precautionary measures to avoid irreparable damage to the Applicant, before the Court decides on the merits of the present Application.
13. In **BALDINI SALFO VS BURKINA FASO** Judgement no; ECW/CCJ/JUD/13/12. Suit no, ECW/CCJ/APP/14/10, this court ruled that;

“The main objective behind the making of an order when the court finds an occurrence of human rights violation is the cessation of the said violation and the institution of the reparation.”

VI. FACTS THAT SUPPORT THE REQUEST

14. The Applicant respectfully refers to the summary of facts set out in the Communication dated 30th June, 2025.

VII. RIGHTS THAT THE APPLICANT IS LOOKING TO PROTECT

15. Notwithstanding the totality of the rights that are part of the dispute with Ghana, this Request for assigning precautionary measures seeks above all, protection against the violation of the following human rights and freedoms: a) Violation of the Right to Fair Hearing, defence, and impartial tribunal: enshrined under Article 7 of the African Charter and Article 9 (1) and (2) of the International Covenant on Civil and Political Rights (“**ICCPR**”). b) Violation of the Right to Dignity and Protection from Arbitrary Measures: enshrined under Article 5 of the African Charter and Article 7 of the ICCPR, (c) (Article 4(g) & (j) of the ECOWAS Democracy and Good Governance Protocol: guarantee of judicial independence and security of tenure.
16. In His Excellency Vice-President Alhaji Samuel Sam-Sumana v. Republic of Sierra Leone.-SUIT NO: ECW/CCJ/APP/38/16 and JUD NO: ECW/CCJ/JUD/19/17, the Court held that: ***“Indeed allegations of violations of human rights by an Applicant is sufficient to invoke the***

jurisdiction of this Court. This is distinct from the issues of the veracity of the allegation(s)."

17. In **KARIM MEISSA WADE VS REPUBLIC OF SENEGAL ECW/CCJ/APP/09/13 (2013) CCJELR, Pg 231**, it was ruled that, ***"simply invoking human rights violation in a case suffice to establish the jurisdiction of the court over the case."***

VIII. RISK OF IMMINENT AND IRREPARABLE DAMAGE: *PERICULUM IN MORA*

18. As mentioned earlier, the Court will only issue a precautionary measure against a Member State when, after reviewing all relevant information, it considers that the Applicant is at real risk of suffering serious and irreversible damage, which makes protection necessary and / or desirable within the meaning and acceptance of Article 20 of the Protocol. This provision gives the Court the power to assign precautionary measures when irreparable damage may be caused to rights that are the subject of legal proceedings or when the alleged failure to respect such rights may have irreparable consequences. Extreme gravity presupposes the existence of a real and imminent risk that irreparable damage may occur before the Court makes its final decision on the merits of the case in question (*periculum in mora*, or danger in delay). Thus, the essential objective of precautionary measures is to preserve the rights of either party pending the Court's final decision, that is, *"that irreparable damage is not caused to rights that are the subject of litigation in court proceedings"*.

19. In **ALEX SAAB VS CAPE VERDE, Ruling ECW/RUL/ 07/2021**, this Community Court of justice held;

"The court considers that there is a situation of imminent damage which determines the urgent need to protect and secure even in part, the human rights relied on and which the Applicant is entitled to, until a decision is taken on the merits."

A. Imminent risk

20. Precautionary measures are necessary and advisable due to the temporal proximity of the risk that requires urgent action by the Court. As mentioned by Rosenne (in relation to the International Court of Justice), *"the urgency has become linked to the seriousness of the damage that is intended to be avoided through a precautionary measure. Only if the Court considers that the potential damage would be irreparable, will the urgency surface"*.
21. The Applicant finds herself in this situation. on 22nd April, 2025, the President issued a press release stating that a prima facie case had been established in respect of the three petitions against the Chief Justice with which she had not been confronted with her accuser nor afforded a fair hearing and despite lis pendens of injunction applications before the respondent's supreme court. The applicant further contends that a grave desecration of her constitutional rights to fair trial, dignity, and protection from inhuman and degrading treatment continued at the hearing of the committee.
22. In **JUSTICE JOSEPH WOWO AND THE REPUBLIC OF THE GAMBIA, SUIT NO: ECW/CCJ/APP/06/18 JUDGMENT NO. ECW/CCJ/JUD/09/19**, this court held;

The Court recalls its earlier affirmation that it considers the pre-trial stage (investigation) as an essential component of a criminal proceedings since the quality or otherwise of investigation is likely to affect the overall fairness of the trial. To this end, the Court holds that the Plaintiff was removed from office as Chief Justice of The Gambia and subsequently tried and convicted without proper investigation which compromised the due process required in the case of the Plaintiff.

B. Irreparable damage

As stated by the Permanent International Court of Justice in the case of the Sino-Belgian Treaty, the damage is irreparable if "*it cannot be repaired simply by paying compensation or restitution in any other material form*". That is, precautionary measures are necessary and advisable when an obvious and flagrant violation of the rights claimed on the merits of the case cannot be tolerated until a final judgment is issued. This is also the understanding of the HRC – Human Rights Commission, expressed in the case of Charles E. Stewart vs. Canada. According to this understanding, which applies *mutatis mutandis*, once the necessary changes have been made, to cases of this nature, the question to be answered by the Court is whether the Applicant can be returned as the Chief justice if she is removed and another person sworn in in her place, if the Court decides in her favour with regard to the substantive part of the case. The answer to this question is no. Once removed, the Complainant will not only cease to be addressed as the Chief Justice of the Respondent, that state of affairs would thus impose a *fait accompli* on the pending case before the Court and would thus render any favourable decision by the Court on the merits of the request meaningless and debatable. The damage that the Applicant faces is thus irreparable.

IX. PLAUSIBILITY OF ACTION ON THE MERIT OF THE CASE: *FUMUS BONI IURIS*

23. The Court's power to assign precautionary measures under Article 20 of the Protocol is intended to preserve the respective rights of the parties in a given case, pending its final decision. It follows from this that the Court must be concerned with the preservation, through such measures, of rights that may subsequently be established as belonging to either party. The rationale for such a rule is clear: when there is little evidence that the violation or claimed right would actually be confirmed by the Court at the merits stage, there would be no need to assign provisional measures. On the other hand, when action on the merits is plausible, precautionary measures should be assigned in the event of the risk of irreparable damage. The Applicant thus submits that, to the extent that the Court considers that it can only grant precautionary measures if it is convinced that the rights claimed by the party requesting such measures are at least plausible, her claim on the merits certainly meets this criterion, as will be demonstrated below.

A. Illegality of the President's interference with the judiciary, a distinct arm of government

24. **Chapter 8 - Article 57 of the Ghana's Constitution 1992 (as amended in 1996)** declares the President to be the head of the executive Government of Ghana, **Chapter 10 of the Constitution** establishes the Legislature as the legislative arm with the powers of enacting laws while Chapter 11 – Article 125 stipulates the judicial powers of Ghana and in **Article 127 of the Constitution**, *the Independence of the Judiciary of Ghana is entrenched.*

25. **Article 125 of the Constitution of Ghana provides general safe guards against arbitrary abuse of powers and undue interference by both the President and the Parliament against independent judicial powers as shown in this case-**

26. For the sake of clarity, **Article 125 provides** . (1) *Justice emanates from the people and shall be administered in the name of the Republic by the Judiciary which shall be independent and subject only to this Constitution.* (2) *Citizens may exercise popular participation in the*

administration of justice through the institutions of public and customary tribunals and the jury and assessor systems. (3) The judicial power of Ghana shall be vested in the Judiciary, accordingly, neither the President nor Parliament nor any organ or agency of the President or Parliament shall have or be given final judicial power. (4) The Chief Justice shall, subject to this Constitution, be the Head of the Judiciary and shall be responsible for the administration and supervision of the Judiciary.

27. Lord Phillips in a hearing on the Report of the Chief Justice of Gibraltar [2009] UKPC 43 stated at paragraph 1 stated that:

"The independence of the judiciary requires that a judge should never be removed without good cause and that the question of removal be determined by an appropriate independent and impartial tribunal. The principle applies with particular force where the judge in question is a Chief Justice."

28. No doubt the arbitrary and high-handed abuse exhibited by the President of the Respondent is one that ought to be immediately halted by this community court of justice pending the resolution of the final case.

29. The President's purported prima facie determination, as communicated in the letter to the Applicant dated 22nd April 2025, contained no reasons or justification for stating that a prima case has been established against her, and was entirely devoid of the elements of judicial or quasi-judicial reasoning expected under the Constitution. The Ghanaian Supreme Court had previously held in a case - **Justice Paul Uuter Dery v Tiger Eye Pl & 2 Others** [2015-2016] 2 SCGLR 812, that a prima facie determination of a petition against a judge, upon receipt of the responses by the judge, entails an assessment of the available evidence to ascertain whether the petition discloses serious issues that merit further investigation. Critically, this process constitutes a quasi-judicial act that must be anchored in due process and fairness. Fairness implies that the President in making the prima facie determination with the Council of State, must specify the particular charges in respect of which a prima facie case is deemed to have been established and the reasons for same. The President's letter failed to do this. It simply stated that a prima facie has been found against then Applicant without more. To date, the Applicant does not know the reasons for the President stating that a prima case has been established against her. Yet a committee has been formed and is working. The President's purported prima facie determination was no determination at all, as it failed to meet the standard of a judicious and objective assessment and, as such, was arbitrary and capricious.

30. Furthermore, the Applicant was not told the reasons for her suspension. The President's letter of 22nd April, 2025, in addition to stating that a prima facie case has been found against the Applicant and therefore a committee would be set up to inquire into the matter, proceeded to suspend the Applicant. No reasons were given for the suspension. The imposition of suspension is punishment since the Applicant has to date, been relieved of her functions as Chief Justice. The President's letter however, contained no reasons for suspending the Applicant.

31. Compounding the illegality is the composition of the committee that was set up by the President to inquire into the purported petitions against the Applicant. Justice Gabriel Scott Pwamang, who was named as the Chairperson, is disqualified from serving on the committee, having previously adjudicated on cases affecting two of the petitioners, Mr. Daniel Ofori and Ayamga Akulgo, in the Supreme Court, and those matters were the subject of some of the allegations in two of the petitions against the Applicant. Justice Gabriel Pwamang had in fact rendered decisions in a case involving Daniel Ofori as part of a panel of which the Applicant was also a member. Similarly, Justice Samuel Kwame Adibu-Asiedu had earlier sat on a panel of the Supreme Court that heard

an application in a suit challenging the very proceedings now being pursued under Article 146. His participation undermines the principle of judicial impartiality and independence.

32. The Applicant submits that Article 146(11) of Ghana's Constitution makes room for the President to revoke a suspension imposed on a Chief Justice or a judge. However, the President will not revoke the suspension unless compelled by this Honourable Court. The Applicant thus prays the Court to grant the interim measure of requiring the President to revoke the suspension, room for which is already made by the Respondent's Constitution.

X. JUDICIAL PROTECTION REQUESTED

33. In view of the above, the Applicant respectfully requests the Court, pending its decision on the merits, to assign the following precautionary measures:

- (a) That the Republic of Ghana suspend the disciplinary/ removal from office as Chief Justice process against the Applicant, pending the hearing and determination of the complaint on the merit;
- (b) That Ghana ensures that the Applicant continues to enjoy the paraphernalia and entitlements of her office as the Chief Justice of Ghana pending the hearing and determination of the case;
- (c) That Ghana refrains from taking any other measures that may harm the rights claimed by the Applicant and / or aggravate or extend the dispute submitted to the Court, or compromise the implementation of any decision that the Court may render.

34. Given the urgency of the situation, the Applicant respectfully requests the Court to hold a hearing on this request as soon as possible, and that the President of the Court ask Ghana to act in order to allow any order that the Court may issue on the Request for Assignment of Precautionary Measures has its appropriate effect.

DATED THIS 30TH DAY OF JUNE, 2025



**FEMI FALANA, SAN
FUNMI FALANA, MRS,
MARSHAL ABUBAKAR, ESQ
APPLICANT'S COUNSEL**
22, MEDITERRANEAN STREET,
IMANI ESTATE, MAITAMA,
ABUJA.
08136570994
falanahumanright@gmail.com

FOR SERVICE ON:
THE RESPONDENT
C/O THE MINISTER OF JUSTICE
AND ATTORNEY GENERAL OF GHANA
MINISTRY OF JUSTICE
ACCRA GHANA