

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
(HUMAN RIGHTS DIVISION)**

AD 2016

SUIT NO HR/.....

B E T W E E N

INTERNATIONAL STANDARDS)
JOURNALISTS ASSOCIATION) Plaintiffs
Represented by NANA OPPONG)
(of 10 Bamako Road, Accra))

and

ELECTORAL COMMISSION) Defendant
(8th Avenue, Ridge, Accra))

STATEMENT OF CLAIM

1. The International Standards Journalists Association (ISJA) is a highly reputable organization of a significant number of Ghanaian professional journalists dedicated to the highest levels of journalism. ISJA Membership consists of hundreds of Ghanaian journalists of diverse backgrounds across the nation without regards to tribe, gender, political affiliation, or religion. The ISJA members come from every form of media with the main objective of creating a brotherhood of learned and ethical professional journalists dedicated to honest service of their beloved country, Ghana. ISJA members adhere to the highest ethics of journalism and endeavor to harm no one with their craft. The ISJA members are concerned citizens desirous of ensuring that the Electoral Commission carries out its duties lawfully towards a peaceful, orderly and a successful election in 2016.

2. Nana Oppong is the President of ISJA and he has been authorized by the ISJA to bring this action for an on behalf of its members and on behalf of all concerned Ghanaian journalists whose sole interest is to ensure that the Electoral Commission does not breach their Fundamental Human Rights in the carrying out of its electoral duties pursuant to the 1992 Constitution of the Republic of Ghana.

3. The Electoral Commission is the sole institution charged under article 45 of the 1992 Constitution with the duty to conduct and supervise all public elections and referenda. On October 31st, 2016 the Commission issued a written statement entitled “Media Accreditation-Observation of Election, 2016” signed by the Commission’s Head of Communications, Eric Dzakpasu. In that statement, the Electoral Commission stated that Ghanaian journalists who wished to have access to the Commission in order to cover the 2016 Presidential and Parliamentary elections could do so only if they were issued an accreditation tag by the Commission which said tag the Commission stated, would be issued only to those who “have paid a fee” to the Commission.
4. The effect of the aforementioned statement of the Commission is that the Commission has made the issuing of accreditation tag to journalists conditional upon the payment of a fee GHC 10 per person and that otherwise qualified journalists who wish to have access to the Commission during the election in order to properly and fully observe and to report on the elections cannot do so; will not be allowed to do so unless they pay the Commission’s “gate fee” of GHC 10.
5. In response to the Commission’s financial demand as aforementioned, the ISJA wrote a friendly letter to the Electoral Commission on November 4, 2016 respectfully asking the Commission to amend its decision concerning the payment of money as the condition for accreditation of an otherwise qualified journalist.
6. In its letter to the Commission, the ISJA explained among other things that there were qualified and professional Ghanaian journalists who could not afford to make any payment for the accreditation tag but who wished to cover the elections. In view of the fact that time is of the essence with the approaching election, the ISJA gave the Commission a week to respond. The week has come. Till date, the Commission has refused or failed to respond to change its decision and has failed or refused to respond to the ISJA’s request for dialogue on the matter.
7. Every member of the ISJA states that the Commission’s demand for payment of money as a condition for the issuing of an accreditation tag is a breach of his or her Fundamental Human Rights as guaranteed by the 1992 Constitution and they bring this action before the honorable Court for the decision of the Electoral Commission to be declared a nullity and to be quashed.

8. The decision of the Commission offends and breaches many articles of the 1992 Constitution stated following:

Article 42 – The Right To Vote & Article 21 –The Right To Information

Article 42: “Every citizen of Ghana of eighteen years of age or above and of sound mind has the right to vote and is entitled to be registered as a voter for the purposes of public elections and referenda.

9. The right to vote is meaningless unless every vote is counted equally and correctly added to the tally resulting in the correct declaration of final results. Thumb-printing does not end the right to vote. The right to vote ends only when the results have been declared by the Commission and every proper court challenge, if any, has been decided by the Supreme Court.
10. The right to vote includes the right to know whether the Electoral Commission has acted properly throughout, at all material times. This right to transparency of election management is not the preserve of political parties or candidates only but it is a right of every voter in Ghana.
11. Every citizen who votes is entitled to supervise the Electoral Commission in order to ensure transparency, credibility, legitimacy, legality and correctness of election processes and outcomes. That right cannot be exercised by every citizen because of illiteracy, old age, sickness, the inconvenience of the greatest majority and the sheer volume of numbers as compared to the limited spaces available at the Commission.
12. Therefore, the right of access to the Electoral Commission in order to know “what’s up” is properly assumed by the many Ghanaian journalists who are themselves voters. Without full and unhindered access to the Electoral Commission during the election, the citizenry cannot be said to have evidence of free, fair and correct election reflecting the will of the people.

13. This right of access to the Commission in order to know what it is doing and to know whether it is acting in accordance with law is further guaranteed by Article 21 (1) (f) of the Constitution which states that: “All persons shall have the right to- information, subject to such qualifications and laws as are necessary in a democratic society;”
14. The right to information clearly includes the right of access to the Commission at all material times -not in order to be given hearsay information as to what the Commission did or did not do- but in order to be able to observe facts for oneself.
15. The securing of real-time access to the Commission in order to obtain clear, live and complete information about the election process being a constitutional right cannot be curtailed by the Commission’s position that they would give access to only those who pay for it. The enjoyment of a fundamental human right cannot be conditional upon the payment of money to a person who has a duty to cooperate with the beneficiary of that right.
16. The demand for money is also a breach of article 54 of the Constitution stated below.

Article 54 – Charge Expenses To Consolidated Fund

“The administrative expenses of the Electoral Commission including salaries, allowances and pensions payable to, or in respect of persons serving with the Commission, shall be charged on the Consolidated Fund.”

17. The ordinary meaning of administrative expenses are that they are part of the operating expenses of the Commission. Such expenses include costs of the general administration of the election. The costs of issuing accreditation tags to each journalist for the administrative purpose of identifying and allocating access to each journalist for a secure and orderly reporting of election events, are necessarily part of the administrative expenses of the Commission.

18. The fact is that what journalists do on election day is part of the election mandate. This is captured by the Public Elections Regulations 2016. Section 23. (1) of the Regulations reads as follows.

“A voter may apply to the returning officer of the constituency in which the voter is registered to be entered as a special voter if as a result *of election duties* the voter will not be able to be present at the polling station where the voter is registered on the day of election” (emphasis added).

19. Under section 49 (1) the Interpretation section of the same Regulations we read the following.

“In these Regulations, unless the context otherwise requires, “special voter” means a person registered as a voter who is (a) a security officer, (b) an election officer; or (c) *a media personnel* accredited by the National Media Commission;” (emphasis added)

20. These two sections of the Regulations make it clear that media personnel carry out election duties on election day. Expenses covering the tags for the accreditation of those who carry out election duties are therefore properly administrative expenses chargeable to the Consolidated Fund.

21. Pursuant to article 54 therefore, the Commission is mandated to (“shall”) charge such administrative expenses to the Consolidated Fund but not to the poor journalist. The demand for money from journalists for tags therefore, constitutes a breach of article 54. Thus, the Commission had a constitutional duty at all material times to include the costs of the tags in its budget to the Government for approval. If it did not, its negligence cannot justifiably be charged upon journalists.

22. Further breach of the fundamental rights of the Ghanaian journalist by the Commission is proved by article 17 of the Constitution reproduced here.

Article 17 – The Right To Equal Treatment & No Discrimination

(1) All persons shall be equal before the law

(2) A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.

(3) For the purposes of this article, “discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by race, place of

origin, political opinions, colour, gender, occupation, religion or creed, whereby persons of one description are subjected to disabilities or restrictions to which persons of another description which are not granted of persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description.”

23. The ISJA state that the decision of the Commission to demand money from them as a condition for the issuing of accreditation tag constitutes unconstitutional discrimination against each journalist on the basis of his status as a Ghanaian journalist.

24. The ISJA state that non-Ghanaian journalists approved by the Commission to cover the 2016 elections have not been asked by the Commission to pay money to the Commission as a condition for the issuing of accreditation tags.

25. Also, the decision of the Commission offends the right of the Ghanaian journalist to be treated fairly by the Commission. Article 23 of the Constitution reads as follows.

Article 23 – The Right To be Treated Fairly

23 “Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal.”

26. This right to fairness treatment is further repeated in article 296 of the Constitution as follows.

Article 296

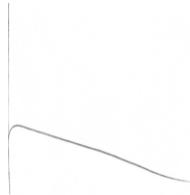
“Where in this Constitution or in any other law discretionary power is vested in any person or authority –

- (a) that discretionary power shall be deemed to imply a duty to be fair and candid;
- (b) the exercise of the discretionary power shall not be arbitrary, capricious or biased wither by resentment, prejudice or personal dislike and shall be in accordance with due process of law; and
- (c) where the person or authority is not a judge or other judicial officer, there shall be published by constitutional instrument or statutory instrument, regulations that are not inconsistent with the provisions of this Constitution or that other law to govern the exercise of the discretionary power.

27. Pursuant to article 296 therefore, the Commission has a duty to publish in the public election regulations, criteria concerning the exercise of its discretion to charge journalists for accreditation tags. The public election regulations of 2016 are characteristically silent on that matter in a clear breach of article 296.
28. The ISJA members state that the foregoing is further evidence of the unfairness and unreasonableness of the Commission's demand for payment for the so-called accreditation tags.
29. On the merit, there are some otherwise qualified ISJA members who are poor and who cannot afford to pay any money for the accreditation tags as demanded by the Commission. Yet, these journalists are qualified professionals who wish to carry out their election duties faithfully and solemnly to ensure a free, fair and peaceful election. Many of these journalists represent constituents that are illiterate, marginalized or incapable of speaking English, the official language of the Electoral Commission. Their presence is therefore critical for the exercise of the democratic rights of many Ghanaians.
30. The Commission has a duty at all material times to consider the financial distress of such journalists and the critical roles they play in ensuring full democratic participation of the every citizen from every group in the election. The Commission has a duty to accommodate the poor journalist by either granting him an exemption from payment or by allowing for some other alternative system of identification or "accreditation" that did not require payment of money.
31. By making its decision without an exemption clause or by failing or refusing to consider the request for exemption from the payment by poor Ghanaian journalists therefore, the Electoral Commission has acted unfairly and unreasonably towards the poor journalist. Simply put, what the Electoral Commission has done is wrong.
32. WHEREFORE, the Plaintiffs claim against the Electoral Commission as follows:

- a. A declaration that the Electoral Commission has breached the Fundamental Human Rights of Ghanaian journalists including ISJA members by demanding financial payment as a condition for the issuing of accreditation tag to each journalist to cover the 2016 elections
- b. An order compelling the Electoral Commission to issue accreditation tags forthwith to qualified Ghanaian journalists without demanding any financial payment from any of them to cover the 2016 elections
- c. An order compelling the Electoral Commission to refund any moneys paid by every journalist for the accreditation tags
- d. An order prohibiting the Electoral Commission from demanding any money from any Ghanaian journalist as a condition for the issuing of accreditation tags for any election in Ghana.
- e. Costs.
- f. Such further or other reliefs as the Honorable Court may seem fit to grant.

Dated At Dzorwulu, Accra this 12th DAY OF November 2016



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THE REGISTRAR
HIGH COURT (HUMAN RIGHTS DIVISION)
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AND FOR SERVICE ON: The Legal Department of the Electoral Commission, Ridge
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