

Review of the Supreme Court's Ruling to halt the Ruling of the Speaker of Parliament: Does it amount to an unconstitutional usurpation of Parliamentary Powers by the Supreme Court of Ghana?

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1.0 Introduction

The separation of powers is a fundamental doctrine embedded in democratic governance. The 1992 Constitution of Ghana embodies this principle in its provisions, allocating powers to the Executive, Legislature, and Judiciary. This doctrine ensures that no arm of government usurps the powers of another, maintaining a system of checks and balances crucial to the functioning of democracy. However, the recent decision by the Supreme Court of Ghana dated the 18th of October, 2024, to grant an ex-parte application, suspending the ruling of the Speaker of Parliament on the vacation of four parliamentary seats under Article 97(1)(g) and (h) of the 1992 Constitution of Ghana, has raised fundamental constitutional questions about the separation of powers and the independence of the legislative arm of government. This legal writeup argues that the Supreme Court has unconstitutionally usurped the powers of Parliament, and the Speaker may not be bound to comply with the Court's decision. Furthermore, the ruling risks igniting a conflict between the Parliament of Ghana and the Supreme Court, as both branches of government could potentially accuse each other of contempt in their efforts to uphold the constitutional principle of separation of powers. This could lead to a judicial-legislative standoff, undermining the harmonious functioning of the two arms of government notwithstanding the doctrine of constitutional supremacy.

2.0 Constitutional Framework: Separation of Powers

The 1992 Constitution of Ghana, under Article 93(2), vests legislative authority solely in Parliament. It provides that *"the legislative power of Ghana shall be vested in Parliament and shall be exercised in accordance with the provisions of this Constitution."* Parliament, therefore, has full authority to regulate its internal proceedings and procedures, as stipulated in **Article 110**, which grants Parliament the authority to adopt its Standing Orders to govern its internal functions including determining matters related to the qualification and disqualification of its members, as outlined in Article 97. The Constitution explicitly emphasizes the autonomy of each arm of government, ensuring that neither the Judiciary nor the Executive can interfere with the proper functioning of Parliament. Article 97(1) (g) and (h) of the Constitution grant the Speaker of Parliament the authority to declare a seat vacant in the following terms of the Constitution:

"(g) if he leaves the party of which he was a member at the time of his election to Parliament to join another party or seeks to remain in Parliament as an independent member; or

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(h) if he was elected a member of Parliament as an independent candidate and joins a political party.”

The exercise of this power by the Speaker pursuant to the above constitutional provisions is an internal parliamentary procedure, and such decisions fall within the exclusive jurisdiction of Parliament as the representative of the people.

The Judiciary is vested with powers to interpret the law and adjudicate matters brought before it under **Article 125** of the Constitution. However, this power does not extend to encroaching upon the internal workings of Parliament or invalidating actions that are constitutionally within Parliament’s jurisdiction. The Speaker of Parliament’s declaration of seats as vacant, pursuant to Article 97(1) of the Constitution, can only be challenged through constitutional litigation that necessitates substantive constitutional interpretation (hearings) and comprehensive legal arguments from all parties. Such parliamentary rulings/decisions cannot be halted by the mere grant of an *ex parte* application, as such matters are considered to be “closed book” parliamentary transactions. Additionally, the Standing Orders of Parliament, which derive their authority from Article 110 of the Constitution, empower Parliament to regulate its own procedures. The Speaker’s declaration of a seat as vacant is a function that operates within this regulatory framework, and no other organ of government, including the judiciary, has the constitutional authority to intervene in such matters.

3.0 The Role of the Supreme Court: Overstepping Constitutional Bounds

The Supreme Court, while entrusted with the judicial power of interpreting the law under **Article 125**, does not have the mandate to interfere with the autonomy of Parliament. The decision of the Supreme Court to halt the ruling of the Speaker of Parliament on the basis of an *ex parte* application from Members of Parliament or other persons raises serious constitutional concerns, particularly regarding the judiciary’s intrusion into matters reserved for Parliament under the Constitution. The Constitution of Ghana clearly delineates the separation of powers between the Executive, the Legislature, and the Judiciary. Article 125(1) of the Constitution states that “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.” While this grants the judiciary independence in administering justice, it does not empower the judiciary to encroach on the internal matters of Parliament.

Traditionally, the Supreme Court of Ghana recognized that Parliament is a sovereign institution with autonomy in the performance of its legislative functions. Any judicial intervention in the internal workings of Parliament would undermine the separation of powers enshrined in the Constitution. In *Tuffour v. Attorney-General*², the Supreme Court underscored the need to respect the boundaries of the different arms of government, cautioning against judicial overreach into legislative affairs.

² *Tuffour v. Attorney-General* [1980] GLR 637.

Given this, the Supreme Court's ex-parte decision to suspend the Speaker's ruling on the vacant seats without notice to the other parties involved violates the very essence of natural justice and procedural fairness. More importantly, it encroaches on the exclusive authority of Parliament to regulate its membership, thereby contravening the doctrine of separation of powers. It is also trite notice that the Supreme Court's ruling undermines the legislative function of Parliament by attempting to negate the constitutional power vested in the Speaker to declare seats vacant under **Article 97**. This overreach represents a violation of the separation of powers principle, which ensures that the three arms of government operate independently within their constitutionally prescribed roles. The Supreme Court's decision contradicts **Article 122**, which emphasizes that acts or omissions amounting to interference with parliamentary proceedings can be treated as contempt of Parliament.

4.0 Parliamentary Autonomy: Are the Speaker's Rulings Constitutionally Protected?

The Speaker of Parliament's decision to declare the seats of the MPs vacant is a lawful exercise of power derived from both the 1992 Constitution and the Standing Orders of Parliament. The Speaker's authority to declare seats vacant under **Article 97** is not subject to judicial review, especially since it pertains to parliamentary discipline and internal governance. The Judiciary has no constitutional basis to question the Speaker's ruling, as it concerns a parliamentary procedure over which Parliament has exclusive jurisdiction.

Parliament's independence is further emphasized in **Article 118** of the Constitution, which prohibits the attendance of the Speaker, a Member of Parliament, or an officer of Parliament before any court unless certified in writing by the Speaker. This provision reinforces the idea that Parliament's internal matters are beyond the purview of the courts, except where Parliament explicitly consents. In the case of *New Patriotic Party v. Inspector General of Police*³, the Supreme Court itself affirmed the importance of the separation of powers and Parliament's independence. The Court ruled that it could not intervene in the internal workings of Parliament unless there was a clear violation of constitutional provisions. The present ruling, therefore, appears inconsistent with established constitutional jurisprudence.

Article 115 of the 1992 Constitution of Ghana provides that: *"There shall be freedom of speech, debate, and proceedings in Parliament and that freedom shall not be impeached or questioned in any court or place out of Parliament."* This provision, often referred to as parliamentary privilege, ensures that the actions and decisions of Parliament and its Speaker are immune from judicial review or intervention. Parliamentary privilege is a cornerstone of legislative independence, protecting Parliament from interference by the other arms of government. In *Bradlaugh v Gossett*⁴, a case that laid the foundation for modern parliamentary privilege, the Court of Appeal held that courts have no jurisdiction to interfere with the internal workings of Parliament, including its decisions on the qualification or disqualification of its

³ *New Patriotic Party v. Inspector General of Police* [1993-94] 2 GLR 459

⁴ *Bradlaugh v Gossett* (1884) 12 QBD 271

members. The principle was reaffirmed in *Pepper v Hart*⁵, where it was reiterated that the courts cannot inquire into the internal proceedings of Parliament.

Applying these principles to the current situation in Ghana, it is clear that the Supreme Court's suspension of the Speaker's ruling constitutes an unconstitutional breach of parliamentary privilege. The Speaker of Parliament, in exercising his powers under Article 97, was acting within his constitutional mandate, and the judiciary has no authority to question or suspend such decisions.

5.0 Contempt of Court vs. Contempt of Parliament: A Constitutional Crisis

Should the Speaker of Parliament be cited for contempt of court for failing to comply with the Supreme Court's decision? This would represent a significant constitutional crisis. Under **Article 122** of the Constitution, acts that obstruct or impede the work of Parliament or undermine its authority can be considered contempt of Parliament. Parliament has the power to punish contemptuous acts, including interference with its proceedings or decisions. So, if the Speaker of Parliament is cited for contempt by the Supreme Court for failing to comply with its ruling, the Speaker is well within his rights to resist such action by invoking Parliament's powers under Article 122, which states that:

"An act or omission which obstructs or impedes Parliament in the performance of its functions, or which obstructs or impedes a member or officer of Parliament in the discharge of his duties or affronts the dignity of Parliament, or which tends either directly or indirectly to produce that result, is contempt of Parliament."

The Speaker of Parliament, as the head of the legislative body, can therefore invoke contempt proceedings against the Chief Justice or any other member of the judiciary for actions that impede the autonomy and functioning of Parliament. Parliament's power to punish for contempt is as strong as the judiciary's contempt powers, and the Constitution does not subordinate one to the other. This balance of powers must be maintained to prevent the undue subjugation of one arm of government to another.

5.0 Conclusion: Can the Supreme Court's Ruling Be Disregarded?

The Supreme Court's decision to suspend the Speaker's declaration of vacant seats represents an unconstitutional overreach into the jurisdiction of Parliament. The Speaker's actions are grounded in the Constitution, particularly under **Article 97** and the Standing Orders of Parliament. The autonomy of Parliament is protected under the principle of separation of powers, which prohibits judicial interference in the legislative process. Any attempt to hold the Speaker in contempt of court may be met with a reciprocal action from Parliament, citing the Chief Justice for contempt of Parliament under **Article 122**. The Speaker of Parliament is under no constitutional obligation to comply with the Supreme Court's ruling in this matter. Parliament, as the sole authority over its internal proceedings, must assert its independence to safeguard the separation of powers⁶

⁵ *Pepper v Hart* [1993] AC 593

⁶ *Constitution of the Republic of Ghana (1992)*, Articles 93(2), 97(1)(g)(h), 110, 115, 125(1), 122.