IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA-AD 2026

SUIT NO.: J1/6/2025

BETWEEN

SHAFIC OSMAN,
LIBYA QUARTERS,
MADINA, ACCRA.

AND

1. **BOARD OF GOVERNORS,**
   WESLEY GIRLS SENIOR HIGH SCHOOL,
   KAKUMDO, CAPE COAST.

2. **GHANA EDUCATION SERVICE,**
   MINISTRIES, ACCRA.

3. **THE ATTORNEY GENERAL,**
   THE LAW HOUSE, ACCRA.

AFFIDAVIT OF BISHOP JOSEPH KWAKU AFRIFAH-AGYEKUM IN VERIFICATION OF FACTS AND DOCUMENTS TO BE RELIED UPON IN THE AMICUS CURIAE BRIEF FILED FOR AND ON BEHALF OF THE NATIONAL CATHOLIC SECRETARIAT [THE CHURCH].
RULE 48 2(a) OF C.I 16.

I, MOST REV. JOSEPH KWAKU AFRIFAH-AGYEKUM, resident of House Number EN-037-0304, Nyamekrom, Koforidua, in the Eastern Region of the Republic of Ghana, do hereby make oath and say that:

1. I am the Bishop of the Catholic Diocese of Koforidua in the Eastern Region of the Republic of Ghana and the deponent herein.

2. I am the Episcopal Bishop of the Ghana Catholic Bishops Conference responsible for education.

3. I therefore have the consent and authority of the National Catholic Secretariat [the Church] to represent it [the Church] in all matters relating to education especially in Catholic Schools in Ghana.

4. The amicus curiae brief was filed on behalf of the Church based on my instructions and unless otherwise deposed to, are within my personal knowledge, information and honest belief.

5. I acquired knowledge of the facts contained in the amicus curiae brief by virtue of position in the Church as the Episcopal Bishop responsible for education in the Church and after having conference with the lawyers instructed to conduct this matter on behalf of the Church.

6. To the extent that any facts stated in the said statement of case suggest, imply, raise or hint at matters of law, such facts result from advice I have received from the Church's lawyers after conferencing with them, which advice I verily believe to be true.

7. I am advised by the Church's lawyers and verily believe that my present affidavit is required to verify the facts and document relied upon in the amicus curiae brief.

8. I hereby depose to my instant affidavit verifying the facts contained in the statement of case filed for and on behalf of the Church.

9. The only document referred to in the amicus curiae brief is the Memorandum of Understanding to Guide Religious Tolerance in Schools, Agreed and Adopted by the Government Assisted and Private Mission Schools validated on April 15 2024 which is marked **CS**.

WHEREFORE I depose to this affidavit in good faith.

SWORN IN ACCRA
THIS 27th DAY OF
FEBRUARY 2026.

+ Joseph Afua Kafoyelem
DEPONENT

BEFORE ME

JUSTINA CLOTTEY
COMMISSIONER FOR OATHS
P.O. BOX AC 33, ARTS CENTRE, ACCRA

COMMISSIONER FOR OATHS

THE REGISTRAR,
SUPREME COURT,
ACCRA.

AND FOR SERVICE ON:

1. SHAFIC OSMAN,
   LIBYA QUARTERS,
   MADINA, ACCRA.

2. BOARD OF GOVERNORS,
   WESLEY GIRLS SENIOR HIGH SCHOOL,
   KAKUMDO, CAPE COAST.

3. GHANA EDUCATION SERVICE,
   MINISTRIES, ACCRA.

4. THE ATTORNEY GENERAL,
   THE LAW HOUSE, ACCRA.

IN THE SUPERIOR COURT OF JUDICATURE,
IN THE SUPREME COURT OF GHANA,
ACCRA-AD 2026.

SUIT NO.: J1/6/2025.

BETWEEN

SHAFIC OSMAN,
LIBYA QUARTERS,
MADINA, ACCRA. ... **PLAINTIFF.**

AND

1. **BOARD OF GOVERNORS,**
   WESLEY GIRLS SENIOR HIGH SCHOOL,
   KAKUMDO, CAPE COAST.

2. **GHANA EDUCATION SERVICE,**
   MINISTRIES, ACCRA.

3. **THE ATTORNEY GENERAL,**
   THE LAW HOUSE, ACCRA. ... **DEFENDANTS.**

AMICUS CURIAE BRIEF FILED FOR AND ON BEHALF OF THE NATIONAL CATHOLIC SECRETARIAT.

I. THE BRIEF.

1. The instant brief is filed for and on behalf of the National Catholic Secretariat [the Catholic Church]. It is registered under the Trustees incorporation Act, 1960 (Act 106). A copy of the certificate of incorporation is exhibited and marked **CC1**.

2. At the hearing of the suit before the Court, the Catholic Church shall crave the indulgence of the Court to adopt the present statement of case as an *amicus curiae* brief.

3. In making this submission, we are not oblivious of the fact that in our jurisprudence, *amicus curiae* briefs have been entertained in two main instances. First, where a person applies to join a case before the Court and the Court refuses the application for joinder but permits the person to contribute to the proceedings by assisting the Court with an *amicus curiae brief.*[1]

[1] See the cases of *Tsatsu Tsikata v The Republic* [2007-2008] 2 SCGLR @ 702 at pages 718-719 per Brobbey JSC and *Ransford France (No. 2) v Electoral Commission & Attorney-General (Arcmann-Ackummey-Applicant)* [2012] 1 SCGLR 697 in which Ansah JSC sitting as a single Justice of the Court disallowed an application for joinder but permitted the applicant to appear in court with an amicus curiae brief. See also the case of *Ransford France (No. 3) v Electoral Commission & Attorney-General* [2012] 1 SCGLR 705 where Dr. Date-Bah JSC observed at page 713 that the single Justice had permitted the amicus to file the brief but

4. The second instance is where the person prays the court for leave to assist the Court by filing an *amicus curiae* brief and the Court grants leave.[2]

5. The procedure currently adopted by the Catholic Church although not *in tandem* with the two procedures discussed, can be accommodated within the rules of practice and procedure.

6. In terms of the submissions made in paragraph 5 herein, the Catholic Church thinks it a better way of assisting the Court to achieve its overriding duty of achieving speedy justice and avoiding costly proceedings to file the *amicus curiae* brief and at the hearing pray the court to adopt the brief.

7. The reason for the submission just made is that, in this way, it avoids the tedium and cost of having to first file an application for joinder or leave to file an *amicus curiae* brief which will be fixed for hearing at a future date, after which the Court will then decide whether to join the Catholic Church or not or in the case of an application for leave to file the brief or not, then this is filed later. It is our belief that this a delay is avoided where as in this case, the brief is filed and the Court's leave is sought to adopt it. In that case, there will no future date required to file the amicus curiae brief whether the Court adopts the brief or not.

8. The submission just made is supported by the fact that the primary purpose of a brief of the kind before the Court is to have the Court permit counsel who does not represent a party to the proceedings before the Court to address the Court as a friend of the Court. This liberty which the Court grants a lawyer to address it [the Court] in this manner has been held to be a well-known procedure in Ghana law.[3]this purpose is not affected by accepting the procedure.

9. It is for the above reason that the Catholic Church has decided to ask the Court's leave to adopt the statement of case filed. This has been done based on our thinking that it accords with progressive attitude of the courts these days to apply the principles and rules of practice and

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surprisingly noted at page 718 that the amicus curiae brief was filed without leave of the Court.

[2] This is the effect of cases like *Tsatsu Tsikata v The Republic* [2007-2008] 2 SCGLR 702 per Atuguba JSC at page 710 *Ransford France (No. 3) v Electoral Commission & Attorney-General* [2012] 1 SCGLR 705 See also Dr. Date-Bah JSC observed at page 718 that leave was required to file an *amicus curiae* brief which he earlier noted at page 713 that the single Justice had granted.

[3] See the case of *Tsatsu Tsikata v The Republic* [2007-2008] 2 SCGLR @ 702 at per 710 referring to the case of Ghana. *In Republic v Cape Coast Circuit Court Registrar; Ex parte Arthur* [1980] GLR 165, CA.

procedure in such a manner as to ensure speedy justice, avoid delays and minimize costs.[4]

II. THE STATEMENT OF CASE.

11. In this statement of case, we will demonstrate that:

i. The suit before the Court is merely contrived to avoid the capacity/*locus standi* requirements necessary to enforce the fundamental human rights provisions of the 1992 Constitution.

ii. The fundamental human rights provisions of the Constitution sought to be enforced are not absolute and are subject to the rights of the religious institutions which have established the institutions in which other persons who do not subscribe to their faith insist on practicing their own faith.

iii. The enforcement of the fundamental human rights provisions of the Constitution the subject of the suit before the Court will inevitably result in the violation of the fundamental human rights of the religious institutions which, in the exercise of their fundamental rights to religious freedom and association have established and nurtured institutions where they can freely enjoy such rights.

iv. there is a further violation of the fundamental human rights of the religious institutions which in the exercise of their fundamental rights to acquire and enjoy their property, have acquired landed property on which they have invested to promote their right to religious freedom and association to insist that a person who has voluntarily associated with such a religious institution be allowed to practice their own faith in the space acquired by the religious institution.

v. since the fundamental human rights provisions the subject of the suit before the Court are not absolute, they are deemed waived by any person who with full knowledge of the requirements of a faith-based institution voluntarily opts to attend the institution especially that they have the option of attending other public institutions with a liberal attitude towards matters of faith matters or which subscribe to their own faith.

10. Two main observations are obvious from an examination of the reliefs claimed in this suit. First the constitutional provisions on which the

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[4] See order 1 rule 1(2) of the rules of the High Court, The Court has held that it will apply the rules of the High Court where there is *amicus curiae* in its own Rules.

suit is mounted are articles, 12, 17(1) and (2), 21(1)(b) and (c), 26, 33(5) and 56 of the 1992 Constitution [the Constitution].

11. It is submitted right from the outset that with the exception of article 56 of the Constitution, all the other provisions the Plaintiff has relied on to prosecute the instant suit are provided for in Chapter 5 [the human rights provisions] of the 1992 Constitution. The Plaintiff prays the Court to declare that certain policies implemented by the institution [Wesley Girls High School] governed by the institution's board of directors [the first Defendant] violate articles 12,17(1) and (2), 21(1)(b), (c), (e) and 26 of the 1992 Constitution and International Human Rights cognisable under Article 33(5) of the Constitution of Ghana, 1992. These policies are the:

    i. prohibition of,

        a. Islamic beliefs, practices and observance of Islam by Muslim students on the institution's campus.

        b. Muslim students from exercising their religious rights.

    ii. compulsion of students to practice,

        a. a compulsory school religion.

        b. Methodism, and

    iii. imposition of limitations on Muslim students.

12. There is therefore no doubt whatsoever in the Plaintiff's mind about the meaning and effect of the constitutional provisions on which the suit before the Court is based. For the Plaintiff, there is clarity and certainty that the institution:

    i. prohibits,

        a. Islamic beliefs, practices and observance of Islam by Muslim students on the institution's campus.

        b. Muslim students from exercising their religious rights.

    ii. compels of students to practice,

        a. a compulsory school religion.

        b. Methodism, and

iii. imposes of limitations on Muslim students.

13. It is accordingly submitted that the Plaintiff is certain that the acts listed in paragraphs 3 and 4 above which are engaged in by the first Defendant as stated in the Plaintiff's first relief, are

> "... contrary to and inconsistent with articles 12,17(1) and (2), 21(1)(b), (c), (e) and 26 of the 1992 Constitution and International Human Rights cognisable under Article 33(5) of the Constitution of Ghana, 1992."

14. It is the reason for which the Plaintiff seeks no assistance from the Court to put the meaning of the constitutional provisions at the centre of the dispute into any context or give it any colour or meaning. The provisions are clear and unambiguous.

III. OBJECTION TO THE SUIT.

15. It is submitted that the Catholic Church acknowledges the Court's exclusive original jurisdiction to interpret and enforce constitutional provisions by declaring such provisions striking them down as unconstitutional.

16. It is, however submitted that the law as laid down by the Court is that the Court's exclusive original jurisdiction to interpret and declare acts unconstitutional acts that are in consistent with, and in contravention of the Constitution in order to enforce the Constitution is not properly invoked when the real purpose of the action is to enforce a fundamental human right.

17. In the review decision of the Court in the case of *Edusei v. Attorney-General*[5] Bamford Addo JSC made the following observation:

> "In the circumstances of this case it is clear that the question of interpretation is not called for. The second relief of the plaintiff which supports this view (as stated earlier) is a request for an order that the plaintiff is entitled to a passport, even though he had not applied for one nor had been refused one. It is evident that he is in effect seeking an enforcement of his fundamental human right of freedom of movement, hence his request for a passport."[6]

18. The Plaintiff's instant suit is similarly circumstanced as Mr. Abel Edusei in the case just cited. The exclusive original jurisdiction of the Court provided for in article 130(1) of the Constitution is plain. The enforcement of the fundamental human rights and freedoms guaranteed by the Constitution falls in the jurisdiction of the High

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[5] [1997-1998] 2 GLR 1 SC.
[6] page 62.

Court to enforce. It means, therefore that Court's jurisdiction to entertain the suit before the court is not properly invoked.[7]

19. To put the submissions made here in perspective, reference is made to the judgment of Acquah JSC [as he then was] in the review decision of the Court in the *Edusei* case. Since it is quoted in quite some detail, the Court's indulgence is craved to do so. The learned Justice held as follows:

> "Now, in the instant case, in respect of article 130(1) of the Constitution, 1992, the main part thereof show that the Supreme Court has exclusive original jurisdiction in respect of the matters set out in sub-clause (a) and (b) thereunder. And under sub-clause (a), the exclusive original jurisdiction is in respect of the interpretation and enforcement of all the provisions of the Constitution, 1992. But then article 33(1), as conclusively confirmed by article 140(2) of the Constitution, 1992, shows that the High Court also has original jurisdiction in the enforcement of the human rights and freedoms provisions in chapter five of the Constitution, 1992. In that situation, the main part of article 130(1) of the Constitution, 1992 which talks of the Supreme Court's exclusive, and the emphasis is on the word "exclusive", original jurisdiction in the enforcement of all the provisions of the Constitution, 1992 which by that must necessarily include those on fundamental human rights, cannot be reconciled with the allocation of the same original jurisdiction in human rights provisions to the High Court in articles 33(1) and 140(2) of the Constitution, 1992. In other words, if that jurisdiction is exclusive to the Supreme Court, as the main part of article 130(1) of the Constitution, 1992 provides, then that exclusive original jurisdiction cannot be shared with the High Court nor any other court. Accordingly, to remove this conflict between the exclusiveness of the SupremeCourt's original jurisdiction and the High Court's original jurisdiction in articles 33(1) and 140(2) of the Constitution, 1992, the "subject to" part of article 130(1) of the Constitution, 1992 precludes the Supreme Court from exercising original jurisdiction in the enforcement of human rights abuses, so as to preserve the exclusiveness of the Supreme Court's original jurisdiction in the enforcement of all the other provisions of the Constitution, 1992, except those on the fundamental human rights and freedoms... It is by such an interpretation of article 130(1) of the Constitution, 1992 that one can give meaning and content to the exclusiveness of the original jurisdiction vested in the Supreme Court in the main part of article 130(1) of the Constitution, 1992. The word "exclusive" was not used in article 130(1) of the Constitution, 1992 without

[7] See *Edusei v Attorney v Attorney-General* [1996-97] SCGLR 1 per Adjabeng JSC at pages 36-37.

significance. And an interpretation which fails to bring out the meaning and effect of the word "exclusive", would be myopic."[8]

20. The submissions just made are not unmindful of the Court's decisions in cases like *Adjei-Ampofo (No 1) v Accra Metropolitan Assembly & Attorney-General.*[9] In that case, the plaintiff also invoked the Court's original jurisdiction for a declaration that the act or practice of the Accra Metropolitan Assembly in making Ghanaians carry human excreta in pans on the head is an affront to Article 15 of the 1992 Constitution.

21. In the case just cited, the Court took the opportunity to further explain the scope of its exclusive original jurisdiction to interpret and make declarations on constitutional provisions to enforce them on the one hand and the Human rights jurisdiction of the High Court on the other to enforce such rights. The Supreme Court held per Akuffo JSC [as she then was] as follows:

> "Although the High Court's jurisdiction in article 140(2) appears to be broad, the provision is nothing more than a practical restatement of the exception to the Supreme Court's jurisdiction as defined by article 130(1), in cases brought under article 2(1). The High Court's enforcement power is therefore to be exercised within the scope of article 33(1), the language of which is clear."

22. The Court applied the *Adjei-Ampofo* in the subsequent case of *FEDYAG v Public Universities of Ghana.*[10] It is therefore conceded that upshot of the cases just discussed is that where the human right or freedom sought to be enforced is not in relation to the plaintiff's personal rights and freedoms but for the purpose of enforcing a provision of the Constitution under article 2(1), the proper court is the Supreme Court.

23. It is easy to hastily accept the logic on which the cases cited are mount as applicable to this case. We submit to the Court to decline any invitation to apply the logic in the *Adjei-Ampofo* and *Feydag* cases to this case.

i. the plaintiff's forum is the high court.

24. In the first place, it is submitted that although the *Adjei-Ampofo* and *Feydag* cases hold that the Court's exclusive original jurisdiction to enforce the Constitution is properly invoked when the Court is called upon to declare acts unconstitutional, the said cases concede the High

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[8] at pages 42 to 43.
[9] [2007-2008] 1 SCGLR 611.
[10] [2010] SCGLR 265.

Court's power to enforce the Constitution. A legion of cases affirms this point.[11]

25. It is therefore submitted that the distinction made by the Supreme Court in the said cases must be looked at again. The reason is that in the enforcement of the fundamental human rights provisions which the Court has emphatically ceded to the High Court, the individual is entitled to seek declarations relative to the constitutional provision sought to be enforced and the High Court has jurisdiction under article 33(2) of the Constitution to grant such declaration "in relation to them". Article 33(2) of the Constitution therefore provides that in the enforcement of a person's human rights, the High Court has power to:

> "(2) ... issue such directions or orders or writs **including writs or orders** ... as it may consider appropriate for the purposes of enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms to the protection of which the person concerned is entitled."[12] [emphasis added]

26. The inclusive nature of the range of orders the High Court may issue to enforce an action to enforce fundamental human right makes it clear that the High Court has power to make declarations that a particular act violates the fundamental human rights provisions of the Constitution, which the Court has affirmed, the High Court has jurisdiction to enforce.[13]

27. It is submitted that once the High Court declares an act a violation of any of the fundamental human rights provisions of the Constitution, it is a declaration *in rem*. Enforcement of that constitutional provision as declared by the High Court will therefore be the position of the law. The reason is that all persons will not be required to institute fresh action to enforce it.

28. It is therefore submitted that seeking the enforcement of a fundamental human rights provision at large without an interpretative component should not be the basis for the Court assuming jurisdiction over a fundamental human rights matter only because the person invoking the Court's jurisdiction claims to be enforcing the Constitution.

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[11] See the cases of *Bimpong-Buta v. General Legal Council & others* [2003-2005] 1 GLR 738 at headnote (3) and at page 750, *Edusei v Attorney-General* [1996-97] SCGLR 1; *Edusei (No 2) v Attorney-General* [1998-99] SCGLR 753 and *Adjei-Ampofo v Attorney-General* [2003-2004] SCGLR 411.

[12] See also Order 67 rule 8 of The High Court (Civil Procedure Rules) 2004 (C.I. 47).

[13] See *Republic v Yebbi & Avalifo* [1999-2000] 2 GLR 50, at pages 61 to 62 of the report where Acquah JSC (as he then was) holds that the word "includes" is often used in order to enlarge the meaning of word or phrases occurring in the body of the statute; and when it is so used these words or phrase must be construed as comprehending, not only such things as they signify according to their natural import but also, things which the interpretation clause declares that they shall include.

29. The submission just made is supported by Acquah JSC [as he then was] in his judgment in the review decision of the Supreme Court in the *Edusei.*[14] The learned Justice held that it was clear that a human rights victim who decides to go to court for redress, ought to apply to the High Court as provided in article 33(1) and confirmed in article 140(2) of the Constitution, 1992 which provides:

> "140(2) The High Court shall have jurisdiction to **enforce** the Fundamental Human Rights and Freedoms guaranteed by this Constitution."[15] [emphasis added]

30. The learned Justice went on to hold as follows:

> "In no other court in the Constitution, 1992 is such original jurisdiction vested. To contend therefore that the two expressions discussed above are permissive and do not exclude the original jurisdiction of the Supreme Court is not only untenable, but would even lead to the absurd result that all the other courts can by that argument exercise such jurisdiction. For, the Supreme Court is not specifically mentioned in article 33(1) of the Constitution, 1992."

31. Bamford Addo JSC made the following addition in the review decision of the Court in the *Edusei* case:

> "To obtain this relief the applicant should have applied to the High Court for an enforcement of his human rights. Rather he clothed his claim in interpretative garb to enable him invoke the original jurisdiction of this court. Considering the reliefs sought in this case and having regard to the surrounding circumstances, I find that this is not a case which calls for the interpretation of the Constitution so as to vest the Supreme Court with the appropriate jurisdiction under article 130 (l)(a); but rather a case of enforcement of human rights which should have been instituted at the High Court."[16]

32. The cases of *Tufuor v Attorney-General,*[17] *New Patriotic Party v Attorney-General (31st December case),*[18] *Sam (No. 2) v Attorney-General,*[19] *Mensah v Attorney-General,*[20] *Bimpong-Buta v Attorney-General,*[21] and the recently decided cases of Abdulai v Attorney-General,[22] *Appiagyei,*

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[14] of [1997-1998] 2 GLR 1 SC.
[15] at page 38 of [1997-1998] 2 GLR 1 SC.
[16] page 62.
[17] [1980] GLR 637.
[18] [1993-94] 1 GLR 35.
[19] [1999-2000] 2 GLR 336.
[20] [1997-98] 1 GLR 227.
[21] [2003-2005] 1 GLR 738.
[22] Writ No. J1/07/2022.

Atuah v Attorney-General, Ezuame v Attorney-General,[23] and Gorni v Attorney-General afford the Plaintiff no *tabula in naufragio*. The cases did not arise directly from declarations that certain actions violate any fundamental human rights provisions of the Constitution.

33. The cases directly apposite will be the *Adjei-Ampofo* and *Feydag* cases but even then it is here argued here that the said logic in the said cases should be jettisoned in favour of keeping the interpretative and enforcement jurisdiction of the Court relative to the Constitution, distinct from the High Court's jurisdiction to enforce fundamental human rights.

ii. the schools are not acquired by government.

34. It is also important to point out that the institution like all those established by other churches and missions are established by the churches without any public funds at all. The churches do not go out to invite or source public funds to start and nurture their institutions. The Plaintiff acknowledges this fact in his submissions. In paragraph 5, page 4 of the Plaintiff's statement of case for instance the Plaintiff submits that the institution is "mission-founded".

35 The Plaintiff concedes that the relationship between the institution like other mission schools is that of a partnership based on the first nationalist government of the Gold Coast which set to work towards universal primary education by subsequently passing the Education Act to bring the policy within the government's constitutional and administrative framework.[24]

36. It is clear therefore that the institution, like other mission schools never solicited government intervention, nor did they invite government to come over and take over schools they established and nurtured from their own resources. There was no cry for help from the Methodist Church because the said church could no longer fund the institution. The Government only comes in as a regulator. In coming in, government does not acquire the institution by taking it over.

37. The submission here made is that as government did not acquire the institution, there can be no sound argument that just because government seeks to align its administrative oversight of education by partnering the institution, the institution assumes the character of a public school like every other public school. It is submitted that, any such argument will require the government to pay full compensation to the church for acquiring its property. And that is if the church is willing to make the offer to the government.

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[23] Writ No. J1/11/2022.
[24] See pages 3 and 4 at paragraph 3 of the Plaintiff's statement of case.

38. The reason for the submission just made is that the institution, like those the Catholic and other churches and missions have also established, are singularly established by the churches which run them. The institutions are wholly established from funds provided by the churches. The land is acquired by the churches themselves without government assistance. The initial infrastructure is funded by the churches in totality.

39. Given the submission so far made, it is clear that because government does not acquire the schools in the proper sense of it, the churches are not paid compensation for the land and the infrastructure they have invested in these schools (to inter alia practice and manifest their religions guaranteed by the constitution) at the time government intervenes.

40. Government's intervention in these schools as already submitted, is therefore one of a partnership based on the fact that the churches have undertaken and relieved the government of a burden which was government's cross to carry. It is undoubtedly a partnership. It is the reason why the Plaintiff once again concedes the institution, like its counterparts are "under the patronage of religious missions."[25]

41. If the facts as established are undisputed, and they indeed are, the question to be answered in this suit will not simply rest only in the context of "the rights of non-adherent students in public schools affiliated with or under the patronage of religious missions" as put by the Plaintiff,[26] the question must be examined also in the context of whether the churches' human rights have not been violated if their schools, which are their property acquired for specific purposes are effectively taken over and run in a manner contrary to the churches' objectives for investing in establishing these schools?

IV. DOES THE CATHOLIC [METHODIST] CHURCH ALSO HAVE HUMAN RIGHTS?

42. Most pertinently, the Plaintiff's case is anchored on the **General fundamental freedoms** provision of Chapter Five of the Constitution. This is article 21 of the Constitution. The Plaintiff, however, relies on clauses (1)(a), (b) and (c) of the article which provide thus:

> "(1) All persons shall have the right to:
>
> (a) freedom of speech and expression, which shall include freedom of the press and other media;

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[25] See page 3. Last sentence of paragraph 2.
[26] See page 3. Last sentence of paragraph 2.

(b) freedom of thought, conscience and belief, which shall include academic freedom;

(c) freedom to practice any religion and to manifest such practice".

43. The Plaintiff conveniently ignores clause (1)(d) and especially (e) of the article which must be read together with clauses (1)(a), (b) and (c) of the article. Clauses (1)(d) and (e) of the article guarantee the rights to:

"(d) freedom of assembly including freedom to take part in processions and demonstrations;
(e) freedom of association, which shall include freedom to form or join trade unions or other associations, national and international, for the protection of their interest".

44. It is submitted that the rights of free speech and expression, of thought, conscience and belief, academic freedom, and the freedom to practice any religion and to manifest such practice on which the Plaintiff has planked his case, will have no meaning and context for purposes of enforcement unless those rights are read together with the rights to freedom of assembly especially the right to freedom of association, which the Plaintiff has left out his case.

45. The reason for the submission here made is that the Plaintiff would have had no reason to complain if this case was about the beneficiaries of the Plaintiff's suit practicing their religion individually and in their own spaces or together with others who do not find it objectionable to do so in their spaces.

46. The Plaintiff's cause of action in this case is based on the insistence that the beneficiaries of his action should be allowed to act freely in a space created by the Methodist church for their own purposes regardless of whether such actions fit or sit well with the purposes for which the Methodist church created the space.

47. It is based on the observations just made that it is submitted that the rights of the owner of the space [the Methodist] cannot be discounted only because it is argued joint resources are spent to maintain NOT ACQUIRE AND CREATE the space. It is emphasized here that the space in contention was acquired and created by the Methodist church. It is the Methodist church which acquired the right to the space.

48. The churches spend their resources to establish the institutions for two reasons. First, to educate children and secondly to manifest and propagate their faith. If the State finds that in terms of education, the institutions may well serve a larger interest including persons who do

not share in the Methodist objectives (faith) for which the space was created, it would be asking too much from the church and indeed resulting in a violation of the property rights of the church to ask that other persons who do not share in Methodism be allowed to carry on their own faith within the same space (outside.)

49. It is therefore submitted that the rights of free speech and expression, of thought, conscience and belief, academic freedom, and the freedom to practice any religion and to manifest such practice can only be legitimately and legally considered, discussed and determined together with the rights to freedom of assembly and of association. In the case of *Mensima v Attorney-General*[27] the Court speaking through Bamford Addo JSC acknowledged that

> "...the right to associate invariably includes the right not to associate with people with whom one does not wish to associate."[28]

50, In addition to the Constitution, the learned Justice also referred to article 20(2) of the Universal Declaration of Human Rights, which guarantees the freedom of persons from compulsion to belong to an association. In the case of *New Patriotic Party v Attorney-General & CIBA*[29] the Court held that:

> "The right to freedom of association includes the right to form and join an association of one's choice, and also the right not to associate with any group or organization. This right is not only applicable to political parties but extends to all lawful associations. The right to freedom of association is not absolute and can be subject to limitations that are reasonable and necessary in a democratic society."[30]

51. The suit before the court therefore puts the cart before the horse. If the government has not acquired the institution, which is the church' property, then on what basis can it be insisted that the church's' right as the owner of the property on which the institution is run cannot decide the covenants that must bind persons who voluntarily want to enjoy its property?

52. And does the institution have the right to associate? The question then must progress to the next, which is that if the institution's founders have decided that their institution should be made up of members who subscribe to Methodism, should a person who knows that the association is underpinned by Methodism voluntarily join it, and then turn around and complain that they are oppressed by Methodism?

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[27] [1997-1998] 1GLR 159 – 218.
[28] At page ...
[29] [1997-1998] 1 GLR 378 – 461.
[30] At page ...

53. Not stopping there, must we also answer whether the Church's right to freely form associations is not violated if the person who voluntarily joins them insists that the principles of Methodism on which the association is founded and run to its present attractive status be bent to accommodate them? As already submitted, the rights under discussion are not, like the other rights in the Constitution absolute rights. They are qualified rights. It is the reason they are grouped under the heading: General Fundamental Freedoms.

54. The enjoyment of every and any human right is subject to the right of others. The courts will usually adopt a balancing approach to enforcement of rights. This will be discussed subsequently in detail. Suffice it to say that faith-based schools have objectives and standards based on which they establish and operate their schools. If the argument is pressed that other religions must have the right to practice their religion in faith-based schools then the religious faith on which the school is established, is eroded and a certain reverse violation of the right religious freedom is committed.

55. Our submission is that any argument that a person is exempted from the foundational principles based on which a faith-based institution is established, then the religious freedom of that institution is blunted in favour of the person who waived their right to freedom of association and religion and decided to join an institution which in the exercise of their [the institution] right to freedom of association and religion and founded a space in which they may freely enjoy their right.

V. WAIVER OF RIGHTS.

56. It is trite knowledge that fundamental human rights may be waived especially those rights which like the ones under discussion are not absolute rights.[31]

57. As seen from the case of *Mensima v Attorney-General* and the *CIBA* case the right to freedom of association includes the right to (the right to) associate invariably includes the right not to associate with people with whom one does not wish to associate. As explained in article 20(2) of the Universal Declaration of Human Rights, the right only means that no one should be compelled to belong to any association.

58. In this case, it is clear that the beneficiaries of the suit before the court by opting to attend the institution have waived their right freely associate and profess and practice their religion in a Methodist environment comprising of persons who subscribe to Methodism.As already submitted, the right to association.

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[31] See the cases of *Edusei (No. 2) v Attorney-General* [1998-99] SC GLR 753 at pages 788-789, *Standard Chartered Bank v Western Hardwood* [2009] SCGLR ... and *Dhalomal v Pupulampu* [1989-90] GLR...[1984-86] 1 GLR 341-366.

59. It is submitted therefore that the human rights violations [potential or actual] from which the present suit emanates have to all intents and purposes waived their rights. From the facts based on which this suit has been instituted, the [victims] those Islamic students from their own volition attended the institution knowing it was a christian school founded on Methodist principles and teachings. Before they attended the institution, they knew that they would be required, whilst they remained students of the institution to observe Methodism.

VI. PLAINTIFF'S HOPE IS TO AVOID THE LOCUS STANDI/CAPACITY HURDLE.

60. The submissions so far made show that the ultimate objective of the suit is to protect the rights of persons who have the option of exercising their right to freedom of association and religion by joining associations which are liberal in terms of accommodating their faith, or waiving their said rights and joining an association which does not countenance their religion but provides an education that such people want.

61. The Court will easily observe in this case that the Plaintiff is relying on affidavits of supposed former victims of the specific human rights violations based on which the Plaintiff has mounted this action. These victims, however, do not think it worth it to bring a suit for redress themselves. The Plaintiff's sole reason for instituting the suit before the Court therefore is to avoid the insurmountable mountain of capacity and locus standi.

62. The law is that once it comes to the enforcement of fundamental human rights is that the person who claims that their rights are violated or threatened is the only person with capacity and/or locus standi to enforce that right by action in the High Court. The rule is based on the phrase "in relation to him" in article 33 clause (1) of the Constitution. In other words, in the High Court, the actual, ongoing or threatened contravention of the fundamental human right or freedom must be in relation to the plaintiff and no one else.[32]

63. The Court's duty in suits of the kind before the Court is to unmask such clever undertakings and put them in their proper place. The law is that it is the substance of the case that determines the Court's jurisdiction, not just the way the reliefs are couched.[33]

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[32] See the cases of *Edusei (No. 2) v Attorney-General* [1998-99] SC GLR 753 at pages 788-789 per Acquah JSC (as he then was), *Bimpong-Buta v. General Legal Council & others* [2003-2005] 1 GLR 738 at headnote (3) and at page 750, *Edusei v Attorney-General, Adjei-Ampofo v. Accra Metropolitan Assembly & Attorney-General* [2007-2008] 1 SCGLR 611, Sam (No. 2.) v. The Attorney- General [2000] SCGLR 305 and *FEDYAG v Public Universities of Ghana* [2010] SCGLR 265

[33] See the cases of *Edusei (No.2) v Attorney-General* [1998-99] SCGLR 753 at page 760 per Bamford Addo JSC and at page 785 per Acquah JSC (as he then was). *Ghana Bar Association v Attorney-General and Another* (Abban case) [2003-2004] SCGLR 250, per *Bamford-Addo* JSC

VII. THE RIGHT TO RELIGIOUS FREEDOM IS SETTLED IN THE JURISPRUDENCE OF THE COMMONWEALTH.

64. To emphasize the fact that the suit before the Court invoking its exclusive original jurisdiction to interpret and enforce the Constitution is unnecessary and contrived only to avoid the locus standi requirements to prosecute such an action in the Supreme Court, it is submitted that the right to religious freedom is a matter settled in many jurisdictions with statutory provisions on human rights *in pari materia* with the constitutional provisions the Court is called upon to enforce.

65. The constitutional provisions on which the suit is pivoted have all received judicial illumination in various decisions of the courts of the commonwealth. This discussion will focus only on the European Convention on Human Rights (ECHR). Article 9 of the Convention guarantees the right to religious freedom. Like article 12(2) of our Constitution, it says thus:

> "9: freedom of thought, conscience and religion
>
> 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or **for the protection of the rights and freedoms of others**." [emphasis ours]

66. Like all the rights guaranteed by our Constitution, article 9 of the ECHR is also clear that the enjoyment of one's rights as stated in article 12(2) of our Constitution is subject to "**the rights and freedoms of others**." It is therefore a qualified right. In respect of article 9 of the ECHR, it has been held that a school policy prohibiting on-site prayer rituals did not breach a pupil's right to religious freedom under article 9 of the ECHR.[34]

i. R (TTT) v Michaela Community Schools Trust [MCST].[35]

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at pages 266-267 and *John Ephraim Baiden (Dr.) v Attorney-General and Bank of Ghana* Writ No.J1/7/2014, dated the 22nd day of July, 2015.

[34] See Discussion of the Subject in School policy prohibiting on-site prayer rituals did not breach pupil's Article 9 ECHR rights (High Court), Practical Law UK Legal Update Case Report .

[35] [2024] EWHC 843 (Admin).

67. In the case of *R (TTT) v Michaela Community Schools Trust* the High Court of England and Wales put the right to religious freedom in context and defined the High Court of England and Wales put the right to religious freedom in context and defined its scope and proper application. In that case, the school's prohibition of ritual prayer on the school's premises was challenged.

68. A key issue for determination by the court was whether such prohibition interfered with the Muslim pupil's [the plaintiff therein called "claimant"] right to freedom of among others, religion under Article 9 of the ECHR. Unlike this case, the plaintiff was actually a student at the defendant school known as Micaela Community Schools Trust (MCST). Also significant is the fact that the Plaintiff had been in the school for a while. The school was a mixed secular secondary free school. The school's students were therefore pupils from diverse ethnic and religious backgrounds but almost half of its students including the plaintiff were Muslims.

69. In the year 2023 the school decided to prohibit its students from performing prayer rituals on the school's premises. The plaintiff suffered sanctions for performing rituals in the school. The plaintiff's contentions in the case among others were that:

> the school's refusal to allow her to perform *duhr* breached her right to freely manifest her religious beliefs under Article 9 of the ECHR. The High Court held that although the plaintiff's beliefs were protected by right to religious provisions of article 9 of the ECHR, there was no violation of the plaintiff's right to religious freedom.

70. The court held that the right to religious freedom was not an absolute right and that the plaintiff:

i. knew [even before she enrolled in the school] that prayer was not permitted at school.

ii. Therefore, made up for missed prayers when she got home.

iii. was aware that the school was secular, and her mother wanted her to attend there because it was known to be strict.

iv. "at the very least impliedly" accepted that she would be subject to restrictions on her ability to manifest her religion.

v. did not show that there would be undue hardship or inconvenience to her if she moved to a school which permitted her to pray during school hours.

71. In reaching its conclusion that the plaintiff's voluntary acceptance of the school's implied that the plaintiff had expressly or impliedly agreed to limitations being placed on their freedom to manifest their religious beliefs and therefore cannot subsequently complain when such limitations become an issue the court applied the case of R (Begum) v Headteachers and Governors of Denbigh High School.[36]

ii. *R (Begum) v Headteachers and Governors of Denbigh High School.*[37]

72. This case dealt with a Muslim girl's right to wear a *jilbab (hijab?)* at school. As held in the MCST case, the United Kingdom Supreme Court held as follows:

> "Strasbourg institutions have not been at all ready to find an interference with the right to manifest religious belief and practice or observance where a person has voluntarily accepted an employment or role which does not accommodate that practice or observance and there are other means open to the person to practice or observe his or her religion without undue hardship or inconvenience"[38]

73. In Lord Scott's view article 9 of the ECHR is not infringed only because an institution requires or prohibits certain behaviour by service users that does not conform to their religious beliefs. That is particularly the case where the individual has a choice as to whether or not to continue to use the services of that institution, or to receive the services of another available public institution which does not operate such a rule.[39]

iii. begum has been followed.

74. The case of Begum has since been followed in cases raising the same facts and issues. It was applied in *R (on the application of X) v Headteachers and Governors of Y School* [40] decided that a school's refusal to allow a pupil to wear a niqab veil at school did not violate the pupil's right to manifest her religion under article 9 ECHR.

75. Following Begum the court held that a particular public institution's rule that required or prohibited a certain behaviour on the part of those who availed themselves of its services did not constitute an infringement of their right to manifest their religion merely because the rule in question did not conform to the religious beliefs of the individual.

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[36] [2006] UKHL 15.
[37] [2006] UKHL 15.
[38] at paragraph 23, per Lord Bingham.
[39] at paragraph 87.
[40] 21 February 2007, [2007] EWHC 298 (Admin); [2008] 1 All E.R. 249.

76. As held in Begum the court found that the right to religious freedom is not violated especially where the individuals have a choice and the freedom to decide whether to patronize the services of the institution or opt for the services of other public institutions offering similar services, and whose rules did not included the objectionable rule in question.

77. Reference is also made to the case of *R (on the application of Playfoot) v Millais School Governors.*[41] Applying the case of Begum it was held that a school's decision to forbid a student from wearing a purity ring to affirm her Christian faith and belief in celibacy before marriage did not breach her right to religious freedom.

78. Finally, reference is made to the case of *Azmi v Kirklees MBC*[42]which decided based on the Begum rules that a school's decision to suspend a Muslim woman from wearing a veil which covered her face in the classroom did not violate her right to religious freedom. The school imposed the rule because it obstructed interaction with pupils.

iv. The only exception to Begum.

79. Even though it has been submitted that the common law decisions on the subject favour the position taken herein, the best standards of practice require us to draw the Court's attention to any cases adverse to our position. It is in this context that we cite the decision of the Kenya Court of Appeal in the case of *PO (Suing as next friend of AA & 9 others v Board of Management St. Annes Primary School, Ahero & 3 others.*[43]

80. In that case the Kenya Court of Appeal held that the right to religious freedom, conscience, religion, belief and opinion had been guaranteed by article 32 of the Kenya Constitution. The Court therefore found that compelling students to attend Friday mass at 7:00 violated their rights to religious freedom.

81. A reading of the decision however, will reveal that there was no reference to a provision in the Kenyan Constitution akin the overriding caveat in article 12(1) of our Constitution which says that the enjoyment of the fundamental human rights and freedoms guaranteed in our Constitution is subject to the rights of others such as articulated herein earlier.

82. Secondly, the Kenya Court of Appeal also found that there was no evidence that persons admitted to the school had been made aware of

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[41] 16 July 2007; [2007] EWHC 1698 (Admin).
[42] 6 October 2006 [2006] 10 WLUK 171.
[43] (Civil Appeal 173 of 2020) [2023] KECA 571 (KLR) (12 May 2023).

the rules and regulations of the school including the Friday Mass at 7am which they accepted.

83. In Ghana however, there is a Memorandum of Understanding [MOU] which guides religious tolerance in government assisted schools private mission schools. A copy of this MOU is exhibited to the affidavit in verification and marked **CC2** The guidelines require students who choose such schools to be "abreast with the culture, values, ethos and the rules and regulations of the school of [their] ...choice."[44]

84. Based on the submissions so far made, it is contended that the facts and circumstances of the Kenya case are distinguishable from the present circumstances. The Court should therefore not consider as relevant to the issues raised in the present suit which pertain to specific constitutional provisions set out in our Constitution.

VIII. FAIRNESS.

85. Since the institution is generally described as a public institution although it is acknowledged that the public's involvement only creates a partnership, it is necessary to consider the suit before the court from perspective of fairness. [The jurisprudence in the United Kingdom has applied the tests formulated as the *Wednesbury* principles to determine whether to enforce the right to religious freedom. This test was formulated in the case of Associated Provincial Picture Houses Ltd v *Wednesbury* Corporation[45] [the famous *Wednesbury* case].

86. The *Wednesbury* principles are generally accepted in public law as settling the foundation on which the courts presently rely in matters of judicial review. Our courts have adopted and applied *Wednesbury* principles as if it was their own even though our courts usually acknowledge it in their judgments. The traditional grounds developed by the Wednesbury case for faulting the acts of public institutions are:

i. illegality.
ii. procedural unfairness, or
iii. irrationality.

87. By irrationality as explained in the Wednesbury case and expounded by Lord Diplock in the case of Council of Civil Service Unions v Minister for the Civil Service[46] is meant "a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it".[47]

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[44] See guideline (d).
[45] [1947] EWCA Civ 1.
[46] [1985] AC 374.
[47] at page 410.

88 In the MCST case, the court held that the option of freely moving to another school without any inconvenience is a bar to enforcing the right as an absolute one, it is clear that it is irrelevant that the person claiming the human rights abuse did not know about the restrictions before enrolling in the school.

89. This was also Lord Scott's view in the Begum case discussed above. The learned Justice held that as long as the individual who claims the violation of their right to religious freedom has a choice as to whether or not to continue to use the services of that institution, or to receive the services of another available public institution which does not operate such a rule.[48] In the case of *Black v Wilkinson*,[49] the English Court of Appeal sought to refine the Begum principle but ended up rendering the principle in different words the application of which will yield the same result. The Court of Appeal held thus:

> "... there is case law which indicates that, if a person is able to take steps to circumvent a limitation placed on his freedom to manifest religion or belief, there is no interference with the right under article 9(1) and the limitation does not therefore require to be justified under article 9(2): see, for example, per Lord Bingham in *R (Begum)v Headteacher and Governors of Denbigh High Scho ol* [2006] UKHL 15, [2007] 1 AC 100 at para 23. This has been referred to as the "non-interference" rule. But the ECtHR decided in *Eweida* at para 83 that, rather than holding that the possibility of circumventing the limitation would negate any interference with the right, the better approach is to weigh that possibility in the overall balance when considering whether or not the restriction is proportionate.[50]

90. Our submission is that weighing the possibility in the overall balance and considering whether or not the restriction is proportionate will yield the same result. The question here will be resolved based on the Plaintiff's speculative rights against the institution's own right to religious freedom and association. The balance of the probabilities needs no discussion. Our earlier submission on this point suffices to deal with this point.

IX. THIS IS NOT A CASE OF INDOCTRINATION.

91. Before this part of our submission is wound up, where the students of a school are instructed and forced to imbibe religious instruction

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[48] at paragraph 87 of [2006] UKHL 15.
[49] 19 Jun 2013 [2013] EWCA Civ 820, CA.
[50] At paragraph 38 per the Master of the Rolls.

contrary to the religious beliefs. For instance, it is not the Plaintiff's case here that the students are forced to practice Methodism and instructed that Jesus Christ is the son of God and only through him can salvation be obtained. It is also not the case that the institution is instructed them contrary to their religious beliefs. The facts of this case must therefore be distinguished from a case like *R, JR87's Application for Judicial Review*.[51] In the case just cited, ...?

92. In that case, the student was taught to believe that Christianity was an absolute truth. The student and her father applied for judicial review on the ground that the instruction violated among others article 9 of the ECHR. The Supreme Court held that the instruction did not educate children with objective information or knowledge in a critical, and pluralistic manner. It therefore amounted to indoctrination, and it did not matter that the student's parents had a statutory right to withdraw their child from religious education and collective worship was insufficient to prevent a violation.

X. HISTORY OF THE RIGHT TO RELIGIOUS FREEDOM.

93. The Plaintiff has devoted the introductory part of his submission to discussing the history of education in Ghana and its significance relative to the action before the Court. It is in this context that that we also dedicate some time to addressing how the right to religious freedom was treated in our previous constitutions.

94. The 1960 Constitution did not have any direct provisions on fundamental human rights. The issue of religious freedom was therefore not expressed in the said constitution. The Plaintiff also makes this observation. In the 1969 Constitution, religious freedom was directly addressed under the broad heading: Protection of Freedom and Conscience in article 21 of the said Constitution.

95. The Proposals of the Constitutional Commission for a Constitution for Ghana, 1968 justified the introduction of the *Protection of Freedom of Conscience* as a fundamental human right in pages 62 to 63. As it affects schools in particular, the Constitutional Commission wrote as follows:

> "230. We are told that there still persists in Ghana a certain amount of discrimination by educational institutions established by religious organisations with regard to the admission of pupils who are not members of the religious denomination controlling that institution or to subject those admitted to the religious beliefs of that organisation. The education of our children is the greatest investment we can make for the future of Ghana and we do not think that religious beliefs alone should be the criterion for admission into any educational establishment."

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[51] 19 November 2025 [2025] UKSC 40 [2025] 11 WLUK 240.

96. The Commission's proposal was simple. The only prohibition was that no child should be denied admission to an educational establishment based only on religion. Based on this observation, the Commission proposed in paragraph 231 thus:

> "231. We accordingly propose that:
>
> (a) **no person attending any place of education should be required to receive religious instruction or take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion or denominational practice other than his own**;
>
> (b) **no religious community or denomination should be prevented from providing religious instructions for persons of that community or denomination in the course of any education provided by that community or denomination**."

97. Although the first part of the proposal thunderously echoes that no person attending any place of education should be required to receive religious instruction or take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion or denominational practice other than his own, it is clearly blunted by the second part which also says that no religious community or denomination **should be prevented from providing religious instructions for persons of that community or denomination in the course of any education provided by that community or denomination**.

98. The conundrum then posed by the proposal is this, if no person attending any place of education should be required to receive religious instruction or take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion or denominational practice other than his own, then what happens to the right of a religious community or denomination to provide **religious instructions for persons of that community** [that the person referred in the first part has joined] **in the course of education provided by that community or denomination**.?

99. Nevertheless, this proposal found expression in article 21(3) and (4) of the 1969 Constitution in words in *pari materia* as follows:

> "(3) No person attending any place of education should be required to receive religious instruction or take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion or denominational practice other than his own.
>
> (4) No religious community or denomination should be prevented from providing religious instructions for persons

of that community or denomination in the course of any education provided by that community or denomination."

100. The provisions of article 21(3) and (4) of the 1969 Constitution were repeated verbatim in article 27(3) and (4) of the 1979 Constitution which said thus:

> (3) No person attending any place of education should be required to receive religious instruction or take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion or denominational practice other than his own.
>
> (4) No religious community or denomination should be prevented from providing religious instructions for persons of that community or denomination in the course of any education provided by that community or denomination."

101. What is clear however is that the right to religious freedom as captured in the 1969 and 1979 Constitutions is remarkably different from the words used to guarantee the same freedom in the 1992 Constitution. As already earlier noted, article 21 clause (1)(c) provides thus:

> "(1) All persons shall have the right to:
>
> (a) freedom of speech and expression, which shall include freedom of the press and other media;
> (b) freedom of thought, conscience and belief, which shall include academic freedom;
>
> (c) freedom to practice any religion and to manifest such practice".

102. There are two important observations to be made from the present constitutional provision which guarantees the right to religious freedom in contrast with its predecessors.[52]

103. First, the prohibition in articles 21(3) and (4) and 27(3) and (4) of the 1969 and 1979 Constitutions that **no person attending any place of education should be required to receive religious instruction or take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion or denominational practice other than his own** is completely excluded in article 21 of the 1992 Constitution.

104. Secondly, in the 1969 and 1979 Constitutions there was a caveat which, said that regardless of the wide manner in which the right to religious freedom is stated in article 21(3) and (4) of the said Constitution,

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[52] Articles 21(3 and (4) of the 1969 Constitution and 27(3) and (4) of the 1979 Constitution.

"Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of ...[the article on religious freedom] to the extent that the law in question makes provision which is reasonably required

(b) for the purposes of protecting the rights and freedoms of other persons, including the right to observe and practise any religion **without the unsolicited intervention of members of any other religion**

and except so far as the provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in terms of the spirit of this Constitution."[53] [emphasis added]

105 As already noted, the caveat in the 1969 and 1979 Constitutions appear to concede the point earlier made which is that the enjoyment of one's right should not be upheld or promoted in such a manner as to invade another person's right. It is in this context that the quotation above is understood.

106. Our submission on the constitutional provisions in the 1969 and 1979 Constitutions quoted above is that, the said provision only means that for the purposes of protecting the rights and freedoms of other persons, including the right to observe and practise any religion **without the unsolicited intervention of members of any other religion** nothing done under the authority of any law shall be held to be inconsistent with, or in contravention of such a right to the extent that the law in question is shown not to be unreasonable.

107. It is further submitted that the previous Constitutions also understood that there may be circumstances in which there will be a clash in the enjoyment of the right to religious freedom. The above quotation therefore acknowledges that a person's right to religious freedom should not be eroded by the "**the unsolicited intervention of members of any other religion.**"

108. In this context, the submission here made is that as the institution's preferred faith is Methodism which is the reason why the church founded the institution, the practice of Islam in a Methodist environment will amount to an **unsolicited intervention**" with Methodism which will not have been tolerated even under the more liberal constitutional provisions of the 1969 and 1979 Constitutions.

109. Based on the submissions so far made, it is therefore submitted that the makers of our various laws on the subject of religious freedom have never intended that religious freedom be exaggerated to levels where their enjoyment and even enforcement become burdensome of others

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[53] See articles 21(6) and 27(6) respectively, of the 1969 and 1979 Constitutions.

and less still, subversive of the rights of others to freely practice their religion without having to endure proponents of their rights.

XI. CONCLUSION.

110. In this statement of case, it is acknowledged that there is a right inherent in every person in Ghana to enjoy the fundamental human rights and freedoms guaranteed by the Constitution.

111. It is also acknowledged that it is the duty of the courts to protect, defend and enforce these rights whenever they are being suppressed or stifled by any authority or person in authority.[54]

112. The courts have however made it clear that when pushing one's fundamental human rights, sight must not be lost of the caveat in clause (2) of article 12 which says that the enjoyment of one's right[s] is:

> "(2) **subject to respect for the rights and freedoms of others and for the public interest.**"

113. A "right" has been defined as "the capacity of a person with the aid of the law, to require another person or persons to perform, or to refrain from performing a certain act" and a "duty", an obligation the law imposes upon a person to perform a certain act, or refrain from performing a certain act."[55]

114. It is submitted that there is no law which requires a school founded on a specific faith to acknowledge, and not stopping there, facilitate or promote the religious rights of individuals who patronize the education the school offers, contrary to the school's own right to religious freedom. This cannot be a proper understanding of articles 12,17(1) and (2), 21(1)(b), (c), (e) and 26 of the 1992 Constitution and any International Human Rights cognisable under Article 33(5) of the Constitution of Ghana, 1992.

115. Based on the submissions just made it is rather contrary to and inconsistent with articles 17(2), 21(1), (b), (c), 26 33(5) and 56 of the Constitution for the Court to accede to the Plaintiff's prayer that the first Defendant's:

i. prohibition of,
   a. Islamic beliefs, practices and observance of Islam by Muslim students on the institution's campus.

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[54] *Republic v Court of Appeal; Ex parte Attorney-General* [1997-98] 2 GLR 391 Edward Wiredu JSC (as he then was) at page 401.

[55] See Smith & Roberson's Business Law 9th ed at page 5. Quoted with approval by Asiamah JSC in the case of *Agyei-Twum v Attorney-General & Akwetey* [2005-2006] SCGLR...

b. Muslim students from exercising their religious rights.

ii. compulsion of students to practice,
   a. a compulsory school religion.
   b. Methodism, and

iii. imposition of limitations on Muslim students.

violate the aforesaid constitutional provisions.

DATED AT SORY&PARTNERS@LAW, ACCRA THIS FEBRUARY 27 2026.

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THE REGISTRAR,
SUPREME COURT,
ACCRA.

AND FOR SERVICE ON:

1. THE ABOVE-NAMED PLAINTIFF OR HIS SOLICITOR, JOSHUA AZURE, WHOSE ADDRESS FOR SERVICE IS: KPEMPKA & CO PRUC, FIRST FLOOR, JOSHUA TOWERS, ODOTEI TSUI AVENUE, DZORWULU, ACCRA.
2. BOARD OF GOVERNERS, WESLEY GIRLS HIGH SCHOOL, KAKUMDO, CAPE COAST.
3. GHANA EDUCATION SERVICE, MINISTRIES, ACCRA.
4. THE HON. MINISTER FOR JUSTICE & ATTORNEY-GENERAL, LAW HOUSE, ACCRA.