

**IN THE SUPERIOR COURT OF JUDICATURE,
IN THE HIGH COURT OF JUSTICE WENCHI, BONO REGION,
HELD ON THURSDAY THE 4TH DAY OF JULY, 2024,
BEFORE HIS LORDSHIP JUSTICE FREDERICK A.W.K. NAWURAH.**

SUIT NO C12/09/2021

**IN THE MATTER OF AN APPLICATION UNDER ARTICLE 33
OF THE 1992 CONSTITUTION OF THE REPUBLIC OF GHANA**

AND

**IN THE MATTER OF AN APPLICATION UNDER ORDER 67
OF THE HIGH COURT (CIVIL PROCEDURE) RULES, 2004, (C.I 47)**

AND

**IN THE MATTER OF ENFORCEMENT OF ARTICLES 12, 13(1), 15(1),
(2) & (3) OF THE 1992 CONSTITUTION**

**IN RESPECT OF SULEMANA ELLIASU, ABUBAKARI IDDIRISU,
ALHASSAN NASIRU, AREMEAW ALHASSAN, ALHASSAN ABDUL-
RAHMAN, AND PAUL ASUE**

AND

**IN THE MATTER
BETWEEN**

SULEMANA ELLIASU

House No. BT 3/5
Techiman

1ST APPLICANT

ABUBAKARI IDDRISU

House No. TY 0378
Techiman

2ND APPLICANT

ALHASSAN NASIRU

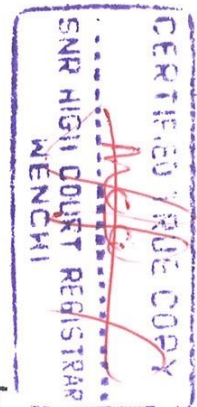
House No. BJ 2/4
Techiman

3RD APPLICANT

AREMEYAW ALHASSAN

House No. TMA 227/1
Techiman

4TH APPLICANT



ALHASSAN ABDUL-RAHMAN

House No. TMA 227/Techiman

5TH APPLICANT

PAUL ASUE

House No. TMA 200E

Diasempa

6TH APPLICANT

v.

THE ATTORNEY-GENERAL

Ministry of Justice and Attorney-General,
Ministries, Accra.

1ST RESPONDENT

THE INSPECTOR-GENERAL OF POLICE

Police Headquarters, Accra.

2ND RESPONDENT

JUDGMENT

The Preamble to the **United Nations Basic Principles on the Use-of-Force and Firearms by Law Enforcement Officials** states thus:

"Law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights."

The Applicants herein instituted the instant suit against the Respondents by way of an originating summons for the enforcement of their fundamental human rights pursuant to the provisions of Article 33 (1), Article 12, 13(1), 15(1), (2) & (3) of the 1992 Constitution, and Order 67 rule 1 of the High Court (Civil Procedure) Rules 2004, (C.I. 47). These constitutional provisions deal with Protection of Rights by the Courts, protection of fundamental human rights and freedoms, protection of right to life, and Respect for Human Dignity, respectively.

Article 33 (1) of the 1992 Constitution, which forms the basis for the Fundamental Human Rights Enforcement Procedure Rules under the C.I. 47, provides as follows:

Article 33 — Protection of Rights by the Courts.

- (1) Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress."

Order 67 rule 1 of the High Court (Civil Procedure) Rules 2004, (C.I. 47) which forms, in essence, the Fundamental Human Rights Enforcement Procedure Rules in Ghana also provides that:

Application for Redress under Article 33 of the Constitution

1. A person who seeks redress in respect of the enforcement of any fundamental human right in relation to the person under Article 33 (1) of the Constitution shall submit an application to the High Court."

PRECIS

On the 8th of December, 2020, whilst the collation of results for the 2020 Techiman South Constituency parliamentary elections was being conducted at the Techiman South Constituency Collation Centre (the Bonochempem Hall in Techiman), a large crowd of people had gathered on the premises of the Collation Centre ostensibly awaiting the outcome of the poll. As the Electoral Commission began turning out the results of the poll, certain faction among the parties gathered there began to openly show their dissatisfaction with the results by chanting and slogans of disagreement and demonstrating all manner of riotous behaviour despite attempts made by the security forces, made up of armed policemen and soldiers who were also present in their numbers, to keep the peace. At a certain point in time the armed security men started firing their weapons ostensibly to control the crowd, but this resulted in a number of people suffering serious gunshot wounds and one person dying as a result of injuries from gunshot.

THE CASE FOR THE APPLICANTS

The six applicants herein claim that the security forces fired their guns indiscriminately into the crowds therein gathered without provocation and without justification and, as a result, they all suffered various forms of

gunshot injuries from the wanton disregard of the state security forces for their rights to life as well as their rights against torture and dehumanizing treatment guaranteed under Articles 33 (1) and Article 12, 13(1), 15(1), (2) & (3) of the 1992 Constitution and enshrined in various international human rights documents, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The Applicants therefore pray, inter alia, for the following reliefs:

1. A declaration that:

- a. The injuries respectively inflicted on SULEMANA ELLIASU, ABUBAKARI IDDIRISU, ALHASSAN NASIRU, AREMEAW ALHASSAN, ALHASSAN ABDUL-RAHMAN, AND PAUL ASUE by gunshots at the Techiman South constituency collation center, carried out by the security forces/personnel deployed by the State of Ghana to the Techiman South collation center, on the 8th day of December 2020, violated:
 - i. Their respective rights to life under article 13(1) of the 1992 constitution, article 4 of the African Charter on Human and People's Rights, article 6 of the International Covenant on Civil and Political Rights, and article 3 of the Universal declaration of Human Rights.
 - ii. Their respective rights on the State to respect and uphold their respective rights to life and human dignity, under article 12 (1) of the 1992 constitution, article 1 of the African Charter on Human and Peoples Rights; and article 2 of the International Covenant on Civil and Political Rights; and
 - iii. Their rights to human dignity and freedom from torture and other conditions that detract from his worth as a human being, under article 15 (1), (2) & (3) of the 1992 constitution-, article 5 of the African Charter on Human and Peoples Rights, article 7 of the International Covenant on Civil and Political Rights-, article 2 of the Convention against Torture, and other Cruel, Inhuman or degrading

treatment or Punishment, and article 5 of the Universal Declaration of Human Rights.

2. An Order directed at the state:
 - a. To investigate the said infliction of injuries on SULEMANA ELLIASU, ABUBAKARI IDDIRISU, ALHASSAN NASIRU, AREMEAW ALHASSAN, ALHASSAN ABDUL-RAHMAN, AND PAUL ASUE as soon as possible, find the perpetrator(s) of the inflictions, and punish them in accordance with the Law;
 - b. To pay:
 - i. SULEMANA ELIASU an amount of five million Ghana Cedis (GH¢5,000,000) as compensation for agony from the torture, inhuman and degrading treatment, Psychological trauma, and for being rendered disabled with almost non-existent prospect and ability to work and earn a living;
 - ii. Each and every other Applicant herein (other than SULEMANA ELIASU) an amount of two million Ghana Cedis (GH¢2,000,000) as compensation for agony from the torture, inhuman and degrading treatment, Psychological trauma, and diminished prospects and ability to work and earn a living.

In support of their application, the Applicants filed a motion supported by a joint affidavit and a supplementary affidavit setting out the relevant information as required under the provisions of the Fundamental Rights Enforcement Procedure Rules [Order 67 rule 2(1) of the High Court (Civil Procedure) Rules 2004, (C.I. 47)]. The Applicants also attached exhibits to their application. Also filed in support of the application is the Applicants' Counsel's written address.

According to the Applicants' version of events, the crowd had remained within their limits behind the barricades erected by the security forces, with the supporters of both the National Democratic Party (NDC) and the New Patriotic Party (NPP) gathered in separate groupings at different and distinct locations at the premises of the Collation Centre. At a certain point in time,

some people in the crowd began chanting and holding up their hands in obvious despair as to the happenings within the Collation Centre. The then parliamentary candidate for the New Patriotic Party began pacing in and out of the collation room and insisting on his victory, whilst the National Democratic Party (NDC) Parliamentary candidate maintained that he (the NPP candidate) could not have won the election.

The Applicants claim that two pickup trucks suddenly arrived on the scene arrived with heavily armed and masked security men and, out of the blue, three consecutive gunshots were fired and followed by a command to fire. Upon this command, the security forces started shooting indiscriminately into one side of the crowd causing many people to flee the scene. As the crowd fled, the security forces pursued them vigorously with gunshots. It is the case of the Applicants that they each sustained serious injury from the gunshots fired as a result of the excessive and unwarranted use of force by the police and security forces in their attempt to control the crowd during the collation of 7th December 2020 Presidential and Parliamentary elections at the Techiman South Constituency Collation Centre (the Bonochempem Hall in Techiman).

THE CASE FOR THE RESPONDENTS

In opposition to the application, the Attorney-General (1st Respondent), on behalf of both Respondents, filed an affidavit in response to the application and a supplementary affidavit pursuant to leave of Court. Attached to the counter affidavit are exhibits A and B. Counsel for the Respondents also filed a written address.

The Respondents vehemently deny indiscriminately shooting into the crowd and maintain that the state security forces rather fired warning shots into air to diffuse the unruly crowd who had become aggressive and had started pelting stones at the security forces with one of them even firing a gun from the crowd. It is the case of the Respondents that the hostile action of the crowd gave a clear indication that they had every intention to attack the security forces, electoral officials, journalists, and other election observers, so the security forces fired warning shots into the air to diffuse the rising agitation and disperse the potential rioters.

The Respondents maintain that while the Electoral Commission's elections official was reading out the results of the collated votes in the Collation Centre, an unknown person attempted to snatch the results from the hands of the official which resulted in a slight altercation between the unknown person and some members of the security forces. The Electoral Commission's official, in an attempt to restore order, immediately ordered that every person should leave the hall, however, in the midst of the chaotic atmosphere, the crowd that had gathered outside of the hall awaiting the declaration of the results was also getting agitated and began to behave aggressively in tone and body language.

According to the Respondents, as the Electoral Commission's officials began projecting the results of the poll onto the screen, a section of the crowd started jubilating, but a supporter of one of the parties went out of the Collation Centre towards a faction of the crowd began inciting them to the effect that the results had been rigged. As a result, a mob of supporters of one of the parties began to cause chaos by chanting and throwing stones at the Bono Collation Centre, all the while advancing towards the security task force amidst pelting stones and other weapons at the security personnel on duty and attempting to break through the barricades. Unable to control the advancing hostile crowd, in spite of all the tactical crowd control measures they had employed, the security forces fired a few warning shots into the air to diffuse the rising agitation and disperse the potential rioters, and as soon as the crowd had dispersed, they stopped the firing of their weapons. The Respondents maintain that the security forces did not shoot into the crowd but rather fired warning shots into the air.

ISSUES FOR DETERMINATION

From the pleadings of both parties and the issues addressed by their respective counsel in their written addresses, the Court settled on the following issues for determination:

1. Whether or not living persons could sue for enforcement of their right to life;
2. Whether or not the injuries the applicants suffered were as a result of the gunshots fired by the state security forces at the Techiman South Collation Centre on the 8th December, 2020;

3. Whether or not there was any justification for the violation of the Applicants' rights; and
4. Whether or not the Applicants are entitled to payment of compensation.

On the first issue, the Appellants' Counsel referred to Article 13 of the 1992 Constitution and its counterparts in other international treaties, conventions and instruments, including the *Universal Declaration of Human Rights (Article 3)*, the *International Covenant on Civil and Political Rights (Article 6)*, and the *African Charter on Human and Peoples' Rights (Article 4)*, to which Ghana is a signatory or state party, and urged on the Court the view that the lethal fire deployed by the state security on the crowds gathered at the Techiman South Collation Centre on 8th of December 2020 was an act that may be expected to cause the premature death of persons, including the Applicants and did indeed seriously interfere with their enjoyment of life in dignity. Thus, although they are still alive, their right to life had been unjustly violated.

The Respondents, on their part, submitted that the Applicants' claims do not fall under the remit of Article 13 of the 1992 Constitution which guarantees the right to life. According to Learned Counsel for the Respondents, a reading of Article 13 of the Constitution shows that there ought to have been either a pending act seeking to claim their lives or that an act had already taken their lives unlawfully, but that was not the situation in the case of the Applicants. It is also the case of Learned Counsel for the Respondents that, in any case, the Applicants have not led evidence to prove that they were at the Techiman South Collation Centre on 8th of December 2020, or that the injuries they suffered were inflicted on them while they were at the Techiman South Collation Centre, or that the injuries they suffered were as a result of gunshots fired by the State Security Forces who were stationed at the Techiman South Collation Centre. The Respondents maintain that some civilians had also shot at the police, and thus the applicants ought to prove that the injuries they suffered were as a result of gunshots fired by the State Security Forces and not self-inflicted or inflicted by some other persons in the crowd.

RESOLUTION OF ISSUES

1. The Scope of "The Right to Life"

Under Article 13 of the 1992 Constitution of Ghana every person is guaranteed their right to life. The circumstances under which a person may be lawfully deprived of such right to life are set out in **Article 13(1) and (2) of the Constitution**. The said provision is as follows:-

Article 13 — Protection of Right to Life.

- (1) No person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a court in respect of a criminal offence under the laws of Ghana of which he has been convicted.
- (2) A person shall not be held to have deprived another person of his life in contravention of clause (1) of this article if that other person dies as the result of a lawful act of war or if that other person dies as the result of the use of force to such an extent as is reasonably justifiable in the particular circumstances —
 - a) for the defence of any person from violence or for the defence of property; or
 - b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
 - c) for the purposes of suppressing a riot, insurrection or mutiny; or
 - d) in order to prevent the commission of a crime by that person.

Because the right to life is concerned with preventing the arbitrary deprivation of life, it is very relevant in situations such as the use of force by public law enforcement institutions such as the police. Per article 13(2) of the Constitution, The use of force by public law enforcement institutions that results in a deprivation of life must have been 'reasonably justifiable' for the defence of any person from violence or for the defence of property; or in order to effect a lawful arrest or to prevent the escape of a person lawfully

detained; or for the purposes of suppressing a riot, insurrection or mutiny; or in order to prevent the commission of a crime by that person.

Article 13 (2) of the Constitution makes it clear that the use of force in these circumstances must be strictly proportionate to the achievement of the permitted purpose. For example, this might occur when law enforcement officers have to use lethal force to protect the lives of other people in imminent danger.

The right to life imposes both positive and negative duties on law enforcement officers. This means that whilst law enforcement officers must refrain from arbitrary killings (a negative duty), they must also take steps to protect people from real and immediate risks to life (a positive duty). This positive duty requires law enforcement institutions to give proper consideration to relevant human rights in their operational planning and control.

Even though there is a dearth of cases on the enforcement of the right to life in Ghanaian case law, the Courts in other Common Law jurisdictions have recognized that a person's right to life can be violated not only through physical harm or death but also through threats, harassment, or other actions that create a real risk to their safety and well-being. In the Nigerian case of **Shobayo v. C.O.P, Lagos State in Suit No. ID/ 760M/2008** delivered on the 15/1/2010, the scope of the right to life was described by Oyewele J in the following terms:

"Right to life is in a class of its own because its violations range from attempt which is a process before full violation occurs which is when violation is completed. Before completion the person can act for himself. When, however, such violation has gone to the irreversible stage such as death, then, such can only be litigated by a next of kin."

The right to life is enshrined in various international and national laws, including the *Universal Declaration of Human Rights (Article 3)* and the *International Covenant on Civil and Political Rights*, to which Ghana is a state party. It is a cornerstone of human rights, recognizing the inherent value and dignity of every human life and also placing obligations on states to take

necessary measures to protect individuals' lives, prevent arbitrary killings, and ensure justice and accountability when such rights are violated. The right to life can be interpreted to include the following:

- The right to exist and to live one's life with dignity;
- Protection from arbitrary deprivation of life, whether through violence, neglect, or other means;
- Freedom from threats, harassment, or intimidation that could lead to harm or death;
- Access to basic needs like healthcare, food, water, and shelter essential for survival;
- State protection from harm, including effective investigation and prosecution of threats or violence; and
- The right to life with dignity, free from cruel, inhuman, or degrading treatment or punishment.

From the above, it follows that the right to life is a fundamental human right and individuals can seek legal recourse if they believe their right to life has been violated or threatened. In legal terms, this is often referred to as a claim for "*threatened violation*" of the right to life. Thus, living persons can bring claims for various violations, such as attempted murder or assault, death threats or harassment, negligence or recklessness leading to injury or risk of death, discrimination or unequal protection under the law, leading to a heightened risk of harm, and failure of state authorities to protect them from harm.

2. The Source of the Injuries

As to the second issue, i.e. whether or not the injuries the Applicants suffered were as a result of the gunshots fired by the state security forces at the Techiman South Collation Centre on the 8th December, 2020, I have already copiously set out the facts upon which the Applicants have relied for the instant application. It is not in dispute that the security forces fired their guns to disperse the rampaging crowds at the Bonochempem Hall during the collation of the parliamentary results for the Techiman South Constituency in the evening of the 8th of December 2020. It is also not in dispute that two

persons were killed on the spot and others injured as a result of the gunfire at the premises of the Bonochempem Hall. Per paragraphs 41 to 43 of their affidavit in opposition, the Respondents clearly affirmed the averments in paragraphs 26 to 28 of the Applicants' affidavit in support wherein they alleged that these persons were injured as a result of the indiscriminate use of firearms by the state security forces.

Indeed, this Court has no qualms accepting that all six Applicants were victims of gunshot wounds suffered in the afternoon of the 8th December, 2020. This fact is confirmed by the Medical Reports of all six Applicants (Exhibits 1 to 6) regarding the injuries they presented to the Holy Family Hospital on the evening of the 8th December, 2020. The Reports indicate that they were each sent to the hospital between 3:55pm and 4:05pm on the 8th December, 2020, as a result of gunshot wounds. This was obviously around the time or soon after the shooting incident occurred at the Bonochempem Hall during the collation of the parliamentary results for the Techiman South Constituency that same evening.

The Applicants' Medical Reports also categorically state in each case that they had been shot. Per their Medical Reports the 1st Applicant was "*shot by unknown assailants*" and suffered an "*open fracture of the left forearm*"; the 2nd Applicant was "*shot with a gun to the right leg*" and suffered an "*open fracture of the right leg*"; and the 3rd Applicant was "*allegedly shot in the head*" and suffered from "*scalp haematoma with subcutaneous emphysema.*" The Medical Reports further state that the 4th Applicant was "*allegedly shot in the right knee*" and suffered an "*avulsion injury of the right knee*"; the 5th Applicant was "*allegedly shot in the head with a gun*" and suffered "*bleeding from head secondary to suspected pellet wounds*"; and the 6th Applicant was "*allegedly shot by a group of military personnel*" and suffered "*gunshot wound to left hip*".

Then again, the Respondent's own video evidence of the shooting incident (Exhibit A) clearly shows some of the armed policemen and soldiers shooting into the crowd whilst others were shooting into the air. One policeman in particular was clearly seen in the video pointing his gun at the crowd, or at least below shoulder level, and shooting. Nowhere in the video does it show any other person or civilian from the crowd shooting any sort of weapon.

The only weapons being fired were clearly from the heavily armed state security forces.

Thus, the time of the shooting incident at the Bonochempem Hall, the presentation of the Applicants to the nearby Holy Family Hospital with gunshot injuries and the confirmation by their Medical Reports that they had all suffered from gunshot injuries, together with the video evidence of reckless shooting into the crowd by the state security forces, clearly suggests a direct nexus between the shooting incident and the injuries suffered by the Applicants.

If the Respondents believed that the injuries the Applicants suffered were as a result of some other shooting incident or bullets from other persons within the crowd, it was incumbent on them to adduce sufficient evidence to counter the very obvious inferences that already existed. No such evidence has been so adduced by the Respondents except to state that the police claim that certain elements in the crowd also fired weapons into the crowd. Such allegations can only remain allegations and nothing more.

Given that there has been no confirmed report of any shooting incident elsewhere on that very day, and the Respondents have provided no such acceptable alternative explanation for the Applicants' injuries, this Court is left with no option but to accept the only logical conclusion to be garnered from the facts and evidence present, i.e. that the injuries suffered by the Applicants were as a result of the gunfire unleashed on the crowds by the state security forces at the premises of the Bonochempem Hall in the late afternoon of 8th December, 2020.

3. Justification for Violation of Human Rights

It is the Respondents' defence that the decision taken by the security forces to fire warning shots was reasonably required under the circumstances to keep order in the polling station and to suppress a potential riot in protection of lives, public property and the greater public interest. The Respondents further assert that the security forces exercised a reasonable and justifiable level of force under the growing chaotic atmosphere on the date of the incident solely in the public interest and to restore order to the 2020 parliamentary and presidential election process.

In order to be able to fulfil their responsibilities of maintaining law, safety and public order and preventing and investigating crime, law enforcement officials, which are generally made up of police and military personnel who exercise police powers, are entrusted with specific powers, including the power to use force and firearms. This power to use force and firearms comes with obligations and responsibilities, in particular with regard to the human rights that may be affected by the use of these powers and which the state and its agents are obliged to respect and protect.

When law enforcement agents employ force and firearms in an excessive, arbitrary, abusive, or unlawful manner, it ultimately undermines the legitimacy and public trust in both the law enforcement agency and the state as a whole. Therefore, it is essential that human rights are respected and upheld whenever law enforcement agents exercise their power to use force and firearms, ensuring that their actions align with the principles of necessity, proportionality, and accountability.

The law is trite that he who alleges must prove. Thus, the burden of persuasion typically lies on the party who is making a claim or asserting a defense to establish a requisite degree of belief concerning that fact in the mind of the tribunal of fact or the court. **Section 10 of the Evidence Act, 1975 (NRCD 323)** which deals with burden of proof states thus:

Section 10—Burden of Persuasion Defined.

10. (1) for the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.

(2) The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establishes the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.”

Section 11(1) of the Evidence Act, 1975 goes on to define the burden of producing evidence thus:

Section 11—Burden of Producing Evidence Defined.

11. (1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.

(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.

Finally, **section 14 of the Evidence Act, 1975** makes provision for the allocation of the burden of persuasion thus:

Section 14—Allocation of Burden of Persuasion.

"Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting."

In **Poku v. Poku [2007-2008] 2 SCGLR 996** at 1022, The Supreme Court per Georgina Wood CJ (as she then was) explained the allocation of the burden of persuasion and the standard of proof in a civil suit in the following words:-

"Generally, the burden of proof is therefore on the party asserting the facts, with the evidential burden shifting as the justice of the case demands. The standard or degree of proof must also necessarily be proof on the preponderance of the probabilities within the meaning of section 12(2) of the Evidence Act, 1975 (NRCD 323)."

The combined effect of above-quoted sections of the Evidence Act is that ordinarily, the burden of persuasion lies on the same party that bears the burden of producing evidence, i.e. the Applicants. However, depending upon the pleadings or what facts are admitted, the evidential burden can move on to the Respondents. In this case, once the Respondents have agreed or admitted that the law enforcement officers fired their guns to disperse the rioting crowds and the Court has also found for a fact that the injuries suffered by the Applicants were as a result of the gunfire unleashed by the

state security forces, the burden of persuasion shifted on to the Respondents to show that the harm or injury was lawful.

Succinctly put, where there is evidence of injury to an Applicant in an application for enforcement of fundamental rights, it is for the Respondent to show that the harm or injury was lawful. The onus is thus placed on the Respondents to show that the shooting of the Applicants on 8th December, 2020 is justified and within the circumstances provided in Article 13(1) and (2) of the Constitution.

As already stated, per Article 13(2) of the Constitution, the use of force by public law enforcement institutions that results in a violation of a person's right to life must have been 'reasonably justifiable' for the defence of any person from violence or for the defence of property; or in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or for the purposes of suppressing a riot, insurrection or mutiny; or in order to prevent the commission of a crime by that person. The Constitution makes it clear that the use of force in these circumstances must be strictly proportionate to the achievement of the permitted purpose, such as when law enforcement officers have to use lethal force to protect the lives of other people in imminent danger. It must always be remembered that proportionality is a requirement additional to necessity.

In my opinion, the necessity to protect life or defend property, which justifies the use of force by state security forces, and the proportionality of the force used, must be determined by an objective standard based on the specific circumstances of each individual case, rather than subjective judgments or personal interpretations.

I have earlier detailed the defences deposed to by the Respondents in their affidavits in opposition to the instant application. I have looked carefully at all the affidavits and annexures filed in this matter, both for and against the application. It is clear that the fact remains that there was some level of agitation within the Bonochempem Hall, and the crowds of people gathered outside the hall were also chanting and raising protest over their own respective disenchantments relating to the collation of the polls. These, in my view, are instances of normal crowd behaviour to be expected in situations such as that. Nowhere in the videos taken of the incident do we

see any acts of riot, insurrection or mutiny or attempt to commit crime on the part of the crowds that warranted the level of lethal force employed by the state security forces at that venue. The video evidence (Exhibit A) speaks for itself. None in the crowd threw stones or wielded any implements or weapons of any kind, yet the armed security forces decided to fire their weapons into the crowd.

Another disconcerting observation to note from the video evidence of the incident is the fact that, in responding to the alleged violence with force, the state security forces failed to distinguish between the individuals who were actively engaging in violence or riotous behaviour and those who are not, such as peaceful protesters or innocent bystanders. Their use of force, even if it were necessary, should have been precisely targeted at the alleged individuals perpetrating violence, and not targeted indiscriminately at the entire crowd as happened in this particular instance. The possible violence of a few individuals should not have led to a response which treated the entire assembly as violent.

The principle of proportionality as enunciated in Article 13(2) of the Constitution prohibits the use of such lethal force such as firearms where the harm inflicted outweighs the benefits of the use of force, i.e. the achievement of a legitimate objective. This becomes particularly important when it comes to the right to life. Succinctly put, the principle of proportionality means that state security officials are only allowed to put life at risk if it is for the purpose of saving or protecting another life. Nothing from the video evidence even closely suggests that any lives were at risk during the collation exercise at the Bonochempem Hall, and no evidence has been adduced by the Respondents in proof of same.

As a general rule, force should only be employed in exceptional circumstances, such as when individuals are engaging in criminal behavior or attempting to disrupt the assembly, and not as a means of crowd control or suppression. [See: **United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)**; **Oya Ataman v. Turkey, Application no. 74552/01, Judgment of 27 February 2007, European Court of Human Rights (Fourth Section)**].

The primary goal of policing assemblies of persons or crowds should be to prevent the necessity of using force. Law enforcement officials are thus required to apply non-violent means prior to resorting to force whenever possible. This calls for emphasis on alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation.

Under International human rights principles governing the use of force and firearms, the use of force must only be resorted to with the utmost respect for the law and with due consideration for the serious impact it can have on a range of human rights, including the right to life, to physical and mental integrity, to human dignity, to privacy, and to freedom of movement. Per the general principles that must govern any use of force as set out by the UN Special Rapporteur on Extrajudicial Executions, the use of lethal force such as firearms must never be employed as a tactical tool for crowd control. [See: **United Nations Human Rights Council, "Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions," May 20, 2020, A/HRC/44/38**].

Obviously, when firearms are discharged as a crowd control measure, there are bound to be additional risks, such as injuring or killing peaceful participants or bystanders or causing further escalation of the violence with even more casualties. Thus firearms may only be used when it becomes necessary to save other lives.

In view of all these facts, I find that the injury of the Applicants by the state security forces was not based upon any reasonable justification for the defence of any person from violence or for the defence of property or for the purposes of suppressing a riot, insurrection or mutiny or in order to prevent the commission of a crime by the Applicants. They were injured as a result of the indiscriminate firing of weapons into the crowd by the state security forces.

The Respondents, who have the onus of establishing that the shooting at the crowd on 8th December, 2020, and the resultant harm or injury to the Applicants was lawful was justified and within the circumstances provided in Article 13(1) and (2) of the Constitution, could not convince the Court in that

regard. I therefore hold that the Respondents have failed to prove that their use of lethal force under the circumstances was justified and lawful.

After carefully examining the varying accounts presented in this case, I have concluded that this application is both regular and substantiated. In my considered view, the Applicants have successfully established their claim, and therefore, I rule in their favor and deliver this judgment accordingly.

4. Compensation

Amongst the reliefs sought by the Applicants is an order directed at the state to pay SULEMANA ELIASU (the 1st Applicant), as the Applicants put it, *"an amount of five million Ghana Cedis (GH¢5,000,000) as compensation for agony from the torture, inhuman and degrading treatment, psychological trauma, and for being rendered disabled with almost non-existent prospect and ability to work and earn a living."* The applicants also pray for an order directed at the state to pay each of the five other applicants *"an amount of two million Ghana Cedis (GH¢2,000,000) as compensation for agony from the torture, inhuman and degrading treatment, psychological trauma, and diminished prospects and ability to work and earn a living."*

With regards to the compensation claimed by the Applicants, the authorities are settled that heads for assessment of damages for injuries suffered under circumstances such as what the Applicants went through, even though not closed, are akin to those in an action for personal injuries arising through negligence. The court may however take into account matters like the nature and conduct of the Respondent, with the result that damages will be correspondingly increased where these aggravate the damages.

In his oft-quoted judgment in **Phillips v. South Western Railway Co. (1879) 4 Q.B.D. 406**, Cockburn C.J. expressed the general approach of the Courts in the assessment of damages for personal injuries. He said at pp. 407-408 thus:

"But we think that a jury cannot be said to take a reasonable view of the case unless they consider and take into account all the heads of damage in respect of which a plaintiff complaining of a personal injury is entitled to compensation. These are the bodily injury sustained; the pain undergone; the effect on the health of the

sufferer, according to its degree and its probable duration as likely to be temporary or permanent; the expenses incidental to attempts to effect a cure, or to lessen the amount of injury; the pecuniary loss sustained through inability to attend to a profession or business as to which, again, the injury may be of a temporary character, or may be such as to incapacitate the party for the remainder of his life”.

The various heads of damages in a claim for personal injuries were lucidly stated and expanded by Lord Devlin in **H. West and Son Ltd. v. Shephard [1963] 2 All E.R 625, H.L.** His Lordship said at p. 636 thus:

"The case raises a fundamental question on the nature of damages for personal injury. There must be compensation for medical expenses incurred and for loss of earnings during recovery; these are easily quantified, whether as special or as general damage. Then there is compensation for pain and suffering both physical and mental. This is at large. It is compensation for pain and suffering actually experienced. Loss of consciousness, however caused, whether by the injury itself or produced by drugs or anaesthetics, means that physical pain is not experienced and so has not to be compensated for; and this must be true also of mental pain. Then there is or may be a temporary or permanent loss of limb, organ or faculty. Whether it is the limb itself that is lost or the use of it is immaterial. What is to be compensated for is the loss of use and the deprivation thereby occasioned. This deprivation may bring with it three consequences. First, it may result in loss of earnings and they can be calculated. Secondly, it may put the victim to expense in that he has to pay others for doing what he formerly did for himself; and that also can be calculated. Thirdly, it produces loss of enjoyment, loss of amenities as it is sometimes called, a diminution in the full pleasure of living. This is incalculable and at large. This deprivation with its three consequences is something that is personal to the victim. You do not, for instance, put an arbitrary value on the loss of a limb, as is commonly done in an accident insurance policy. You must ascertain the use to which the limb would have been put, so as to ascertain what it is of which the victim has actually been deprived."

These heads of damages in claims for personal injuries have been largely adopted and applied by the Courts in Ghana in a plethora of cases like **Yeboah v. M Yamak and Co [1962] 1 GLR 120**, where it was held, per holding (2) of the headnotes thus:

- (2) *"the two main elements in the award of general damages in personal injury claims are firstly, the personal injury itself, giving rise to pain and suffering and loss of the pleasures of life; and secondly the financial loss, i.e. loss of earnings, and the duration of the loss, considering any improvements to the health and working capacity of the plaintiff."*

The Court of Appeal also held in **Fibre Bag Manufacturing Co. v. Sarpong (1967) GLR 657** that, in assessing damages to be paid to the plaintiff, the court must consider the pain and suffering, and the loss of amenities of life, and the prospective loss of earnings.

Again, in **Samuel Awuku v. Suleman Mamuni and Shaibu Sulemana (2014) JELR 69748 (CA)**, Ofoe, JA discussed the heads for assessment of damages as follows:

"The authorities are settled that heads for assessment of damages for injuries, even though not closed, can be categorized under pecuniary damages and non-pecuniary. The most common of pecuniary damages has to do with medical expenses, travelling in and out of hospital or the like. In this area we may add actual loss of earnings, loss of earning capacity and other gains or benefits which but for the injury the plaintiff would have had and any other expenses he had been put to as a result of the accident. Under non pecuniary damages we have loss of amenities of life, pain and suffering, and loss of expectation of life. It is these two categories that one is expected to examine and apply to the specifics of a case in determining the appropriate monetary award to make to an applicant. While it is admitted that some of these claims i.e. the pecuniary awards are amenable to arithmetic calculation to a fair degree non pecuniary awards are not. But the general objective is to provide what will be accepted generally as adequate, fair and reasonable compensation for the loss arising out of the injury."

All these authorities cited above suggest that when awarding compensation for physical injury suffered, a Court typically considers a number of factors including, but not limited to the following:

1. **Severity of the injury:** The extent and gravity of the harm suffered, including the type and duration of the injury.
2. **Pain and suffering:** The physical and emotional distress experienced by the victim as a result of the injury, including chronic pain, discomfort, and mental anguish.
3. **Medical expenses:** Past and future medical costs, including treatment, any consequential surgical operations, rehabilitation, and medication.
4. **Loss of earnings:** Income lost due to the injury, including past and future wages, benefits, and any potential earning capacity. This includes the impact on the Plaintiff's ability to attend to their profession or business.
5. **Loss of amenities of life or Impact on daily life:** How the injury affects the victim's daily activities, hobbies, and overall quality of life, considering its degree and probable duration, whether temporary or permanent.
6. **Permanent damage or disability:** Any long-term or permanent effects of the injury, such as scarring, disfigurement, or disability.

In support of their claims for compensation, the Counsel for the Applicants tendered the Applicants' medical reports which summarise the nature of injuries suffered by each Applicant and the immediate treatment administered as follows:

Suleiman Eliasu: Suleiman Eliasu, a 28-year-old man, suffered an open fracture of the left forearm as a result of being shot by unknown assailants. He was sent to the theatre for debridement and, upon request by his relatives, he was subsequently referred to the Wenchi Methodist Hospital the next day, that is, the 9th December, 2020.

Abubakari Iddirisu: Abubakari Iddirisu, a 27-year-old man, suffered an open fracture of the right leg as a result a shot with a gun to the right leg. He was admitted and treated with antibiotics, analgesics and tetanus prophylaxis and subsequently referred to the Wenchi Methodist Hospital the next day, that is, the 9th December, 2020.

Alhassan Nasiru: Alhassan Nasiru, a 26-year-old man suffered injury to scalp (scalp haematoma with subcutaneous emphysema) as a result of being allegedly shot in the head. He was admitted and pressure dressing applied to stop the bleeding. He was also treated with antibiotics, analgesics and tetanus prophylaxis, and discharged the next day, that is, the 9th December, 2020.

Aremeyaw Alhassan: Aremeyaw Alhassan, a 37-year-old man suffered avulsion injury of the right knee as a result of being allegedly shot in the right knee. He was admitted with dressing applied to his wound and also treated with antibiotics, analgesics and tetanus prophylaxis. He was discharged the next day, that is, the 9th December, 2020, and made seven follow up visits for the dressing of his wound.

Alhassan Abdul-Rahman: Alhassan Abdul-Rahman, a 35-year-old man, suffered bleeding from the head from suspected pellet wounds as a result of being shot in the head with a gun. He was detained and had the lacerations to his head sutured and dressed. He was also treated with antibiotics, analgesics and tetanus prophylaxis and discharged.

Paul Asue: Paul Asue, a 34-year-old man, suffered gunshot wounds to the left hip as a result of being allegedly shot by a group of military personnel. An x-ray was done of his pelvis, his wound was dressed, and he was treated with antibiotics, analgesics and tetanus prophylaxis and discharged the same day, that is, the 8th December, 2020.

What can be gathered from the evidence in the Medical Reports, which to me tells some of the story of the nature of the injury and the treatment the

Applicants went through, was that the Applicants, in each case, underwent some basic emergency medical treatment and were either discharged the same day or on the following day. Only the 1st and 2nd Applicants were referred to the Wenchi Methodist Hospital for further treatment. Paul Asue (6th Applicant) was discharged that same day, Alhassan Nasiru, Aremeyaw Alhassan and Alhassan Abdul-Rahman (3rd, 4th and 5th Applicants) were discharged the following day. Suleiman Eliasu and Abubakari Iddirisu (1st and 2nd Applicants) were however referred to the Wenchi Methodist Hospital the next day, that is, the 9th December, 2020. Thus, apart from the 1st and 2nd Applicants, the rest of the Applicants were in hospital for less than one day.

Apart from the initial supportive treatment, which included intravenous infusion, antibiotics, pain management, and tetanus prevention, there is no further information regarding the subsequent medical care received by the 1st and 2nd Applicants after being referred to the Wenchi Methodist Hospital. In fact, it is unclear whether they even attended that hospital. As a result, the Court lacks any insight into the potential long-term or residual effects of the injuries of the 1st and 2nd Applicants, including any permanent disability or incapacity that may have resulted.

Furthermore, there is a lack of information about the Applicants' personal circumstances, including their educational or employment status at the time of the accident, the nature of their employment (if applicable), and how they have adapted to their current physical condition since the incident. Answers to these questions would have been invaluable in informing the Court's decision, but unfortunately, no evidence was presented on these critical matters. As a result, the Court had to rely solely on the affidavit evidence submitted by the Applicants to determine the appropriate compensation for each of them, making this task even more challenging.

In this instant case no evidence was led by the Applicants as to the pain they went through or the expenses they were put to, except for the 2nd Applicant who's "*Estimated Bill for Surgery and Implant Removal*" (Exhibit 7 Series) from the Wenchi Methodist Hospital to which he was referred is eight thousand, four hundred Ghana Cedis (GH¢8,400.00). While it is clear that they all experienced some level of pain, the extent and duration of their

suffering are unknown to me. Consequently, their damages are likely to be minimal.

Due to a lack of lack of information about the Applicants' personal circumstances as well as the pain they went through and the expenses they were put to, I am compelled to rely on the expenses expected to be incurred by the 2nd Applicant, whose case like that of the 1st Applicant is comparatively more severe, to determine an appropriate award for all the Applicants. Following the direction of the Supreme Court in **Akufo v. Issaka (1966) GLR 476 at 480**, which endorsed awards under specific headings to make a lump sum, I shall assess damages under the various heads and conclude with a total award of twenty five thousand Ghana Cedis (GH¢25,000.00) in favor of each Applicant.

Upon considering the several reliefs claimed by the Applicants, I grant them the following which have been proved on the balance of probabilities in accordance with the standard required by the law under Section 12 of the Evidence Act, 1975 (Act 323): -

1. A declaration that the injuries respectively inflicted on SULEMANA ELLIASU, ABUBAKARI IDDIRISU, ALHASSAN NASIRU, AREMEAW ALHASSAN, ALHASSAN ABDUL-RAHMAN, AND PAUL ASUE by gunshots at the Techiman South Constituency Collation Center, carried out by the security forces/personnel deployed by the State of Ghana to the Techiman South Collation Center, on the 8th day of December 2020, violated their respective rights to life under Article 13(1) of the 1992 Constitution, and their respective rights on the State to respect and uphold their respective rights to life and human dignity, under article 12(1) of the 1992 Constitution; and
2. An Order directed at the State to investigate the said infliction of injuries on SULEMANA ELLIASU, ABUBAKARI IDDIRISU, ALHASSAN NASIRU, AREMEAW ALHASSAN, ALHASSAN ABDUL-RAHMAN, and PAUL ASUE as soon as possible, find the perpetrator(s) of the inflictions, and punish them in accordance with the Law.
3. An Order directed at the State to pay each Applicant the sum of twenty five thousand Ghana Cedis (GH¢25,000.00) as compensation

for the violation of their right to life and infliction of psychological trauma from being shot at by the state security forces.

4. Costs of twenty thousand Ghana Cedis (GH¢20,000.00) for each Applicant against the Respondents jointly and severally.

(SGD.)

H/L JUSTICE FREDERICK A.W.K. NAWURAH

(JUSTICE OF THE HIGH COURT)

COUNSEL:

- Osman Alhassan Esq. for Abraham Amaliba Esq. for Applicants;
- Michael Baafi Esq. (Senior State Attorney) for Respondents.

