Review of Case Law on Constitutional Supremacy in Ghana

Introduction

The 1992 Constitution of Ghana is the supreme law of the Republic. Article 1(2) provides that any law, action, omission, or conduct that is inconsistent with the Constitution is void to the extent of that inconsistency. The principle of constitutional supremacy ensures that all arms of government ,the executive, legislature, and judiciary act within the bounds of the Constitution. The courts, especially the Supreme Court, play a critical role in enforcing this supremacy through constitutional interpretation and judicial review. This review examines relevant Ghanaian case law where the courts have asserted the supremacy of the Constitution and upheld its authority over statutory provisions, executive actions, parliamentary enactments, and even decisions of other courts.

1. Concept and Application of Constitutional Supremacy

Tuffuor v Attorney-General [1980] GLR 637

This foundational case arose during the transition to the 1979 Constitution but remains applicable due to its restatement in the 1992 Constitution. The court addressed the transitional provisions concerning the office of the Chief Justice. The Supreme Court held that the Constitution must be interpreted in its **broad, liberal, and purposive sense**, as it is a **sui generis document** that expresses the will and aspirations of the people. The court affirmed that judges of the superior court, including the Chief Justice, continued in office without needing reappointment. The phrase "shall be deemed to continue in office" was interpreted in its **natural and mandatory sense**, and any contrary parliamentary action was unconstitutional.

Furthermore, the court held that the term "any person" under Article 2(1) must be interpreted as **any citizen** of Ghana, natural or artificial. The sovereignty of the Constitution and the right of every citizen to enforce it was reaffirmed.

Key Principles:

- The Constitution is not an ordinary statute but a foundational legal instrument.
- Interpretation must be broad and purposive.
- Constitutional supremacy invalidates inconsistent parliamentary actions.

2. Judicial Review of Legislative and Executive Actions

Justice Abdulai v Attorney-General [2022]

This case involved the constitutionality of the Deputy Speaker participating in a vote while presiding over parliamentary proceedings. Article 104 of the 1992 Constitution requires a quorum for voting, excluding the Speaker. The issue was whether a Deputy Speaker, while presiding, should also be excluded.

The Supreme Court held that unlike the Speaker, the Deputy Speaker remains a **Member of Parliament representing a constituency**. His role as presiding officer does not disenfranchise his constituents. Therefore, he **can be counted for quorum and vote**. The Court's decision **validated the approval of the budget**, reinforcing that even parliamentary procedures are subject to the Constitution.

Key Principle:

- The Constitution takes precedence over parliamentary standing orders and practices.

Professor Appiagyei-Atua v Attorney-General

The plaintiff challenged the **Imposition of Restrictions Act, 2020 (Act 1012)**, arguing that it violated Articles 21 and 31 of the Constitution, which deal with fundamental rights and emergency powers.

The Supreme Court acknowledged that the Constitution only permits the **restriction of fundamental rights** under **specific constitutional circumstances**, such as a **state of emergency**. Granting the president unrestricted powers through ordinary legislation without meeting constitutional thresholds was unconstitutional.

Key Principle:

- Executive powers, including emergency powers, must derive strictly from the Constitution.
- Legislation inconsistent with constitutional safeguards is void.

Abu Ramadan v Electoral Commission [2016]

The plaintiff challenged the EC's use of the **NHIS card** as proof of citizenship for voter registration under Article 42. The Court found that the **NHIS card included non-citizens and minors**, and thus could not conclusively establish citizenship.

Key Principle:

- Any law or instrument that **undermines constitutional requirements** in this case, proof of citizenship is unconstitutional.

Derrick Adu Gyamfi v Attorney-General

Section 13 of the Companies Act, 2019 (Act 992) disqualified persons merely **charged with a criminal offence** from serving as company directors. The Supreme Court held that this provision **violated Article 19(2)**, which guarantees the **presumption of innocence**, and **Article 19(11)**, which prohibits punishment except for breach of clearly defined law.

Key Principle:

- A mere charge does not amount to guilt; disqualification laws must respect constitutional rights.

Ezuame Mannan v Attorney-General

Section 43 of the Narcotics Control Commission Act, 2020 (Act 1019), allowed the cultivation of cannabis without an **explanatory memorandum**, violating Article 106(1). The Court struck down the provision as **passed in excess of Parliament's legislative authority**, emphasizing the need for transparency and accountability in law-making.

Key Principle:

- Legislative processes must comply with constitutional procedures; non-compliance renders the statute invalid.

3. Judicial Review of Court Decisions (Supervisory Jurisdiction)

Republic v High Court (Ex Parte Zanetor Rawlings)

Zanetor Rawlings, after winning a party primary, was challenged for **not being a registered voter**, allegedly violating Article 94(1)(a). The High Court proceeded to interpret Article 94 without reference to the Supreme Court.

The Supreme Court held that **only it had the authority** to interpret the Constitution under Article 130(2). The High Court had acted in excess of jurisdiction. The Supreme Court **quashed** the decision and reasserted its **exclusive interpretative mandate**.

Key Principle:

- Only the Supreme Court can interpret the Constitution under Article 130(1) and (2).
- Lower courts must refer matters involving constitutional interpretation.

Republic v Maikankan

This case clarified the **scope of Article 130(2)**. The High Court referred a question on whether a jury must be empaneled in criminal trials. The Supreme Court held that **not all constitutional questions require interpretation** only those that are **ambiguous or contested**. Courts should not overload the Supreme Court with clear or obvious matters.

4. Proper Invocation of Supreme Court Jurisdiction

Republic v Special Tribunal Ex Parte Akosah

This seminal case established **four grounds** upon which the original jurisdiction of the Supreme Court can be invoked:

1. Allegation of **ambiguity** in a constitutional provision.
2. Parties assigning **rival meanings** to the same provision.
3. **Conflict** between two constitutional provisions.
4. An act, omission, or conduct alleged to be **inconsistent** with the Constitution.

This case reaffirmed that the **Supreme Court is the guardian of constitutional supremacy** and its jurisdiction must be properly triggered.

Samuel Osei Boateng v National Media Commission

The plaintiff sought a declaration that appointing a member of the NMC to head the GBC violated **Article 168**, amounting to conflict of interest. The parties gave rival meanings to Article 168, thus triggering the Court's **interpretive jurisdiction**. The Court ruled the appointment unconstitutional.

Key Principle:

- Conflicts of interest arising from constitutional provisions are subject to judicial interpretation.

James Kwabena Bomfeh v Attorney-General

The plaintiff challenged state sponsorship of the **National Cathedral** and **Hajj pilgrimage**, claiming breaches of Articles 21, 35, and others. The Court held that although no ambiguity arose for interpretation, the claim still invoked **enforcement jurisdiction**.

Key Principle:

- Supreme Court jurisdiction can be invoked either for **interpretation** or **enforcement**, not exclusively for ambiguous provisions.

5. Conflict and Harmonization of Constitutional Provisions

Zakaria v Nyimakan

The plaintiff alleged a conflict between **Article 99(2)** (which limits appeals in parliamentary election petitions to the Court of Appeal) and **Article 131(1)(a)** (which states the Supreme Court as the final appellate court).

The Court rejected the conflict, holding that **certain constitutional provisions are intentionally exclusive** and that **hierarchy of courts** can be subject to specific exceptions.

Kuenyehia v Archer

The issue was whether justices continuing in office under the 1992 Constitution must retake their judicial oaths before the President. The Court held that oaths could be taken before the Chief Justice, as the President's powers may be **delegated**under the Constitution. The Constitution must be **read as a whole**, and its interpretation must consider **context, purpose, and practicality**.

6. Other Notable Applications of Constitutional Supremacy

NPP v Attorney-General (31st December Case)

The NPP challenged the government's use of public funds to celebrate the 31st December coup, citing Article 3(4) which mandates citizens to resist unconstitutional rule. The Court held that **celebrating a coup violated the spirit of the Constitution**, even if no explicit provision prohibited the celebration.

Key Principle:

- The **spirit and preamble** of the Constitution are part of its enforceable authority.

Food Sovereignty Ghana v Attorney-General

The plaintiff claimed that the Plant Variety Protection Act violated Article 75 because it sought to implement the UPOV Convention without ratification. The Court held that Parliament **enacted a law under Article 106**, and no treaty was being directly implemented. Thus, no constitutional breach occurred.

Conclusion

The supremacy of the Constitution of Ghana is firmly rooted in judicial practice. The Supreme Court has consistently maintained its role as the ultimate interpreter and enforcer of constitutional provisions. Through cases like *Tuffuor v AG*, *Justice Abdulai v AG*, *Appiagyei-Atua v AG*, and *Zanetor Rawlings*, the Court has invalidated actions, laws, and decisions inconsistent with the Constitution. These cases demonstrate that constitutional supremacy is not only a textual doctrine but a living principle applied to uphold democracy, rule of law, and accountability in governance.

In light of these precedents, legal practitioners, scholars, and public officers must remain vigilant to ensure that all actions, policies, and enactments conform strictly to the 1992 Constitution. The judiciary, particularly the Supreme Court, remains the guardian of constitutionalism in Ghana.