

IN THE SUPERIOR COURT OF JUDIC A TIREME COURT OF GHANA IN THE SUPREME COURT ACCRA - A.D. 2025

SUIT NO: J1/6/2025

egistrar

BETWEEN

SHAFIC OSMAN

Libya Quarters Madina, Accra



T8 23 2026

1. BOARD OF GOVERNORS
WESLEY GIRLS SENIOR HIGH

Kakumdo, Cape Coast

2. EDUCATION SERVICE
Ministries. Accra

3. THE ATTORNEY-GENERAL The Law House, Accra

DEFENDANTS/APPLICANTS

MOTION ON NOTICE

FOR LEAVE FOR 2ND AND 3RD DEFENDANTS/APPLICANTS TO WITHDRAW AND REPLACE THE STATEMENT OF THE DEFENDANTS' CASE PURSUANT TO THE INHERENT JURISDICTION OF THE SUPREME COURT

PLEASE TAKE NOTICE that this Honourable Court shall be moved by the Attorney General for and on behalf of the 2nd and 3rd Defendants/Applicants herein praying this Honourable Court for leave to withdraw and replace their Statement of Case upon the grounds set out in the accompanying affidavit and for any other order or orders as this Honourable Court may deem fit.

OURT TO BE MOVED on the day of day of

DATED AT THE OFFICE OF THE ATTORNEY-GENERAL, THE LAW HOUSE, LIBERIA ROAD, ACCRA, THIS 3: 4. DAY OF OCTOBER, 2025.

DR. JUSTICE SREM-A

DEPUTY ATTORNEY- GENERAL

& MINISTER FOR JUSTICE

LAWYER FOR THE 2ND & 3RDDEFENDANTS

THE REGISTRAR
SUPREME COURT
CIVIL DIVISION
ACCRA

AND FOR SERVICE ON:

THE WITHIN NAMED PLAINTIFF/RESPONDENT OR HIS LAWYER, VICTOR NSOH AZURE, ESQ., KPEMKA & CO PRUC, FIRST FLOOR, JOSHUA TOWERS, ODOTEI TSUI AVENUE, DZORWULU, ACCRA.

IN THE SUPERIOR COURT OF JUDICATURA IN THE SUPREME COURT ACCRA - A.D. 2025

SUIT NO: J1/6/2025

BETWEEN

SHAFIC OSMAN

Libya Quarters Madina, Accra **PLAINTIFF**

AND

1. BOARD OF GOVERNORS WESLEY GIRLS SENIOR HIGH

Kakumdo, Cape Coast

DEFENDANTS/APPLICANTS

2. EDUCATION SERVICE Ministries. Accra

3. THE ATTORNEY-GENERAL The Law House, Accra

AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE TO AMEND THE STATEMENT OF CASE OF $2^{\rm ND}$ AND $3^{\rm RD}$ DEFENDANTS/APPLICANTS

- I, DANIEL ARTHUR OHENE-BEKOE, State Attorney in the Civil Division of the Office of the Attorney General, Accra make oath and say as follows:
- 1. That I am the deponent herein.
- 2. That I have the consent and authority of the Honourable Attorney General to depose to this Affidavit for and on his behalf, the matters herein having come to my knowledge, information and belief in the course of my duties.

- That at the hearing of this application, the Honourable Attorney General shall 3. seek leave to refer to all processes so far filed in this matter as if such processes are duly exhibited to this affidavit.
- That on 23rd December 2024, the Honourable Attorney General was served 1. with the Plaintiff/Respondent (herein after referred to as the Respondent). filed a Writ to invoke the Original Jurisdiction of the Supreme Court under Articles 2(1)(B) and 130(1)(A) of the 1992 Constitution of Ghana.
- That the Defendants/Applicants (herein after referred to as the Applicants) 5. subsequently, with the leave of this Honourable Court, filed their Statement of Case.
- That after a close study of the facts of the case on the back of which the 6. Plaintiff mounted the action, the Honourable Attorney General has decided to withdraw and replace the Statement of Case filed for and on behalf of the 2nd and 3rd Applicants to place the whole of their response before the Court for determination.
- That a draft copy of the Applicants' Statement of Case is attached and marked 7. as Exhibit "AG 1" to demonstrate that the Applicant is desirous of defending the matter.
- That in the circumstances, the Applicants crave the indulgence of this 8. Honourable Court to be granted leave to amend their Statement of Case.

WHEREFORE I swear to this affidavit in support of the Motion for Leave to withdraw and replace the Statement of Case.

SWORN AT ACCRA

THIS DAY OF LOV 2025}.

DEPONENT

BEFORE ME

Pape 4 of

IN THE SUPERIOR COURT OF JUDICATURE IN THE SUPREME COURT ACCRA - A.D. 2025

SUIT NO: J1/6/2025

BETWEEN

SHAFIC OSMAN

Libya Quarters Madina, Accra **PLAINTIFF**

AND

1. BOARD OF GOVERNORS
WESLEY GIRLS SENIOR HIGH

Kakumdo, Cape Coast

2. EDUCATION SERVICE

Ministries, Accra

3. THE ATTORNEY-GENERAL

The Law House, Accra

DEFENDANTS/APPLICANTS

CERTIFICATE OF EXHIBITS

/Magistrate/ Registrar of Court/ Notary, do hereby certify that the following documents have been attached to the Defendants/Applicants' affidavit in support of the motion.

NO.	EXHIBIT MARK	DESCRIPTION
1.	Exhibit AG1	A copy of the draft statement of the 2nd and 3rd
		Defendant's case.

BEFORE ME

COMMISSIONER FOR OATHS

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IN THE SUPERIOR COURT OF JUDICATURE IN THE SUPREME COURT ACCRA - A.D. 2025

SUIT NO: J1/6/2025

BETWEEN

SHAFIC OSMAN

Libya Quarters Madina, Accra

PLAINTIFF

AND

BOARD OF GOVERNORS WESLEY GIRLS SENIOR HIGH

Kakumdo, Cape Coast

EDUCATION SERVICE

Ministries, Accra

THE ATTORNEY-GENERAL

The Law House, Liberia Rd

Accra

1ST DEFENDANT

STATEMENT OF CASE FOR AND ON BEHALF OF THE 2ND AND 3RD DEFENDANTS (DRAFT)

May it please your Lordships,

INTRODUCTION I.

- 1. This statement of case is for and on behalf of the 2nd and 3rd Defendants. It prays your Lordships to dismiss the Plaintiff's case in the writ to the extent that the reliefs sought, if granted, infringe on the 1st Defendant School's right to practice its religion. violative of the school's rights guaranteed under the 1992 Constitution of Ghana.
- 2. The Plaintiff initiated the action herein by a Writ dated December 23, 2024, with its accompanying Statement of Case setting out the facts and law on which the action is founded. By the said action brought under the original jurisdiction of the court, the Plaintiff is claiming the following reliefs:
 - a. A declaration that the 1st Defendant's policy prohibiting the belief, practice and observance of Islam by Muslim students on its campus is 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.

- b. A declaration that the 1st Defendant's policy compelling and requiring the practice of a compulsory school religion in a public school is contrary to and inconsistent with Articles 21(1) (b) (c) and Article 26.
- c. A declaration that 1st Defendant's policy prohibiting Muslim students from exercising their religious rights is unlawfully discriminatory and a violation of Article 17(2) of the Constitution of Ghana, 1992.
- d. A declaration that the limitations on Muslim students in 1st Defendant school undermines the welfare of Muslim students under International Human Rights of the Child cognisable under Article 33(5) of the Constitution of Ghana, 1992.
- e. A declaration that 1st Defendant's policy compelling the practice of Methodism by all students is an establishment of religion in violation of Article 21(1) (c) and Article 56 of the Constitution of Ghana, 1992.
- f. A declaration that by allowing the 1st Defendant's policy of compelling the practice of Methodism by all students, the 2nd Defendant has unlawfully allowed the imposition of a common religious program in violation of Article 56 of the Constitution of Ghana, 1992.
- g. An order perpetually restraining the 1st and 2nd Defendants, with immediate effect from further administering the impugned policy in the 1st Defendant school or similar policies in any other school.
- h. An order directing the 2nd Defendant to enact constitutionally compliant guidelines for the regulation of religious practice and observance for all public schools in Ghana.
- i. Any other order(s) that this honourable court may deem fit.

II. SUMMARY OF FACTS

- 3. The 1st Defendant school, Wesley Girls' High School, is a missionary-founded school partially funded by the government, through the Ministry of Education and allied government agencies. The school's curriculum, some of its infrastructure, as well as its teachers, are all determined, provided for, appointed and paid by the government, respectively.
- 4. The school requires the signing of an undertaking that contains an "Institutional Faith Clause" during the admission process. The undertaking, particularly this institutional faith clause, requires the observance of the school's Methodist practices, including the attendance of mass, and participation in other faith-based activities.



- 5. The Plaintiff contends that Wesley Girls' High School curtails the rights of students, particularly, Muslim students, when they are prevented from observing Islamic religious acts such as Salat, Jummah, Ramadan and Eid while in school. It is the Plaintiff's case further that, Wesley Girls' High School bans Islamic prayer, outlaws any gathering of Muslim students, prevents Muslim students from having or wearing any Islamic religious attire on campus, fails to nominate a Muslim student for student leadership and compels Muslim students to participate in Methodist religious practices.
- 6. In that respect, the Plaintiff submits that this contravenes Articles 12, 17(1)(2), 21(1) (b)(c)(e), 26(1) and 56 of the 1992 Constitution which guarantee freedom of thought, conscience and belief, freedom of association and freedom to practice any religion and to manifest such practice. Consequently, Wesley Girls' High School's policy or institutional faith clause is inconsistent with, in contravention of the Constitution and to that extent are null, void and of no legal effect.

III. ISSUES FOR DETERMINATION

- 7. The issues which, from the Attorney-General's perspective, come up for determination from these facts are as follows:
 - a. Whether or not the Wesley Girls Senior High is owned by the Methodist Church?
 - b. Whether or not the Wesley Girls Senior High has the right to practice its religion?
 - c. Whether or not the Wesley Girls Senior High is entitled to government funding, even as a religious body?
 - d. Whether or not the State can take away the religious right of Wesley Girls Senior High because of funds received from the State.

IV. LEGAL ARGUMENTS OF THE 2ND AND 3RD DEFENDANTS

- 8. Based on the above facts and issues, the Attorney-General presents the following arguments in support of the prayer that the case in the Writ be dismissed.
 - a. Wesley Girls High School is owned by the Methodist Church and not the State.
 - b. Wesley Girls High School has the right to practice its religion.
 - c. Wesley Girls High School is entitled to government funding, even as a religious body.
 - d. The State cannot take away the religious right from Wesley Girls High School because of funds received from the State.



- A. Wesley Girls High School is owned by the Methodist Church and not the State.
- 9. **Article 25** of the Constitution promotes the right to establish and maintain a private School or Schools, including religious groups that may want to build Schools.
- 10. Wesley Girls' High School is a religious (Methodist Mission) school. It is a religious school with public character.
- 11. Date-Bah JSC in the case of **Chapel Hill School Ltd. vs. The Attorney-General & Another [2008-2009] 2 GLR 98 at page 110** gave meaning to an educational institution characterized as being a public character. He stated that:

"For the appellant to succeed in showing that it is an institution of a public character, it must, in our view, establish that its educational business was of public benefit and did not confer any private benefit on individuals. The fact that it is privately owned is not necessarily a bar to the appellant's ability to demonstrate this."

- 12. This characterization of Wesley Girls' High School does not make it a public school or one established and managed by the State.
- 13. Prior to Ghana's independence in 1957, the Methodist Mission, alongside other religious missions such as the Basel Mission, the Roman Catholic Mission, and the English Church Mission (ECM), played a significant role in shaping the educational landscape of the then Gold Coast. The colonial government formally acknowledged these efforts with the enactment of the **Education Ordinance of 1882**, which fostered a partnership between the government and the churches in the provision of education. This ordinance led to the establishment of a Board of Education tasked with administering grants-in-aid to mission-established schools.
- 14. Subsequently, the **Education Ordinance of 1887** classified schools into two main categories:
 - a. Government Schools: Schools established and fully managed by the government.
 - b. Assisted Schools: Schools established and managed by churches, with financial support from the government.
- 15. After Ghana attained independence in 1957, the management of all educational institutions came under the control of the government to ensure equitable access to education for all citizens.
- 16. This transition was facilitated by the enactment of the **Education Act, 1961 (Act 87)**, which integrated Methodist educational institutions, including Wesley Girls' High School, into the public school system under the Ghana Education Service (GES). It is worthy to note that under Act 87, some key terms such as "public", "assisted

<u>institution</u>" and "<u>public higher institution</u>" were defined. For the avoidance of doubt, these were defined as follows:

"Public – in relation to an institution is defined as one that is maintained wholly or in part from central or local. Government funds.

Assisted Institution – a public secondary school, training college, or other establishment for higher education, controlled by a board of governors or similar management structure, and approved by the Minister for the receipt of government grants-in-aid.

Public higher institution – a government or assisted institution other than a primary."

17. The management of pre-tertiary schools is a product of the **Pre-Tertiary Education Act, 2020 (Act 1049)** which repealed the **Education Act, 2008 (Act 778)** which has since replaced the **Education Act, 1961 (Act 87)**. It emphasizes the unique nature of faith-based schools and their distinct identity within the public education system. The following provisions address the management of faith-based schools reinforcing their role and distinct identity within the public education system.

Section 4(4) of Act 1049 states as follows:

"Faith-based schools shall enter into Memorandum of Understanding with the Education Service for the effective and efficient management of faithbased schools."

Section 10 (1) of Act 1049 states as follows:

"The governing body of the Education Service is a Council consisting of the following;
(b)(viii) one representative of the Faith-based organizations in Ghana."

Section 52 of Act 1049 states as follows:

"Faith-based organization" means an association of persons, body or organization that professes adherence to or belief in a system of faith or worship established in pursuance of a religious objective such as National Catholic Secretariat, the Christian Council, the Pentecostal Council, the Federation of Muslim Councils and Ahmadiyya Mission."

18. Wesley Girls' High School prides itself as being a Methodist Mission High School exclusively for girls which is assisted by the Government of Ghana. The character of the school remains as one that is steeped in its Methodist Traditions which is expressed through its proven practices and activities including its co-curricular activities. Clearly, as can be gleaned from the Wesley Girls' High School Students' Handbook, the Wesley Girls' High School is a faith-based school.

- B. Wesley Girls High School has the right to practice its religion.
- 19. Respectfully, Chapter 5 of the Constitution of Ghana, 1992 incorporates provisions on Fundamental Human Rights. The important question to be addressed pertains to the right of the Wesley Girls' High School to practice its religion pursuant to **Article** 21(1)(c).
- 20. Article 21(1) (b) and (c) of the Constitution dealing with general fundamental rights and freedoms of a person including religious freedom provides as follows:

(1) All persons shall have the right to

- (b) freedom of thought, conscience and belief which shall include academic freedom
- (c) freedom to practice any religion and to manifest such practice.
- 21. **Article 26(1) of the Constitution** lends support to the right to enjoy one's religion, promote any culture, language or tradition so long as it is consistent with public policy, the promotion of individual liberties in a free and democratic society.
- 22. Respectfully, my Lords, by this Court's decision in the case of **New Patriotic Party v Attorney-General (CIBA case)** [1997-1998] 1 GLR 729, the word "person" in the Constitution includes natural and artificial or corporate persons. Thus, the court by a majority of 4 -1 in holding 1 held as follows:

"all classes of persons including natural persons and corporate bodies like the plaintiff had the capacity to bring an action in the Supreme Court under article 2 (1) for the enforcement of the 1992 Constitution."

- 23. Wesley Girls' High School just like any other person in the eyes of the law, enjoys all the fundamental human rights and freedoms contained in Chapter 5 of the Constitution subject only to the respect for the rights and freedoms of others and for the public interest.
- 24. The Supreme Court in the case of James Kwabena Bomfeh v Attorney-General [2019] 1 SCGLR 137 at page 161 reiterated this position of law as follows:

"The Constitution guarantees the equal right of all persons to subscribe to the religious belief and faith of their own choosing without interference or imposition by the State. The state is thus prohibited from discriminating against any person on grounds of religion or creed or the establishment of a state religion and also preventing the free expression of religious orientations."

25. Respectfully, my Lords, the Supreme Court of Canada in the case of_Loyola High School v Quebec (Attorney General) [2015] 1 S.C.R. 613 The Supreme Court of Canada addressed the issue of religious freedoms in a faith-based school. Loyola High School, a private Catholic institution, challenged a government requirement to teach an ethics and religious culture program from a neutral perspective. The court concluded that the Minister's decision infringes Loyola's right to religious freedom

under s. 2(a) of the Charter, in a manner that cannot be justified under s. 1. Abella J in Loyola's case at pages 649 to 650 stated as follows:

"To tell a Catholic school how to explain its faith undermines the liberty of the members of its community who have chosen to give effect to the collective dimension of their religious beliefs by participating in a denominational school. As Justice Dickson observed in Big M Drug Mart, "whatever else freedom of conscience and religion may mean, it must at the very least mean this: government may not coerce individuals to affirm a specific religious belief or to manifest a specific religious practice for a sectarian purpose" (p. 347). Although the state's purpose here is secular, requiring Loyola's teachers to take a neutral posture even about Catholicism means that the state is telling them how to teach the very religion that animates Loyola's identity. It amounts to requiring a Catholic institution to speak about Catholicism in terms defined by the state rather than by its own understanding of Catholicism."

- 26. Applying this reasoning to Wesley Girls' High School, requiring the school to allow unrestricted religious practices of other faiths would hinder the free practice of Methodism, which forms the foundation of the school's values. My Lords, this respectfully, in line with the Loyola case would be a violation of the school's religious freedom.
 - C. Wesley Girls High School is entitled to government funding, even as a religious body.
 - 27. My Lords, respectfully, the fact that Wesley Girls Senior High as a religious institution of a public character does not in any way deprive it from government funding.
 - 28. My Lords, in James Kwabena Bomfeh v Attorney-General (supra) at page 160, the Court per Adinyira JSC stated that:

"As noted earlier the Constitution does not specifically prohibit the Government from <u>supporting</u>, <u>assisting or cooperating</u> with religious groups. ... The State is free to lend support or aid to a religious group if it deems such beneficence to be for the good of the nation."

- 29. With respect, we submit that Wesley Girls' High School just like other schools established by religious bodies, has played a prominent role in Ghana's educational landscape.
- 30. This was pithily stated by Adinyira JSC in the unanimous decision of the Supreme Court in James Kwabena Bomfeh v Attorney-General (supra) at page 160 as follows:

"Historically, the state in Ghana recognized the existence and importance of religious identity and affiliation in the Ghanaian society and encouraged their open and lawful expression even at national events. There has been collaboration

between the state and religion in Ghana by the establishment of educational institutions, medical facilities and agricultural projects by all groups of Christian and other faiths in the country and thus contributing immensely to the socioeconomic growth of the country. In some remote areas of Ghana, it is the religious bodies that pioneered the establishment of schools and health facilities before the state recently ventured in those areas.

The church has been a transforming agent, contributing to the development of the moral character of people and impartation of knowledge."

- D. The State cannot take away the religious right from Wesley Girls' High School because of funds received from the State.
- 31. My Lords, the religious right of any person including Wesley Girls' High School cannot be curtailed *solely* by reason of funds received from the State.
- 32. The Courts have always guarded jealously the rights of persons. The Supreme Court in James Kwabena Bomfeh v Attorney-General (supra) at page 160 emphasized that restrictions on freedom of worship or religion cannot be justified under the Constitution as it is prohibited. She stated as follows:

"What the letter and spirit of the constitutional provisions forbids is the state hindering freedom of worship, religion and belief in the country and discrimination on grounds of religion. The Constitution specifically prohibits Parliament from enacting a law "to impose on the people of Ghana a common program or set of objectives of a religious or political nature"."

- 33. The fact that public schools in general cannot have a one-for-all religion for students does not extend to private schools or mission schools. The State may withdraw funds to public schools upon failure to recognize practices of all religious groups in the institution.
- 34. The State being secular cannot interfere with the practices of a religious school, such as Wesley Girls. The treatment of public schools should not and cannot be the same as that of Mission owned and managed schools.
- 35. This Court in **T. T. Nartey v Godwin Gati [2010] SCGLR 745 at page 755** had this to say with respect to treatment of all equally.

"Accordingly, if the law were to treat all human beings rigidly equally, it would in fact result in unequal outcomes. Rigid equal treatment would often result in unfair and unequal results. Accordingly, it is widely recognized that equality before the law requires equal treatment of those similarly placed, implying different treatment in respect of those with different characteristics. In simple terms, equals must be treated equally, while the treatment of unequals must be different."

36. There are international legal frameworks which give credence to the autonomy of educational institutions to enforce policies aligned with their values, beliefs and religion. Article 18(4) of the International Covenant on Civil and Political

Rights (ICCPR) recognizes the rights of parents to guide their children's religious upbringing. Article 18(4) of ICCPR provides as follows;

"The State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

37. Article 26(3) of the Universal Declaration of Human Rights (UDHR) further upholds the right of parents to choose education that aligns with their values and beliefs. These provisions, coupled with the local constitutional framework, provide ample justification for the school's policies.

V. CONCLUSION

- 38. My Lords, it is the 2nd and 3rd Defendants' respectful submission that:
 - a. Wesley Girls High School is owned by the Methodist Church and not the State.
 - b. Wesley Girls High School has the right to practice its religion.
 - c. Wesley Girls High School is entitled to government funding, even as a religious body.
 - d. The State cannot take away the religious right from Wesley Girls High School on the basis that it receives funds from the State.
 - 39. My Lords, it is the Defendants' respectful submission that the Plaintiff is not entitled to any of the reliefs sought in the Writ and Statement of Case.
 - 40. Accordingly, the Defendants pray that the Plaintiff's action should be dismissed.

VI. NUMBER OF WITNESSES TO BE CALLED

41. My Lords, the Defendants do not intend to call any witness in support of their case.

VII. NAME AND ADDRESS OF COUNSEL FOR THE 2ND AND 3RD DEFENDANTS

THE ATTORNEY-GENERAL LAW HOUSE ACCRA

VIII. LIST OF AUTHORITIES

LIST OF CASES

- 1. Chapel Hill School Ltd. v. The Attorney-General & Another [2008-2009] 2 GLR 98
- 2. James Kwabena Bomfeh v. Attorney-General [2019] 1 SCGLR 137

- 3. Loyola High School v. Quebec (Attorney General) [2015] 1 S.C.R. 613
- 4. New Patriotic Party v. Attorney-General (CIBA case) [1996-1997] SCGLR 729
- 5. T. T. Nartey v. Godwin Gati [2010] SCGLR 745

LIST OF LAWS AND BOOKS

- 1. Constitution of Ghana, 1992.
- 2. Education Act, 1961 (Act 87).
- 3. Education Act, 2008 (Act 778).
- 4. Education Ordinance of 1882.
- 5. Education Ordinance of 1887.
- 6. International Covenant on Civil and Political Rights (ICCPR).
- 7. Pre-Tertiary Education Act, 2020 (Act 1049).
- 8. Universal Declaration of Human Rights (UDHR).

DATED AT THE OFFICE OF THE ATTORNEY-GENERAL, ACCRA, THIS 31st DAY OF OCTOBER 2025

HON. DR. JUSTICE SREM-SAI
DEPUTY ATTORNEY- GENERAL
& MINISTER FOR JUSTICE
SOLICITOR FOR THE 2ND & 3RD DEFENDANTS

THE REGISTRAR SUPREME COURT ACCRA

AND FOR SERVICE ON ABOVE NAMED PLAINTIFF OR HIS LAWYER, VICTOR NSOH AZURE, KPEMPKA & CO PRUC, FIRST FLOOR JOSHUA TOWERS, ODOTEI TSUI AVENUE, DZORWULU, ACCRA.