

## Constitutional controversies under each constitution

- 1957

1. Lardan v Attorney General

The first case, *Lardan v Attorney-General*,<sup>2</sup> concerned a deportation order made pursuant to the Deportation Act of 1957. Under this order, the plaintiff was to be deported from Ghana as it was alleged that his continuous presence was not conducive to the public good. He brought an action seeking a declaration to the effect that the order was invalid by virtue of the fact that the Act was not applicable to him since he was a Ghanaian citizen by birth. While the matter was pending in court, Parliament enacted the Deportation (Othman Lardan and Amadu Baba) Act of 1957 which gave power to the Minister of the Interior to specifically deport the two individuals from Ghana. Furthermore, this Act sought to terminate any proceedings in any court instituted for the purpose of challenging the validity of any deportation order made against the persons affected by the Act. Section 4(2) provided as follows:

On any order of deportation being made hereunder, any deportation order made under the Deportation Act, 1957, in respect of the same deportee shall be automatically revoked and if the deportee is in custody under the provisions of the Deportation Act, 1957, he may, notwithstanding any proceedings in any court, whether pending or determined, be retained in custody for the purposes of this Act without being released and such custody shall be deemed to be legal custody, and any proceedings in any court instituted for the purpose of impugning the validity of the Alhaji Alufa Othman Lardan Lalemie Deportation Order, 1957, or the Alhaji Amadu Baba Deportation Order, 1957, shall be automatically determined.

The question the Court had to determine was whether the Act was *ultra vires* the Constitution of Ghana. Smith J held as follows:

I have considered all the other authorities cited to me and they illustrate the same point that the words 'peace, order and good government' with no reservation attached, no restriction as to specific subjects and without qualification, give to any country 'the same plenary powers as are possessed by the Imperial Parliament in England'. It was conceded that this Act of Deportation, and that was a momentary indulgence in fantasy, if passed by the Imperial Government would be a matter for Parliament only and the English courts would be powerless to interfere. If, as I hold, the words 'peace, order and good government', unqualified in any way, are plenary powers possessed by Parliament and no less than the powers possessed by the Imperial Parliament, then it follows just as it would in England that the court here has no power to inquire into such an Act. I consider, therefore, that any law which comes within the ambit of the Ghana (Constitution) Order in Council, s 31, and which does not contravene any other provision in the Constitution can only be challenged in a court of law if it violates or purports to violate sub-section (2) or (3) of the section. On that view, the Act deporting these two persons, not being in contravention of any expressed limitation in

# Constitutional Controversies

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