

THE DISQUALIFICATION OF MARTIN AMIDU AS SPECIAL PROSECUTOR WOULD RATHER HAVE BEEN A DISASTER FOR PRESIDENT NANA AKUFO ADDO: BY MARTIN A. B. K. AMIDU

INTRODUCTION

Mr. Godfred Dame had the effrontery, childlike pomposity, and arrogance to have said in the interview he granted to Metro TV's Good Afternoon Ghana programme that:

“What I can say is that when his office was threatened by a legal suit, his own status as the Special Prosecutor was threatened by a legal suit; Dr Dominic Ayine instituting an action against the attorney general and himself, I rather defended him [Amidu]; defended him to the best of my ability and my defence was actually upheld by the Supreme Court and that resulted in him continuing as Special Prosecutor...So, in a way, I'm responsible for his being Special Prosecutor, which he so much touts about”.

This article is a sequel to my article, “A Short Tenure Fighting Corruption and Political Discrimination Is More Honourable”, published on 9th July 2021 in which I stated that: “I shall be demonstrating separately that the disaster (for an unfavourable outcome) rather awaited the President ...who had appointed older persons to public office, instead of Martin Amidu or Cynthia Lamptey, my deputy who were only to be affected tangentially.”

I never sought to be the Special Prosecutor to tout it as an achievement – It certainly is not!

The only regret I have in life is to have trusted President Nana Akufo Addo in such a sheepish manner as to have allowed him to have conned me into agreeing to be his Special Prosecutor in a naïve but sincere belief on my part that he was intent on fighting corruption and was also against using the process of criminal justice administration as an instrument of political discrimination against his political opponents. The position and status of Special Prosecutor was not one I would ordinarily have agreed to be nominated and appointed to after declining nomination for the Supreme Court in 1999 as I indicated on oath at my vetting but for the fact the President invited, cajoled, promised, and assured me that the appointment was going to be on terms personal to me and vowed to ensure my independence and that of the Office. The President and I at our first meeting in his office on 10th January 2018 anticipated possible legal action by the National Democratic Congress (NDC) on the age provision in Act 959 but we concluded, as seasoned constitutional lawyers, that Act 959 was constitutional, and above all it was not our place to invalidate an Act of Parliament.

THE DISHONESTY OF REMOVING A DEFENDANT'S NAME FROM THE CASE FOR THE PURPOSE OF THE GREED OF CLAIMING A POSSIBLE SUCCESSFUL OUTCOME

The NDC as the President and I anticipated at our meeting on 10th January 2018 preceded Dr. Ayine's action with an interview to 3FM on 12th January 2018 and a press statement also

signed by its General Secretary on 5th February 2018. Dr. Dominic Ayine, the NDC Member of Parliament from my own region of the Upper East took freight and brought an action in the Supreme Court on 12th February 2018 against the Attorney General as 1st Defendant and me as the 2nd Defendant. The Attorney General filed her Statement of the 1st Defendant's Case on 26th February 2018. I filed a Statement of the 2nd Defendant's Case on 5th March 2018. Dr. Ayine and his team then applied to file a Supplementary Statement of Case on 23rd March 2018. I filed an affidavit in opposition to the application on 26th March 2018. The Attorney General filed her affidavit in opposition on 13th April 2018.

On the hearing of the application on 19th April 2018 Dr. Ayine's application was dismissed, compelling him and his team to apply to amend their Writ and Statement of Case, which were granted by the Court on 17th May 2018. I again filed my Amended Statement of the 2nd Defendant's Case on 4th June 2018, and later the Memorandum of Issue on 9th January 2019. The Attorney General also filed her Amended Statement of the 1st Defendant's Case in June 2018 and her Memorandum of Issues on 18th January 2019. Dr. Ayine, the Plaintiff had filed his Memorandum of Issues on 30th November 2018. The case was then ripe for hearing within twelve (12) months from 12th February 2018.

The case was called for hearing on 5th February 2019, almost one year since it was commenced, without the Attorney General having formally applied to have my name struck out from the suit as a Defendant. Mr. Dame who appeared for the Attorney General, was content to take advantage of the benefit of seeing and reading my lucid pleadings resulting from my long experience as an advocate of landmarked constitutional law causes in the Supreme Court alongside distinguished lawyers such as the late Rt Hon. Peter Adjatey, Mr. J. B. da Rocha and now President Akufo Addo as worthy opponents. Then suddenly and out of the blue, Mr. Dame, for the Attorney General, took Dr. Ayine with his lawyers and me, the 2nd Defendant, by surprise by disingenuously applying orally to the Court after almost one year since the case began to have my name struck out of the case as the 2nd Defendant.

Dr. Ayine's lawyer, Tony Lithur, repeated a valid argument he had made in one of his applications when Mr. Dame orally applied to have me struck out of the case as a Defendant on 5th February 2019: "But the 1st Defendant cannot properly speak for him on the matter. The issue is, anyhow, moot as 2nd Defendant has since filed a Statement of Case in response to the Plaintiff's Claim." He should have added that by filing my Statement of 2nd Defendant's Case and taking part in the case from 12th February 2018 through to 5th February 2019 I had shown beyond all reasonable doubt that I was an Interested Party in the case and entitled as such to remain a Defendant in the suit by the Court's own precedent on the right of interested parties to take part in constitutional cases affecting them. I had invested time and energy defending my tangential rights for a whole year. Mr. Dame slept on the case for a year like he did in the recent GPGC/Ghana arbitration. Unlike the GPGC arbitration in a foreign forum, when Mr. Dame woke-up he was less than fair and candid to the Court, the plaintiff and to me by refusing or failing to draw the Courts attention to the fact that the Attorney General was not in fact a nominal defendant as Mr. Dame claimed in his

submission but a substantive defendant answering substantively for supposedly nominating the Special Prosecutor under section 13(2) and subsequently the Deputy Special Prosecutor under section 16(2) of Act 959, respectively.

The Court strangely and unfortunately, failed or refused to hear from me on this issue even though I was present, had announced myself and had been recorded as appearing for myself. My name was struck out from the suit as a 2nd Defendant the same day. But my pleadings remained on the case docket, and I had no doubt that the judges would or had already read them and would take them into account in their consideration of the merits of Dr. Ayine's case.

My Amended Statement of the 2nd Defendant's Case was published for the benefit of the public and can still be found on my website. Anybody may judge for him or herself whether my defence was not far more matured, reasoned, lucid, robust, and stronger than anything Mr. Godfred Dame thinks he filed on behalf of the Attorney General as the then 1st Defendant to have won the case for the Government. Mr. Godfred Dame deliberately got my name struck out from the suit (almost a whole year after it started) so that the Attorney General and him could bask in my name, integrity and reputation and take credit for the outcome of the case as he now dishonourably caused to have been done first in his profile published on 9th February 2021 and at the interview, he granted on Metro TV on 24 June 2021.

Delayed hearing and disposition of the case to render the Special Prosecutor ineffective

The Attorney General, and Mr. Dame, her deputy who appeared for her in Court, made no effort to have the case heard for more than another year. Dr. Ayine and his team wanted an early trial and so did I, to enable me to vacate the office or clothe me with the full authority to perform as Special Prosecutor. The Attorney General, for reasons best known to her and Mr. Dame, refused to formally apply for an early hearing as is the normal practice in such serious constitutional cases against the Attorney General herself and the Republic. In the interim, a High Court almost literally enjoined me from performing my duties as the Special Prosecutor when it ruled on 31st July 2019 in an application for stay of proceedings that: "I am of the opinion that the situation at hand would amount to exceptional circumstances such that the instant proceedings ought to be stayed pending the determination of the Appeal and/or the status of the Special Prosecutor, whichever comes first." It meant any prosecution I mounted would face the same fate. No decision was made until on 13th May 2020 when the Supreme Court disposed Dr. Ayine's case.

The impression I formed (which was shared by other reasonable persons knowledgeable in the field) was that the Government that had appointed me the Special Prosecutor was, out of fear, more interested in assessing, in the interim, whether in the performance of the duties of the office I would show bias in its favour before, pressing for a hearing and disposition of the case. My reaction was to walk away from the Office, but former President Rawlings and others were prevailed upon to persuade me not to, as that would be an embarrassment to the

President and the Government. I knew the catch in the case was the several more aged public officers appointed by the President to assist “The Family” enterprise who would have been affected if I walked away or was thrown under the bus. Nonetheless, my office was rendered ineffective by virtue of the ruling of the High Court, but the Attorney General and Mr. Dame, her deputy, never saw the urgency of the case being decided earlier than 13th May 2020. Eventually it was adjudicated and decided upon by an almost entirely new panel made up of a new Chief Justice, three newly appointed judges, and three members of the original panel two of whom dissented. I resigned seven months later, on 16th November 2020, leaving behind the more aged appointees of “The Family” who are still at post to take care of its corrupt business.

Mr. Godfred Dame appears to have deliberately and calculatingly gotten me out of being a Defendant in the case of Dr. Ayine v 1. Attorney General and 2. Martin Alamisi Amidu at the point the case was ripe for hearing so that he could claim in his biography that one of his achievements was “...for leading the efforts of the Government to... the challenge to the constitutionality of the appointment of Mr Martin Amidu as Special Prosecutor...”. But any experienced and deep-thinking lawyer would have realized that the suit by Dr. Ayine was firstly targeted against the Attorney General who supposedly nominated me under section 13(3) of Act 959 and my prospective deputy under section 16(2) of Act 959; secondly against the President for purportedly accepting the nominations and forwarding them to Parliament for consideration for approval; thirdly against Parliament for approving the nominations; fourthly against the President again for appointing me and later my deputy to our respective positions; and only lastly and tangentially against me and later deputy for accepting the supposedly unconstitutional nominations, resulting approvals, and appointments.

CONSEQUENCES OF NULLIFYING THE APPOINTMENTS ON NANA AKUFO ADDO

Mr. Dame knows or ought to have known that even if the Supreme Court had declared my nomination and appointment as Special Prosecutor under section 13(3) of Act 959 to be inconsistent with the Constitution that decision would normally have saved any actions and decision I had taken while holding the appointment. Any decision otherwise would firstly have meant that the Office of the Special Prosecutor was never operationalized by the President since the enactment of Act 959 because it was the appointment of the Special Prosecutor that operationalized the Office of the Special Prosecutor. Secondly, the Deputy Special Prosecutor could not also have remained in office as her nomination, approval and appointment under section 16(2) would also have been unconstitutional as well on account of the reliefs sought from the Court.

Commonsense should have pointed Mr. Dame to the fact that a declaration of nullity ab initio by the Court would have been a disaster for the calculating “Puppet Master”, the President, Nana Akufo Addo, and “The Family” from which the President would never have recovered his loss of face and not for me or my then deputy. The many appointed older members and associates of “The Family” who are still at post facilitating its corruption would have been out of office. But Mr. Godfred Yebaoh Dame could not even distil these simple outcomes and consequences for the “Puppet Master” the President who made him Deputy Minister which were glaring from Ayine’s Writ and Statement of Case even after the decision of the Supreme Court on 13th May 2020 and subsequently used my name for his profile before his

parliamentary vetting, and subsequently granting the interview to Metro TV as Minister of Justice and Attorney General.

INTEGRITY OF THE OFFICE OF ATTORNEY GENERAL

The rights, privileges, and obligations guaranteed to every citizen under the 1992 Constitution will become meaningful the day every Attorney General in Ghana puts aside his or her first hat as the Minister of Justice under which he or she may act politically and concentrates on the letter and spirit of his or her professional mandate of the Attorney General under Article 88 of the Constitution. Article 88 is informed by hallowed customs and conventions enjoining fairness, candor, and impartiality to every citizen and eschewing arbitrariness and discrimination in the performance of the duties of that public office.

It does not help the integrity of that Office when its occupant hops from radio station to radio station or from TV station to TV station doing politics and threatening political opponents with investigations by the police or with civil or quasi-criminal suits for criticizing his public performance. It certainly is not good for the respect due that Office when citizens begin disrespecting the Office by mocking any occupant of the office as a “Local Champion” adding that: “This \$170M judgement debt case, they should have sent it to Supreme Court or?”; or that the occupant of the office should remember that: ““You can choose to threaten us. You can choose to behave anyway you want because you’re the Attorney General. But let me put this on record to you. You will not be Attorney General forever...”; or that the occupant is interfering politically on behalf of his appointing government with the constitutionally guaranteed rights of citizens to peacefully protest and demonstrate, and to freedom of expression or speech; or for the occupant of the office to tell citizens exercising their constitutional rights even before a Court decides their case that: “If you’re demonstrating about broken promises by successive governments since independence, what is the urgency about it?”; or for the occupant of the office to be unfortunately described by a fellow citizen as: “The puppet master reveals himself”; or to be challenged by citizens to “start with the criminal complaint against those who organized the Supper Spreader!”; or “that the police were his puppets; as such he was the puppet master all along in this suit”; or to be told that: “We have an Attorney-General Department. We have hired and paid two foreign law firms, Omnia Strategy and Volterra Fietta. Yet, we fell asleep and did not take advantage of the 28-day window afforded us to challenge the arbitration panel’s decision that we should pay \$170M to GPCG for terminating a contract”; et cetera, et cetera, (I could go on and on), all within less than the first three months of assuming office.

CONCLUSIONS

Mr. Dame was nowhere near this universe when I received my Qualifying Certificate Under the Legal Profession Act in September 1978 and was enrolled as a lawyer the same year. I am done with the professional practice of the law just as I declined the nomination to the Supreme Court in 1999 but it hurts to see someone who could pass for the person who was my last biological child, now an independent adult, occupying an exalted office I once occupied, for however short a period, behaving without the requisite maturity and experience of public service. I welcome Mr. Godfred Yeboah Dame’s pomposity and arrogance because they urge me on to continue criticizing him as a customary Ghanaian parent to change for his own betterment. This is the only way to depoliticize that exalted Office and put Ghana First.

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