MARTIN AMIDU ON GALLOPERS, SETTLEMENTS AND THE HALLOWED TRADITIONS OF THE OFFICE OF THE ATTORNEY-GENERAL: BY MARTIN A. B. K. AMIDU

I have read and heard various versions of the story, narrative, and discourse on what the former Minister of Local Government and Rural Development describes as: "Press Statement, The Galloper II Vehicles." July 2011 features prominently as the month in which a decision was made to discontinue or hold in abeyance the continuation of the case in Court to explore a possible settlement. In this regard, his matter touches upon the period of my tenure as the Attorney-General of the Republic of Ghana under Article 88 of the 1992 Constitution for which I am personally accountable to the people of Ghana for my conduct in office. I, therefore, have to speak out on this matter.

I took over as the Attorney-General and Minister for Justice on 21st January 2011 to 19th January 2012. Within the period that I was the Attorney-General under Article 88 of the Constitution I had the sole and personal responsibility under my oath of office for the running of the Attorney-General's Department. Unlike Article 79 of the Constitution, Article 88 does not establish a position of a Deputy Attorney-General. Even in the case of the ordinary Ministerial level, the Chief of Staff wasted no time in reminding Deputy Ministers that they could not under the Constitution write or sign letters in their own capacity as Deputy Ministers. They had to do so only upon the instructions or the authority of the Minister under Article 78 and on behalf of the Minister.

The Joy News editor, Samson Lardy Ayenini, in an article on myjoyonline.com of 6th July 2012 claims to have gone through the stack of court documents on the Gallopers and states that African Automobile Limited "filed the writ in 2005", and I believe, a statement of claim as well. This is because he adds that: "but the A-G at the time filed a defence, making a counter-claim." He later gives a narration of the content of African Automobile Limited's Statement of Claim after which he states to my utter shock and surprise that: "In July 2011, African Automobile Ltd. applied to the court to discontinue with the case stating the possibility of settlement negotiations." I have been shocked and amazed because if in July 2011 the Attorney-General had a defence and counter-claim in the suit the only person who could have given express authority for the Attorney-General's office to accept any offer to hold the case in abeyance to attempt an out of Court settlement was myself, the Attorney-General at the time. In my unavoidable absence for whatever reasons the President had to specifically appoint in writing another Minister to double as Minister of Justice (not as Attorney-General) to act in my place with a copy of the letter to me to enable me hand over to that Minister.

No such temporary appointment took place in July 2011. Neither the Deputy Attorney-General, Hon. Barton Odro, MP, who took liberties for claiming to hail from Cape Coast with the President of the Republic nor the Solicitor-General, Mrs. Amma Gaisie had the constitutional authority under Article 88 to make such an important and critical decision which could cost millions of Ghana Cedis to the Republic without my expressed concurrence and in writing. I make bold to say that not even the President who appointed me as the Attorney-General could under Article 88 of the Constitution delegate my

constitutional functions as the Attorney-General to any other person or authority without first relieving me of my appointment by express revocation of my warrant of appointment.

This is why I state unequivocally that any decision by anybody to hold in abeyance the conduct of the case between *African Automobile Limited Vs. the Attorney-General* in July 2011 which was not made by me, as the Attorney-General, was unconstitutional, fraudulent, null and void as contravening Article 1(2) of the Constitution. It could only have been intended to promote some self serving purpose by the person or persons who took the decision in violation of Article 88 of the Constitution particularly, sub-clause (5) thereof.

And I wish to state for the avoidance of doubt that no file on the case involving the Galloper II Vehicles was ever submitted to me as Attorney-General with recommendations for any decision whatsoever. I challenge the Deputy Attorney-General and the Solicitor-General during my tenure of office to produce evidence to the public that the file on the Gallopers was ever brought to my attention as the Attorney-General for any action and my instructions thereon to have warranted an agreement in July 2011 to enter into settlement discussions on behalf of the Republic of Ghana. If there is no such evidence on the file, then, the Deputy Attorney-General, Hon. Barton Odro, and the Solicitor-General, Mrs. Amma Gaisie, have some explaining to do to the people of Ghana; how come the case was discontinued or held in abeyance for settlement without authority from the Attorney-General?

If the alleged discontinuance or holding of the case in abeyance was done unconstitutionally it will follow that my successor cannot rectify a void and unconstitutional act by any usurpers of the authority granted the Attorney-General under Article 88. Any experienced legal practitioner assuming the office of the Attorney-General must have satisfied himself by now that any on-going settlements he inherited were properly authorized by the person with Constitutional authority to do so. The Deputy Attorney-General, Hon. Barton Odro, and the Solicitor-General, know that I always insisted that whatever I continued from my predecessor was properly authorized in accordance with the law since I had personal responsibility for whatever happened during my tenure. No Commission of Enquiry or Court would take the excuse that ones predecessor breached the Constitution so one also continued to do so.

In accordance with the hallowed tradition of the Attorney-General's office the Deputy Attorney-General and the Solicitor-General should state whether or not the holding of the case in abeyance for settlement negotiations was initiated by the Attorneys directly handling the case in the Court or upon instructions from either of them. If the Attorneys handling the case initiated the negotiations for settlement there must be memoranda coming up to the Solicitor-General and beyond stating the necessity for a settlement. If it was initiated from the Deputy Attorney-General or the Solicitor-General there must similarly be a memorandum or memoranda to the Attorney-General recommending the necessity for a settlement. The Deputy Attorney-General and the Solicitor-General know that this was the procedure adopted when recommendations were made to me on 11th

November 2011 to consider the proposals for withdrawal of the case of *Attorney-General Vs. Alfred Agbesi Woyome* from the High Court for settlement negotiations which I refused, for good legal reasons, to withdraw.

I had been a Deputy Attorney-General and Deputy Minister for Justice for upwards of twelve and half years and know more than anybody else the limits of the authority a Deputy Attorney-General and the Solicitor-General. Consequently, I did not waste time when I assumed office as the Attorney-General in reminding the Deputy Attorney-General, Hon. Barton Odro, MP and the Solicitor-General, Mrs. Amma Gaisie, that I would not take responsibility for any actions or omissions by either of them or those working up to them unless the acts or omission were done with my knowledge and express authorization. The situation I met at the Attorney-General's office upon my first briefings when I took over as the Attorney-General justified my insistence that no major decisions that committed the Republic to the settlement and payment of money or so called debt was done without my express authority.

It is on record that I refused to endorse a number of so called settlement agreements that were forwarded to me by the Solicitor-General either directly or through the Deputy Attorney-General because there was no evidence of authorization either from my predecessor or myself for entering into the settlement agreement or that my predecessor's instructions had overlooked aspects of the Constitution or the law. There were other written records of cases file in which I refused to endorse and forward to the Minister for Finance and Economic Planning for payment of settlements purportedly entered into by junior Attorneys without any indication on file of their authority to commit the Republic of Ghana to such debts.

There is also evidence of several memoranda I wrote to the Deputy Attorney-General and the Solicitor-General asking for explanations for the Republic having to pay certain settlements or judgment debts which were never answered in spite of reminders. Some of these memoranda related to other African Automobile Limited judgments in which the Court of Appeal or High Court had had to make adverse comments about the performance of the Attorneys who represented the office in Court.

The Deputy Attorney-General and the Solicitor-General knew that my general attitude to cases pending in the Courts was to allow the Court to decide rather than settle them out of Court, abuse the Court process and fool the electorate and general public by transforming them into consent judgments granted by the Court. I also insisted that in the exceptional cases in which the office had to consider settlement of cases out of Court the settlement proposal had to be accompanied by a written memorandum citing relevant precedents for the conclusions reached, coming from the Attorney handling the case through his Head of Group to the Solicitor-General to the Deputy-Attorney-General and then to me, the Attorney-General for consideration and final decision. I reminded the Solicitor-General several times that this was the hallowed practice of the Attorney-General's Office in settling cases for purposes of probity, accountability and transparency in discharging the burdensome and onerous duty in approving payments from the Consolidated Fund.

I told the Deputy Attorney-General who was making his first stint as a Deputy Attorney-General that the practice was evolved to prevent putting temptation in the path of the Attorney-General in just assigning any figures to cases to settle at his whims. This brings the Attorney-General into unnecessary suspicion and disrepute in the exercise of his quasi judicial functions.

I had the misfortune of entering into an office where a long and hallowed tradition of settlement or legal decision making being accompanied by legal justifications from the bottom-up that enabled the Attorney-General within his busy schedule to make informed decisions had been abandoned. A number of debt settlements that had been signed by the Deputy Attorney-General and letters signed to the Minister of Finance and Economic Planning for payment had no memoranda attached to them to show the legal basis of arriving at the settlements. A number of other settlements by the Attorney-General and letters to the Ministry of Finance and Economic Planning also had no memoranda supporting how the settlements and figures were arrived at.

In a number of written responses from the Solicitor-General to some of my memos she disclaimed any knowledge about how the figures were arrived at or even her being allowed making her views known on the matters. That was why I wanted the right thing to be done in accordance with the hallowed traditions of the Attorney-General's office, in which I had practiced as Deputy Attorney-General for over a decade, during my tenure of office as Attorney-General. It saves one's integrity and indemnifies one against corrupt practices.

After 23rd December 2011 when President was busy diverting the electorate's attention from the crimes involved in the Woyome payments to those who created the liabilities, Hon. Barton Odro, the Deputy Attorney-General, had the boldness, without any direct or express authority from me since I took over as the Attorney-General to work out and arrive at a settlement of GH¢38 million plus for alleged wrongful dismissal of workers of the National Mobilization Progamme by Mr. Jake Obetsebi-Lamptey in a pending Court case that had been brought by the dismissed workers against the Attorney-General.

I queried the settlement and instructed that the Court be allowed to determine whether or not there was wrongful dismissal. I pointed out that unless the Court determined that Mr. Jake Obetsebi-Lamptey had indeed wrongfully dismissed the workers it was full hardy for me as the Attorney-General to settle the matter on the basis of wrongful dismissal and pretend that my decision could be used to prosecute Mr. Obetsebi-Lamptey for causing financial loss to the state.

There are other cases which were settled before I went to the Attorney-General's Office under the naïve believe that evidence of the Attorney-General's settlement could be used as evidence of causing financial loss to the state. As a former PNDC operative, my decision in the National Mobilization Programme settlement case, a temptation put in my path, was difficult for me as a politician. But I was acting not as Minister of State, a politician, but as the Attorney-General of the Republic, a quasi judicial officer, who has faith in the judicial system to determine the issues presented to the Court by the parties.

I have deliberately stayed away from the controversy whether or not there was a binding and subsisting contract between African Automobile Limited and the Government of Ghana at the time of the performance of the contract because of my faith in Constitution and its Courts. My attitude towards the presumptuousness of any Attorney-General who wants to court suspicion for himself in the settlement of such pending cases are well known to have decided those with access to the case files not to have allowed me to see the file on the Gallopers while I was the Attorney-General.

My considered view is that it is always better for an Attorney-General to have faith in and prefer a Court's interpretation of facts to determine whether or not there is a contract between litigants as a matter of law than to arrogate to himself that judicial function and open himself up to suspicions and unwarranted insinuations of motives inconsistent with his quasi judicial office. In Civil Appeal J4/23/2012, African *Automobile Limited vs. The Attorney-General*, 6th June 2012, (Supreme Court, Unreported) the Supreme Court dismissed African Automobile Limited's appeal for the enforcement of an agreement to be paid compound interest on the grounds that a referee appointed by the High Court had found that two exhibits constituted a contract between the parties. The Supreme Court said: "This submission misses the point of Ofoe JA's analysis in the passage from his judgment quoted above. His point indeed is that the interpretation of facts to determine whether they result in the conclusion of a contract is a matter of law for a judge to undertake. Accordingly, the assumption by the referee that Exhibits A and B resulted in a contract and therefore their terms were to be applied to the calculation of interest on the indebtedness he ascertained was not binding on the trial court nor on the Court of Appeal. He [Ofoe JA] was correct in his analysis." The Supreme Court accordingly affirmed both the decision of the High Court and the Court of Appeal by "upholding the legal conclusion of the learned trial judge that Exhibits A and B did not result in the formation of a contract."

An Attorney-General must not have a personal or political bias in any case in the exercise of his professional responsibilities under Article 88 of the Constitution. My long experience as a Deputy Attorney-General has taught me that it is professionally better to allow the Courts assigned under the Constitution to determine conclusively whether or not there is a subsisting contract between the African Automobile Limited and the Government of Ghana in the pending case to do so. An Attorney-General, with years of legal practice to his credit, knows he will ultimately take personal and professional responsibility for saddling the Republic with any debt settlement. He would consequently not act upon the basis of the opinions of persons who may have self-serving interests in any out of court settlement or court settlement of cases however learned or powerful they may claim to be in the law or in the Government overtly or covertly. Caution, they say is the better part of valour. The Supreme Courts can never, in making authoritative decisions on the law, cause financial loss to the state.

Martin A. B. K. Amidu