

## COMMISSIONS OF ENQUIRY AND NON-POLITICAL WHITE PAPERS: BY MARTIN A. B. K. AMIDU

We the people of Ghana in solemn declaration and affirmation of our commitment to probity, and accountability gave to ourselves the 1992 Constitution in the expectation of integrity and good governance by the President and other elected representatives. But the conversion of the excellent report of the Sole Judgment Debt Commissioner into a political White Paper for electioneering purposes to be published under the supervision of the office of the Attorney-General demonstrates how low we have come in this country in terms of the only constitutionally established office within the executive branch which by hallowed tradition and practice is to defend and uphold the liberty of every individual and the rule of law in its quasi-judicial decision making process.

I have returned to this subject for two reasons. First, to deal briefly with the introduction of extraneous matters not forming part of the Commissioner's report and attempts to amend, vary, modify and rewrite the Commissioner's report in some parts, to show that it does no credit to the legal advisors to the Government as it converts them into conduits of a corrupt political elite in Government contrary to their constitutional mandate specifically provided for under Articles 88 of the Constitution. Secondly, to use the historical records to show that the *Delta Foods Ltd* case which the political White Paper is at pains to wish away and turn into the responsibility of Nana Addo Dankwa Akofu-Addo of the New Patriotic Party is one of two examples of what happens when Vice-Presidents or Presidents usurp the Attorney-General's functions under the Constitution. This contrasts with an Attorney-General who abdicates his constitutional responsibilities and becomes a mere conduit for executive actions in the issuance of political White Papers contrary to the Constitution.

### **Introduction of extraneous matters to the Commissioner's report into the White Paper -** Pages 3 - 7 of White Paper

The *Bankswitch Ghana v Government of Ghana* and whatever decision was given at the alleged Permanent Court of Arbitration was not part of the enquiry and report of the Sole Commissioner on Judgment Debts. The Government and the Attorney-General nonetheless found it "honourable" to hood-wink Ghanaians by smuggling it into a White Paper on the Commissioner's report pursuant to Article 280. This is a deliberate and inexcusable cover up of this Government's complicity in compounding the Bankswitch Ghana arbitral award or debt which I had advised the Government as its Attorney-General in 2011 to settle because it had a very bad case to prevail at any arbitration. The Government and the Attorney-General also find it "honourable" to smuggle into the White Paper on the Commissioner's report the *Balkan Energy Ghana* case which was argued by me as the Attorney-General before the Supreme Court and conclusively decided in favour of the Republic and was not the subject of the Commissioner's enquiry. As for the attempt in the White Paper to water down the Supreme Court's decisions to

favour the Government's foreign friends and surrogates such as *Waterville* and *Isofoton* after the Supreme Court's conclusive declarations and orders on the issue of estoppel the little said about the Government's disingenuity on the matter the better. I hope Ghanaians will wake up to the fact that this is not a White Paper under Article 280 of the Constitution but a bogus and fraudulent NDC Manifesto White Paper masquerading as one pursuant to Article 280 of the Constitution. It also calls into grave question the preamble and solemn declaration and affirmation of the Constitution to probity and accountability in the exercise of the Attorney-General's functions under Article 88 thereof.

Least I forget, first, in the Political White Paper the Government forgot to expunge or pretended not to have noticed in order to expunge the kind words the Commissioner repeated about me in his report on *GBEWAA Civil Engineering Co. & Yakubu Adam Kasule v Attorney-General, etc* at pages 355 to 356 of the leaked report thus:

“...It is sad that Hon (Mr.) Martin Amidu has been vilified for being just. He has suffered several media bashing propelled by some faceless people, for pursuing a just cause as a patriotic citizen of Ghana and a good one of course. This Commission is amazed that he remains unfazed by such wrong attacks. The Commission accordingly accords him the enviable esteem of a Ghanaian who loves his country more than himself.”

The Government's determination to obliterate any good thing said about me (as its internal NDC foe) in the Commissioner's report as it did at page 5 of the White Paper would come to naught without expunging the above commendations as well. I demand that the Government does so for the sake of consistency in its intolerance for alternative views within even the NDC. Second, the Government assumed an unconstitutional authority in the political White Paper to overrule or reject the definite adverse finding and recommendation (i) of the Sole Commissioner (see page 86 of the White Paper at [moc.gov.gh](http://moc.gov.gh)). Common sense should have informed the Government that the provisions of Article 280(2) entrusting to the Court of Appeal appellate jurisdiction over such adverse findings would have been meaningless if the Government had a first administrative review authority to selectively overrule or reject or confirm such adverse findings made against persons by the Commissioner appointed under Article 278. The Sole Commissioner's findings are not part of “any finding made by a commission or committee of inquiry which is not a judicial or quasi-judicial commission or committee of inquiry..” whose adverse finding shall not have the effect of disqualifying a person under paragraph (d) of clause (2) of article 94 of the Constitution unless it has been confirmed by a Government white paper as stated under Article 94(4) thereof. It is unconstitutional to tamper with this Sole Commissioner's adverse findings in any form in a Government white paper – period!

**Delta Foods Ltd v Attorney-General** – Pages 20 – 22 of White Paper

The main thrust here is to show with documentary evidence how the persistence of a Vice-President to disregard the 1992 Constitution by arrogating to himself the functions entrusted to

the Attorney-General under Article 88 of the 1992 Constitution led to the consent judgment debts and other liabilities that became the subject of the Sole Judgment Debt Commissioner's report in *Delta Foods Ltd v Attorney-General*. This NDC Government refuses to accept the responsibility for the obvious mess of the financial loss caused to the state by its former boss and officers. With its tongue in its cheek, it shamelessly politicizes the obvious in attempting to reframe and shift liability in the White Paper to a political opponent to score cheap political and electioneering points.

On 9<sup>th</sup> April 1999 I wrote a memorandum to the Attorney-General, Dr. Obed Asamoah, on *Delta Foods Ltd* after the Solicitor-General, Mr. E. A. Addo, had submitted a memorandum through me to the Attorney-General on how the mess in *Delta Foods Ltd* was created and a consent judgment entered in the High Court without the knowledge and involvement of the Attorney-General. I wrote, inter alia, that:

“I think having read the ruling of the Supreme Court and looked at the file on this subject, the handling of the Delta Food Ltd contract by the Ministry of Agriculture and the Castle leaves much to be desired. The supposed settlement is also being alleged to have been reached to the detriment of Ghana because Attorneys in this Ministry claimed they were under instructions from the Castle to settle the case in court. Because of the alleged superior orders from the Vice-President's Office, you, the Solicitor-General and myself were not even consulted before the settlement was entered in Court.

I believe that if the Attorneys who handled this matter had handled the case professionally they would be accepting personal responsibility for the outcome of their actions in the settlement. But they are passing the buck to the Vice-President's Office which shows that they acted more as administrators taking instructions from superiors than in the true tradition of the Bar as a lawyer advising the Government.

It is in this light that I think we should be careful of the extent to which this office takes instructions from the Vice-President or his Office in purely legal matters. It is said the Vice President directed the entry into the contract with Delta Food Ltd. He directed the settlement in court with Delta Food Ltd which he is now trying to have set aside. He directed that Ministry of Agriculture should take possession of the maize and sell it. He directs that we pay the third party or agrees that we pay the third party. He reviews affidavits. I think we are either putting too much on the shoulders of the Vice-President or he is taking on himself the duties of the Attorney-General under Article 88 of the Constitution. It is not a situation which is in his own interest either legally or politically.

One of the beauties of the legal profession is the ability of the lawyer to give his professional opinion without fear or favour, and handle his client's case with utmost legal discretion but never as a mere conduit of the client. This tradition ought to be preserved before we become legal messengers instead of advisers.

I am sorry I have had to set down my detailed opinion in this matter. It is not intended as a criticism but to ensure that in future nobody condemns our work as the principal legal adviser to the Republic of Ghana and its government. Superior orders cannot avail us as an alibi.

Submitted for your consideration please.” (See copy of the memo attached in PDF format)

Prior to my above memorandum the Solicitor-General had passed a memorandum signed and dated 25<sup>th</sup> March 1999 through me to the Attorney-General on the subject “Trip by Solicitor-General to the U. S. In Connection with Action Initiated By Delta Foods Limited to Enforce Consent Judgment” in which he had stated, inter alia, that: “Following the Vice-President’s directives regarding the above matter the Solicitor-General left for the U. S. on 12<sup>th</sup> March 1999 with documents from the Vice-President’s office....” The Attorney-General and I were not consulted about this trip. The Vice-President simply usurped the powers of the Attorney-General just as he subsequently tried to do when he became President and I became his Attorney-General leading to our parting company.

It is clear from the foregoing that this Government and the Attorney-General were clearly acting mischievously to politicize the excellent work of the Sole Judgment Debt Commissioner by connecting the NPP’s Attorney-General who merely paid upon the consent judgment the Supreme Court had refused to quash by certiorari during the NDC 2 Government as a means of aborting the further investigations ordered by the Commissioner. It was also clearly setting the grounds for unwarranted political electioneering attacks on Nana Addo Dankwa Akufo-Addo who had become the Presidential candidate of the NPP for the 2016 elections against President Mahama. This is a patent and cheap unconstitutional exercise of executive power in the name of a White Paper against a political opponent under the letter and spirit of the 1992 Constitution. It also contravenes the core values of the NDC as we founded it to frown upon such abuse of power.

History, they say repeats itself. The mess in the *Delta Foods Ltd* case repeated itself in the EO Group case when I was Attorney-General in 2011. The Vice-President at the time (now President) acted in concert with Dr. Oteng Adjei, (the Minister for Energy) in by passing my legal opinion to them on the EO Group case and smuggled a memorandum to the President for an executive consent to enable the EO Group to assign their shares to a buyer. Having obtained the executive consent behind my back they concerted by asking Dr. Oteng Adjei to write to me to confirm a request for indemnity from future prosecution or action by the Republic of Ghana. In the true tradition of the legal profession, the fact that the President had been deceived by the Vice-President and Dr. Oteng Adjei into granting an executive consent, did not intimidate me as the Attorney-General to grant the indemnity requested. I replied to Dr. Oteng Adjei’s letter No. SCR/ZA5/144/02 dated 22<sup>nd</sup> July 2011 in my letter XE337/09/8 of the same 22<sup>nd</sup> July 2011, inter alia, as follows:

“Consequently, I wrote letter No. XE 337/09/8 dated 19<sup>th</sup> July 2011 which was hand delivered to your office and received on 20<sup>th</sup> July 2011. I am, therefore, surprised that in your letter NO. SCR ZA40/200/01 OF 21<sup>ST</sup> July 2011 written after my letter of the previous day, you did not find it appropriate to inform H. E. the President about my letter to you, the content of which H. E. the Vice President, your goodself and me had agreed upon on 19<sup>th</sup> July 2011.

Having informed you of the status of the EO Group criminal case and advised you verbally and in writing, I cannot, without committing legal suicide, write again confirming the request for indemnity you made in the concluding paragraph of your letter of to-day. A photocopy of my letter NO. XE 337/09/8 OF 19<sup>th</sup> July 2011 is annexed herewith for your ease of reference.” (See copies of the letters attached in PDF format)

I never granted the indemnity or closed the docket before I left office in January 2012. My immediate successor also did not grant the indemnity or close the docket before he left office in 2013. It follows that any indemnity and closure of the docket would have been done only under the watch of the Vice-President who had originated the unconstitutional problem when he became the President after the 2012 elections and thus leaving Dr. Oteng Adjei and him alone to pick the pieces of any political corruption allegations that arises. Does the foregoing not make it easy to understand how things are now being done in the teeth of legal advice at the GNPC under the Chairmanship of Dr. Oteng Adjei which were not done when the experienced and veteran Ato Ahwoi was the Chairman of that entity?

I am deliberately exposing the politicization of the White Paper on the Commissioner’s report to enable people capable of rational and dispassionate reasoning see the inherent dangers any Government faces when it usurps the powers of the Attorney-General or when an Attorney-General allows his office to be usurped or abused by the Presidency. It also underscores what happens when a Government acts deliberately and covertly to cover political corruption by besmearing other coordinate organs of Government and political opponents in a manner inconsistent with or in contravention of the constitution.

Nana Akufo-Addo had nothing to do with the *Delta Foods Ltd* consent judgment and resulting accumulated interests. It was the handy work of Vice-President Mills usurping the Attorney-General’s office. He carried this bad habit of usurping the Attorney-General’s functions into his Presidency which I resisted as the Attorney-General with all the constitutional authority at my disposal and proved in the Supreme Court decisions in the *Attorney-General, Waterville & Woyome* case, and the *Attorney-General, Isofoton & Forson* case which the White Paper also tries again to bastardize. The subsequent consent judgment and damages for wrongful termination of appointment with interests granted in my favour in the High Court, (part of which still remains unpaid and unfulfilled) shows a parallel with the consent judgment created by then Vice-President Mills and others in the *Delta Foods Ltd* case which the Government is running away from in the White Paper.

The probity and accountability enshrined in the preamble to our Constitution requires Government to be candid with citizens instead of using covert means and propaganda to suppress political corruption and legal incompetence by passing the buck to other branches of Government and political opponents in an Orwellian Big Brother fashion. Let’s put Ghana First Countrymen!

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