

**THE CONSTITUTIONALITY OF THE COMMITTEE TO INVESTIGATE
ALLEGATIONS OF MISCONDUCT ARISING OUT OF THE PRESIDENTIAL
ELECTION PETITION: BY MARTIN A. B. K. AMIDU**

I write to question the Constitutionality of the Committee set up by the Chief Justice and the Judicial Council to investigate allegations of judicial misconduct contained in a secret, illegal and unethical tape recording of a former deputy minister of communications in the present Government. The Committee is alleged to be chaired by Dr. Justice Date-Bah, a recently retired justice of the Supreme Court.

My contention is that the Constitution does not entrust any disciplinary power over superior court justices to the Chief Justice or the Judicial Council or to an appointments and disciplinary committee or any other committee of the judicial council. The independence of the judiciary and the individual justice in the performance of his judicial functions are guaranteed in article 127 by the framers of the Constitution. The reason for those provisions is simple. Mahama v Soli [1976] 2 G. L. R 99 and those lines of cases showed how Chief Justices tried to interfere with superior court justices in the performance of their judicial functions. To repose disciplinary authority at first instance in any Chief Justice over other superior court justices is to make superior court justices apprehensive of the Chief Justice's ability to intimidate such justices with threats of removal from office and thereby interfere with their judicial independence.

The independence and moral integrity of the justices of the Superior Courts was so dear to the framers of the Constitution as the final custodians of the Constitution, democracy and rule of law that they provided that a person shall not be qualified to be appointed as a justice of the Superior Court unless he is of high moral character and proven integrity. The importance of the independence, moral character and proven integrity of Supreme Court Justices in particular, is underscored by the injunction of the framers of the Constitution that they can only be appointed after the approval by the peoples' representative in Parliament assembled has been sought.

The importance the framers of the Constitution attached to the independence, moral character and integrity of the superior court justices, particularly Supreme Court Justices as the final arbiters of Constitutional disputes is demonstrated by the only procedure provided in the structure and scheme of the Constitution for the discipline and removal of superior court justices in Article 146 of the constitution. In this disciplinary and removal structure and scheme provided as a safeguard to the independence of individual justice of the superior courts the Chief justice and the Judicial Council are each assigned specific roles and functions at different stages of the process.

The petition allegedly submitted to the Chief Justice by the General Secretary of the NPP on behalf of the NPP does not purport to fall under the disciplinary and removal provisions of the Constitution otherwise it should have been addressed to the President. It could not come under Article 146 because it contains so general an allegation against unnamed judges that it is, with respect, ambiguous to constitute a serious indictment on the conduct of any of the justices who determined the Presidential Election Petition. This is why it is unconstitutional to adopt any extra

constitutional mode of fishing for evidence against all of the nine justices or any of them to be able to undermine the integrity of the judiciary as a whole.

Nana Akuffo-Addo has demonstrated the importance of maintaining the integrity of the judicial process in accepting the decision of the Supreme Court while rightly disagreeing with its reasons for the decision. That is statesmanship! It demonstrates the conduct of one who puts Ghana First in the face of scenarios that may plunge Ghana into intractable conflicts and violence. Liberia, Sierra Leone, Ivory Coast started by discrediting their judiciary, particularly their Supreme Courts, as the personification of justice, democracy and rule of law. History has documented the consequence of what happened and the expense of rebuilding those nations.

The functions of the Judicial Council are clearly spelt out in Article 154 of the Constitution. I cannot find any of the functions that give the Council disciplinary powers over justices of the superior courts let alone justices of the Supreme Court whose independence has been jealously reinforced and guarded by the framers of the constitution. Indeed there is disciplinary power granted to the judicial council in sections 16, 17, 18, 19 and 20 of the Judicial Service Act, 1960 (C.A.10) which governs misconduct and disciplinary processes over judicial Officers as defined in Article 161 of the Constitution. Superior Court Justices are not judicial officers in the definition provided in Article 160 of the Constitution.

The Judicial service Act, 1960 is not therefore applicable to misconduct by superior court justices. Aside the Criminal Offences Act which is applicable to everybody in Ghana including superior court justices suspected of crime, Article 146 is the only disciplinary provision governing the conduct of superior court justice in order to guarantee their independence from interference by anybody or authority. This includes the Chief Justice and Judicial Council for the time being.

What are the Chief Justice, and the Judicial Council going to do with any adverse findings made by the subcommittee of the Judicial Council it has appointed to investigate the unsubstantiated allegations against the judges who sat on the case at large? The Chief Justice and the Judicial Council cannot initiate any disciplinary proceedings for the removal of any justice of the supreme court from office in their official capacities as Chief Justice or Judicial Council in accordance with the letter and spirit of Article 146(1) (2) and (4) of the Constitution.

But the fact that the Chief Justice found it necessary to refer the petition of the General Secretary of the NPP to the Judicial Council for consideration appears to indicate that she was satisfied that there was a prima facie case made out by the General Secretary's petition? The agreement by the Judicial Council chaired by the Chief Justice to refer the matter to a committee of the judicial Council for investigation must also have been based upon a satisfaction by the Judicial Council that a prima facie case had been made out by the petitioner? The problem is that the complaint is against all the justices who partook of the determination of the case without specifying the misconduct against each of them to have underpinned any finding of a prima facie case against anybody. Consequently, the real job of the Committee Appointed to investigate the ambiguous and unauthenticated allegations (the Appointments and Disciplinary Committee of the Judicial

Council?) is to hold an inquisition, a form of star chamber of old, to determine which of the justices of the supreme court or all of them whose conduct may be caught by the ambiguous allegations leveled against them.

Without establishing any evidence against any particular justice of the Supreme Court all the justices who sat on the case have been asked to submit comments on the unsubstantiated and ambiguous allegations against the justices at large. This in my view is persecutorial, inquisitorial, and inconsistent with the letter and spirit of the Constitution, particularly Article 146 thereof. There can be no grave interference with the independence of the individual justice of the Supreme Court in the execution of their judicial functions and powers than this.

My views on the powers and functions of the Chief Justice and the Judicial Council in the disciplinary and removal processes of superior court justices were articulated by me when I was Attorney General and a member of the Judicial Council in similar cases. The foregoing restates my known position on the constitutionality of the powers and functions of the Chief Justice and the Judicial Council on the matter. I feel very strongly that to allow either the Chief Justice or the Judicial Council to interfere in the independence of the individual justice of the superior courts in the exercise of his or their judicial functions will seriously undermine the liberty guaranteed to each of us as citizens under the Constitution.

My respectful view is that any individual or political party who considers that the allegations attributed to the former deputy minister on the illegal, secret, and unethically obtained tape recording contains provable allegations of misconduct against any or the several justices who determined the Presidential Election Petition has a Constitutional right to avail himself of the provisions of Article 146 of the Constitution for discipline and removal of the affected justices. The situation where petitions based on unsubstantiated and ambiguous allegations without prima facie evidence are made resulting in fishing expeditions which gives prominent members of the major political parties the cover to call into question the integrity of individual members of the Supreme Court panel does not help the stability and unity of Ghana or put Ghana First.

The ethnic and geopolitical undertones exhibited in some of the allegations making the internet after the announcement of the appointment of the Committee clearly shows how dangerous the politicization of the decision of the Supreme Court is moving Ghana to the precipice. It is important for Ghana as a nation (and particularly the NDC and NPP) to watch the residues of conflicts we are gathering behind us from the past elections to reinforce future electoral conflicts before we push this nation into violent crisis. This is my perspective on this matter

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