RE: "DEPUTY AG TAKES WOYOME JUDGE TO THE CLEANERS" – MARTIN AMIDU'S REJOINDER.

This rejoinder condemns in no uncertain terms the unconstitutional and unethical conduct of the Deputy Attorney General, Dr. Dominic Ayineh, in scurrilously abusing the Court and the Judge that tried the Woyome case and also for the contempt of scandalizing the judiciary as a whole in the media, and in spite of the pendency of an appeal in the Court of Appeal filed by the office of the Attorney General. I had the honour of prosecuting and securing a conviction in a similar contempt of scandalizing the court and the judiciary case in Republic v Mensah Bonsu & Others; Ex Parte Attorney-General [1995-96] 1 GLR 377 in the Supreme Court in 1995 as an NDC Government's Deputy Attorney General.

On the morning of 15th March 2015 I read a news item on myjoyonline with the title: "Deputy AG takes Woyome judge to the cleaners". I was immediately stupefied by the office to which the heading was attributed but assumed it was one of those cheap journalist gambits to entice readers.

I was, however, dumbfounded by the first sentence of the news item stating that: "Deputy Attorney General Dominic Ayineh has shredded the ruling which acquitted and discharged Alfred Woyome and had harsh words for the sitting judge." What? A Deputy Attorney General of the Republic of Ghana having "harsh words for the sitting judge" and shredding "the ruling which acquitted and discharged" an accused person whom his office prosecuted or persecuted depending on how one views the circumstances surrounding the prosecution? Wait! There was Shock in store for me!

The Deputy Attorney General is reported to have described the ruling as a "travesty of justice" and saying that the Justice's "mind was made up from day one", adding that his "ruling is a prime example of poor judicial reasoning leading to conclusions that are totally untenable." A Deputy Attorney General whose office had appealed the verdict of the High Court had the audacity in public and in the media when an appeal is pending to use abusive and scurrilous language on a Justice of the High Court just for performing his function in pursuance of the judicial power vested in him under the 1992 Constitution? This is incredible and unbelievable coming from nowhere than the office of the Attorney General. It leaves a sad reflection on the integrity and oath of the appointing authority to defend and protect the Constitution of Ghana.

First, the conduct of Dr. Dominic Ayineh, the Deputy Attorney General, amounts to contempt of scandalizing the Judiciary; secondly it interferes with the inherent democratic principle of the independence of the judiciary; and thirdly and fundamentally, it contravenes Articles 125(3) and 127(1) (2) and (3) of the 1992 Constitution. Professionally a Deputy Attorney General is accorded respect and recognition as a matter of convention by both the Bench and the Bar as deputy leader of the Bar. Courtesies are therefore extended to him in accordance with the hallowed and time honoured traditions of the legal profession when he appears in Court. Indeed

the Attorney General, and in her absence her deputy, speak for the judiciary and the legal profession on the floor of Parliament. The Office of the Attorney General normally prosecutes superior court justices during impeachment proceedings. It, therefore, has the burdensome duty of ensuring compliance with the code of conduct and ethics of the legal profession and the judicial service. The Attorney General is consequently a member of the Judicial Council which oversees the Judicial Service. Dr. Dominic Ayineh, the Deputy Attorney General was therefore better positioned to raise any matter of professional misconduct with any supporting evidence at the appropriate forum against the judge instead of cowardly and scurrilously abusing the Court and the Judge, and scandalizing the whole judiciary in the media without any opportunity for the Court or the judiciary to be heard in its defence.

The conduct of Dr. Dominic Ayine, as Deputy Attorney General, in scandalizing the Judiciary in the media in the Woyome case has the tendency and may have been calculated to intimidate members of the Judiciary who are, or may hear criminal cases and appeals from the Attorney General's office: it offends the rule of law and the inherent principles of criminal justice. There is a constitutional presumption of innocence in criminal justice administration and the benefit of the doubt in our constitutional and democratic system inures to the benefit of the accused. Under any responsible social democratic Government living to the values of the NDC Constitution the Deputy Attorney General's conduct is more than sufficient ground for resignation or removal from office.

It does not matter what I think personally of the verdict and reasoning in the trial and acquittal of Woyome who is one of the persons I pursued stubbornly up to a review decision by the Supreme Court. He is entitled to a judicial verdict and that verdict remains binding by law until it is overturned by the Court of Appeal or on further appeal by the Supreme Court.

The Attorney General and her deputy may have good legal grounds to criticize the reasoning of the Justice in the Woyome case but as the Attorney General has decorously demonstrated the place for it, particularly for the Attorney General's office, is in an appeal and not scandalously in the court of public opinion where the majority of citizens do not have an educated appreciation of how the criminal justice system works. In any case the Deputy Attorney General ought to know that it is because of the fallibility of human nature that the general and inherent principles of rule of law and democracy provide for appeals from one judge to a bench of three and under the 1992 Constitution to the Supreme Court with a minimum bench of five justices. The increase in the number of justices sitting on the appellate processes is simply to ensure that any human biases will as far as humanly possible cancel themselves out in the final appellate decision. No human system can be perfect, so even the Supreme Court is empowered to depart from its own previous decisions when it thinks it proper to do so.

If it was the comments of the High Court Judge about the shoddy nature of the prosecution that un-nerved Dr. Ayine, so many people including former president Rawlings and myself think that the office of the Attorney General and the NDC Government deliberately lost every opportunity

for purely political convenience to present a holistic case that would convince a Court to convict Woyome and his accomplices. The conduct of the case by the Government from the outbreak of this scam to the verdict only confirms the perception all along that the Government was compelled by public reaction to pretend a prosecution because of the involvement of some of its Ministers of State and other card bearing members of the party but it had determined to conduct the prosecution in such a manner that nobody was ultimately convicted.

Why did the Attorney General choose to use the Chief Director instead of the Solicitor General and other Attorneys with primary knowledge of the facts who acted upon the instructions of the then Attorney General as lawyers in the scam in spite of my letter of 10th June 2013 to the office which was received by the Deputy Attorney General while the Attorney General was abroad? I will email with this statement a Portable document format (pdf) attachment of my said letter of 10th June 2013 in the hope that the media will make it available to doubting Thomas' to confirm warnings I had conveyed to the Attorney General on the disturbing manner the prosecution was being handled. Readers who are interested in reading again one of my warnings about the danger of prosecuting Woyome alone without his accomplices should read my feature article titled "Amidu's Perspective On The Nolle Prosequi In The Woyome Case" on GhanaHomePage of Monday, 11th June 2012. I have said already that Government was only interested in pretending to prosecute Woyome alone and protecting the others and so ignored all counsel.

The Supreme Court in its judgments of 14th June 2013 and the review decision of 29th July 2014 had given hints as to who were the principal accomplices of Woyome in the over GH₵51million scam. It declared the conduct of the then Attorney General, Betty Mould-Iddrisu, in paying or ordering the payment of the money null, void and without effect whatsoever. It further declared the conduct of Woyome jointly with Austro-Invest Management Ltd in making claims and issuing a writ of summons with the support of Waterville inconsistent with and in contravention of Article 181 (5) of the Constitution. More importantly for the prosecution, the Supreme Court declared that the High Court which purported to assume jurisdiction in the action commenced by Woyome as Plaintiff in suit No. RPC/152/10 against the Attorney General (then Betty Mould-Iddrisu) claiming damages for breach of contract in an international business transaction and entering judgment in default of defence acted without jurisdiction and set aside those proceedings and others consequent upon it as null, void and without effect whatsoever.

Why did the Attorney General's office not take the cue from the Supreme Court decision and charge at least the other persons whose conduct had been declared unconstitutional along with Woyome for at the least causing financial loss to the state? Would it not have been difficult for the accused and all those who facilitated the scam after the declaration of unconstitutional conduct by the Supreme Court to have escaped a positive verdict if they were tried together? But where this NDC Government deliberately and knowingly appointed a lawyer of one of the culprits, Austro-Invest Management Limited (represented by its sole shareholder resident in Ghana, Ray Smith) as its Attorney General to prosecute Woyome alone, is the verdict of the trial High Court acquitting Woyome not a probable outcome? Mrs. Brew Appiah-Oppong, the

Attorney General, just took Woyome's bait in confirming publicly for the first time that Lithur, Brew and Co of which she was a partner were lawyers for Ray Smith, the sole shareholder of Austro-Invest, in receiving part of the scam money on behalf of Ray Smith from Woyome before her appointment as Attorney General!

Be that as it may, the declaration of the High Court proceedings as null, void and without effect whatsoever by Supreme Court created a golden opportunity for the Republic to have pressed home the point that the trial Court could not take account of the null and void conducts and proceedings in determining the outcome of the verdict. If the Supreme Court decision was not brought to the attention of the Judge and his attention called to the effect of the declaration of nullity which was made long before the end of the trial, one can only blame the prosecution and not the judge. Whether or not a contention based on an allegation that the trial Judge misapprehended the application and binding effect of the retroactive declarations of nullity and voidness by the Supreme Court in his assessment of the evidence will succeed at the Court of Appeal and later at the Supreme Court will depend on how the submissions are couched and emphasized.

Any contention, in spite of the final decision of the Supreme Court on the unconstitutional conduct of the then Attorney General that she took legal advice from the Ministry of Finance and some experts is answered by the constitutional fact that the final responsibility for legal decisions in the Attorney General's office stops with the Attorney General. She cannot legally be bound by any advice, expert or otherwise of any person or authority in the performance of her constitutional duties as the principal legal advisor to the Government under Article 88 of the Constitution: she does so at her own peril. Judges receive medical, engineering, scientific and other technical evidence from experts in those disciplines on a regular basis during adjudication but it is trite that the ultimate decision is for the judge to make and not the experts. Similarly, an Attorney General as a quasi-judicial officer cannot hide behind experts or even the Cabinet for faulty appreciation of Article 181 (5) of the 1992 Constitution or any other law. In any case the decision of the Supreme Court which was prior in time is binding on all other Courts in Ghana. The foregoing are possible temperate legal arguments on appeal and do not provide justifiable grounds for scandalizing the judiciary or a Court in the media abusively and scurrilously.

I am ashamed of the unconstitutional and unethical conduct of the Deputy Attorney General who now occupies a position I once encumbered for upwards of twelve years from September 1988 to 7th January 2001 for the PNDC and the NDC1 & 2 Governments. I am a core foundation member of the NDC and this is not a partisan matter. The unconstitutional and unethical conduct of the Deputy Attorney General constitutes an attack on the core values of democracy, the rule of law, and the independence of the judiciary which we voted to defend as a nation at the referendum in April 1992. I invite every good citizen of Ghana and the world in general to condemn the Deputy Attorney General's conduct in the interest of the preservation of the rule of law and the independence of the judiciary in Ghana against executive governmental impunity.