

## THE ELECTORAL COMMISSIONER'S ABUSE OF POWER IN DISQUALIFYING 13 PRESIDENTIAL CANDIDATES – BY MARTIN A. B. K. AMIDU

The decision of Mr. Justice Eric Kyei Baffour of the Commercial Division of the High Court, Accra, in the case of the Republic v Charlotte Osei and the Electoral Commission, Ex Parte Nduom, 28<sup>th</sup> October 2016, will forever remain a testimony to the resilience of Ghanaian jurisprudence to curb impunity, arbitrariness, abuse of power and abject arrogance on the part of public officials under the 1992 Constitution. It rightly quashed the arbitrary and unlawful decision of the Commissioner made on the 10<sup>th</sup> of October 2016 invalidating the nomination of the applicant as a candidate for the coming Presidential Election for alleged non-compliance with regulations 7 of the Public Elections Regulations, 2016 (CI 94) and ordered the Commissioner to comply with the Regulations.

After granting the order of certiorari the Court resolved the issue in controversy as follows:

“I will proceed after quashing the decision of the Respondents disqualifying the Applicant as a candidate and order that the Respondents afford opportunity to the Applicant to make the necessary alteration or amendment to its nomination paper for it to receive same and then proceed to determine whether the Applicant had met all the criteria laid down by the laws of the Republic, in line with its duty laid down in C.I 94. The EC has no basis to complain that nomination period has closed when they did not set one. They only set nomination day under regulation 7 but not nomination period under regulation 92(2) as I have already found. The time frame to afford the Applicant is entirely within the discretion of the Respondents being mindful of the limited time available for the elections on December 7, 2016.”

A photocopy of the entire ruling made available to me can be found on my website, [martinamidu.com](http://martinamidu.com).

Ghanaians may recall that for the first time in annals of the history of the 1992 Constitution, the Electoral Commission of Ghana announced on 10<sup>th</sup> October 2016 that it had disqualified 13 out of 17 candidates aspiring to contest to be elected to the high office of President from taking part in the 2016 Presidential Elections. The reasons ascribed in the Commissioner's own words for the alleged disqualification can be found in a document entitled: “Receipt of Nominations for 2016 Presidential Elections – Key criteria for the presidential candidates” published on [citifmonline](http://citifmonline) General News of Monday 10 October 2016. Citi FM headed its publication as “Why Nduom and 12 presidential aspirants were disqualified.”

A casual reading of the reasons provided by the Commissioner in that document leaves an ordinary reasonable person with the conclusion that the decision to disqualify each of the presidential candidates was premised upon an alleged non-compliance with regulation 7 of the Public Elections Regulation, 2016 (C.I. 94). One walks away with the cogent and credible impression that the Commissioner purportedly acted in pursuance of an alleged power of disqualification vested in her under regulation 9(2) and (3) of C.I. 94. But even a fleeting perusal of regulation 9 of C.I. 94 should have left any lazy reader with a firm conviction that the

Commissioner had no legal authority to invalidate the nomination of an aspiring candidate for president without first giving the candidate the opportunity to alter or amend his or her improperly completed nomination forms. Unfortunately, the common sense objections of the various aspiring candidates to their disqualification in violation of regulation 9(2) of C.I. 94 were met with insolent language bordering on insults and impunity demonstrating the perceived omnipotence and infallibility of the Commissioner in making her decisions.

Truth be told, I have never in my long years of experience in the public service witnessed the degree of arrogance and impunity exhibited towards the respectable citizen aspiring presidential candidates who sought to reason with the Commissioner to simply comply with the duties imposed upon her by the Constitution and the laws governing the process. Without waiting for the aspiring candidates to exhaust their constitutional rights to challenge her arbitrary decisions and determinations, she arrogantly proceeded to refer the aspiring candidates to the police for investigation for the commission of various offences alleged by her in her statement of reasons for disqualifying them. This was clearly a scheme she designed to intimidate the aspiring candidates and frighten them with the police powers of the Executive from vindicating their rights before the Courts. It should be everybody's guess how she managed to recruit the Ghana Police Service which is currently under the control and direction of the partisan NDC Government to foster her agenda of harassing and intimidating these innocent citizens into accepting her unlawful decisions disqualifying them.

As a matter of fact, her arbitrary and unlawful disqualification of 13 aspiring presidential candidates and her arrogant attitude towards those distinguished citizens and their political parties or supporters does not conduce to her image as an impartial arbiter of elections. And the decision in Ex Parte Papa Kwesi Nduom exposes her high handiness, incompetence, and inexperience as a public officer. It also does no credit to whatever agenda the appointing authority which is also contesting this presidential election had in mind in patronizing her to the important and critical office of impartiality as Electoral Commissioner under the Constitution.

It is amazing that the Commissioner failed or refused to realize that her impunity in not complying with the Constitution and the law in disqualifying the aspiring candidates disclosed more about her failure as the head of the Electoral Commission than the ignorance or lack of attention on the part of the aspirants in filling the complex nomination forms designed by her office for the Presidential Elections. It is demonstrable failure and an indictment on the competence of the Commissioner that only 4 of her class of 17 political parties and independent aspiring presidential candidates were able to understand and complete the nomination forms without error and to submit them at her own appointed time of 29<sup>th</sup> and 30<sup>th</sup> September 2016. Instead of rushing to disqualify them contrary to the due process of law (particularly the right to alter or amend as provided by law and natural justice) and gloating on her competence in the unlawful application of C.I. 94 she should have resigned for failing in her functions to educate the aspirants for the complex nomination electoral process and its purpose.

The conduct of the Commissioner in unlawfully disqualifying 13 aspiring presidential candidates appears to confirm the perception that she came to her job with the unconstitutional agenda of compelling the electorate to make a choice between the two major political parties (the NDC and the NPP who normally contest all Parliamentary seats as well) at this year's Presidential Elections to demonstrate her perceived ability to organize a free and fair election without petitions. Such an agenda is subversive of Article 3 and Chapter 7 of the Constitution dealing with the representation of the people. In Africa such an arrangement provides and facilitates the ability of incumbent Governments to use the Executive Power and resources of the state in rigging the elections. The non-incumbent major opposition party should watch carefully the trap being set for it. I hold the view that in Ghana's present circumstances the plurality of political parties fielding candidates at the presidential elections is the only guarantee to effectively policing the process by the presence, and alertness of their supporters, polling assistants and others at the polling stations on the day of elections.

An examination and analysis of the ruling of the Court in Ex Parte Papa Kwesi Nduom and the reasons given by the Commissioner on 10<sup>th</sup> October 2016 for disqualifying each of the 13 aspiring presidential candidates as published in detail on Citi FM manifestly shows that they are each underscored by a common reason for each disqualification. The Commissioner disqualified each and every one of them in violation of their right to be afforded the opportunity to make the necessary alteration or amendment to their nomination forms before the Commissioner took the decision to disqualify them under C.I. 94. Prudence and common sense therefore requires the Commissioner on the strength of the decision of Ex Parte Papa Kwesi Nduom to see her way clearly to give each of the aspiring presidential candidates the opportunity to alter or amend his nomination forms in accordance with regulation 9(2) of C.I. 94 to enable the processes to the election to proceed without any further delay instead of waiting for each aspiring candidate to secure a separate ruling from the Court.

The battle to get as many of the disqualified aspiring candidates onto the ballot is far from ended. The aspiring candidates should be advised to have the means of altering or amending their nomination forms ready and by their side to effect the alterations, amendments and corrections at the shortest notice by the Commissioner. The Commissioner has one more chance to make a determination of the validity of each of the nominations again and the aspiring candidates must not be caught with their pants down when she calls upon them to amend their nomination forms in accordance with the Regulations. Whosoever wins the 2016 Presidential Elections must do so transparently and fairly. We must put Ghana First by equalizing the disadvantages of the political parties in opposition to ensure that they have a fair and even chance against any abuse of incumbency by this Government which is definitely very desperate to remain in power after eight years. Let us watch every step of this Electoral Commissioner in this election year!

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30/10/2016