

ELECTORAL COMMISSION HAS A VOLUNTARY CHOICE TO GO TO THE SUPREME COURT – MARTIN A. B. K. AMIDU

In what appears to be an immediate press release issued on the evening of 31st October 2016, the Electoral Commission stated that it has today filed an application at the Supreme Court to quash the High Court decision in Republic v Mrs. Charlotte Osei and the Electoral Commission; Ex Party Papa Kwesi Nduom, 28th October 2016. It stated, inter alia, that it will “seek clarity on the relevant aspects of the law on candidate nomination.” The said press release will be on my website, martinamidu.com, for ease of reference.

The Commissioner has the constitutional and legal right of choice to seek to quash the decision of the High Court at the Supreme Court by bringing herself within the supervisory jurisdiction of the Court. And since the Commissioner has knowingly chosen the path of adversarial confrontation instead of pragmatic alternative dispute resolution in view of the limited period to the election date of 7th December 2016, I hope she will, within the letter and in the spirit of the Constitution, take full responsibility for the natural and probable consequences of her actions as Chairperson of the Commission. I wish her good luck in her application.

I have read thoroughly the ruling of the High Court and the issues joined between the parties upon which it was decided before I agreed with it. My views on it together with my suggestions for a pragmatic, prudent and common sense facilitation of the early resolution of this disqualification electoral dispute for the smooth conduct of the 2016 Presidential Elections are already in the public domain and I have no reason to revise them.

I did not find that the issue of the mere suspicion by the Commissioner of the commission of any alleged criminal offences by the applicant was part of the controversy between the parties for the High Court’s decision. One needs to wait for the certiorari application of the Commission to see how this new issue has been framed by the Commissioner, and introduced to invoke the supervisory jurisdiction of the Supreme Court. One may then learn how “seeking clarity on the aspect of the law on candidate nomination” constitutes a ground for certiorari or whether or not it is rather an issue for constitutional interpretation requiring invoking the original jurisdiction of the Court.

In an article I had completed on the electoral powers of the Commission (which was due for publication until it was overtaken by the article I published on 31st October 2016 on the subject of abuse of the electoral powers of the Commissioner), I had dealt with the question of whether or not suspicion, albeit reasonable, by the Returning Officer for Presidential Elections who is also the Chairperson of the Commission that a person is suspected of the commission of an alleged election offence deprives the suspect of his constitutional right to the presumption of innocence and a fair trial. I had contended, inter alia that, indeed the Public Elections Regulations, 2016 (C.I. 94) states unambiguously that only a person convicted of an election offence is liable to a fine or to a term of imprisonment and is disqualified for a period of five

years from the date of the expiration of the imprisonment from being registered as a voter or voting at an election.

I argued that the offence creating portion of C.I. 94 is regulation 44 and it incorporates by reference the provisions relating to election offences specified in sections 27 through to 40 of the Representation of the People Act, 1992 (PNCL 284). Section 42 and 43 of PNCL 284 also states clearly the procedure leading up to the removal of the names of convicted election offenders from the voters register kept by the Commissioner. The Registrar of Courts where persons are convicted of an offence under sections 27, 28 or 29 “shall as soon as possible, after the conviction, report the conviction in writing to the Commission”. Consequently the Commission is required to keep a record of persons who by operation of sections 27, 28, 29 or 41 are disqualified from being registered as voters, voting at an election or becoming members of parliament and to delete that person’s name from the register.

I argued further in that article that the Commissioner on the basis of the electoral laws governing her office had no power to assume that the mere suspicion by her that a person has committed an election offence or any other criminal offence clothes her with authority to deal with the person as though he had been convicted of an election offence, disqualified and his name removed from the register of voters as required by the C.I. 94 and PNDCL 284. I did not have to deal with the issue of election offences and their effects in my article published on 31st October 2016 on this subject because it did not appear to be an issue in controversy dealt with by the ruling of the High Court, let alone one disclosed on the face of the ruling as constituting an error of law.

Now that the Commissioner as the Returning Officer and Chairperson of the Commission thinks that the ruling of the High Court discloses any such error on the face of the record, it is prudent to wait for how the submissions on this matter which the Commission’s press release alludes to will get its way into the issues in controversy arising from the ruling of the High Court and how the Supreme Court will resolve it. When the Supreme Court is done with its work, we citizens of Citizens Vigilance will be at liberty to have our say in exercise of the constitutional right to free speech.

Caution has always being said to be the better part of valour. My considered and humble view is that the nearness to 7th December 2016 should have informed how pragmatic this matter should have been handled after the ruling of the High Court. That was why I advocated for prudence, common sense and pragmatism to prevail in the resolution of this matter without further delay. I hope that by the time the disqualification of the 13 aspiring candidates each gets resolved, those of them who may be determined to be qualified to be on the ballot would have time to go round the country to canvass for votes in accordance with the letter and spirit of the Constitution for a free and fair election.

By making the voluntary choice to apply for the discretionary remedy of certiorari in the Supreme Court, the Commissioner as the Returning Officer for the Presidential Elections and

Chairperson of the Commission takes full responsibility, in accordance with the spirit of the Constitution, for the natural and probable consequences of her actions.

Citizens of Citizens Vigilance will continue to follow developments in this matter as mandated under Article 3 of the Constitution during and after the Supreme Court is done with it when our substantive comments will be made. In the meantime let every citizen put Ghana First and watch every step of the Commissioner in this election year to ensure that the constitutional injunction of a free and fair election is actualized.

Martin A. B. K. Amidu
31st October 2016