MONTIE FM CRIMINAL CONTEMPT – AMIDU'S REJOINDER

I was happy to read on the Ghana Web of 18th August 2016 expressions of disagreement by two lawyers, Messrs. George Loh and Ayikoi Otoo with portions of my case commentary on the Owners of the Station – Montie FM criminal contempt case, which I published on my web site at dawn on Wednesday, 17th August 2016, and which was also carried by the Citi News of the same day. Unfortunately because they only selected convenient topics from my case commentary in the interview they gave to Citi FM, they failed or refused to address the several substantive constitutional and fundamental errors I demonstrated to have been committed by the Court in the inquisitorial procedure it adopted in convicting and sentencing the "Montie" contemnors. My commentary went beyond simply inherent jurisdiction and the prosecutorial powers of the Attorney General.

Under the heading **Precedent of the Presidential Election Petition - Contempt Convictions** I anticipated and addressed Mr Ayikoi Otoo's contention: "…that precedents had been set when Ken Kuranchie,, Stephen Atubiga, Sir John, Hopeson Adoye and Sammy Awuku, were all summoned by the Supreme Court and dealt with in 2012" when I stated clearly that:

> "There are those who would be tempted to raise the issue of the purported convictions for criminal contempt in the Presidential Elections Petition of persons from the two largest political parties in Ghana as precedent for the Court's procedure in this case as well. My answer to them is that if those proceedings also suffered from the same violations of the 1992 Constitution as I have demonstrated in this paper then those convictions were inconsistent with provisions of the Constitution and also void. In this regard the wisdom contained in the dissenting opinion of the late eminent and very distinguished Supreme Court Judge, Mr. Justice Adade, in Bilson v Apaloo [1981] GLR 24 at 69-70, comes to mind. He said that:
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> > '….But it is said that the Court of Appeal has been sitting five all the time, and no one has raised a finger. That does not mean that a finger can never be raised. It has been raised now, and we cannot force it down. If in my reckoning, an error was committed then, there is no reason why that error should be perpetuated simply because it has been done with impunity in the past. "Public policy and commonsense" pleaded by the defendant, cannot be suffered to oust the operation of what, in my view, are the clear prescription of constitutional provision.'
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> I say also that in so far as the Supreme Court did not avert its mind to the constitutional standards laid down in the criminal contempt case of Kwabena Mensa-Bonsu on the procedure and burden of proof for the criminal contempt of scandalizing the court, the ruling in the Owners of the Station – Montie FM case was rendered in disregard of the Courts own previous and binding decision. In accordance with Article 129(3) of the Constitution the ruling in the Owners of the Station - Montie FM was given per incuriam and consequently void under the Constitution."

I have stated clearly in my case commentary that: "It is beyond argument that the Supreme Court is clothed with the power to commit for contempt of itself under the 1992 Constitution. But the same Constitution enjoins the Supreme Court to exercise all its powers in accordance with the due process of law and to respect the fundamental human rights and freedoms guaranteed under it." The issue at stake is not whether or not the Court has an inherent jurisdiction. The question is whether or not the inherent jurisdiction has been exercised as enjoined under the 1992 Constitution. My clear answer is that the Court violated the Constitution.

I have argued extensively throughout my case commentary that the Court did not exercise its inherent jurisdiction in accordance with the Constitution. I have maintained that the Supreme Court in its own binding decision of Kwabena Mensa-Bonsu extensively reviewed its inherent jurisdiction, underscored the difference between contempt in the face of the court and the prosecution of ex facie criminal contempt of court cases, and arrived at the same conclusion as the Republic v Liberty Press Ltd case that the Attorney General is the proper authority to initiate the later type of contempt.

In any case it is trite that the common law inherent jurisdiction of the superior courts is limited by and subjected to the Constitution, a statute or rule of law. The primacy of the Constitution over the common law and any other law is beyond question and any interpretation of a court's inherent powers that negates a substantive constitutional provision or provisions such as Articles 12, 14(1), 19(2)©(d)(g) (10) and (18), 21(1)(a), 33(5) and 88 of the 1992 Constitution as I demonstrated in my case commentary is void and unconstitutional.

Mr. George Loh strikes me as someone who did not read my case commentary as he alleged. He would not have missed the fact that I was writing a case commentary based solely on the certified true copies of the sentencing ruling and decision. The certified true copies which he can find on my web site do not disclose that any preliminary objections were raised. I am sorry that he is yet to learn that preliminary objections in rulings are those which have been raised, recorded and been decided upon as the lawyers in Liberty Press Ltd, and Kwabena Mensa-Bonsu got the Court to do.

A lawyer shows lack of courage when he fails or refuses to file or argue proper preliminary points of law or legal objections that compels the court to make a ruling but hops round radio stations seeking sympathy with the excuses he gave at his interview with Citi News. Mr. Loh appears to be in the category of lawyers who erroneously believe that every decision by the Supreme Court is necessarily infallible and divine. Somehow the public may be interested in the fact that Mr. Loh (if he is not the same person as George Larbi) is not recorded in the sentencing decision on 27th July 2016 as one of the lawyers for the contemnors and will not appear in the reported case as one of them.

I had expected that Mr. Ayikoi Otoo would have addressed in a considered and written response the substantive human rights issues of lack of detailed particulars of the offences charged; presumption of innocence; exaction of compulsory pleas from each director or officers of the corporations and their individual convictions instead of the corporations; the personal conviction of Mr. Ato Ahwoi after the Court had become functus officio after sentencing the corporations; the lack of a Respondent for a review application; and other constitutional issues I raised instead of choosing the lines of least resistance as he did.

I have no vested interest in any of the personalities convicted in the Owners of the Station - Montie FM or in any political party. As a citizen of Ghana I know that the 1992 Constitution skews the dictatorship of the legislature, and the executive. It has entrusted the protection of our liberties to the judiciary in the hope that when we err we would be tried by a fair, impartial and transparent court known in the scheme of things as the "least dangerous branch of Government".

It is in the interest of our fundamental human rights and freedoms that the judiciary is seen to obey the Constitution which it is enjoined to protect. It has lived up to that responsibility on several occasions. On this occasion I do not think it has lived up to the constitutional injunction. And I stand by the Constitution!

Martin A. B. K. Amidu