

THE NDC GOVERNMENT’S POLITICAL MANIFESTO WHITE PAPER FOR ELECTION  
2016: BY MARTIN A. B. K. AMIDU

When I wrote my researched statement on “The Ghanaian Sense of Justice: Corrupt Judges Removed, Corrupt Attorneys Rewarded and Corrupt Politicians Protected”, it hardly occurred to me the Government covert judicial corruption investigations operations that were intended to arouse public emotion and anger in order to suppress Gargantuan political corruption was part of the NDC’s Political Manifesto agenda towards the 2016 Elections. Barely two months after the break out of the report of the covert judicial operations the Government published what is supposed to be a White Paper pursuant to Article 280 of the Constitution on the Sole Judgment Debt Commissioner’s report. A perusal of the White Paper leaves one in no doubt that it is in fact another election 2016 NDC Manifesto No. 2 to suppress political corruption against the Government and its supporters arising from the very clear and lucid report of the Sole Judgment Debt Commissioner.

When one reads the leaked report of the Sole Judgment Debt Commissioner one is left in no doubt of the excellent work the Commissioner had been able to undertake within the short period at his disposal for such an enormous assignment. Of course as a distinguished lawyer who had risen from the High Court to the Court of Appeal, the erudition displayed in his work attests to his competence as a judge that ought to make members of the legal profession and fellow citizens proud. Unfortunately, the Government is playing politics and propaganda with such excellent work by arrogating to itself the power to amend, modify, vary, re-write and even introduce extraneous matters into the report for purely political electioneering purposes. No one knows the sampling methodology used to select the cases contained in the report to make detailed comments in the NDC Political Manifesto White Paper such that only cases affecting political opponents and detested NDC members like myself have been slanted and dealt with as though the White Paper were an election manifesto to vindicate the Government and some of its officials from political judgment debt corruption.

**(1) Alfred Agbesi Woyome v Attorney-General and Another (2) Waterville v Attorney-General (3) Isofoton SA. v Attorney-General** – Pages 3-7 of White Paper

I went to the Supreme Court in the two now well known cases of *Amidu (No 1) v Attorney-General, Waterville Holding (BVI) Ltd & Woyome (No 1)* [2013-2014] SCGLR 112 and *Amidu (No 2) v Attorney-General, Isofoton SA & Forson (No 1)* [2013-2014] SCGLR 167. My review application against the Attorney-General & Woyome was granted in *Amidu (No 3) v Attorney-General, Waterville Holdings (BVI) Ltd, & Woyome (No 2)* [2013-2014] SCGLR 606. The Supreme Court decision in the Attorney-General, Waterville & Woyome cases are final and conclusive in finding unconstitutional conduct on the part of the then Attorney-General and the other Defendants and ordering *Waterville* to pay a total of around €47 million, and for Woyome

to refund over GH¢51 million. But the Manifesto White Paper deliberately limits the *Waterville* Supreme Court order to only US\$25 million in spite of the Attorney-General's own entry of judgment for the larger amount. It is trite learning that a Commission of Inquiry cannot sit in adjudication over a decision of the Supreme Court as the final Court. Nonetheless the NDC Government's Manifesto White Paper (for purely political electioneering reasons in the coming 2016 elections) introduces extraneous matters - not within the jurisdiction of the Commission and therefore not even considered by the Commissioner - to dampen the effect of the orders of the Supreme Court. This enables the Government to fraudulently explain away the Government's refusal to enforce the orders of the court against its surrogates to which it unconstitutionally dished out the Republic's scarce resources.

What has the Sole Judgment Debt Commissioner's report got to do with the assistance the Government is giving to its foreign cronies to flout the orders of the Supreme Court at so called international arbitral tribunals at which the Government is effectively collaborating to defeat the orders of the Court? When did the judgment and orders of the Supreme Court of Ghana become subservient to those of international arbitral tribunals? Since when did the principle that ignorance of a sovereign national constitution is no excuse for anybody to breach any nation's Constitution become an exception for foreigner investing in Ghana? Everybody dealing with any Government world-wide is deemed to know the Constitution of that nation. This is the accepted universal principle of law for citizens and foreigners alike, so where from the exception by this Government for its foreign friends? I am convinced that the introduction of the following extraneous statement in the NDC Manifesto White Paper is just a political ploy to make the retrieval of the debts ordered by the Supreme Court a non-electoral issue:

“Government accepts the recommendations of the Commission.

Government, however, notes that international tribunals have not agreed entirely with our Supreme Court decisions in *Balkan*, *Waterville* and *Isofoton* cases in relation to Article 181(5) of the 1992 Constitution. In particular, in the case of *Bankswitch Ghana v Government of Ghana*, the arbitral tribunal established under the auspices of the Permanent Court of Arbitration (PCA), in its award of April 11, 2014, held that based on customary international law principles of estoppel, the Government of Ghana was precluded from arguing that the *Bankswitch* Agreement was unenforceable under Article 181(5) of the 1992 Constitution.” [p. 7]

The *Bankswitch Ghana v Government of Ghana* arbitration has never been before the Supreme Court in Ghana for a decision and one can understand the Permanent Court of Arbitration depending on the peculiar facts of that case making in an arbitral award against the Government. This Government has never been known to be serious about defending the financial interest of the Republic of Ghana, particularly when its foreign friends are concerned. But in *Balkan*, *Waterville* and *Isofoton* which I had the honour to have argued before the Supreme Court the issue of estoppel was conclusively pronounced upon by the final Court in Ghana. This

Government was reluctant to peruse the *Waterville* and *Isofoton* cases in the Supreme Court of Ghana. When I decided to prove that the cases could be won, my own NDC and Government claimed that I was suffering from delusion of grandeur (complements the ingenuity of one of the young men we sent to Cuba for training as a medic in the 1980's who now works in the MRI or X-ray Department of the 37 Military Hospital).

Ghanaians cannot allow the government to play politics with the orders of the Supreme Court when it has clearly demonstrated its affinity to the foreign judgment debtors and its reluctance to get our money back. In any case how does the Government explain its decision not to prosecute those foreign surrogates but go after Woyome alone? I hope Ghanaians will wake up to the fact that this is not a White Paper under Article 280 of the Constitution but a bogus and fraudulent NDC Manifesto White Paper masquerading as one pursuant to Article 280 of the Constitution.

The Sole Commissioner after hearing the evidence on the *Attorney-General*, *Waterville*, *Woyome* & *Isofoton* cases decided to follow the Supreme Court in saying a few kind words about my tenacity in perusing those cases. I had obtained a consent judgment entered in my favour in the High Court in which the Government was ordered to pay me compensation for wrongful termination of appointment and accordingly submitted a copy to the Sole Commissioner as part of my case of Government wrong doing in those cases. The Government in which I had served and which is the successor of the PNDC and previous NDC Governments I have served as well since 1982 could not hide its anger against my successes at the Supreme Court in the following comments:

“Government is, however, of the view that the Sole Commissioner went out of his remit in attempting to ascribe reasons for Hon. Martin Amidu’s loss of his Ministerial job in 2012 when he, the Sole Commissioner, did not have the requisite evidence on the matter.” [p. 5]

I never asked the Sole Commissioner to make any kind comments about me but I do appreciate his discretion as a respected and distinguished judge who has since earned a meritorious promotion from the Court of Appeal to the Supreme Court to have followed in the tradition of the Supreme Court with those kind words. The NDC Government Manifesto White Paper cannot, whatever its intentions, expunge those words from the report and the Government has no Constitutional powers to amend them except to go to the Court of Appeal after the gestation period provided under the Constitution. When I say my own political party, of which I am a foundation member, would want me dead some do not want to believe me but here is proof that even after conceding to pay me damages for wrongful termination in the High Court, the Government still chases my name for obliteration even in the report of a Commission of Enquiry. Everything is pure propaganda without truth for this Government and party. I may as well appeal to the Government to expunge the following said about my very humble self from the [2013-2014] SCGLR report as well:

- (1) **‘The Editorial Comment** to the case of *Amidu (No 1) v Attorney-General, Waterville Holdings (BVI) Ltd & Woyome (No 1)* [2013-2014] 1SCGLR 112 at 119, **on the question of the public spiritedness of Hon Mr Martin A Amidu which fueled his meticulous and industrious presentation of the case, namely:**

*“it is very desirable for the Bench and Bar in Ghana to heartily applaud the much-deserved high commendation kindly bestowed by the Supreme Court in the instant case (per Date-Bah JSC) on Hon Mr Martin Alamisi Amidu, the distinguished former Attorney-General and Minister of Justice ‘for his public spiritedness which has fueled his meticulous and industrious presentation of the case.’ As the Supreme Court further put it: ‘his diligence has enabled the ventilation of the important legal issues.’ The Editor would also like to draw the attention of all members of the Bench and Bar in Ghana to the fervent call by Dotse JSC in his concurring opinion in the instant judgment of the Supreme Court namely: ‘the need for civil society organisations or groups to come to the assistance of such a plaintiff. This is because from the plethora of documents filed in this case, I reckon that the plaintiff has been put to a lot of expense all in the attempt to protect the interests of the State...The plaintiff, in my opinion, must be highly commended for his vigilante role in protecting the wanton dissipation of the public purse.’”*

In *Amidu (No 2) v Attorney-General, Isofoton SA & Forson (No 1)* [2013-2014] SCGLR 167 at 191 the Supreme Court said the following about me which the Government may as well order to be expunged from the record:

#### ‘Epilogue

The Roman poet Horace in one of his Odes declares: *“Dulces et decorum est pro patria mori.”* Literally translated, this means it is sweet and honourable to die for one’s country. Whilst we are not suggesting that the plaintiff has died in his effort to safeguard the public purse, there is no doubt that he has sacrificed his time and money to achieve that objective. It is only right that we should once again put on record (for the second time in a week, the first time having been in *Amidu (No 1) v Attorney-General, Waterville Holdings (BVI) & Woyome (No 1)* (supra) this court’s appreciation of his public-spiritedness shown by the plaintiff, which has led to the examination of the important legal and policy issues that have been settled in this case. He has served the public interest well by securing the clarification of the law embodied in this judgment as well as the orders made.’ [p. 191]

The NDC Manifesto White Paper has also politicized the findings of the Sole Judgment Debt Commissioner in attempting to reframe the report on *Delta Foods Ltd v Attorney-General* appearing on page 20 of the supposed White Paper. The proper title of the case in which an NDC Government in which I served as Deputy Attorney-General applied for certiorari instead of paying upon the consent judgment is *Republic v High Court, Accra; Ex Parte Attorney-General (Delta Foods Case)* [1998-1999] SCGLR 595. The Solicitor-General at the time, Mr. E. A. Addo, under the NDC 2 Government was adamant in applying for certiorari and argued the case himself with the late Mr. Avah and the late SY Anin (both then Chief State Attorneys) and lost the case to a unanimous decision of the Supreme Court made up of Bamford-Addo, Ampiah, Acquah, Atuguba and Sophia Akuffo JJSC. The ruling was given on 3 March 1999. Nana Addo Dankwa Akufo-Addo was then (if my memory serves me right) the ranking member for the Constitutional and Legal Affairs Committee of Parliament and had nothing to do with the case. Consequently when the Sole Commissioner for Judgment Debts stated that “(iii) the office of the Attorney-General did not exhibit candour and good faith in seeking the order of certiorari at the Supreme Court.”, he was referring to the office of the Attorney-General in 1998-1999 and not the later tenure of Nana Addo Dankwaa Akufo-Addo after 7<sup>th</sup> January 2001 when Prof. Mills and myself lost the elections to President Kufuor. As the Sole Judgment Debt Commissioner rightly sated:

“(i) It was the improper and wrong decision of the office of the Attorney-General to seek a certiorari in the Supreme Court on a mere technicality in proceedings that it had participated in that burdened the Government with the additional US\$4.9million judgment debt payment.

(ii)The US\$4.9 million payment authorized by Hon. Nana Akuffo Addo and paid to the solicitor for Delta Foods Ltd., Hon. Peter Ala Adjetey, constituted a huge financial loss to the State.”

Nana Akuffo Addo merely paid the US\$4.9 million to the NDC’s Larry Adjety’s father to curtail any further rise of the interest but it was the improper and wrong decision of the office of the Attorney-General under NDC 2 to seek a certiorari in the Supreme Court on mere technicalities ... that burdened the Government with the additional US\$4.9 million payment and not the payment by the NPP Attorney-General who was merely obeying the decision of the Supreme Court in refusing the certiorari. There may be a problem of understanding the English language by whosoever drafted the NDC Government Manifesto White Paper but the Supreme Court decision could have been resorted to in finding out which year’s office of the Attorney-General applied for the certiorari.

Unfortunately propaganda and suppressing political corruption on the part of this Government is so foremost on its agenda that it is blinded to see that the Attorney-General’s Department to be sanctioned will be NDC 2’s Attorney-General’s Department

as recommended by the Commissioner. It could also be that by some chicanery the political drafters of the Manifesto White Paper deliberately twisted the words and pretended not to see which year's office of the Attorney-General is to be sanctioned since Nana Akufo Addo is a feared Flag Bearer of the largest opposition NPP and a desired target for political propaganda in election 2016 for which the Manifesto White Paper like the covert judicial operations were intended.

There is certainly a need to go back sixteen years to conduct an investigation to identify public officers to be sanctioned because that was the mandate given the Sole Commission by this Government to begin from the coming into force of the 1992 Constitution, unless it least expected an independent report from a distinguished justice of the superior courts of Ghana. Those who will be caught will include the former Solicitor-General, "Several Ways of Killing a Cat" and a former Member of the Council of State both of whom were at the Ministry of Agriculture. As far I recollect, the Solicitor-General handled the *Delta Foods Ltd* case in his own right as Solicitor-General even though he was somewhat related to the Attorney-General at the time with whom he could have discussed it. The concluding comments of the Sole Commissioner is the more reason for the investigation as to how the maize was utilized but suppressing political corruption seems to be more important for this NDC Government in its Manifesto White Paper than anything else in this impending election period.

**African Automobile v Attorney-General** – Pages 27-30 of White Paper

When it comes to *African Automobile v Attorney-General* dealt with at page 27 of the report the Manifesto White Paper is quick to suppress the implicated now 1<sup>st</sup> Deputy Speaker of Parliament, Ebo Barton Odro, who was the Deputy Attorney-General who instructed the payment of the post-judgment interest of GH¢4,159,101.38 without authority from myself as the Attorney-General until I found it out after I had left office. In the report the Sole Judgment Debt Commissioner accepted the findings and observations of the Auditor-General whose assistance he had sought as follows:

(iii)The post-judgment interest of Gh¢4,159,101.38 which had been awarded by the court and paid into the sub-consolidated bank account of the Ministry of Employment, Manpower & Development should be returned to the Consolidated Fund. Unknown to the Auditor-General, however, this amount had been paid to the company on the directive of the Deputy Attorney-General." [p. 28]

The Manifesto White Paper curiously avoids mentioning the Deputy Attorney-General, Ebo Barton Odro, by name and does not make any recommendations or comments as it made in the case of Nana Akufo-Addo and myself, a humble NDC foundation member also perceived as an enemy. What can this Political Manifesto White Paper be, if not

designed to suppress Gargantuan political corruption and damnify perceived opponents of the Government!

### **Societe Generale v GNPC and Conclusions**

Attempts have been made in the Manifesto White Paper to deal with the outspoken NPP Member of Parliament, Hon KT Hammond – see pages 12-16. It is not my intention to defend him but to expose the partisan nature of the Manifesto White Paper which is the second NDC Political Manifesto issued by this Government for the coming electioneering 2016 purposes within two months. KT Hammond is ordered to be investigated by EOCO for US\$900, 000.00 while Hon Ebo Barton Odro (now 1<sup>st</sup> Deputy Speaker of Parliament of the NDC) goes free after an unauthorized payment of GH¢4,159,101.38. What Ghanaian sense of justice is this than protecting card bearing members of the NDC while hounding mercilessly and dealing with political opponents whose fundamental rights and freedoms are also guaranteed under the 1992 Constitution? When I call this unconstitutional conduct on the part of the NDC which is now deviating from core values, (and of which I am a foundation member), I am insulted with approval from the Presidency in a democracy.

I wish to ask once more what the methodology was for sampling the cases to be commented upon in the Manifesto White Paper so we can replicate them to see whether the selection was not ad hoc to condemn political opponents to deflect public criticism from the Government's Gargantuan political corruption. Betty Mould-Iddrisu, Ebo Barton Odro, Benjamin Kumbour, (the now Minister of Defence who staged his own assassination and was exposed by the Ghana Police Service) are all indicted in the Sole Judgment Debt Commissioner's report but the Political Manifesto White Paper covers them up. Can the public be told the rational grounds for choosing my cases which the Supreme Court had conclusively disposed of, and those involving the NPP Flag Bearer and KT Hammond, a leading NPP Member of Parliament, for extensive unconstitutional comments while ignoring the Government's own Ministers, 1<sup>st</sup> Deputy Speaker of Parliament and other officials?

As an aside, one solution I may have to think about should the NDC Government and party continue on their unconstitutional path aided by their small boys with sharp teeth is whether I should also not Goosie Tanoh 2000 or Obed Asamoah 2004 against this dictatorship in Election 2016.

Fellow countrymen, I told you so: An Orwellian Big Brother State is incrementally in the making by this Government contrary to the letter and spirit of the 1992 Constitution. Let's wake up fellow Ghanaians and defend our Constitution against this crippling dictatorship.

Martin A. B. K. Amidu

[23<sup>rd</sup> November 2015]

