

STOP URGING THE ATTORNEY-GENERAL TO SETTLE THE CASE OF BALKAN ENERGY (GHANA) LIMITED IN SPITE OF THE SUPREME COURT'S DECLARATION THAT THE CONTRACT IS AN INTERNATIONAL BUSINESS TRANSACTION TO BE LAID BEFORE AND APPROVED BY PARLIAMENT TO BE CONSTITUTIONAL AND OPERATIVE: BY MARTIN A. B. K. AMIDU

In the past few days I have made several disclosures which I believe to be a matter of public interest, which is why I am compelled to bring the following information to the notice of every patriotic Ghanaian to demand transparency and accountability in the manner the case of Balkan Energy (Ghana) Limited and the Attorney-General will be concluded. This matter, like others raised, is contentious, but deserves to be concluded in the interest of the Republic of Ghana. I will feel very guilty if, because of the very enormous pressures from friends and some elders to abandon my advocacy work for the meantime, I kept the information to myself only for the above case to be settled in a manner inconsistent with the interest of the Republic of Ghana. Hereafter I will take a temporary leave.

On 16th May 2012 the Supreme Court of Ghana unanimously declared the agreement between Balkan (Ghana) Limited and the Government of Ghana to be an international business transaction within the meaning of Article 181(5) of the 1992 Constitution which had to be laid before and approved by Parliament before it could become operative. The Supreme Court remitted the case back to the High Court for the Supreme Court's interpretation of Article 181(5) of the Constitution to be applied to the proceedings before the High Court. The Balkan Ghana Agreement was never laid before and approved by Parliament.

On the same day and before the judgment could be signed and made available to the parties and the public it reliably came to my attention that Mr. Dan Markin, holding himself out as the Executive Chairman of Uniex Ghana Limited and acting on behalf of Zenith Bank (Ghana) Limited approached the Attorney-General for discussions towards a settlement of the case. He has since visited the Attorney-General's Office again on the same subject. The antecedents of Mr. Dan Markin meddling in the Balkan case on behalf of Zenith Bank (Ghana) Limited gives credibility to me about the reports at my disposal.

Mr. Dan Markin is the Chairman of the Ghana Railways Development Authority. Mr. Dan Markin's interest in settling the Balkan Energy (Ghana) Limited case first came to my notice on 22nd July 2011 in a letter written by Zenith Bank (Ghana) Limited addressed to the Executive Chairman, Uniex Ghana Limited requesting their mediation and consulting services to enable the Bank find a lasting solution to the mounting debt on their books for the OSAGYEFO BARGE PROJECT. The Bank's letter stated further that:

“Subsequently, the Parties led by Balkan have sought arbitration in the Hague. While we have been looking forward to an expeditious resolution to the impasse with its effect on the settlement of the debt, the realization of the resolution seem to be dragging, whilst the debt keep mounting.

In the circumstances, your professional capability in resolving such intricate problems has been brought to the attention of BALKAN ENERGY, and they have indicated their no objection in having you step in without prejudice. We are also reliably informed that the Government of Ghana is also amenable to an expeditious resolution of the matter....” (Emphasis supplied).

Zenith Bank (Ghana) Limited's letter was immediately followed by a letter from the Executive Chairman, Uniex Ghana Limited addressed to the Minister of Energy and copied to me as the Attorney-General amongst others asking for permission to mediate the dispute. The Uniex Ghana Limited letter was signed by Dan Markin as Executive Chairman.

I therefore immediately caused a search to be made at the Registrar-General's Department only to realize that Uniex Ghana Limited was not registered as professional mediators or arbitrators. It also transpired that the Dan Markin who is the Executive Chairman is the same Dan Markin who is the Chairman of the Ghana Railways Development Authority, a public officer, bound by Articles 284 and 286(5)(g) in respect of conflict of interest and declaration of assets. I declined the request in two written letters dated 16th August 2011 when I received the copy of the Uniex Ghana Limited letter and on 30th August 2011 in a written response to the Minister of Energy when Uniex Ghana Limited's letter was eventually forwarded to me. Both letters have the same reference number D. 19/SF. 14.

In my view it was in the national interest to allow the Supreme Court which was seized with the matter to determine whether or not there was any enforceable contract between the Government of Ghana and Balkan Energy (Ghana) Limited under Article 181(5) of the Constitution. Balkan Energy (Ghana) Limited continued to pursue an arbitration against the Government of Ghana in spite of an injunction from the High Court restraining it from doing so. Balkan Energy (Ghana) Limited also consistently refused to allow a mutually agreed independent inspection of the OSAGYEFO BARGE to determine its state of repair. There was also overwhelming evidence from Government's technical experts that the claim against Government was incompetent as Balkan Energy (Ghana) Limited was rather in default of its obligations to the Government. Both the Government's Ghanaian and foreign external Solicitors agreed with me that it was not in the national interest to settle a case based upon a contract that may turn out after all to be unconstitutional.

I briefed the President about Dan Markin's interest in meddling with the pending case. I also briefed the Chief of staff and made available to him a copy of the search results on Uniex Ghana Limited showing that our own Dan Markin and Chairman of the Ghana Railways Authority was unconstitutionally meddling in the pending Balkan case. I thought Dan Markin will be advised to stop meddling in the Attorney-General's functions in the institution and conduct of civil proceeding for and against the Government under Article 88 of the Constitution.

I was, therefore, shocked to receive on the night of 15th October 2011 an e-mail with an attached letter of even date from the external solicitors of Balkan Energy (Ghana) Limited in Dallas, Texas, addressed to the Government of Ghana's external Solicitors in New York stating, inter alia, that:

"For the first time yesterday I learned that a delegation from Ghana including Mr. Dan Markin (Chairman of Ghana Railways Development authority), Mr. Amar Quaye Amar (the Energy Advisor to the President of the Republic of Ghana), Dr. Peter Yamkey (sic) (Chief Executive Office of Ghana Gas Company) and joined by Mr. Daniel Asiedu (the current CEO of Zenith Bank Ghana) are coming to meet with the representatives of Balkan Energy (Ghana) Limited and Balkan Energy Company, LLC here in Dallas on Monday, October 17, 2011.

On behalf of myself and on behalf of the firms of NautaDutilh and Bentsi-Enchill Letsa & Ankomah I want to confirm that we were unaware and did not participate in the planning or scheduling of this meeting. Neither I nor representatives of NautaDutilh or Bentsi-Enchill Letsa & Ankomah plan to attend that meeting.

As I now understand it, the purpose of this meeting is to discuss resolution of claims pending in the above referenced arbitration and litigation in the Ghanaian High Court and Supreme Court....

I would appreciate it if you would advise me if you can confirm this on behalf of the Government of Ghana, both in the arbitration proceeding and in the pending proceedings in the Ghanaian courts, at your earliest immediate convenience.

I apologize for raising this on Saturday, but as I have indicated, it just came to my knowledge yesterday and I was only able to confirm the foregoing today... ”

My prompt and immediate response by e-mail the same night of 15th October 2011 to the Government’s external solicitors after making enquiries from the Deputy Chief of Staff, Miss Dr. Sawyer, was as follows:

“Thanks for the mail. The Government of Ghana has not authorized anybody to mediate this case on its behalf. I have not as Attorney-General authorized the mediation and the Deputy Chief of Staff assures me that Government could not have authorized it without my concurrence. I am told that Yankey and Amar will not go for the alleged meeting. Dan Markin has himself been told not to hold out himself as representing the Government without express authority from my office. Regards.”

The Attorney-General’s written submissions for the referral of the Balkan (Ghana) Limited case to the Supreme Court for authoritative interpretation and arguments were conducted against the background of the foregoing illegal and unconstitutional meddling with the functions of the Attorney-General in representing the Government of Ghana. I had personally researched, written, and signed the statement of case in reply to the case of Balkan Energy (Ghana) Limited as the Interested Party and had same filed on 7th October 2011. Surprisingly the Solicitor-General came to my office the day before the hearing of the application for referral for permission to withdraw our application from the Court because she had doubts about the case. I did not tell her I was arguing the case myself until the next morning when I told her, to her delight, that I was going to the Court myself to argue the case. On 2 November 2011 the Supreme Court unanimously upheld the Government’s application and referred the interpretative issues to itself for interpretation. On 6th December 2011 the Supreme Court gave directions for the filing of Statements of Case by the parties. I personally invested a lot of labour, sleepless nights and including the whole Christmas holidays for the research and writing of the Government’s Statement of Case which I signed to be filed on 28th December 2012 as ordered by the Court. I acknowledge the enormous suggestions and editorial support of the head of the Ghana external Solicitors. Our suffering should not be rendered nugatory on grounds of personal conveniences.

It is important for the Ghanaian Public to know that on 23 December 2009 when Balkan Energy Ghana Limited instituted arbitration proceedings against the Government of Ghana, “Balkan’s claim was for US\$50,000,000 plus interest based on a claim to a tolling fee under the PPA, with the claim expressed to

be increasing by approximately US\$4 million a month” This is the claim we fought on the grounds that there was no enforceable agreement under Article 181 (5) of the Constitution of Ghana to the Supreme Court and had judgment for the Government of Ghana. The Supreme Court acknowledged my signed written statement of case and quoted extensively from it in its judgment. This is the case Zenith Bank Ghana Limited wanted and wants Uniex Ghana Limited under the Executive Chairmanship of Dan Markin, who is also the constitutional Chairman of the Ghana Railways Development Authority to settle by mediation for Balkan Energy Ghana Limited.

I have lived the experience of some officials using their positions to facilitate settlements of cases which otherwise are very favourable to the Republic of Ghana to its disadvantage. The Balkan Energy (Ghana) Limited case coming again from the Ministry of Energy to be possibly settled gives me great worry and anxiety for the national interest.

Consequently, since I was informed of Dan Markin and Zenith Bank Ghana Limited’s overtures for the settlement of the Balkan Energy (Ghana) Limited case I have served notice on the Ghanaian external Solicitors that I will fight any settlement of the case that is not in the national interest with all my heart.

The Government of Ghana has an iron clad case against Balkan Energy(Ghana) Limited and it would be unconstitutional to settle a matter arising out of an unconstitutional contract when the matter has been remitted back to the High Court to dispose off as directed by the Supreme Court.

There is a very excellent article written by one Mr. J. Ato Kobbie, the Managing Editor of “The Business Analyst” on ghanaweb of Saturday 26 May 2012 on the claims of Balkan Energy for every patriotic member of the public to be further informed of what is at stake in the interest of the Republic of Ghana.

In conflict theory and practice structural violence occurs when the resources of a nation or community are expropriated by a few people for their personal use and thus depriving the consolidated fund and Government accounts of resources to provide life saving facilities for the majority of the citizenry. It is violence that is very lethal to the populace but cannot be seen with our naked eyes as we see physical violence. Let's save Ghana from such continuing structural violence and impunity.

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