

KISSI AGYEBENG, THE SPECIAL PROSECUTOR, HAS CROSSED THE REDLINE BY SCANDALIZING THE ADMINISTRATION OF JUSTICE AND MUST BE IMPEACHED: BY MARTIN A. B. K. AMIDU

INTRODUCTION

The press conference called by the Special Prosecutor, Kissi Agyebeng, a public officer and member of the executive branch of government, on 29 November 2023, with malicious intent to incite the media and the public against the judicial branch of government and bring the administration of justice into disrepute before ordinary members of the Ghanaian and world society crossed the red line of freedom of speech and expression to subvert the letter and spirit of the foundation of the 1992 Constitution. The Special Prosecutor and the OSP who exercise just an infinitesimally small fraction of the delegated investigatory and prosecutorial powers of Attorney-General dealing only with corruption and corruption-related offence and cannot do or be allowed to do what the delegating authority cannot do.

In whatever dress or apparel or form the Special Prosecutor clothed his intended performance on the front stage of the play to his audience at the press conference, one purpose stands out. The media briefing was first and foremost intended to heap scurrilous abuse on and scandalize the court and judge who ruled on the certiorari and other application in the case of the Republic v the Special Prosecutor and Another, Ex Parte Col. Kwakwo Damoah and Another delivered by the High Court (General Division 5), Accra, on 27 November 2023. The secondary purpose was to use that occasion to scurrilously abuse and scandalize the judiciary and the administration of justice and bring them into disrepute before the eyes of ordinary members of the public, generally in an attempt to coerce the judiciary, and particularly the Court of Appeal before which appeals from the OSP are pending, and the Supreme Court before which the OSP's application for certiorari was pending to decide those cases in its favour. The Supreme Court coincidentally struck out the application for certiorari when Kissi Agyebeng was on his feet enjoying his delivery at his anti-judiciary incitement media briefing or press conference.

As a public officer paid and maintained out of the public purse the conduct and performance of the Special Prosecutor was inconsistent with and contravened Article 127 of the 1992 Constitution which guarantees the independence of the judiciary in the exercise of the judicial power in both its judicial and administrative functions from control and direction of any person or authority. More particularly, the conduct and performance of the Special Prosecutor at his orchestrated rented press or media briefing or conference violated clause 2 of Article 127 which states clearly that:

“(2) Neither the President nor Parliament nor any other person whatsoever shall interfere with Judges or judicial officers or other persons exercising judicial power, in the exercise of their functions; and all organs and agencies of the state shall accord to the courts such assistance as the courts may reasonably require to protect the independence, dignity and effectiveness of the courts, subject to this Constitution.”

Quite apart from Kissi Agyebeng, the Special Prosecutor, being an integral part of the executive branch he intentionally and the deliberately summoned the media at public expense to directly and indirectly bring undue pressure to bear on judges in the exercise of their judicial power and function. The OSP, an agency of the executive branch accordingly failed

in its constitutional duty to protect the independence, dignity, and effectiveness of the courts by scurrilously abusing and scandalizing the courts and the administration of justice.

The Director of Public Prosecutions (DPP) appointed pursuant to the Legal Service Act 1993 (Act 320) would have been subjected to disciplinary proceedings for misconduct meriting dismissal from office if he or she called a media conference and said the same things the Special Prosecutor said at the press conference of 29 November 2023 which was intended to bring the administration of justice and the judicial branch into disrepute in the eyes of right thinking members of society contrary to Article 127 of the 1992 Constitution. And all those who worked under me as the Deputy Attorney-General (DAG) and later as the Attorney-General (AG) know that I would either have insisted on the initiation of such disciplinary proceedings or initiated proceedings against a DPP who dared to hold a media briefing to win public sympathy for an unfavourable decision by the courts instead of exhausting the appellate procedure or forever hold his or her peace.

I have no doubt that the President who was himself an Attorney-General would have initiated disciplinary proceedings against a DPP who committed the same violation of the 1992 Constitution during his tenure as the Attorney-General. Kissi Agyebeng is the worst appointment the President has ever been led into making and the President knows this as a former Attorney-General. The President is not, however, in a position to initiate disciplinary proceedings against the Special Prosecutor as he can only be removed from office under Section 15 of Act 959 by a process of impeachment.

Any person may, however, seek to remove the Special Prosecutor for stated misbehaviour for his unconstitutional media conference performance on 29 November 2023; wilful violation of his Official Oath in contravening Articles 127 (1) and (2) of the 1992 Constitution; and for conduct which brings or is likely to bring the OSP into disrepute, ridicule, or contempt, and is prejudicial and inimical to the security of the state under Section 15 of the Act 959. Consequently, patriotic citizens ought to be protecting the 1992 Constitution and the sanctity and independence of the judiciary by invoking the provisions of Section 15(3) of Act 959 for the removal of the Special Prosecutor from office.

Ghanaians have to decide whether we want an independent and impartial judiciary which is enshrined under the 1992 Constitution or we want a rogue Special Prosecutor who intentionally violates provisions of the Constitution and the law governing his tenure as a public officer. There is no way Ghana is going to survive should Kissi Agyebeng succeed in using public funds and resources to incite the public to bring the image and integrity of the judiciary down before ordinary right thinking members of society as he did on 29 November 2023. Between the two, the removal of the Special Prosecutor from office will protect the judicial branch and thereby the security of the state.

MUTUALISTIC SYMBIOSIS BETWEEN THE CITIZEN, THE EXECUTIVE BRANCH, AND THE JUDICIARY

The Attorney-General as an officer of the court, like any other lawyer, when he is dissatisfied with the outcome of a criminal prosecution before a lower court is entitled to appeal the decision to a higher court until he exhausts the appellate or review processes. This explains why Attorneys-General or any authorized officers working under them never call press conferences when decisions of the courts go against them, and when the decision is made not

to appeal or apply for review even where the decision is considered objectionable. Public condemnations of the courts, judges, and the administration of justice are red lines no AG worth the name and honour will cross.

The Special Prosecutor's conduct has also consistently violated several other provisions of the 1992 Constitution and constitute further impeachable offences as I will demonstrate hereunder. The OSP is a public office maintained from the public purse from the ordinary citizens taxes and is, therefore, a servant of the people and not its master. The OSP is consequently, bound to respect all the rights of citizens who come into confrontation with the law in plying their daily lives which explains the fundamental rights and freedoms guaranteed to every citizen and are binding on the Special Prosecutor under Article 12 of the 1992 Constitution.

The prime functions of the OSP are to investigate and prosecute corruption and corruption-related offences in the courts of law and the courts are also enjoined to dispense justice in accordance with the Constitution. The courts of law, particularly the superior courts of justice, are enjoined in criminal cases to enforce any breaches of the fundamental rights and freedoms enshrined under the Constitution whenever it dispenses justice. The citizen is entitled when he comes into confrontation with the law enforcement powers of the executive branch which includes the investigation and prosecution of suspected crime, to be presumed innocent until proven guilty by a court of law and not in the media and before a court of public opinion whilst the investigation is on-going.

This explains the provisions of 1992 Constitution protecting the citizens right to life in Article 13; the right to the protection of personal liberty in Article 14; respect for human dignity in Article 15; equality and freedom from discrimination in Article 17; fair trial in Article 19; the right to administrative justice in Article 23; and above all, for purposes of law enforcement, the constraint on the exercise of discretionary power vested in any person or authority in Article 296 of the Constitution. The enforcement and protection of any abuses of the rights and freedoms guaranteed under the Constitution have been clearly apportioned to the judiciary and at first instance to the High Court in cases where a person alleges breach of or the likely contravention of his rights and freedoms in Article 33 thereof. The High Court is empowered in such actions to give such directions or orders or writs including writs or orders in the nature of *habeas corpus*, *certiorari*, *mandamus*, prohibition, and *quo warranto* as it may consider appropriate for purposes of enforcing or securing the enforcement of the human rights and freedoms to which the person is entitled.

While the executive branch has been entrusted with law and order enforcement functions in investigation and prosecution of cases, the judicial branch has the responsibility to hold the scales between the executive branch and the sovereign people of Ghana. Consequently, the Special Prosecutor who has confessed in writing that he has received collective admonishing from very senior and experienced lawyers who are men and women of the world warning him that should he persist in media criticism, "especially the public-calling-out variety" his institution may incur the prejudice of the judiciary and has failed to heed the admonishment of such worldly men and women is on a suicide mission and is a threat to the independence of the judiciary and the security of the state.

The Conduct of the Special Prosecutor in holding media conference and briefing amidst unfair to oppose unfavourable decisions by the courts to citizens who access justice has the

tendency to frighten and intimidate citizens under investigation or prosecution from exercising their fundamental right to access to justice. The stress and trauma a citizen under go by the cognitive and psychological mental health realization that should he be unfortunate to come under investigation by Kissi Agyebeng, as the Special Prosecutor, he has no prospect of having a favourable decision from the courts, subject to the appellate processes, without being subjected to further a mental stress and disparagement in a second court of public opinion by the OSP for his success in court constitutes inhuman and degrading treatment tantamount to mental torture giving rise to post traumatic stress disorder. The Special Prosecutor's conduct is, therefore, inimical to the administration of criminal justice, and also constitutes inhuman and degrading treatment of suspects under investigation by the OSP.

The Ghana Police Service (GPS) which is the oldest law enforcement agency in Ghana; the Economic and Organized Crime Office (EOCO) which used to exercise the anti-corruption mandate; the National Intelligence Bureau (NIB) which used to be part of the Police Service and has investigatory and prosecutorial powers; the Ghana Revenue Authority (GRA); the Ghana Immigration Service (GIS); and other law enforcement agencies are not known to hold media briefing to heap scurrilous abuses and scandalize the courts, and intimidate beneficiary citizens anytime the courts make unfavourable decisions against them for the benefit of a sovereign citizen.

The foregoing law enforcement institution have been in existence for decades exercising delegated investigatory and prosecutorial power from the AG without the constitutional violations being witnessed from the OSP which has been in existence for only six years. The cancer of a Special Prosecutor that has infected the OSP for the past two years cannot be allowed to metastasize to infect the healthy working relation between organic law enforcement, the citizen, and the administration of justice guaranteed under law.

THE RELATIONSHIP OF THE OSP AND THE JUDICIARY FROM 2018 - 2021

The poisonous and cancerous relationship between the OSP, the suspect under investigation, and the judiciary brought about by the conduct of the OSP, an agency of the state, mobilizing public opinion against both the judiciary and citizens under investigation or prosecution by the OSP started only upon the assumption of office of Kissi Agyebeng as the Special Prosecutor as I will demonstrate with the historical material hereunder.

In or around September 2019, two High Courts (Financial and Economic Crime Division 1 & 2) in separate applications on notice made orders confirming the administrative freezing of the accounts of Adjenim Boateng Adjei, Frank Kwaku Arhin, and Talent Discovery Company Limited. In the Special Prosecutor v Adjenim Boateng Adjei, the court ordered the freezing of eight (8) bank accounts of the Respondent. In the Special Prosecutor v Francis Kwaku Arhin, the court ordered the freeing of the Respondent's bank accounts. In the third application of the Special Prosecutor v Talent Discovery Limited (TDL) the court granted confirmatory orders for the continued freezing of two bank accounts of the Respondent. The orders of the courts remained in force and the accounts frozen for investigations despite several applications made by the respective Respondents to the courts to have them unfrozen. These accounts were ordered unfrozen by the courts on application by the respective Respondents during the tenure of the acting Special Prosecutor who allowed the investigation to go into hibernation long after my resignation from the OSP on 16 November 2020.

The ruling in the case of the Republic v 1. Mahama Ayariga 2. Kendrick Kwesi Marfo, Suit No. MSFT/23/2019, High Court (Financial & Economic Crime Division 2), Accra, 17 June 2019 (Unreported). Mrs. Justice Afia Serwah Asare-Botwe granted an application by the 1st Accused on a motion to strike out the Charge Sheet filed on 27 March 2019 on the grounds, inter alia, that the drafting of the Particulars of Offence under Counts one (1), three (3), four (4) and five (5) did not make any reference to any part of those offences having been allegedly perpetrated in furtherance of corruption and/or a corruption-related enterprise. She stated that: “This drafting error, which, in my candidate opinion, has the effect of exceeding the mandate of the Office of the Special Prosecutor.”

In accordance with the hallowed tradition of professional prosecutors I did not as the Special Prosecutor make any comments on the decision of the court and the judge. (The judge had worked under the Deputy Special Prosecutor (DSP) when she worked at the Attorney-General’s Department in Koforidua and when she later became the Acting DPP at the time I was the AG. I was the DAG and later AG during the same period). I nonetheless took personal responsibility for the error in the Particulars of Offence with the consolation in the fact that Mrs. Justice Asare-Botwe had trained the prosecuting attorney acting on my behalf in this case while she was a Principal State Attorney in Sunyani and what she did was part of her continued tutelage.

The OSP filed fresh charges against the two suspects and withdrew the pending charge against the 1st Accused person. A second attempt to strike out the new charges failed before the same court and judge. It was needless in accordance with the Constitution and the hallowed tradition of prosecutorial ethics to make scurrilous or abusive comments against the court or the judge in the media for doing what she was appointed to do – decided cases between the citizen and the state. This case was pending before the same court and judge until I resigned my office and handed it over to the DSP as the acting Special Prosecutor by operation of law who supervised the continuation of the case in the court.

In the Republic v Hajia Hawa Ninchema & 6 Others, Case No. FT/012?2019 High Court (Financial and Economic Crime Division 2), Accra, a motion was filed on 3rd June 2019 for and on behalf the 7th Accused person to strike out the charge sheet filed by the OSP against the accused persons on a number of grounds while a notice of preliminary legal objection was filed on 6th June 2019 for and on behalf of the 6th Accused/Applicant challenging the mandate of the OSP to launch the prosecution. The Court and the Judge in a ruling on 17 June 2019 refused to strike out the charges, and also dismissed the preliminary objection.

The trial of the charges filed on 5 May 2019 in Hajia Hawa Ninchema & 6 Others started when I was in office and was dismissed by the court on a submission of no case on 7 May 2021 long after my resignation without any hullabaloo from the OSP then under the Acting Special Prosecutor or from me even though the Acting Special Prosecutor knew contemporaneously about my disappointment in an encounter with the President when I briefed him in his office on 8 May 2019 that I had filed this case against his Bawku Municipal Chief Executive, and about an on-going investigation against his District Chief Executive for the Jirapa District Assembly which was still on-going before I resigned my office. The President as the repository of executive power was being alerted to warn his appointees against suspected corruption. Incidentally the Municipal Chief Executive who was the 1st Accused and the 7th Accused are in accordance with our internalized culture in the

Bawku township my relations broadly speaking, then belonging to the NPP and the NDC, respectively, against whom an informant had laid the complaint against the 7th Accused. The DSP also knows the issues that arose about this case during her mother's funeral and I am not in a position to say how she resolved them after my resignation. I have said enough!

The Ninchema case was the first Charge Sheet filed in court by the OSP and a test case for the OSP. I did not think I could in conscience disagree with the written opinions of my investigators and prosecutors including the DPP on the fact that there was a case to be made out by filing criminal charges in the court. I have no regrets for doing my duty in the true tradition of the legal profession as a Special Prosecutor and allowing the court to decide, which it rightly did. Without any further proof that the President interfered with the court, which I do not have, it was and is needless to make any insinuations against the judge or the administration of justice. I only state the President's disappointing reaction to my briefing on 8 May 2019 in the Ninchema case and its aftermath to bring out the fact the interaction confirmed to me for the first time what the President really expected of me as the Special Prosecutor.

The OSP charged Samuel Adams Mahama & 3 Others before the Circuit Court, Accra, for a number of suspected corruption offences and obtained four arrest warrants with other orders on 13 May 2020 for the arrest of each of them that enabled the OSP to apply for the issuance of INTERPOL arrest warrant for each of them. These arrest warrants are still pending and Kissi Agyebeng is purporting to take credit for them without any acknowledgements even though the case has been in coma for over three years since I resigned my office.

I challenge Ghanaians to point to one press conference or media statement issued by the OSP from February 2018 when I was sworn into Office to 16 November 2020 when I resigned my office as the Special Prosecutor attacking any court or judge or the judiciary in the exercise of its judicial power. There was also no such incitement against the administration of justice from 16 November 2020 to 5 August 2021 when the DSP acted as the Special Prosecutor. The records on the above cases are all available in the OSP and in the courts to confirm the several cases handled in court during my tenure.

THE RELATIONSHIP OF THE OSP AND THE JUDICIARY FROM AUGUST 2021 TO DATE

It is one thing for a law enforcement agency which is part of the executive branch to lament over and tacitly pressurize the appointing authority for not making available facilities and resources to execute the functions of one's office, and entirely a different thing to attack another coordinating branch of government in a manner that constitutes the grave misconduct of scurrilously abusing and scandalizing the independent judiciary and the administration of criminal justice. The latter crosses the red line of constitutionality and requires swift and immediate response by all patriots in defence of the 1992 Constitution.

In the media conference Kissi Agyebeng purposefully summoned with public resources on 29 November 2023 to scurrilously abuse and scandalize the court and the judge who ruled in the case of the Republic v Special Prosecutor and Another, Ex Parte Col. Kwadwo Damoah and Another he rhetorically, hypocritically, and perniciously stated at page 3, paragraph 4 that:

“It would be absolutely of no good and utility should it be the case that the OSP is set against the judiciary or that the judiciary is against the OSP. That would surely spell disastrous

consequences for this Republic especially in the fight against corruption to the unending glee of corrupt persons.....”

The truth of the matter from the preceding narrative and discourse is that it is rather the OSP under Kissi Agyebeng which is set against the judiciary and not vice versa.

The relationship between the OSP and the judiciary from February 2018 to 5 August 2021 shows that the statement made in the above quoted sentence is a mere figment of the malevolent and fertile mind of Kissi Agyebeng as the Special Prosecutor and his dysfunctional work culture, his incompetence, and his inexperience as a professional investigator and prosecutor. The OSP was run by seasoned and experienced prosecutors from February 2018 to 5 August 2021 without anything of the sort of dooms day cry and making capital about losing the fight against corruption ever arising. The DSP, who has her own challenges, had been appointed as acting DPP upon the retirement of the late indefatigable Miss Gladys Aikins and she knows what a prosecutor must do in the hallowed tradition of professional prosecutors.

The truth of the matter is that Kissi Agyebeng is not making use of the DSP’s professional prosecutorial experience which he lacks. Kissi Agyebeng assumed office on 9 August 2023 as though he had been appointed after a coup d’état and did not take handing over notes from the person acting as the Special Prosecutor before his appointment: he has since chosen to ignore her in major decision making. He used not to inform her even verbally of his numerous trips abroad before and after the Governing Board was appointed. I doubt whether there is any record as demanded by the administrative bureaucracy of consultations between the two most senior managers of the OSP up to date. I met the DSP on an almost daily basis formally and informally and would even inform her when I was stepping out of the office for a few minutes as is normal practice in a functional public service environment.

The first appearance of Kissi Agyebeng in the High Court after assuming the office of the Special Prosecutor on 9 August 2021, was in the case of the Republic v 1. Mahama Ayariga 2. Kendrick Kwesi Marfo, High Court (Financial & Economic Crime Division 2), Accra, which was pending before Mrs. Justice Serwaa Asare-Botwe when I resigned office on grounds of principle. I have already narrated previous developments in this case leading to the striking out of parts of the charges and the filing of fresh charges by the OSP.

It had to take the Special Prosecutor upon his appointment and as his first act in the court since he assumed office to enter a nolle prosequi on 11 October 2021 without even consulting his immediate predecessor or the prosecuting attorney who only went to the court with the Special Prosecutor to hear him announce for the first time that he had filed a nolle prosequi, and moved the court to grant it, which the court did. But Kissi Agyebeng lied that he entered the nolle prosequi “following a thoroughly review of the available evidence” without consulting his authorized officers, his deputy, the prosecuting attorneys, and the investigators in the case all of whom were part of the OSP retreat I organized at the La Palm Royal Beach Hotel, Accra, where the same facts and evidence were thoroughly reviewed and everybody agreed that there was sufficient evidence to prosecute.

The unfairness that attended this performance was palpable forgetting the fact that even the AG, in my experience of over fourteen years in the AG’s Department, does not make decisions on cases being conducted on his behalf by an attorney in court without discussing his opinion

with the prosecutor handling the case(s) on his behalf. The normal practice is for the AG or DG to commit the DPP and the prosecuting attorney to agree with his written opinion on the utility of entering the nolle prosequi in writing to protect the AG or DAG against charges of abuse of discretionary power. Kissi Agyebeng thought nobody will remember or connect his entry of the nolle prosequi with the fact that he had been trained by and remained an intimate friend of the leading lawyer in the Ayariga case for the 1st Accused person and who had sued the Republic in Supreme Court to have me removed from office as the Special Prosecutor on grounds of age. The leading lawyer had repeated the same argument to challenge the charges filed against the 1st Accused without success before Mrs. Justice Asare-Botwe. These facts necessitated his engagement on assuming office with the existing officers in the OSP to avoid suspicion that his first act in court as the Special Prosecutor was tainted and actuated by corruption.

But I raised no finger in my retirement because unbeknown to Kissi Agyebeng, I was quite happy with his abuse of discretion. The only reason why I agreed with the investigators and prosecutors including my deputy at the OSP to file the charges was that in conscience there was a strong case to answer and I had no option than to redeem my oath to Parliament and to uphold my Official Oath not to favour any person with whom I stood in the relation of a father, which was the case with the 1st Accused. The family of the 1st Accused perfectly understood this as they knew my character from childhood and we are still on good terms.

Then, the same Mrs. Justice Serwaa Asare-Botwe of the High Court (Financial & Economic Crime Division 2), who ordered the entry of the nolle prosequi requested by Kissi Agyebeng in the Mahama Ayariga case, had the misfortune to decide the Sir John case, in the Office of the Special Prosecutor v Charles Owusu and Nana Boakye Acheampong (In their capacities as the Executors of the Estate of the last will and Testament of Kwadwo Owusu-Afriyie Alias Sir John) Suit No. FT/00440/2022, High Court, Accra, 12 July 2022 (Unreported). All of hell broke loose and she immediately incurred the umbrage of the Kissi Agyebeng, the Special Prosecutor, and was tried in the court of public opinion for hampering the fight against corruption despite the fact that he had given notice of filing an appeal against the decision. “If this decision is left to stand, the Republic will lose the fight against corruption in unimaginable ways.”, the Special Prosecutor thundered. The appeal, to the best of my knowledge, has been pending since July 2022 - for almost one and half years. Nonetheless the Special Prosecutor misconducted himself again on 29 November 2023 in referring to this pending matter before the Court of Appeal to hurl scurrilous abuses at Mrs. Justice Serwaa Asare-Botwe and her then court even though she has since been elevated to the Court of Appeal, and to scandalize the administration of justice.

The Special Prosecutor next attacked and scurrilously abused what he perceived to be an unfavourable order made by the Human Rights Court against the OSP. In the case of Charles Bissie v 1. The Office of the Special Prosecutor 2. Kaneshie District Court, Accra, Suit No. HR/9191/2023, High Court (Human Rights Division) Accra 15 June 2023 (unreported) presided over by Mr. Justice Nicholas Abodakpi. The court had made an order for interim injunction restraining the 1st Respondent from executing the Arrest Warrant it procured from the 2nd Respondent against the Applicant, applying for further Arrest Warrant against the Applicant, publishing notices purporting the Applicant to be wanted, pending the determination of the application for the enforcement of Fundamental Human Rights. The order was to last for ten (10) days.

This court is a Human Rights Court set up to enforce the human rights and freedoms of citizens against executive encroachments pursuant to Article 33 of the 1992 Constitution and the High Court (Civil Procedure Rules) 2004 (C.I. 47). Whether the court acted within or in excess of its jurisdiction was not a matter a public officer and a prosecutor can resolve at media conferences intended for public incitement against the court, the judge, and the administration of justice. The due process of law enjoined Kissi Agyebeng to resort to following the legal processes within the hierarchy of the judicial system to resolve his grievances as provided for by law.

Kissi Agyebeng rather chose again to cause dissatisfaction for the court, the judge, the judiciary, and administration of justice by inciting the media and public against the judicial branch of government by using his media conference of 29 November 2023 to continue his violation of Article 127 as a public officer and to intimidate the citizen for daring to access justice pursuant to Article 33 of the 1992 Constitution. He dismissively held the order of the court in contempt when he issued a media statement the same day in response to the order of the High Court to the public stating that:

“The general public is advised, that in the exercise of its police powers, the Office of the Special Prosecutor can arrest without a warrant, any person it reasonably suspects of having committed corruption or corruption-related offenses.”

Kissi Agyebeng, a management public officer heading the OSP cannot violate his Official Oath and Article 127 (1) and (2) of the 1992 Constitution by inciting the public against the administration of justice and the independence of the judiciary without consequences.

The OSP next went after Mrs. Justice Serwaa Asare-Botwe successor in the High Court (Financial & Economic Crime Division 2) presided over by Mr. Justice Edward Twum, as a vacation judge, in a ruling he made in the Office of the Special Prosecutor v Cecilia Abena Dapaah Suit No. FT/0072/2023, High Court (Financial & Economic Crime Division 2), Accra, 31 August 2023 (Unreported) when in the exercise of the judicial power he declined to make an order upon an application by the OSP for confirmation of an administrative freezing order made against the bank accounts and other assets of the Respondent. Kissi Agyebeng rained all hell and brimstone on the competence and integrity of the court and the judge even after Kissi Agyebeng had accepted the ruling and decided not to appeal against it.

Kissi Agyebeng’s next move was to seek to undermine the orders made by the court by rearresting the suspect within the premises of the OSP and claim that he had obeyed the orders of the Court. The OSP then administratively froze her bank accounts and confiscated other assets and filed a fresh application for confirmation orders before the same court and judge in respect of the same assets. The Respondents naturally exercised their constitutional and legal rights to challenge the second application. The lawyers for the Respondent not only filed an affidavit opposing the application but further filed an application for abridgment of time to hear the OSP’s application for confirmation orders. While this application was pending for hearing, Kissi Agyebeng, purported to charge Cecilia Abena Dapaah for refusal or failure to make declarations of property and income when demanded to do so by the OSP.

On the day of the hearing of criminal charges against the accused person, Cecilia Dapaah’s application for abridgment of time also came on for hearing in the same court. The court heard the application for abridgment of time first without any objection from the authorized representative of the OSP and granted the abridgment of time. Heavens came down with

media statements aimed at and recruiting the media and the public against the decision of the court and the judge. Before the next adjournment day, the Special Prosecutor instead of appealing the decision chose to file a certiorari application in the Supreme Court. He further submitted a petition to the Chief Justice to remove Justice Edward Twum from all cases involving the OSP on grounds of bias and prejudice: this petition was eventually declined by the Chief Justice.

Kissi Agyebeng's application for certiorari pending before the Supreme Court was truck out as withdrawn by the Special Prosecutor's representative at the hearing on 29 November 2023 after moving her motion for leave to file a supplementary affidavit and after the President of the Supreme Court of five justices reportedly informed her that the court decides cases within the law and takes such decisions to expedite hearings. Unbeknown to Kissi Agyebeng that the Supreme Court had struck out his certiorari application as withdrawn when his representative sensed the outcome of the motion for leave, Kissi Agyebeng was high on his performance at the press conference where he threw the hallowed traditions of lawyers to the wind and took umbrage against the courts, the judges, the judiciary, and the administration of justice as a whole on 29 November 2023 to incite the media and the public against the judicial system.

The Special Prosecutor, Kissi Agyebeng's next port of call in his rampaging upon the reputation and independence of the judiciary and the administration of criminal justice was to savage the decision of the High Court in the Republic v 1. The Office of the Special Prosecutor 2. Emmanuel Amadu Basintale, Ex Parte 1. Col. Kwadwo Damoah 2. Joseph Adu Kyei, Suit No. GJ/1232/2022, High Court (General Jurisdiction 5), Accra, 27 November 2023 (Unreported) in which the court and the judge granted an application for certiorari and prohibition against the OSP quashing the unconstitutional adverse finding contained in what is popularly known as the Labianca Report made and signed by Kissi Agyebeng and dated 3 August 2022.

The certified ruling is unavailable because the judge read his handwritten ruling in court on 27 November 2023. Without waiting to obtain a certified true copy of the ruling to base any reasonable criticism of the decision on, Kissi Agyebeng felt so slighted and offended by the decision of the court and the judge as to purposefully summon at public expense the media to the conference or briefing on 29 November 2023 under the smokescreen of a general briefing on the work of the OSP. Only fools will fail to see through Kissi Agyebeng's childlike smokescreen to the real fact that the main purpose of the media conference at public expense on 29 November 2023 was to specifically constitute himself into a higher court and incite the public against the court and the judge for the exercise of his independent judicial power in the Ex Parte Damoah case.

The Special Prosecutor, an officer of the court accused the court and the judge in the glare of television cameras and a teaming media audience of "the judge conveniently shut his eyes to an express statutory provision that the OSP has the mandate to publish detected acts of corruption and that was what the OSP had done in the report." Kissi Agyebeng continued: "Worse, the judge then proceeded to prohibit the OSP from further investigating the affected persons....." (Emphasis supplied – see page 7 paragraph of his written statement). The accusation of a judge of conveniently shutting his eyes to something suggests that the judge acted corruptly or prejudicially in the office of a judge. Kissi Agyebeng then,

unconstitutionally usurps the independent judicial power vested in the court and the judge when he stated with finality that:

“This decision opens up a calamitous deluge as every person under criminal investigation would be encouraged to take out suits to injunct investigation and prosecution bodies.... The real and present danger looms largely on the consideration that by doing so, persons under investigation would conscript the judiciary to clothe them with immunity from investigation and prosecution.” (Emphasis supplied).

The insinuation that the court in Ex Parte Col. Kwadwo Damoah or any of the courts in the cases Kissi Agyebeng cited for “a developing trend of rather regressive and dismissive judicial decisions in respect of cases involving the OSP” could have been conscripted by suspected criminals to do their bidding, without further proof, constitutes a malevolent and scurrilous abuse of each of the courts and judges involved and the scandalization of the administration of justice as a whole. Kissi Agyebeng must be made to substantiate his accusation against the justices of the superior courts and the administration of justice at an impeachment proceeding, failing which he should be removed from office as the Special Prosecutor without further delay.

Kissi Agyebeng indicated an intention to appeal the ruling of the High Court in the Ex Parte Damoah case. One wonders what use the intended appeal will serve when the Special Prosecutor has already incited the public against the administration of justice to the fact that the only acceptable decision the Court of Appeal can make in his appeal is to agree with the views he used to incite the media and the public against the administration of justice.

Kissi Agyebeng after all the bravado, scurrilous abuses of the courts and judges and scandalizing the administration of justice admits in an obscure part of his written statement that the OSP like all law enforcement agencies is not infallible and he does not suggest that every case brought by it or against it must end in a favourable outcome – “no matter how improbable the evidence”. On bended knees Kissi Agyebeng still charges the courts with gang-up dismissive and regressive prejudice towards the cases of the OSP when he stated that:

“However, it seems to us that the flagship public agency created by law to fight corruption should receive better regard and consideration by the courts and not the developing trend of dismissiveness and regression without regard to its governing enactments, certainly not the erection of non-existent hurdles in its work and operations.”

Kissi Agyebeng from the foregoing examination and analysis of his conduct and relationship with the judiciary since his assumption of office as the Special Prosecutor confirms the fact that it is the case that the OSP under his watch has been set against the judiciary and not the case that the judiciary is against the OSP.

TRANSPARENCY AND ACCOUNTABILITY IN THE OSP

The Special Prosecutor, Kissi Agyebeng sought to convince Ghanaians that he summoned the press conference or media briefing on 29 November 2023 because “a major pillar of the fight against corruption is transparency on the part of anti-corruption agencies.” But Kissi Agyebeng, in his typically opaque fashion refuses or fails to ever define his understanding of transparency to enable the public to appreciate what he means when he uses the word in the context of his performance.

However, he justifies his expenditure of public funds on media engagements “... after every major judicial pronouncement or decision informing the public on our judge’s opinions in cases involving the OSP and stating the position of the Office on the opinion in question – as to whether it progresses the fight against corruption or otherwise” to the pursuance of a policy of transparency.

I have had occasion on 29 June 2023 to write and published an article entitled “Kissi Agyebeng’s OSP pick the people that he thinks he should, rather than pick the cases that need to be prosecuted” in which I demonstrated his arbitrary and capricious abuse of the provisions of Act 959 and the subsidiary laws thereunder, and his violations of the fundamental rights and freedoms of citizens and other provisions of the 1992 Constitution, and laws of Ghana. I warned Ghanaians, inter alia, that:

“When tyrannical investigators and prosecutors in the mold of William Kissi Agyebeng are let alone, they deploy empty rhetorical performance that signify nothing to confuse the public. The emerging tyranny of William Kissi Agyebeng activates the constitutional and patriotic duty of citizens to respond to those abuses and stop them in their tracks before they destroy this country with a new McCarthyism..... The Ghanaian new McCarthyism which has been evolving as Agyebengism that thrives on public hysteria and fear against corruption is encapsulated in Kissi Agyebeng’s spurious and sweeping explanation on JoyNews’... “

I concluded this article by warning further that:

“... the danger with the media lending itself wittingly or unwittingly to promoting the new Agyebengism as a form of McCarthyism in the fight both against galamsey and corruption is that it negates the freedom and independence of the media enshrined in Chapter Twelve (12) of the 1992 Constitution. History does not repeat itself but it rhymes. Like it or not, the fight against corruption is not an opportunity for hysteria, entrepreneurship, retribution, and the emergence of a new McCarthyism to be called and styled Agyebengism in Ghana. Ghana shall outlive tyranny!

The interested reader can find this article which was published on my website as: [DANGER IN KISSI AGYEBENG’S OSP PICKING CASES IN BIASED MANNER — MARTIN AMIDU SPEAKS](#)

The preamble of the 1992 Constitution makes, inter alia, a solemn declaration and affirmation of our commitment to; freedom, justice, probity, and accountability; the rule of law; the protection and preservation of Fundamental Human Rights and Freedoms..... These solemn declarations, affirmations, and commitments cannot be realized when the rights and freedoms of citizens to access independent and impartial justice are threatened by the summoning of press conferences or the issuance of media statement in a typically style of McCarthyism anytime the judiciary makes a major decision against the OSP to scandalize the administration of justice and intimidate beneficiaries of the major judicial decisions in the name of transparency.

The pot cannot call the kettle black. Consequently, Kissi Agyebeng cannot be allowed to choose what he thinks he must call the media and inform them about at public expense to incite the public against suspects and the administration of justice without accounting to the public for his administration of the OSP. As the founding Special Prosecutor I have a vested interest in ensuring that the OSP is not operationalized as a rogue anti-corruption institution as happened in other countries. Consequently, I have written and published articles on on-going investigation in which Kissi Agyebeng was the lawyer for either the complainant or

suspects and is, therefore, now tainted by conflict of interest and entrepreneurship as the Special Prosecutor.

One, therefore, expected that when Kissi Agyebeng scurrilously abused and scandalized the court and the judge in the case of Charles Bissue v 1. The Office of the Special Prosecutor 2. Kaneshie District Court, Accra, Suit No. HR/9191/2023, High Court (Human Rights Division) Accra 15 June 2023 (unreported) presided over by Mr. Justice Nicholas Abodakpi to have known that one of the reasons that might have influenced the court to decide to restrain the OSP was the fact that he suffered from conflict of interest as the former lawyer to the complainant, Anas Aremeyaw Anas and Tiger Eye PI, with Anas Aremeyaw Anas also being a founding partner of their law partnership of Comwell Gray LLP.

The arbitrary and capricious exercise of investigatory and prosecutorial discretion, violations of Act 959 and its subsidiary legislation, and provisions of the 1992 Constitution in the Labianca Report dated 3 August 2022 might have informed the court and the judge in granting the application for judicial review in the Republic v 1. The Office of the Special Prosecutor 2. Emmanuel Amadu Basintale, Ex Parte 1. Col. Kwadwo Damoah 2. Joseph Adu Kyei, Suit No. GJ/1232/2022, High Court (General Jurisdiction 5) 27 November 2023 (Unreported). I had written and published an article entitled “Labianca report published by the Office of the Special Prosecutor is hollow, without mandate, and unconstitutional” which has been vindicated by the ruling of the court, but Kissi Agyebeng incited the press in his conference performance without reminding them of alternate views contrary to his. See - [OSP’S LABIANCA REPORT FALLS SHORT AND IS UNCONSTITUTIONAL — MARTIN AMIDU SPEAKS](#)

The Special Prosecutor in his written 12-page statement to the media threw an invitation to every Ghanaian to help the OSP in the fight against corruption in the following concluding words: “The OSP must be supported in its work. Should the OSP fail, Ghana would utterly lose the fight against corruption – with its attendant erosion of our democracy”. As the founding Special Prosecutor I have consistently insisted that the OSP cannot be allowed to become a rogue institution. I, therefore, rise up to the challenge and call to support the OSP in its work by raising here issues based on information and intelligence I have received by virtue of my being the founding Special Prosecutor from people who have misgivings about the integrity of the present direction of the OSP. See - [FIGHTING CORRUPTION REQUIRES INTEGRITY, NOT ENTREPRENEURSHIP — MARTIN AMIDU SPEAKS](#)

I do not know whether the Special Prosecutor knows that tongues have been wagging from informants and intelligence, and in the media that a friend of the Special Prosecutor from the mountains usually demands and receives considerations allegedly for the benefit of the OSP during the preliminary investigation and full investigations of case to tamper with the resultant threats to continue with the case and to prosecute the suspects in court. Tongues have also been wagging that Issah Seidu had to suffer incarceration for long periods because his friends and relations at home and abroad could not raise considerations to meet demands from some staff of the OSP.

Tongues are further wagging that there are completed investigation dockets in the OSP which are not moving forward because senior officials of the OSP, including its head, are either relatives or friends or former professional representatives of the suspects or have received considerations from the suspects. As a matter of fact I handled the NLA-NEXGO case whose investigation was hampered by Kissi Agyebeng as the lawyer for one of the suspects insisting

that he must be present before any interrogation of his client: he never honoured his word with his presence before my resignation from office. The case has been suppressed since his assumption of office. I wrote and published an article on this matter. See – [TAXPAYERS HAVE RIGHT TO KNOW WHY AGYEBENG IS HYPING SOME WHILE IGNORING OTHER CASES — MARTIN AMIDU SPEAKS](#)

I got to know that in 2022 the OSP took possession of over fifty operational vehicles and cars some with bullet proof fortifications from the Tema port which were hidden under the basement of the OSP. The OSP did not have an operational procurement entity at the time to enable the OSP to procure them from its moneys approved by Parliament; internally generated funds, and grants approved by the Minister responsible for Finance in consultation with the Attorney-General. My information is that two of the vehicles driven from the Tema Port in convey got involved in an accident on the Tema Motorway in which one of the vehicles became a complete write off. The public has not heard or seen the President, Attorney-General or any entity presenting these over fifty vehicles as gifts to the OSP as is the usual practice with donations in the form of grants. A media briefing by the OSP will assuage public suspicions of violations of the procurement law in their procurement.

Still on procurement! Can the Special Prosecutor explain at a media briefing one of his first acts on his assumption of office - how he came to procure a fleet of vehicles including pick-ups from a car rental company allegedly belonging to his friend or associated with his friend who is alleged to be one of his employees now which he used as back-up for his security details without going through a competitive car rental company bidding process and the approval of the Public Procurement Authority (PPA)? What consideration informed the alleged immediate procurement by renting or purchasing a Prado four wheel drive without PPA approval for the Chief Accountant of the OSP who is a signatory to the OSP accounts only weeks after assuming office when other heads of departments went without the same favour? Remember that the OSP investigates and prosecutes procurement malpractices and the OSP's press conference will instill confidence in the investigatory work of the OSP when the OSP investigates persons suspected of the commission of similar procurement offences.

The Special Prosecutor should be addressing a press conferences on whether it is true that since his assumption of office he has spent more than a third of the year in 2021, 2022, and 2023 traveling abroad on the public purse without any written information to his deputy on his travelling abroad. Is it true that the Special Prosecutor even travels with orderlies who have no security functions to perform on such trips abroad?. Is it also true that certain friends of the Special Prosecutor accompany him on some of these trips at their own expense which can be detected from entries from the Ghana Immigration Service data base? By the way, the public wishes to know how many times the Special Prosecutor has traveled abroad on official duties since 9 August 2021, and if accompanied by whom; and whether the DSP was formally informed about these travels abroad.

It may well be that when the Special Prosecutor becomes more transparent and accountable and addresses the issues raised at a media briefing, the suspicions of members of the public who may be tarnishing the integrity of the OSP may be put to rest. I raise them here because of the invitation thrown to the public by the Special Prosecutor and the fact that the policy of the OSP to be transparent with the public is a two way street of openness and accountability

as the fight against corruption cannot be won when citizens suspect the conduct of Caesar's wife of not being above suspicion.

CONCLUSIONS

The foregoing examination and analysis of the demand by the Special Prosecutor that the OSP is entitled during his tenure to be treated by the judicial branch as a flagship anti-corruption agency and given preferential decisions by the courts as against citizens has demonstrated that there was no animosity between the judiciary or any courts or judges and the OSP from its foundation in February 2018 to 9 August 2021 when Kissi Agyebeng assumed office as the Special Prosecutor. The judiciary cannot, therefore, be accused of being against the OSP as he endeavoured to incite the public during the press conference or media briefing on 29 November 2023 to believe.

It has been shown that the Ghana Police Service (GPS) which is the oldest law enforcement agency in Ghana; the Economic and Organized Crime Office (EOCO) which used to exercise the anti-corruption mandate; the National Intelligence Bureau (NIB) which used to be part of the Police Service and has investigatory and prosecutorial powers; the Ghana Revenue Authority (GRA); the Ghana Immigration Service (GIS); and other law enforcement agencies are not known to hold media briefing to heap scurrilous abuses and scandalize the courts, and intimidate beneficiary citizens anytime the courts make unfavourable decisions against them for the benefit of a sovereign citizen. The cancer of a Special Prosecutor that has infected the OSP for the past two years cannot, therefore, be allowed to metastasize to infect the healthy working relation between organic law enforcement, the citizen, and the administration of justice guaranteed under law.

The policy of the OSP to be transparent with the public which the Special Prosecutor claimed underpinned his performance of scurrilously abusing the courts and scandalizing the administration of justice, it has been shown, is a two way street of openness and accountability as the fight against corruption cannot be won when citizens suspect the conduct of Caesar's wife as not being above suspicion.

The Special Prosecutor crossed the red line in his performance to the media which was malevolently summoned on 29 November 2023 to incite the public against the rights of beneficiary citizens to the decisions of the courts and to scandalize the administration of justice in a manner in consistent with and in contravention of the 1992 Constitution to warrant patriotic citizens to defend the Constitution by petitioning the President for the removal of the Special Prosecutor from office for stated misbehaviour and other grounds provided for in Act 959 discussed hereinbefore. The Constitution and the independence of the judiciary must be defended against any agency of the executive branch wishing to unjustly trample upon the rights and freedoms of citizens. God, protect Ghana!

Martin A. B. K. Amidu
3 December 2023