



A STATEMENT ON PETITION FILED BY THE CHIEF JUSTICE, JUSTICE KWASI ANIN-YEBOAH SEEKING TO HAVE HON. DR. DOMINIC AYINE INVESTIGATED BY THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL - BY HON. JOHNSON ASIEDU NKETIA, GENERAL SECRETARY OF THE NATIONAL DEMOCRATIC CONGRESS (NDC).

Monday, 21st June, 2021

Good morning distinguished ladies and gentlemen of the media. We thank you for honoring our invitation at such short notice and we are grateful for your continuous collaboration with us towards building a better Ghana.

The National Democratic Congress has become aware of a petition to the General Legal Council, in which the Chief Justice of the Republic of Ghana himself, Justice Kwasi Anin-Yeboah, acting as a Complainant, is seeking to have disciplinary action taken against Hon. Dr. Dominic Ayine, the NDC Member of Parliament for Bolga East who is also Chairman of the Subsidiary Legislation Committee of Parliament.

According to the letter from the Judicial Secretary to the Disciplinary Committee Chairperson of the General Legal Council, statements that Hon. Dr. Dominic Ayine made during a panel discussion on Presidential Election Petitions and their impact on Africa's Democracy, organized under the auspices of the Centre for Democratic Development (CDD) call for such disciplinary action.

During the panel discussion referred to above, when asked about what he made of the independence of the Judiciary in the wake of decisions in the course of the recent 2020 Election Petition, Dr. Ayine stated his honest, well-reasoned and well-researched views as not only an academic of so many years, but also as a lawyer of high repute, a former Deputy Attorney General, a Member of Parliament and the Chairman of Parliament's Subsidiary Legislation Committee. It therefore, came as a shock to many in academia, civil society, the legal fraternity and, indeed, to us in the NDC, that the Chief Justice has initiated processes to have Dr. Ayine investigated and disciplined for his comments.

Friends from the media, let me state here and now that the National Democratic Congress stands with Dr. Ayine against what is increasingly becoming a campaign of judicial



tyranny being waged by the Chief Justice of the Republic against lawyers who identify with the NDC. Indeed, the latest persecution of Dr. Ayine is part of a grand agenda by the current Chief Justice to intimidate, cower and muzzle all dissenting voices, particularly those in the NDC, who dare to speak against some of the strange decisions that characterized the 2020 Presidential Election Petition.

As you may be aware, only few months ago, some lawyers with NDC leanings, specifically Lawyer Abraham Amaliba and David Annan, were hauled to the Disciplinary Committee of the General Legal Council by the Chief Justice in similar fashion and harassed for expressing their views on the Constitution of the Supreme Court Panel that heard the 2020 Election Petition. Also, not long ago, the Hon. Rockson-Nelson K. Etse Dafeamekpor, the NDC member of Parliament for South Dayi, received a similar invitation to appear before the Disciplinary Committee of the General Legal Council.

Ladies and gentlemen of the media, Dr. Ayine spoke at a roundtable discussion which had other lawyers and academics brought together to analyze the impact of Presidential election petitions on our democracy. When the question about confidence in the independence of the judiciary was posed, Lawyer Yaw Oppong, a member of President Akufo-Addo's legal team, responded that he thought Ghana's judiciary was independent. Dr. Ayine, on his part, expressed the view that his confidence in the independence of the judiciary had been dampened by the way the court determined some of the interlocutory applications of the Petitioner without due regard for judicial precedent and settled rules and practices.

Ladies and gentlemen of the media, the way in which the Supreme Court, in the hearing of the 2020 Election Petition continuously shielded the Chairperson of the Electoral Commission, Mrs. Jean Adukwei Mensah, from scrutiny and accountability, has been the subject of critical comment by many people. Indeed, much of the criticism has been from people who are in no way associated with the NDC.

We must say we are also struck by how positions that the current Chief Justice took in 2012 Election Petition are completely opposite to his positions in the 2020 Election petition. Let me read you a few sentences from Justice of the Supreme Court (as he then was) Anin-Yeboah when he dissented in respect of a ruling concerning whether the Electoral Commission should be ordered to produce certain documents. He said:



“In a serious matter in which the mandate of the entire voters of this country is being questioned through the judicial process one expected the second respondent as the sole body responsible for the conduct of elections to have exhibited utmost degree of candour to assist the court in arriving at the truth. Surprisingly, the second respondent Electoral Commission opted for filing no pink sheets leaving this court unassisted and thereby placing reliance only on the pink sheets supplied to the agents of the petitioners at the various polling stations in issue. Why the second respondent elected to deny assistance to a court of law in search of the truth in a monumental case of this nature is beyond my comprehension. I think this must be deprecated in view of the constitutional autonomy granted to it to perform such vital functions under the Constitution for the advancement of our democratic governance.”

Yet, in the recent Election Petition, the same Justice Anin Yeboah dismissed every single application on behalf of the Petitioner to have the Chairperson of the Electoral Commission assist the Court to establish the truth! In 2013 Dr. Afari-Djan went into the witness -box and was subjected to extensive cross-examination. That was not enough for Justice Anin-Yeboah then. This time, Mrs. Jean Mensa, having sworn to a witness statement and sworn to affidavits to the effect that she would be available for cross-examination, chose not to testify. Even an attempt to re-open the case of the Petitioner to enable her be subpoenaed was rejected by the Chief Justice and his colleagues. Why was the conduct of Mrs. Jean Mensa not “deprecated”? How does the Chief Justice, Justice Anin-Yeboah, expect Ghanaians to have confidence in his impartiality and fair-mindedness as a judge in the face of these contradictory decisions by him?

Also, the way and manner the Supreme Court unanimously dismissed virtually all the interlocutory applications of the Petitioner without regard for the law in some instances further dampened our hopes in that important arm of government. You may recall for instance, that in their ruling on the application by the Petitioner to re-open his case to call the EC Chairperson as an adverse witness, the Supreme Court disregarded the clear provisions of the Evidence Act of Ghana and opted for a wrong interpretation of the Black Law Dictionary’s definition of Adverse Witness. In that ruling, the Court said that a person cannot be an Adverse Witness until he has already mounted the witness box, despite the clear provisions of the Evidence Act of Ghana which provides that, in a civil action, a party, or a person whose relationship to a party makes the interest of that person



substantially the same as a party, may be called by an adverse party and examined as if on cross-examination at any time during the presentation of evidence by the party calling the witness.

When the Petitioner applied for a review of this decision and the court was presented with an opportunity to correct this clear error of law, the Court refused to do so without any plausible reason. How then can anybody fault Dr. Ayine for saying that his hopes about the independence of the judiciary was dampened by the way and manner the Court failed to apply the law and judicial precedent in dealing with some interlocutory applications of the Petitioner?

Friends from the media, our position on this matter is simple. Dr. Ayine's views about the independence of the Judiciary are views he is entitled to in line with his freedom of expression guaranteed under the 1992 constitution. He was courteous to the Court and kept his language temperate and decent. He stayed within the bounds of professionalism. He was neither scurrilous nor scandalous. For him to be accused by the Chief Justice of disparaging Ghana's Judiciary over these tempered and justified comments, is not only bizarre and unfortunate, but speaks volumes about the Chief Justice.

Clearly, the opinion expressed by Dr. Ayine which we in the NDC share without any equivocation, is not actionable and does not violate any rule or Professional conduct rules for lawyers. As a matter of fact, neither Dr. Ayine, nor we in the NDC can be compelled to increase our confidence in the independence of the judiciary even when the Court has not given us any basis or reason to do so. The Chief Justice ought to be reminded that justice emanates from the people and is administered on our behalf. Public confidence in the independence of the judiciary must therefore be earned and not forced on us.

Ladies and gentlemen of the media, we are concerned at the seeming judicial dictatorship that is fast festering under the leadership of the current Chief Justice, an unwelcome development which threatens free speech and could potentially undermine our justice system. You will recall that not so long ago the Chief Justice instructed a Lawyer, Mr. Thaddeus Sory, to issue a threatening letter to media houses in the country ostensibly to restrict public criticism of the Court on grounds that the Ghanaian People are uneducated and uninformed about legal issues. When there was public uproar, it was then claimed



that the letter was not aimed at preventing criticisms of decisions of the Supreme Court in the media.

The Judiciary, like Parliament or the Executive, is not above criticism. Indeed, it is worth recalling that the recent “Re-Akoto” event in Kumasi, where an address was delivered on behalf of the Chief Justice, was an event to criticize a sixty-year-old decision of the Supreme Court. The event was dominated by politicians of the New Patriotic Party stock who used the occasion to express their critical views freely.

Ladies and Gentlemen, we wish to reiterate the fact that the invitation of Dr. Ayine to appear before the General Legal Council is yet another attempt by the Chief Justice to intimidate and suppress views that are at variance with his views. Even if the Chief Justice disagrees with Dr. Ayine’s views or deems same as erroneous, the statements made were decorous expressions of opinion about a judgement delivered by the Supreme Court and do not warrant professional discipline.

Our progressive march as a constitutional democracy will suffer a grave setback if the Disciplinary Committee of the General Legal Council were to proceed to hold an inquiry into this matter of Dr. Ayine’s statements at the CDD event. Our Constitution and laws protect the integrity and independence of the judiciary and not the sensibilities of judges. Judicial vanity is a threat to justice and must not be countenanced in any democracy. We therefore join well-meaning Ghanaians to demand that the Chief Justice withdraws his petition against Dr. Ayine forthwith. We further serve notice that as a political party, we are keenly following events, and shall resist judicial tyranny with all our might.

In conclusion, we wish to state that, even as the action taken against Dr Ayine is unjustified, it is but a symptom of a larger problem. It is no coincidence that virtually all the lawyers who have been reported to the Disciplinary Committee of the General Legal Council by the Chief Justice, Justice Kwasi Anin-Yeboah, in recent times are aligned to the NDC. What is the Chief Justice’s personal interest in the punishment of NDC affiliated lawyers that he is so keen to initiate unwarranted actions against them? We dare say that such treatment would not be meted out to lawyers who are aligned to the NPP for reasons best known to the Chief Justice.



After the 2013 Election Petition verdict was delivered by the Supreme Court, Lawyer Sam Okudjeto at a Symposium organized by the Danquah Institute took some of the Justices of the Supreme Court to the cleaners and gave his own interpretation of the judgment, contrary to what the Court had determined. Also recently, when the High Court, Human Rights Division, presided over by Justice Gifty Agyei Addo, ruled against the General Legal Council in an application brought by Lawyer Francis Sosu, Lawyer Sam Okudjeto once again went to town attacking and questioning the capacity of the Judge who quashed the decision of the Disciplinary Committee of the General Legal Council, of which he is a member.

Lawyer Sam Okudjeto, is also a leading member of the NPP and the Council of State. Why was he not referred to the General Legal Council for disciplinary action by the current Chief Justice, Kwasi Anin-Yeboah? What about the several NPP affiliated lawyers, including a lawyer on record, who made many prejudicial comments and sought to seduce the Supreme Court during the hearing of the 2020 Election Petition?

The respect accorded the Judiciary is one that ought to be earned due to the ability of members of that important arm of government to show equanimity, balance and fairness to all manner of persons irrespective of their political colouration. That respect cannot be rammed down the throat of anyone through acts of suppression and brazen acts of intimidation. The notion that the Judicial arm of government is beyond reproach is but a fantasy which cannot be sustained. The same is utterly inimical to democratic practice and must not be countenanced.

If these actions by the Chief Justice are intended to browbeat the NDC and its members and prevent us from stating our views on the performance of the Judiciary, we hereby state categorically that they will not succeed! We will not be intimidated. We, as a party, will continue to defend the cause of freedom and of right in this country. We did not strive to put in place the building blocks of a sustainable democracy only to allow judicial tyranny to rear its head. And, we will never be intimidated by partisan occupants of state institutions no matter the cost.

God bless our homeland Ghana. Thank you for coming.