

THE FUTILITY OF THE KISSI AGYEBENG INSPIRED PETITION FOR PARLIAMENTARY PROBE INTO EOCO’S FAILURE TO INVESTIGATE THE MONEY LAUNDERING ALLEGATIONS AGAINST CECILIA DAPAAH: BY MARTIN A. B. K. AMIDU

The politicization of the objects and functions given to the Office of the Special Prosecutor (OSP) under Sections 2 and 3 of the Office of the Special Prosecutor Act, 2017 (Act 959) in the fight against corruption by Kissi Agyebeng, an inexperienced and incompetent neotype in the professional practice and ethics of the art of investigations and prosecutions of criminal offences is what has brought the fight against corruption into disrepute. The Cecilia Abena Dapaah case is a clear example of either the exhibition of incompetence and inexperience by the Special Prosecutor and his whole team at the OSP or a deliberate politicization of an ordinary suspected crime simply because, as stated by the OSP, the case involved “Ms. Cecilia Abena Dapaah, a former Minister of Sanitation and Water Resources and her spouse, Mr. Daniel Osei-Kufuor.”

I am convinced by the genesis of the investigation by the OSP into the Cecilia Abena Dapaah case that Kissi Agyebeng intentionally decided to politicize the OSP as an insurance against the crimes at the OSP from being investigated and also as a blackmail against the Government in defence of the partnership at Cromwell Grey LLP, and Tiger Eye PI.

Emotionally speaking, I think that the politicization and blackmail of the Government by the OSP serves those who nominated such an incompetent and inexperienced investigator and prosecutor to such a critical law enforcement office. But the fight against corruption transcends emotions and has to be based on professional principles as it affects the well-being and welfare of every Ghanaian rather than to allow criminals to hide under that umbrella of fighting corruption to loot the public purse because one has an axe to grind with the Government of the day. Governments come and go but the Republic of Ghana will ever endure.

I will begin with the genesis of the Cecilia Abena Dapaah alleged corruption investigation by Kissi Agyebeng and his OSP. On 24 July 2023 Kissi Agyebeng’s preferred propaganda media house, Joy FM, started to whip up public disaffection against the Government and Cecilia Abena Dapaah at 11:24 am when it published that:

“The Office of the Special Prosecutor (OSP) is under siege to investigate and possibly, prosecute the resigned Sanitation Minister, Cecilia Dapaah after a huge amount of cash was allegedly stolen from her home. Social commentators and social media users have been calling on the OSP to take up the matter before it gets cold. When asked if the calls had stopped coming through, a source at the OSP told Myjoyonline “they have not stopped coming” since the case became public last week.”

The reader who has time for the details should read what was published on [OSP inundated with calls to probe Cecilia Dapaah’s alleged stolen monies - MyJoyOnline](#).

On the same day, the OSP issued a press statement which Joy FM reported at 12:33 pm, inter alia, as follows:

‘Madam Cecilia Abena Dapaah who resigned her post on Saturday as the Minister of Sanitation and Water Resources, has been placed under arrest by the Office of Special Prosecutor for suspected corruption and corruption-related offences. Her arrest is in relation to the alleged large sums and personal properties stolen from her Abelempke home in Accra for which five people are standing trial. A statement issued by the OSP said "Ms. Dapaah is being questioned by authorised Officers of the OSP." Following media reports of an ongoing criminal trial of the five suspects for the missing millions, there have been a wave of calls for the arrest and investigation of Abena Dapaah to ascertain the source of the large sums of money.’

The reader who has time for the details should again read what was published on [OSP arrests, questions resigned Sanitation Minister Cecilia Dapaah over stolen 'huge' cash - MyJoyOnline.](#)

The facts as stated by the OSP makes it clear that the Special Prosecutor depended on a Police Service docket submitted to the Office of the Attorney-General as the main basis for his witch-hunting against a former Minister of State of the Government. Kissi Agyebeng as an investigator and prosecutor exercising delegated authority from the Attorney-General under Article 88 of the 1992 Constitution did not have the mandate to intrude upon an investigation by the Police Service and directions given thereto by the Attorney-General. See the unanimous ruling of the Supreme Court in the case of Republic v High Court (Financial and Economic Crime Division Court 2), Ex Parte Malik Ibrahim, 27 July 2023, SC, (unreported).

Kissi Agyebeng knew, (or ought to have known if he was a qualified and professional investigator and prosecutor), that as the Special Prosecutor he was exercising entrenched delegated investigatory and prosecutorial power apportioned by the 1992 Constitution to the Attorney-General under Article 88 of Chapter 8 of the Constitution. The OSP, therefore, had no authority to base any investigations on police dockets submitted to the Office of the Attorney-General for advice by the Ghana Police Service or cases in which the Ghana Police Service has already commenced investigations. The fact that the Parliament of Ghana has no constitutional authority to amend the entrenched powers apportioned to the Attorney-General under Article 88 of the 1992 Constitution is basic knowledge.

The Ghana Police Service is the only law enforcement agency under the 1992 Constitution entrusted with an unrestricted mandate to fight crime to be prosecuted by the Attorney-General. Consequently, when the Ghana Police Service is investigating any crime and discovers evidence pointing to the suspected commission of corruption or money laundering it does not have to stop the investigation and refer the case to a specialized agency established by Parliament such as the OSP or the Economic and Organized Crime Office (EOCO).

Even when a copy of the Attorney-General’s letter to the Director-General of the CID dated 31st July, 2023 came to the notice of Kissi Agyebeng that the Attorney-General from whom he held delegated authority “had instructed the Police Service who are already seised with other aspects of the case to investigate the source(s) of the huge sums of money found in the home of the suspects”, Kissi Agyebeng for purely political, blackmail, and populist reasons decided to continue trying Cecilia Abena Dapaah with his collaborators at Joy FM in the court of public opinion for months.

The foregoing professional and ethical prohibitions are rudimentary knowledge for experienced professional investigators and prosecutors. The EOCO learnt the hard lesson in the unanimous ruling of the Supreme Court in the case of Republic v High Court (Financial and Economic Crime Division Court 2), Ex Parte Malik Ibrahim in which the High Court granted EOCO's application for the freezing of the assets of Malik Ibrahim only for the Supreme Court to quash the order of the High Court for lack of mandate and the fact that the Ghana Police Service was already seised with the same investigation.

As the Supreme Court stated in its unanimous ruling in Ex Parte Malik Ibrahim:

'The Interested Party, Economic and Organised Crime Office, (EOCO) is a state institution established under the Economic and Organised Crime Office Act, 2010 (Act 804) to "monitor and investigate economic and organised crime and on the authority of the Attorney-General prosecute the offences to recover the proceeds of crime" among others.'

It is clear from the foregoing that the Executive Director of the EOCO (who has a restricted mandate) like the Director-General of the CID of the Ghana Police Service whose criminal investigatory powers are unrestricted, is subject to the directions of the Attorney-General. As the Supreme Court stated further in Ex Parte Malik Ibrahim:

"(18) From the long title of Act 804, it is an ACT to **"establish an Economic and Organised Crime Office as specialised agency to monitor and investigate economic and organized crime and on the authority of the Attorney-General prosecute the offences to recover the proceeds of crime and provide for related matters."** These Objects of the office are further explained under Section 3 as;

a) "investigate on the authority of the Attorney-General prosecute serious offences that involve;

(i) financial or economic loss to the Republic or any State entity or institution in which the State has financial interest,

(ii) money laundering,"

The operative words in Section 3(a) as quoted by the Supreme Court are the words "serious offences that involve" - "(ii) money laundering." The EOCO cannot just investigate money laundering when there is no evidence of "serious offences that involve money laundering." Kissi Agyebeng never submitted to the EOCO any evidence of "serious offences that involve money laundering" upon which the EOCO could predicate any investigation and prosecution on the authority of the Attorney-General. This is what Evelyn D. Kelson's advice from the Office of the Director of Public Prosecutions (DPP) signed on behalf of the Attorney-General to the Executive Director of the EOCO pointed out.

There was a fundamental issue in the Ex Parte Malik case that the Supreme Court called attention to which Evelyn D. Kelson's advice to the EOCO overlooked or did not advert its mind to. I will quote a substantial portion of what the Supreme Court said in relation to the powers of the Police Service to investigate money laundering which clarifies the authority of EOCO as well. The unanimous ruling of the Supreme Court in Ex Parte Malik Ibrahim stated in part in its paragraph 24 as follows:

“(24) It is provided under Section 1 of the Police Service Act, 1970 (Act 350) provides as follows;

1. Functions of the Service

(1) The Police Service as provided for by Article 190 of the Constitution, shall prevent and detect crime, apprehend offenders, and maintain public order and the safety of persons and property.

Accordingly, the mandate of the Police Service established by the Constitution is not limited except as may be stated in enactments made subsequent to Act 350. However, the offence of money laundering is created and defined by Section 1 (1) & (2) of the **Anti - Money Laundering Act, 2020 (Act 1044)** as follows:

Section 1 - Money laundering...”

The Supreme Court after quoting Section 1 of Act 1044 concluded as follows:

‘ (25) The Act does not designate one particular agency of state as the only agency to investigate offences under the Act. What the Act does is that, under Section 37 it refers to **“Competent Authorities”** who, if in the course of performing their duties they apprehend information alluding to money laundering, those authorities are required to make a report to the Financial Intelligence Centre (FIC) established by Act 1044. The FIC may also refer a matter of offence under Act 1044 to an investigating authority for it to take action. The phrase **“Competent authorities”** is defined under the Act to include the Police Service, EOCO, National Security Secretariat and other agencies of state. **“Investigating Authority”** is defined to mean; **“a body that is designated by legislation to investigate an unlawful activity under this Act.”** The FIC established under the Act does not have an investigating mandate as one of its functions set out under the Act. Section 8(g) of Act 1044 states that the FIC shall collaborate with investigating authorities without limiting it to any particular agency.’

The Supreme Court makes it clear in Ex Parte Malik Ibrahim that under Section 37 of Act 1044 the **“Competent Authorities”** who, if in the course of performing their duties they apprehend information alluding to money laundering, those authorities are required to make a report to the Financial Intelligence Centre (FIC) established by Act 1044.’ Kissi Agyebeng due to incompetence and inexperience refused to follow Section 37 of Act 1044 and report the so-called apprehended information alluding to money laundering in the Cecilia Dapaah case to the Financial Intelligence Centre (FIC) established by Act 1044. After violating Act 1044 in terms of reporting procedure to the FIC to enable the FIC to collaborate with a chosen investigating authority as required by the Act, Kissi Agyebeng refused to cooperate with the EOCO by even indicating the serious offences involving money laundering he alleged. In these circumstances the EOCO cannot be faulted for referring Kissi Agyebeng’s unlawful referral to EOCO to the Attorney-General for advice under Act 804.

The petitioners to Parliament, most of whom are known activists and spokespersons for Kissi Agyebeng and the NDC, know that it is trite learning that the investigatory and prosecutorial discretion of the Attorney-General is not subject to review by the courts of law. The EOCO is subject to the authority and directions of the Attorney-General under Act 804. The Executive

Director of the EOCO cannot, therefore, refuse to comply with the advice of the Attorney-General or the Director of Public Prosecutions. Certainly, Parliament has no power to investigate the exercise of investigatory and prosecutorial discretion by the Attorney-General under the entrenched Article 88 of the 1992 Constitution.

Consequently, the Kissi Agyebeng inspired petition to Parliament to probe into EOCO's failure to investigate the non-existing money laundering allegations against Cecilia Dapaah is an exercise in futility except when the self confessed corrupt National Democratic Congress (NDC) Speaker of Parliament decides to use the petition for transactional political purposes. An NDC Member of Parliament (MP) I brought up into the politics of the Fourth Republic just also confessed that one cannot be an MP without being corrupt. Is that true? At least we have some decent citizens with integrity in that Parliament in my view.

As the election day 7 December 2024 approaches so many anti-corruption entrepreneurs and lobbyists hoping for appointment from the winner of the 2024 Presidential elections would stop at nothing to deceive the electorate with baseless arguments and concoctions against their perceived opponents in the self-serving name of fighting corruption. This is the time for genuine anti-corruption crusaders to defend the 1992 Constitution by insisting that the electorate must be apprised with the truth to make an informed decision between the two evils they will face at the 2024 Presidential elections.

I wish to repeat what I wrote and was published by Joy FM on 23 December 2023 at 8:20 am - [Martin Amidu: OSP turned into an incarnation of McCarthyism - The certified ruling in Ex Parte Damoah case - MyJoyOnline](#)

“The hallmark of the leadership of any anti-corruption institution that deserves respect for integrity, honour, and effectiveness in the fight against the canker of corruption is to emulate Caesar's wife and be above suspicion in whatever one does while leading the anti-corruption institution. Any form of McCarthyism and witch-hunting negates honour and integrity for an endeavour to be a shining example in the fight against corruption.

Unfortunately, the Special Prosecutor has demonstrated time and time again that he is an unrepentant personification of McCarthyism and witch-hunting who has no respect for the 1992 Constitution, and the Office of the Special Prosecutor Act, 2017 (Act 959) and the two subsidiary legislations I spent the balance of the first year of the OSP in 2018 facilitating to be enacted to enable the operationalization of the OSP.”

My personal right to defend the 1992 Constitution and the due process of law guaranteed under it cannot be subjected to intimidation by any media house or any group of fellow citizens. Kissi Agyebeng is a wounded snake whose head needs to be decoupled from the OSP before the OSP infests the body politic with the very poisonous corruption the OSP was established to prevent and investigate and thereby destroy the 1992 Constitution. Those who nominated Kissi Agyebeng can continue to protect him, but I will not stop defending the basic ethics and principles of law enforcement and the 1992 Constitution which I have done throughout my adult life as a citizen of Ghana.

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