

THE RE-OPENING OF SOME COURTS IN THE UER - JUDICIAL IMPARTIALITY IS IMPOSSIBLE UNDER A CHIEF JUSTICE LACKING INTEGRITY AND TRANSPARENCY: BY MARTIN A. B. K. AMIDU

The Chief Justice of Ghana after being made to realize her profound ignorance and illiteracy of the history and geography of Ghana quietly directed the re-opening of four (4) of the courts within the environs of the Upper East Regional capital she arbitrarily and capriciously directed to be closed on 29 October 2024 as being part of “the current situation in Bawku and its environs”. The conduct of the Chief Justice in closing those courts on spurious grounds demonstrated her lack of high moral character and proven integrity to have been entrusted with the exercise of the administrative and supervisory powers vested in her under Article 125 of the 1992 Constitution which enshrines, inter alia, that: “Justice emanates from the people and shall be administered in the name of the Republic by the judiciary which shall be independent and subject only to this Constitution.” A Chief Justice of any country who does not know the history and geography of her country and acts discriminatorily, unfairly, and without candour in the performance of her administrative and supervisory functions is clearly unfit to be the head of the administration of an independent judiciary. The empanelling of justices by her even to sit as justices of the superior courts to exercise the judicial power would be open to and actuated by arbitrariness, capriciousness, and incompetence to infect the independence of the courts as adjudication institutions.

It will be recalled that on 1 November 2024, I published in the media an article entitled: “The Speaker’s folly of shutting down Parliament and the decision to close all courts in the Upper East Regional Capital” in which I exposed the incongruity of the reason assigned by the Chief Justice for closing the courts in the regional capital and its environs which was widely circulated. On 8 November 2024, the Chief Justice directed another memorandum amending her earlier capricious directives dated 29 October 2024, this time directing “the re-opening of the following courts for business, with immediate effect. 1. High Court, Bolgatanga 2. Circuit Court, Bolgatanga. 3. District Court, Bolgatanga 4. District Court, Bongo.” The Chief Justice, however, refused or failed to assign any reason for directing the re-opening of the four (4) selected courts listed above. Interestingly and reflecting again her abject illiteracy of any historical and/or geographical knowledge of Ghana, the incompetent Chief Justice left out the District Court, Zuarungu, within Bolgatanga and its environs from the list of the courts she directed to be re-opened.

The District Court, Zebilla, and the District Court, Garu, cannot by any historical or geographic ingenuity be classified as coming within the words of the Chief Justice’s memo of 29 October 2024 as falling within the nomenclature of “the current situation in Bawku and its environs.” Zebilla which is 18 miles from Bawku and Garu which is also the equivalent in mileage from the Bawku Municipality can not by any stretch of the imagination be said to be within “the current situation in Bawku and its environs” unless a person who has risen to the high office of Chief Justice of Ghana has surrounded her reasoning to the executive branch for purposes of political party election interference agenda.

The volatile towns and environs of violent chieftaincy and/ or land, and other primordial conflicts in the Republic of Ghana between the end of September 2024 and the end of October 2024 were and still are ten townships and their environs in various regions of the country. The website of the Ministry of the Interior, where I was once also the Minister, shows that between the end of September 2024 and the end of October 2024 the Minister for the Interior imposed curfews on ten towns and their environs. In almost each case the curfew narrative was similar and as having been done on the advice of the Regional Security Council. I am not aware that the Chief Justice closed down the courts in those townships and their environs as a result of the curfew declarations let alone the closure of courts in their regional capitals as happened in the UER.

The summary I made of the notifications of curfew for the period under reference affected Kpatinga township and its environs in the Northern Region; Bomaa township and its environs in the Ahafo Region; Bunkpurugu township and its environs in the North East Region; Nkwanta township and its environs in the Nkwanta South Municipality of the Oti Region; Bawku Municipality and its environs in the Upper East Region; Chereponi township and its environs in the North East Region; Saboba township and its environs in the Northern Region; Drobo, Japekrom, Babianiha, Kwasibourkrom, Mpuasu, Babekrom, Kojokeseokrom and Katakyiekrom and its environs in the Jaman South Municipality of the Bono Region; Sampa township and its environs in the Jaman North District of the Bono region; and Bimbilla township and its environs in the Northern Region.

The most unmistakable observation any casual researcher will make is the conspicuous absence from the website of the Ministry of the Interior's press release titled "Declaration of Curfew in Bawku" dated 28 October 2024, signed by a Deputy Minister for the Interior for the Minister stating that:

"Following an emergency National Security meeting held today, 28 October 2024, under the Chairmanship of the President of the Republic, Government wishes to inform the general public of the following:

1. The return to Bawku, on 24th October 2024, of Mr. Seidu Abagre, who was illegally enskinned as Bawku Naba in February 2023, subsequent to the vacation by the Court of Appeal, sitting in Kumasi of the warrant for his arrest, has led to significant disturbances affecting public peace and security in the area. Unfortunately, these disturbances have resulted in the loss of numerous lives in Bawku and its environs, with looming threat to escalate beyond Bawku...." (Emphasis supplied).

The next day, 29 October 2024, the Judicial Secretary issued a Memorandum in the name of the Chief Justice in which she states that: "The attention of the Honourable Lady Chief Justice has been drawn to concerns expressed by Lawyers and other Stakeholders about the current situation in Bawku and its environs." and "In order to ensure the safety and security of Judges, Staff, Lawyers and Court Users," the Chief Justice closed seven courts, none of which was within Bawku and its environs, namely (1) High court, Bolgatnaga, 2. Circuit Court, Bolgatanta, 3. District court, Bolgatanga, 4. District Court, Zuarungu, 5. District Court

Zebilla, 6. District Court, Garu, and 7. District Court, Bongo. She later added the District Court, Pusiga to her list by cowardly using the GBA to issue individual circulars to lawyers.

How a memorandum intended to deal with a situation within Bawku and its environs transformed into the closure of courts outside the targeted Bawku and its environs can only be explained by the Chief Justice of Ghana, the Parliament of Ghana that vetted and approved her and the President who nominated and appointed her to such an august position under the 1992 Constitution to administer the most important conflict resolution arm of government entrusted with the exercise of the final judicial power of the Republic of Ghana.

The Public Relations Officer of the Ghana Bar Association (GBA), one Saviour Kudze, speaking on 31 October 2024 on behalf of the GBA in support of the capricious administrative conduct of the Chief Justice let the cat out of the bag when he told Citi News, inter alia, that:

“The Chief Justice is the head of the judiciary. So I believe she is always in constant touch with the security agencies. And following the developments as announced by the Chieftaincy Minister, I believe they have advised her on the intelligence that they have picked up, which must have necessitated the closure of the courts.

The subterfuge phrase used in the Chief Justice’s memorandum of 29 October 2024 to close the courts was that the directive was given: “In order to ensure the safety and security of Judges, Staff, Lawyers and Court Users,” which taken along side the fact that the Minister for the Interior issued a press release signed by the Deputy Minister for the Interior declaring a curfew in Bawku stating, inter alia,: “Following an emergency National Security meeting held today, 28 October 2024, under the Chairmanship of the President of the Republic, Government wishes to inform the general public of the following ...” coheres with the logical and analogical reasoning that the Chief Justice closed the courts not as an independent administrator and supervisor of an independent judiciary. The Chief Justice in giving her directives for the closure of the courts after the President returned to his office on the afternoon of 28 October 2024 and Chaired the National Security Council meeting on Bawku was acting as a mere politicized poodle and puppet of the executive branch of government which had refused or failed to maintain the security and welfare of the people of Bawku and its environs as enjoined by the Constitution.

Despite the separation of powers doctrine, there is an accepted convention the whole world over that when the independent judiciary is about to deliver a judgment or ruling which is likely to affect the security of the nation it notifies the President as head of the executive and the Speaker as head of the legislature to enable measures to be put in place in advance to contain any national security fall outs from the impartial and unavoidable decision of the court. This was what happened in the Yendi Skin Affairs and other sensitive decisions involving the Supreme Court which enabled the beefing up of security in the Dagbon Kingdom before the judgment was pronounced to the public. The doubting Thomases should remember that even in the Soussoudis /Sharon Scranage Affair the USA federal court sat at a weekend after the two governments agreed on the exchange of assets to release Michael Agbotui Soussoudis (may he rest in peace) to be flown immediately to Ghana while Edward

Edusie and co were also enroute to the USA. The recent exchange of assets between the USA and its allies in NATO, and Russia in which Belarus, Slovakia, and Polish courts had to sit to enable the assets to be exchanged for national security reasons are cases demonstrating the fact that the relationship between the three arms of government enables them to cooperate and coordinate in so far as the integrity and independence of each branch is maintained in accordance with the Constitution. President Trump's cases and sentencing are clear examples of the postponement of judgments by courts until after public elections for security reasons.

Viewed within the foregoing examples, after all, the spark that brought about the 24 October 2024 bloody conflict in the Bawku township was precipitated by a decision of the Court of Appeal empanelled by this Chief Justice which delivered its judgment on 17 October 2024. Ghana must have an incompetent security apparatus if it did not foresee the probable and likely consequences of the decision of the Court of Appeal only less than two months to the 2024 elections to provide contingency security arrangements for Bawku and its environs unless it was a desired decision for an electoral political agenda.

But when the Court of Appeal rendered its judgment with predictable national security implications for the Bawku conflict, the President left the pending crisis simmering and jetted off to Samoa for the pomp of the Commonwealth Heads of Governments Meeting (CHOGM), leaving the nation in the care of his touted able Vice-President as the acting President. When the shooting and dastardly killings started on the night of 24 October 2024 the President did not cut his journey short to return to attend to the loss of lives at home, and the acting President also stayed aloof until the President returned to his office in the afternoon on 28 October 2024 to make decisions at the national security meeting on the blood of more than 31 dead citizens and residents of northern Ghana. Whether President would have behaved in the same way if the deaths were occurring in Kyebi and its environs, and not in the north, is an open question. In contrast, when the Turkish President was attending the BRICS meeting in Kazan and an attack on a Turkish Aviation company left only five dead and 22 injured he cut short his participation in the conference and returned home to exercise command and control over the security situation.

The Chief Justice immediately after the President's belated national security meeting in the evening of 28 October 2024 then closed the seven (7) courts of those northerners in the UER the following day with spurious assigned reasons only to be exposed by the GBA. The lack of candour and transparency in the reason she assigned for closing the courts leaves one with the one and only one conclusion that she was acting as a poodle of the executive branch. She lied to the public with tongue in cheek on the reason for closing the courts for fear of exposure to the public as a lacky of the Government in judicial administrative robes. Even handed justice commended the ingredients of her poisoned chalice to her own lips through the GBA exposure!

The administrative and supervisory functions assigned to the Chief Justice as head of the Judiciary means that she has the responsibility to empanel Superior Court and Court of Appeal Justices, recommend lower justices for promotions, transfer justices eligible for transfers, select the justices to attend conferences, courses, and other travels abroad, and the

exercise of other administrative discretions relating to the welfare of the justices. In the past Superior Court justice such as the late Justices J. N. K. Taylor and Justice Edward Wiredu who refused as High Court Justices to take instruction from some Chief Justices while sitting as justices of the High Court were penalized. The lack of independence and candour exercised by the Chief Justice in closing the courts and re-opening some within a week lends credence to the numerous allegations of the use of her administrative and supervisory powers to interfere in the course of justice through empanelling of justices of the Court of Appeal and Supreme Court, and the whimsical distribution of rewards and punishment to judicial office holders.

The cumulative effect of the perceptions she has created in her administrative and supervisory functions might have been one of the reasons that contributed to the significant decline in the rating of the standing of the nation's judiciary by the recent Mo Ibrahim Foundation report measuring indicators of judicial impartiality based on factors such as the independence of the courts, the autonomy of judges, and judicial appointments downwards by about 30% - see myjoyonline report of 8 November 2024. It is also such perceptions that show that she can not be a dependable gatekeeper of the fundamental rights and freedoms of the people of Ghana from whom justice emanates. It is, therefore, little wonder that Joy News reports that: 'This perception has led some Ghanaians to refer to the judiciary with labels like "Unanimous FC" and "We-Know-The-Outcome (WeKTO Centre)," since the view that the apex court's decisions have become overly predictable.'

I was the only Deputy Attorney-General appointed to the Ministry of Justice for almost thirteen years from September 1988 to 7 January 2001 working with well educated, erudite and distinguished Chief Justices like, Mr. Justices E. N. P. Sowah, P. E. N. K. Archer, and I. K. Abban, and I never came across the incompetence in the administration and supervision of the justice delivery we are witnessing in Ghana today. Mr. Justice N. Y. B. Adade was the acting Chief Justice for six months which Ghana never got as a substantive erudite and honest head of judicial administration. Mrs. Georgina T. Wood was the Chief Justice when I was the Attorney-General and she had come to the job with previous invaluable experience from her time with the Ghana Police Service as a commissioned officer before joining the bench. I, therefore, know what is expected from Chief Justices with good skills in public administration to make the judiciary independent and impartial.

But my first encounter with the morally depraved administrative and supervisory arbitrariness, lack of fairness and candour nature of the current Chief Justice was when I made a Right to Information (RTI) application to the Judicial Service of Ghana (JSG) under her administration and supervision asking whether an alleged joint publication made by the Special Prosecutor, Kissi Agyebeng, on a document bearing the coat of arms for the JSG and the eagle symbolizing the Office of the Special Prosecutor (OSP) was issued by the two institutions. The answer I received was that the two institutions met and issued the joint statement. The following was my question numbered 3 and the answer given: "Whether the Judicial Service has published the said jointly crafted and published joint statement issued on 27th December 2023, on its website. If not why? Answer: Yes."

My next move was to search for the publication of the alleged joint statement on the JSG website and what I discovered was scandalous and criminal under the RTI Act, 989. What I saw was not the same document published by the OSP in the joint names of the two institutions but a similar statement on a letter head of the JSG without any reference number purportedly dated 27 December 2023, the same day the OSP published the document in their joint names with their respective coats of arms. As a seasoned security and intelligence practitioner, I decided to find out when the document was created and uploaded in PDF onto the JSG website. I was shocked to discover from the properties of the PDF document that the file size of 45.4 KB was created on 23/01/2024, 12:49:47 to enable the JSG to answer my RTI application the next day, 24 January 2024 in a letter without reference number. A reference number would have exposed the fraud straight away so none was provided as required by public records administration. The Chief Justice of Ghana had without any doubt acted corruptly, and fraudulently in forging a response to her answers to my RTI application.

Before emailing this article to the media, I went back to the JSG website to replicate my research on the alleged joint statement uploaded by the JSG on its website to dupe me and Act 989. The properties of the PDF document still bear the day of creation as 23 January 2024 – anyone can go there right now to replicate it for verification before it is deleted by these criminal minds. Any experienced Chief Justice in whose name the answer to my RTI application was given should have known that with modern technology such a banal fraud was easily discoverable. How could she who had sat as a justice of the superior courts to dispense justice in criminal cases be so naive not to know that any seasoned investigator like me will not take her answers as credible without cross-checking on their veracity? But every seasoned investigator and minimally competent criminal lawyer knows that whatever the crime the criminal always leaves behind traces of identity which an erudite investigator can painstakingly and with patience unearth. Interestingly, the JSG's alleged version of the joint statement PDF is the only document under the section of publications designated specifically as "Public Notice." I can adduce further evidence of the unlawful and unconstitutional conduct of the Chief Justice in the exercise of her administrative and supervisory powers under Article 125 of the Constitution, but I will reserve that for now.

When President Akufo-Addo nominated her for approval by Parliament as Chief Justice I authored an article entitled: "The New Chief Justice – The last three stops of Nana Akufo-Addo's long game for the 7 December 2024 elections" in which I stated, inter alia, that:

"The choice of Mrs. Justice Gertrude Araba Esaaba Torkornoo (Nee G. A. E. Sackey, enrolled on the Roll of Lawyers in Ghana as No. 2086 on 2 October 1987) was purposeful and in line with Nana Akufo-Addo's long game. It is the third of the last three games he has to play in the hope that nature will support his machinations to impose his will on the letter as distinct from the spirit of the 1992 Constitution at the 2024 general elections".

Nonetheless the 8th Parliament as routinely under the supervision Speaker Alban Sumana Bagbin and Haruna Iddrisu as the minority leader transacted business as usual and got her appointed as the Chief Justice of Ghana knowing the administrative and supervisory powers that goes with the appointment to that office.

I can not, therefore, pretend to shed tears with those now scandalizing the Supreme Court sitting in the exercise of judicial power when she is perceived to be doing precisely what I had warned Ghanaians against in her administration and supervision of the judiciary in a manner favouring the President who nominated her over better qualified seniors, as I have attempted to demonstrate in this article to patriotic citizens. The saying that: “To forewarn is to forearm” was intended to guide everybody, therefore, if Parliament decided not to be forearmed during her approval hearing process despite being forewarned, they bear greater responsibility for saddling the nation and the 1992 Constitution with her capricious, pernicious, and poor delivery as judicial administrator and can not complain only when her conduct hurts their perceived rights. “We reap what we sow,” is that not what the Bible tells us in Galatian 6:7 KJV?

As I said at my vetting for appointment as the first Special Prosecutor on 13 February 2018 (which turned out to be a gratuitous service), I was offered nomination for appointment to the Supreme Court in 1999 and I politely declined the offer even though there was every assurance of my being approved and appointed. A Supreme Court Justice on the same day, questioned my statement on oath to Parliament by confronting one of the two Supreme Court Justices I had named as having been prevailed upon to convinced me to accept the nomination. The Supreme Court Justice I named on oath confirmed my statement to the Supreme Court Justice and his colleagues who were then present (they are all retired now). After several years of public service to the Republic of Ghana, especially at the Ministry of Justice, and the Ministry of the Interior with additional responsibility for the Security and Intelligence Agencies, I would be failing in my duties to our dear homeland should I fear to speak up when the foundation of the 1992 Constitution is being undermined by no less a person than the Chief Justice of Ghana in judicial administration and supervision.

The only proposal which in my considered view would salvage the wanton abuse of the administrative and supervisory powers vested in the Chief Justice under the 1992 Constitution is to curb those powers by a constitutional amendment enjoining that the empanelling of the justices of superior courts, their assessment for promotions, their transfers, selection for courses, and the exercise of other administrative and supervisory powers over the rights of the justices of the superior courts must be undertaken with the assistance of Artificial Intelligence (AI) to avoid capriciousness of this and future Chief Justices. Until that can be done, it is the duty of every patriotic citizen to defend the Constitution in ensuring free, fair, and transparent 7 December 2024 elections devoid of the political machinations of the government under the cover of national security, a judicial administration with political under tunes, parliamentary overreach, or any partisan political party activity bent on putting the stability of the 1992 Constitution into jeopardy by subverting the constitutional order. Good bless Ghana!

Martin A. B. K. Amidu
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