



REPUBLIC OF GHANA

OFFICE OF THE PRESIDENT

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Ref. No. OPS 307/21/934

20th August, 2021

Dear Mr Thompson:

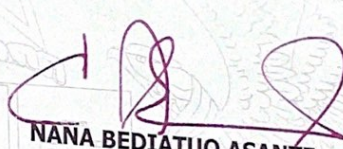
RE: IN RE: PETITION TO INVOKE ARTICLE 146 FOR THE REMOVAL OF CHIEF JUSTICE

Reference is made to your letter received at the Office of the President on 13th July, 2021, on the above subject matter.

I have been directed by the President of the Republic to forward to you, his determination, in consultation with the Council of State, on whether or not your petition invoking article 146 (6) of the Constitution for the removal of the Chief Justice discloses a *prima facie* case.

Please acknowledge receipt of this letter and the President's determination.

**MR. MENSAH THOMPSON
EXECUTIVE DIRECTOR
ALLIANCE FOR SOCIAL EQUITY &
PUBLIC ACCOUNTABILITY (ASEPA)
ACCRA**


**NANA BEDIATUO ASANTE
SECRETARY TO THE PRESIDENT**

cc: The Vice President
Jubilee House, Accra
The Chairperson
Council of State, Accra
The Chief of Staff
Jubilee House, Accra



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20th August, 2021

**RE: PETITION TO INVOKE ARTICLE 146 OF THE CONSTITUTION FOR THE
REMOVAL OF THE CHIEF JUSTICE**

Determination of *prima facie* case

By an unreferenced letter received at the Office of the President on 13th July, 2021, signed on behalf of Alliance for Social Equity and Public Accountability ("ASEPA") by Mensah Thompson describing himself as Executive Director, ASEPA, a petition for the removal of the Chief Justice, Mr. Justice Kwasi Anin Yeboah, was delivered to my office. Attached to the letter were two documents in support of the petition:

- (i) a letter, dated 8th July, 2021, written by a Kwasi Afrifa, Esq. on the letterhead of O & A Legal Consult petition; and
- (ii) a letter written by the Judicial Secretary, dated 12th July, 2021, requesting the "Ghana Police Service to conduct criminal investigations into a bribery allegation".

ASEPA claims to be "a registered Civil Society organisation based in Ghana with full rights under the laws of Ghana".

By a letter, dated 20th July, 2021, I consulted the Council of State, in accordance with the terms of article 146 (6) and the teachings of the Supreme Court in **Agyei-Twum v. Attorney-General and Another** [2005-2006] SCGLR 732, in determining whether the petition discloses a *prima facie* case against the Chief Justice, which determination should precede the appointment of a committee under article 146 (6) of the Constitution.

By a letter, dated 20th August, 2021, the Council of State conveyed to me its conclusions on the consultation as to whether a *prima facie* case has been established against the Chief Justice.

Accordingly, I make this determination of whether a *prima facie* case has been established against the Chief Justice, Mr. Justice Kwasi Anin Yeboah, to warrant the



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appointment of a committee under article 146 (6) of the Constitution for the purpose of inquiring into the petition.

Basis for *prima facie* determination

Article 146 of the Constitution provides the procedure for the removal of Justices of the Superior Court of Judicature. It allows for a petition to be presented for the removal of a Justice of the Superior Court for "*stated misbehaviour or incompetence or on ground of inability to perform the functions of his office arising from infirmity of body or mind*".

Article 146 (3) and (4) require the President, on receipt of a petition for the removal of a Justice of a Superior Court other than the Chief Justice, to refer the petition to the Chief Justice, who shall, first, determine whether there is a *prima facie* case, before setting up a committee to investigate the complaint.

In the specific case of the removal of the Chief Justice, article 146 (6) stipulates:

Where the petition is for the removal of the Chief Justice, the President shall, acting in consultation with the Council of State, appoint a committee consisting of two Justices of the Supreme Court, one of whom shall be appointed chairman by the President, and three other persons who are not members of the Council of State, nor members of Parliament, nor lawyers.

It is noted that article 146 (6) of the Constitution does not expressly provide for a prior determination of a *prima facie* case by either the President or Council of State, before the President proceeds to appoint a committee in the manner stipulated to investigate the complaint. However, the Supreme Court has affirmed the necessity for the determination of a *prima facie* case in respect of a complaint against a Justice of the Superior Court to be extended to the Chief Justice in processes under article 146 (6). In **Agyei-Twum v. Attorney-General and Another** (supra), the Supreme Court, speaking, unanimously, through Date-Bah JSC, held at page 786, as follows:

"Fourth, I do, however, declare that upon a proper purposive construction of the whole of article 146 in the context of the 1992 Constitution viewed in its entirety, the Chief Justice must be given the benefit of a prior



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determination of whether a prima facie case had been established against him before the President may lawfully establish a committee to consider a petition for his removal. This prima facie determination is to be made by the President with the Council of State. Thus, as claimed in the plaintiff's fifth relief, the consultation by the President with the Council of State has to determine in respect of the appointment of a committee to inquire into a petition for the removal of a Chief Justice has to determine first whether the said petition discloses a prior prima facie, before the President may proceed to the appointment of the committee, again in consultation with the Council of State."

This decision by the Supreme Court, in the exercise of its exclusive jurisdiction to interpret the Constitution, is binding upon me.

Allegations of the Petitioner

The basis for the petition against the Chief Justice can be found on a one (1) page document signed on behalf of the Petitioner as stated above. The thrust of the petition are at paragraphs 4 and 5 of the letter, whereat the Petitioner alleges that "*a lawyer Kwesi Afrifa Esq. in response to a petition brought against him at the General Legal Council made serious allegations against the Chief Justice, that his former client disclosed to him that the Chief Justice had requested a bribe of \$5million from him to help win a case pending at the Supreme Court worth a judgment claim of \$16Million.*"

The Petitioner continues that "*the Chief in response to this allegation has made a formal complaint with the Criminal Investigations Division (CID) of the Ghana Police Service.*" The Petitioner annexes a copy of this complaint to the petition as **Exhibit B.**

On the basis of these allegations, the Petitioner prays me "*to commence impeachment proceedings against the Chief Justice on the grounds of stated misbehaviour as specified under Article 146 as one of the grounds for the removal of a Chief Justice from office.*"

Whether there is a prima facie case for removal of the Chief Justice, Mr. Justice Kwasi Anin Yeboah



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In determining whether there is a *prima facie* case for the removal of the Chief Justice, I consider the allegations contained in the petition and supporting documents, and assess whether, on account of those allegations, a presumption of misbehaviour by the Chief Justice has been established by the Petitioner to warrant the appointment of a committee by me to inquire into the petition. The essential question is, are the matters contained in the petition sufficient to establish misbehaviour on the part of the Chief Justice as to warrant his removal from office, or do they raise a presumption which if not rebutted, will be sufficient to constitute misbehaviour resulting in the removal of the Chief Justice?

The 2nd Edition of Black's Law Dictionary defines *prima facie* as:

At first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure; presumably. A litigating party is said to have a prima facie case when the evidence in his favor is sufficiently strong for his opponent to be called on to answer it. A prima facie case, then, is one which is established by sufficient evidence, and can be overturned only by rebutting evidence adduced on the other side. In some cases, the only question to be considered is whether there is a prima facie case or no. [Emphasis added.]

In **Ansu-Gyeabour v. Attorney-General** [31/01/2013, ref no. J6/1/2012], the Supreme Court cited another definition of *prima facie* when it was called upon to determine whether the then Chief Justice, Justice Georgina Theodora Wood, had properly discharged her duty of determining that a *prima facie* case existed against a Justice of the Superior Court of Judicature against whom a petition had been lodged for his removal. The Court relied on L. B. Curzon's Dictionary of Law's definition of *prima facie* as, "of first appearance; on the face of it" and held that, on the face of the two reports before the then Chief Justice, she could make a determination that a *prima facie* case had been established.

The **Evidence Act, 1975 (NRCD 323)** also puts the burden on a person who is asserting a claim to prove it. The burden is thus on the Petitioner to establish the existence or non-existence of the facts the Petitioner alleges. Section 10 of the **Evidence Act** deals with the burden of persuasion on parties and states specifically as follows:



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- (1) *For the purposes of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.*
- (2) *The burden of persuasion may require a party*
 - (a) *to raise a reasonable doubt concerning the existence or non-existence of a fact, or*
 - (b) *to establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.*

With respect to the burden of providing evidence, section 11 of the **Evidence Act** provides in part as follows:

- (1) *For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.*
- ...
- (4) *In other circumstances the burden of producing evidence requires a party to produce sufficient evidence which on the totality of the evidence leads a reasonable mind to conclude that the existence of the fact was more probable than its non-existence.*

It is, thus, clear from the above that implicit in the determination of a *prima facie* case is the necessity for a party (the complainant, petitioner or plaintiff, as the case may be), to produce enough evidence or facts to allow the adjudicator to make such determination in his favour. A complainant, petitioner or plaintiff bears the burden to advance facts on the basis of which the adjudicator or person exercising a quasi-judicial function will hold that a presumption of wrongdoing has been raised in his petition against the one named as respondent to the proceedings in question in respect of the subject matter of the inquiry.

In discharging my duty enjoined by the combined effect of article 146 (3), (4) and (6) of the Constitution, and as held by the Supreme Court in **Agyei-Twum v. Attorney-General and Another** (supra), I will confine myself solely to assessing whether, assuming the allegations of the Petitioner as expressed in the petition were factually

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accurate, a presumption of misbehaviour, as stated, has been established against the Chief Justice to warrant his removal from office.

It is observed that the petition is not anchored on any allegation made directly or emanating from the Petitioner itself. The Petitioner relies on allegations made by a certain lawyer, Mr. Kwasi Afrifa, in his response to a complaint of misconduct made against him pending at the General Legal Council, wherein the said lawyer also makes allegations against the Chief Justice based on what he alleges another person (his former client) told him. The Petitioner, thus, reproduces third hand or fourth hand hearsay as the basis for seeking to trigger the serious process for the removal of a Chief Justice of the Republic from office. It is correct to say that the Petitioner does not possess personal knowledge of any of the matters that the Petitioner advances as the foundation for the petition.

The foregoing observation makes the resolution of the fundamental issue for determination in the assessment of whether a *prima facie* case has been established against the Chief Justice uncontroversial.

The Petitioner does not attach any further evidence to his petition, beyond **Exhibits A and B**. Thus, **Exhibits A and B** must be treated as sufficient and cogent evidence capable of establishing a case against the Chief Justice, which case may only be rebutted by evidence from the opposing side.

Exhibit A is Mr. Kwasi Afrifa's response, dated 8th July, 2021, to a petition to the General Legal Council against him, by his client, Ogyeedom Obranu Kwesi Atta VI. In this response, Mr. Afrifa recounts his relationship with Ogyeedom Obranu Kwesi Atta VI and how he came to be his lawyer, and then alleges that his client had informed him that the Chief Justice had demanded a bribe of \$5million in order that his client wins his case. The relevant paragraphs of **Exhibit A** read:

At the end of July 2020, the Petitioner informed me that friends of his who were highly connected politically had taken him to see the Chief Justice who had agreed to help him win his case on condition that he drops my goodself as the Lawyer handling the case for him to engage Akoto Ampaw Esq in my stead.



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He further informed me that the Chief Justice had demanded a bribe of USD\$5,000,000.00 for a successful outcome to his case and that he had already paid USD\$500,000.00 to the Chief Justice. He further indicated that he was hard-pressed to raise the remainder of the USD\$5,000,000.00 and so I should refund some of the GHS300,000.00 paid to me as fees because he had in line with the advice of the Chief Justice, engaged Akoto Ampaw Esq as Solicitor to continue the case before the Supreme Court.

.....

He said he wanted the payment in dollars because he was raising the remainder of the money to be paid to the Chief Justice, and that currency was his currency of choice.

.....

Indeed he told me that his own investigation which he caused personnel at BNI to conduct shows that the Chief Justice was in the process of acquiring several properties at a posh residential area in Kumasi and therefore needed the money urgently. I told him that I was simply not interested in his dealings with politicians and persons wielding power.

Exhibit B is a request by the Judicial Secretary to the Ghana Police Service to investigate the allegations of bribery levelled against the Chief Justice. In the request, the Judicial Secretary asserts that the Chief Justice does not know the lawyer's client and has never met him. The request further refutes all the allegations made against the Chief Justice and states that the Chief Justice was in fact the only judge on a panel, who dissented in an application at the instance of Mr. Afrifa's client in favour of the opposing side.

The Petitioner relies solely on this response by Mr. Afrifa in **Exhibit A** as the basis for invoking article 146 of the Constitution. Not only does **Exhibit A** woefully miss the mark as the requisite standard of evidence required to establish a *prima facie* case against the Chief Justice, it also does not base the allegations stated therein on any evidence. Mr. Afrifa, in **Exhibit A**, makes several bare allegations without a shred of evidence. In fact, all the allegations he makes in **Exhibit A** are founded on information he claims to have obtained from his client, Ogyedom Obranu Kwesi Atta VI.

Even a cursory review of **Exhibit A** would reveal that the allegations are all unsubstantiated – Mr. Afrifa consistently repeats that he was informed by his client



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before each of the impugned statements he makes against the Chief Justice. The said Mr. Afrifa, on the basis of whose allegations ASEPA files the instant petition, himself does not directly allege bribery against the Chief Justice. He merely alleges before the General Legal Council what he claimed he heard from his client. It goes without saying that the petition is not founded on any fact at all known to the Petitioner or to anybody that the Petitioner knows. The Petitioner is clearly unable to verify any of the allegations contained in Exhibit A. Thus, it is curious, at best, that the Petitioner is inviting me to commence proceedings to remove the Chief Justice, based on information that the Petitioner does not have knowledge of and is relying on from another person (Kwasi Afrifa), who is also allegedly relying purely on information he received from yet another person (Ogyedom Obranu Kwesi Atta VI).

As indicated already, the Petitioner itself does not make any allegation of bribery or any form of misconduct against the Chief Justice. A careful examination of paragraphs 4 and 5 of the petition, which contain the most material allegations by the Petitioner, will disclose that, even if same are proven, they will only have the effect of showing that a lawyer has made an allegation that another person had earlier on intimated to him that the Chief Justice had demanded a bribe from that other person. This allegation by ASEPA, assuming same to be true, is conjectural, speculative and provides nothing of substance to assist in proceedings under article 146 of the Constitution.

The Petitioner fails to meet the threshold of proffering sufficiently strong evidence in support of his allegations for the opposing side to be called to answer to it. In actual fact, the Petitioner fails to provide any evidence at all, in support of the spurious allegations made against the Chief Justice. It does not attempt to substantiate any of the claims in any form. It merely states that, on the basis of **Exhibits A and B**, he is entitled to invoke article 146 of the Constitution to commence proceedings to remove the Chief Justice on the grounds of alleged stated misbehaviour, which are not substantiated in any form at all.

Furthermore, it is instructive to note that **Exhibit B** does not contain any evidence of the allegations in Exhibit A. It rather hurts the Petitioner's case, as it refutes each and every allegation made against the Chief Justice.

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Applying my mind to the demands of the task before me, I have no hesitation in finding that the Petitioner's complaint does not disclose a *prima facie* case for further action to be taken under article 146 (6) of the Constitution.

The Supreme Court in **Agyei-Twum v. Attorney-General and Another** (supra), held, per Modibo Ocran JSC, at page 797, that:

"... the whole of article 146 is in the nature of impeachment proceedings; and this recognition or insight should inform the nature, if not the form, of the document put out as a petition... Without attempting to evaluate the merits of the substantive complaints, it is distressing to note that nearly all of them consist of second and third generation allegations against the Chief Justice. Very little emanates from the personal knowledge of the petitioner, nor is there an express showing that the events being recounted by him as the basis for the removal process were disclosed or narrated to him by the victims of aggrieved judges in the context of lawyer-client relationship. The narration of the events sounds very much like the sort of things that anyone could pick up from the rumour mill."

Modibo Ocran JSC, at page 802, gave the following admonition:

"There is the need to insulate the Chief Justice from frivolous petitions while insisting on transparency and accountability in the exercise of his functions."

I note that the Petitioner, at paragraphs 6 and 7, seeks to suggest a collaboration between a committee set up under article 146 of the Constitution and the CID, CHRAJ and General Legal Council in the investigation of its allegations, which are clearly based on rumours. My view is that the Petitioner confuses the mandate of an article 146 committee with that of the other institutions referred to by the Petitioner. The mandate of a committee set up under article 146 is clearly lost on the Petitioner.

An article 146 committee is not a body vested with general investigative powers into the conduct of a named public official for the purpose of "building a docket", which may form the basis for further action against the public official. The mandate is restricted solely to inquiring whether any ground of stated misbehaviour or

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incompetence or inability to perform the functions of office arising from infirmity of body or mind made against a Justice of the Superior Court of Judicature, in a petition filed under that provision, has been proven.

The Council of State in its letter, dated 20th August, 2021, conveying its conclusions on the consultation with me on the petition, concluded firmly that the petition initiated by ASEPA for the removal of the Chief Justice on the grounds of stated misbehaviour is frivolous and vexatious. The Council found that the petition does not meet the *prima facie* standard envisaged under article 146 (6) of the Constitution and thus, ought to be dismissed *in limine*.

On the strength of the foregoing, I find that no *prima facie* case is disclosed by the instant petition for the removal of the Chief Justice. The petition is devoid of any basis warranting the setting up of a committee under article 146 (6) to undertake the very serious business of removing a Chief Justice from office. To entertain further proceedings on the basis of third hand and fourth hand hearsay, as the petition is replete with, will violate legally acceptable standards of fairness and weaken the efficacy of the top echelon of the Judiciary.

It is important to note that, even though the petition and its accompanying papers did not make any reference to, or include the rejoinder, dated 11th July, 2021, from Ogyeedom Obranu Kwesi Atta VI, the contents of the rejoinder are a matter of public knowledge and have been circulated widely in the media. In my view, the categorical denial by Ogyeedom Obranu Kwesi Atta VI, who is purportedly the source of the hearsay, is an important fact to be placed on the record. The said rejoinder states, "*I unequivocally deny all allegations of intended bribery or actual bribery of any judge including the Chief Justice whom I have never met or known personally apart from seeing him a distance from the bench.*" I am convinced that it is very likely that the Petitioner was well aware of this categorical denial at the time of lodging the petition for the removal of the Chief Justice on 13th July, 2021.

Date-Bah JSC, author of the lead judgment in **Agyei-Twum v. Attorney-General and Another** (supra), on the issue of the handling of petitions which do not meet the threshold of article 146, expressed himself thus:

"...Once any petition, no matter how frivolous its contents are, is presented to the President, then he has a duty to establish a committee



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to consider it. A literal reading of the provision, therefore, could lead to the floodgates being opened for frivolous and vexatious petitions being continuously filed against a serving Chief Justice, with two Supreme Court judges being perpetually tied down to hearing such petitions, alongside the other members of the committee that the President has to appoint. This is a scenario that would weaken the efficacy of the top echelon of the Judiciary."

It is obvious from the above that the Supreme Court in interpreting article 146 (6) had in mind unmeritorious and unwarranted petitions such as the instant one. The petition is dismissed accordingly.

A handwritten signature in green ink, appearing to read 'Nana Addo Dankwa Akufo-Addo'.

NANA ADDO DANKWA AKUFO-ADDO
PRESIDENT OF THE REPUBLIC