

Our Ref: CHRAJ/188/2021/594

20th August, 2021

MR. MENSAH THOMPSON
EXECUTIVE DIRECTOR
ALLIANCE FOR SOCIAL EQUITY AND PUBLIC ACCOUNTABILITY
ACCRA

Dear Sir,

IN THE MATTER OF THE COMMISSION ON HUMAN RIGHTS AND
ADMINISTRATIVE JUSTICE ACT, 1993 (ACT 456)

AND IN THE MATTER OF ALLEGATIONS OF BRIBERY AND CORRUPTION
UNDER SECTION 7(1)(a) AND (f) OF ACT 456

BETWEEN:

ALLIANCE FOR SOCIAL EQUITY AND PUBLIC ACCOUNTABILITY
ACCRA COMPLAINANT

AND

HIS LORDSHIP JUSTICE ANIN YEBOAH, CHIEF JUSTICE OF THE REPUBLIC OF
GHANA RESPONDENT

DECISION

Kindly find attached the Decision of the Commission in the above-mentioned matter for your attention.

Yours sincerely,

Daniel Anang Afetsi
(Senior Registrar)
for: Commissioner

IN THE MATTER OF THE COMMISSION ON HUMAN RIGHTS AND
ADMINISTRATIVE JUSTICE ACT, 1993 (ACT 456)

AND IN THE MATTER OF ALLEGATIONS OF BRIBERY AND
CORRUPTION UNDER SECTION 7(1)(a) AND (f) OF ACT 456 OR
ARTICLE 281(a) AND (e) OF THE 1992 CONSTITUTION

(CASE NO: CHRAJ/188/2021)

BETWEEN:

ALLIANCE FOR SOCIAL EQUITY AND PUBLIC
ACCOUNTABILITY (ASEPA)

COMPLAINANT

AND

HIS LORDSHIP JUSTICE ANIN YEBOAH,
CHIEF JUSTICE OF THE REPUBLIC OF GHANA

RESPONDENT

DECISION

1.0 Introduction

The Complainant, Alliance for Social Equity and Public Accountability (ASEPA), has invited this Commission per a complaint dated 12 July 2021 and received on the same date, to investigate allegations of bribery and corruption against the Respondent, Justice Anin Yeboah, Chief Justice of the Republic of Ghana under Article 218(a) and (e) of the 1992 Constitution.

Article 218(a) and (e) provide as follows:

218. The functions of the Commission shall be defined and prescribed by Act of Parliament and shall include the duty-

4. An allegation which has found its way into the public through mainstream and social media bringing the name of the judiciary into disrepute and casting a serious slur on justice administration in the Country.

5. ASEPA treats these allegations very seriously and contends that the conduct of the Chief Justice if found to be true is in serious violation (sic) chapter 24 (Code of conduct for public officers) and several other provisions”.

3.0 Mandate of the Commission

Section 7(1)(a) and (f) of Act 456 provides as follows:

7(1) In accordance with article 218 of the Constitution, the functions of the Commission are,

(a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties; ...

(f) to investigate instances of alleged or suspected corruption and the misappropriation of public moneys by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor-General resulting from such investigations

The language of Section 7(1)(a) and (f) of Act 456 under which the instant complaint has been lodged is quite clear that the complainant had come to the right forum.

A distinction however needs to be made between section 7(1)(a) and Section 7(1)(f) of Act 456 in the sense that whilst the former mandatorily requires a complaint by an identifiable complainant, the latter does not need a complaint

to invoke the jurisdiction of this Commission. See the exposition of section 7 by the Supreme Court in the **Republic v. High Court (Fast Track Division) Accra; Exparte CHRAJ (Richard Anane, Interested Party) [2007/2008] SCGLR 213.**

4.0 Petition to the President by Complainant for Removal of the Respondent (Chief Justice Annin Yeboah) under Article 146 of the Constitution

Whilst the Commission was conducting preliminary investigations into the instant complaint, it was brought to its attention that the Complainant has also petitioned the President of the Republic under Article 146 of the 1992 Constitution for the removal of the Respondent as Chief Justice, grounding the petition on the same allegations of bribery and corruption. The said petition was submitted to the Office of the President on the 13th July 2021, a day after the instant complaint was lodged with the Commission.

There is evidence available to the Commission that the Secretary to President has responded to the Complainant/Petitioner indicating that the

“...President of the Republic has in accordance with Article 146(6) of the Constitution commenced the appropriate processes subsequent to the Petition for the removal of the Chief Justice”

Article 146 of the 1992 Constitution provides as follows:

- (1). A Justice of the Superior Court or a Chairman of the Regional Tribunal shall not be removed from office except for stated misbehavior or incompetence or on ground of inability to perform the functions of his office arising from infirmity of body or mind.**
- (2) A Justice of the Superior Court of Judicature or a Chairman of the Regional Tribunal may only be removed in accordance with the procedure specified in this article.**

(3) If the President receives for the removal of a Justice of a Superior Court other than the Chief Justice or for the removal of the Chairman of a Regional Tribunal, he shall refer the petition to the Chief Justice, who shall determine whether there is a *prima facie* case.

(4) Where the Chief Justice decides that there is *prima facie* case, he shall set up a committee consisting of three Justices of the Superior Courts or Chairman of the Regional Tribunals or both, appointed by the Judicial Council and two other persons who are not members of the Council of State, nor members of Parliament, nor lawyers, and who shall be appointed by the Chief Justice on the advice of the Council of State.

(5) The committee appointed under clause (4) of this article shall investigate the complaint and shall make its recommendations to the Chief Justice who shall forward it to the President

(6) 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 members who are not members of the Council of State, nor members of Parliament, nor lawyers.

(7) The committee appointed under clause (6) of this article shall inquire into the petition and recommend to the President whether the Chief Justice ought to be removed from office.

(8) All proceedings under this article shall be held *in camera*, and the Justice or Chairman against whom the petition is made is entitled to be heard in his defense by himself or by a lawyer or other expert of his choice.

(9) The President shall, in each case, act in accordance with the recommendations of the committee.

(10) Where a petition has been referred to a committee under this article, the President may-

- a) In the case of the Chief Justice, acting in accordance with the advice of the Council of State, by warrant signed by him, suspend the Chief Justice;
- b) In the case of any other Justice of the Superior Court or of Chairman of a Regional Tribunal, acting in accordance with the advice of the Judicial Council, suspend that Justice or that Chairman of a Regional Tribunal.

(11) The President may, at any time, revoke a suspension under this article.

It is apparent that the complainant recognizes that bribery and corruption when proven could constitute grounds of stated misbehaviour, hence its invocation of Article 146. Whilst it may be conceded that the Complainant in the instant matter before the Commission did not claim, as a specific relief, the removal of the Respondent, it is discernible from its invocation of Article 146 that that is the ultimate destination of the Complainant.

It is a principle of law that special provisions take precedence over general provisions *i.e generalia specialibus non derogant*.

The procedure for the removal of a Chief Justice having been specifically provided for in Article 146, it is our considered view that the provisions of the said article take precedence over the general provisions in Article 218.

Again, public policy deprecates litigation in multiple fora over the same matter. See the common Law position in *McHenry v. Lewis* [1882] 22 Ch. D. 397, CA where it was held

When a plaintiff sues a defendant for the same matter in two courts in this country, such a proceeding is prima facie vexatious and the courts will generally, as of course, put the plaintiff to his election and stay one of the suits.

The Supreme Court, quoting with approval this principle, clarified the position in the case of *In Re Paramount Stool of Bamiankor; Effia IV & Another v. Nana Taiba II & Others* [2010] SCGLR 37 per Abban CJ, as he then was, thus:

By this principle, the suit must be between the two parties in one court in respect of a given matter and one of the parties goes to another court within the same jurisdiction seeking the same relief. In such a situation, either party may be put to his election as to the forum in which he would like to pursue his claim. In which case, the other suit may be dismissed or stayed pending the outcome of the other

Although this Commission is not a court, it is persuaded by the reasoning of the Supreme Court and accordingly finds it compelling to apply same to the instant complaint.

Section 13(1) of Act 456 has stipulated the direction that the Commission ought to take when confronted with a situation such as this. It states as follows:

13. Refusal to investigate

(1) The Commission may refuse to investigate a matter where in the course of investigation of the complaint it appears to the Commission

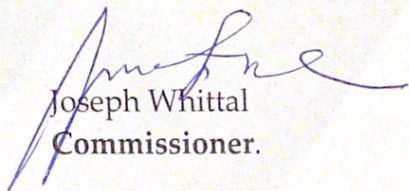
(a) that under the law or existing administrative practice there is adequate remedy for the complaint, whether or not the complainant has taken advantage of the law or practice, or

(b) that having regard to the circumstances of the case, a further investigation is not necessary.

Section 13(1) gives discretion to the Commission when confronted a situation such as this, where there is a provision of law, as set out in Article 146 to deal with matters of this nature, and the Complainant has taken advantage of it as evidenced by its petition to the President under the said Article, to refuse to investigate the matter.

Since the matter is pending in the appropriate constitutional forum, the Commission, in exercise of its discretion under Section 13 of Act 456, hereby ceases to investigate the complaint any further as the invocation of the Article 146 proceedings has effectively taken the matter out the forum of the Commission.

DATED AT COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE, OLD PARLIAMENT HOUSE, JOHN EVANS ATTA MILLS HIGH STREET, ACCRA THIS 20TH DAY OF AUGUST, 2021


Joseph Whittal
Commissioner.