IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA – AD 2015

CIVIL MOTION NO: J8/41/2015

BETWEEN:

MARTIN ALAMISI AMIDU
PLOT 355 NORTH LEGON RESIDENTIAL AREA — PLAINTIFF/RESPONDENT
ACCRA

AND

1. THE ATTORNEY-GENERAL
MINISTRY OF JUSTICE — 1ST DEFENDANT/APPLICANT
MINISTERIES
ACCRA

2. WATERVILLE HOLDINGS (BVI) LIMITED
P. O. BOX 3444
ROAD TOWN — 2nd DEFENDANT/RESPONDENT
TORTOLA
BRITISH VIRGIN ISLANDS

3. ALFRED AGBESI WOYOME
HOUSE NO. 16B — 3rd DEFENDANT/RESPONDENT
6TH STREET TESANO – ACCRA

AFFIDAVIT OF MARTIN ALAMISI AMIDU (THE INTERESTED PARTY/PLAINTIFF) HEREIN

I, Martin Alamisi Amidu of 355 North Legon Residential Area Legon, Accra make oath and say as follows:

1. I am the deponent and the Interested Party to the application by the Attorney General (the nominal 1st Defendant in the substantive action and review application herein) for leave to enforce judgments and orders of this Court dated 14th June 2013 and 29th July 2014 respectively.

2. I have been served with the Attorney General's application filed on 23rd January 2015 and the accompanying affidavit including two supplementary affidavits filed on 31st January 2015 and 18th March 2015.

3. Pursuant to this Court's ruling on my review application dated 29th July 2014 the Attorney General purported to file an entry of judgment in this Court on 15th August 2014 in purported pursuance of the judgment and order of the Court and Article 2(1) and (2) of the 1992 Constitution which related only to the 3rd Defendant/Respondent/Judgment Debtor: No entry of judgment in respect of the 2nd Defendant/Respondent/Judgment Debtor, Waterville Holding (BVI) Ltd has even been filed in this Court after this Court's decision of 14th June 2013.

4. The 3rd Defendant/Respondent/Judgment Debtor applied to this Court on 26th October 2014 to set aside the entry of judgment by the Attorney General (the nominal 1st Defendant/Respondent/Judgment Creditor in the case).

5. On 27th October 2014 I filed an affidavit in support of the setting aside of the entry of judgment by the Attorney General on the grounds that it unconstitutionally undermined the decision of the Supreme Court dated 29th July 2014. (A photocopy of my said affidavit is annexed herewith and marked Exhibit "MAA1" for ease of reference).

6. When the application to set aside came on for hearing on 28th October 2014 the 3rd Defendant/Respondent/Judgment Debtor apparently realizing the futility of his grounds of application sought leave to withdraw same: this Court struck out the patently offending entry of judgment in the interest of substantial justice while allowing the 3rd Defendant/Respondent/Judgment Debtor to withdraw his application.

7. The incumbent Attorney General and her office throughout the hearing and conclusion of the substantive action and review application has been a nominal Defendant on behalf of the Government of Ghana by virtue of Articles 58 and 88 of the 1992 Constitution and the binding subsisting interpretative decisions of this Court.

8. I believe that by the structure, design and scheme of the 1992 Constitution, particularly Articles 2, 58, 88 and 130 of the Constitution, the Attorney General (now the Judgment Creditor on behalf of the Republic of Ghana) is vested with the Constitutional mandate of entering judgment and orders, and taking steps to enforce same after this Court has made decisions and orders at the behest of a citizen in the public interest against or in favour of the Government which she represents in a nominal capacity such as in this action.

9. I further believe that the structure, design and scheme of the 1992 Constitution enjoins the Attorney General/Judgment Creditor for the Republic in this case to enter

judgment and take steps to enforce declarations and orders made by this Court against the Government of Ghana even if the declarations and orders are against an act or conduct of the incumbent Attorney General, which is not the case in this matter.

10. I am convinced that the Attorney General or even the President of Ghana against whom this Court makes declarations and/or orders at the behest of a citizen in the public interest is enjoined by the doctrine of necessity and in the spirit of Articles 58 and 88 of the 1992 Constitution to take steps to ensure compliance with and enforcement of the decisions and orders.

11. In the premises I also believe that by the Constitutional scheme the Attorney General/Judgment Creditor in this case does not need this Court to grant her leave to perform her Constitutional duty under Articles 58 and 88 of the Constitution to enter judgment and to take steps to enforce decisions of this Court or any other Court when a citizen in the public interest obtains judgment on behalf of and in favour of the Republic of Ghana which it is her lot to ensure are loyally, faithfully, and dutifully executed for the benefit of the Republic of Ghana.

12. I believe further that but for the Constitution specifically apportioning the primary responsibility to the Attorney General as the Judgment Creditor of the Republic for purposes of taking steps to enforce and execute all judgment debts owed to the Republic, I, as the citizen, public interest Plaintiff should, perhaps, have been the proper person seeking leave of this Court to take steps to enforce the judgments and orders for the refund of the Judgment Debts to the Republic and not the Attorney General.

13. The Attorney General has stated in paragraph 7 of her supplementary affidavit filed on 31st January 2015 that this Court ruled on 5th November 2014 that even though the Supreme Court Rules, 1996 (C. I. 16) did not provide the means of enforcing the Court's judgment or order, this Court has such power by virtue of Article 129(4) of the 1992 Constitution.

14. In spite of this Court's ruling clearly stating that it has power to enforce its own judgments and/or orders the Attorney General never entered judgment in this Court in terms of the declarations and order made by the Court on 14th June 2013 or apply for directions under Rule 5 of the Supreme Court Rules, 1996 (C. I. 16) as to how to proceed in this matter until 23rd January 2015 when she filed this application not for directions but for leave to enforce the judgment or orders, her Constitutional duties notwithstanding.

15. I believe that the Attorney General and her office have been indolent in taking almost two years to approach this Court not for prescription of the practice and procedure under Rule 5 of the Supreme Court Rules, 1996 (C. I. 16) but for leave for the Attorney General to enter and to take steps to enforce the judgment and orders of this Court in respect of the 2nd Defendant/Respondent/Judgment Debtor, Waterville, given on 14th June 2013.

16. I believe further that the Attorney General and her office have also been indolent in taking almost eight months to even apply to this Court for leave to take steps to enforce the review decision dated 29th July 2014.

17. I am of the belief that the Attorney General is also deliberately, knowingly, and in contempt of the orders of this Court concealing other payments made by the Government of Ghana to the Defendants/Respondents/ Judgment Debtors pursuant to the two inoperative Agreements dated 26th April 2006 by suppressing the facts from this Court: for example, a Writ and Statement of Claim filed on 2nd March 2010 by the 3rd Defendant/Respondent/Judgment Debtor shows that he had earlier been paid the sum of GH₵110,500.24 on 8th February 2010 through another action and was again seeking interest on same from the High Court (A scanned photocopy of the Writ and Statement of Claim of 2nd March 2010 is annexed herewith and marked Exhibit "MAA2" for ease of reference).

18. I am also of the firm belief that the Attorney General on behalf of the Government of Ghana has refused or failed to act timeously and properly to secure the judgment debt of the cumulative amount of Forty Seven Million, Three Hundred and Sixty Five Thousand, Six Hundred and Twenty-Four Euros and Forty Cents (€47,365,624.40 – made up of €22,365,624.40 as certified by BIC, and €25 million mediation payment) through processes such as applying for absconding warrant or other orders against the Local Manager of the 2nd Defendant/Respondent/Judgment Debtor preventing him from leaving the jurisdiction of this Court or to give security for the payment of the Judgment Debt as the 2nd Defendant/Judgment Debtor is an off-shore foreign registered limited liability company and can disappear without trace.

19. The consequence of the foregoing is the ingenious attempt by the Local Manager of the 2nd Defendant/Respondent/Judgment Debtor to contend that he has ceased to represent the company after the judgment and orders of this Court: see the further supplementary affidavit filed by the Attorney General on 18th March 2015 in this application.

20. I believe that at least since 30th January 2015 the Attorney General should have taken steps to ensure the availability of the local representative of the 2nd Defendant/Respondent/Judgment Debtor at all times in Ghana as a guarantee for the payment of the Judgment Debt while this Court hears this application: this does not appear to have been done, or intended.

21. I am of the firm believe that the Attorney General is abusing the process of this Court by bringing this application long after the decision and orders of this Court for leave to enforce them and thus closing the stables after the horses might have fled and thereby trying to shift any blame for her refusal or failure to take steps to ensure enforcement and execution against the 2nd Defendant/Respondent/Judgment Debtor timeously onto the Courts should this off-shore foreign company latter be untraceable for levying execution.

22. I also believe that in spite of the fact that these judgment debts were occasioned by the indolence of the Government of Ghana in not complying with Article 181 (5) of the 1992 Constitution, the Attorney General, a quasi-judicial officer has a responsibility to act independently and impartially on behalf of the Republic of Ghana (as distinct from the Government of Ghana which appointed her) in accordance with the taught traditions of law respecting the office of the Attorney General to take steps to have had the judgment and orders of this Court enforced long ago.

23. In view of the time lapse between the decision and/or orders of this Court in this matter it is my belief and prayer that the interest of substantial justice in accordance with the letter and spirit of the Constitution will be served should this Court on the basis of the further supplementary affidavit filed on 18th March 2015 by the Attorney General in these proceedings for leave to enforce the judgment and orders, order an absconding warrant or other restraining order to issue against the Local Manager of the 2nd Defendant/Respondent/Judgment Debtor to prevent him from leaving the jurisdiction of this Court or give sufficient security for the refund of the payments thereof until the final execution of the judgment and/or orders of this Court.

24. I believe that an order or orders restraining the Local Manager of the 2nd Defendant/Respondent/Judgment Debtor from leaving the jurisdiction until the conclusion of the process of execution or to give sufficient security to pay the Judgment Debt together with the accompanying interest will prevent the similar situation in which the original 3rd Defendant (Austro-Invest per Ray Smith) in the substantive action in anticipation of a possible court suit within the jurisdiction of this Court liquidated that foreign company in Zug, Switzerland on 26th July 2011 while on 17th November 2011 the same Ray Smith instructed Lithur, Brew & Co, (in which

the incumbent Attorney General was a senior partner), who commenced Suit No. AC 96/2012 in the High Court, Automated/Fast Track Division for the recovery of his portion of the monies paid to the 3rd Defendant/Respondent/Judgment Debtor (then the 4th Defendant in the substantive suit): "in connection with, arising from or relating to Suit No PC 152/2010 titled Alfred Agbesi Woyome v Attorney General,...". (A photocopy of the attestation and of the translated copy of the Commercial register of the canton Zug, by Dr. J. D. Umpley, and an application by Lithur, Brew & Co on behalf of the said Ray Smith for Preservation and/or Interlocutory Injunction filed on 8th December 2011 is each annexed herewith and marked Exhibits "MAA3" and "MAA4" respectively for ease of reference: Motion No J1/2/2013 for prescription of practice and procedure filed on 16th October 2012 and dealt with by this Court in the substantive action contains all exhibits on this matter).

25. The letter and spirit of Article 2 of the Constitution will be rendered nugatory should successful actions thereunder be unenforceable because parties have absconded from the jurisdiction or disposed of their properties and bank accounts after this Court's judgment and orders: there would be no incentive for citizens, such as I, to go to the trouble, expense and pain of vindicating and defending the 1992 Constitution.

26. The trouble, enormous expenses, energy, verbal attacks, and insults I have gone through in asserting the citizen's constitutional right under Article 2 of the 1992 Constitution in the public interest would have been needless and a sham should the whole orders or any part thereof of this Court to the Judgment Debtors to refund the respective sums of money owed the Republic, and the consequential interest that follows as a matter of cause and now in accordance with the Court (Award of Interest and Post Judgment Interest) Rules, 2005 (C. I. 52) go unenforced.

27. The involvement of the Government of Ghana in the creation and distribution of the unconstitutional payments entailed in this action and the fact that Austro-Invest represented by Ray Smith (a client of the law firm of which the Attorney General was a senior partner) was a joint beneficiary with the 3rd Defendant/Respondent/Judgment Debtor has the tendency to create the unavoidable perception that those responsible for taking steps for the enforcement of the decisions and orders in this matter are unable to do so impartially due to conflict of interest in spite of the doctrine of necessity which requires otherwise.(A photocopy of letter making public allegations of conflict of interest by the 3rd Defendant/Respondent/Judgment Debtor against the Attorney General and her public admissions of having been a lawyer for Ray Smith of Austro-Invest in her firm of Lithur, Brew & Co are annexed herewith and marked Exhibits "MAA5" and "MAA6" for ease of reference).

28. I believe that taking steps to enforce the judgment and/or orders in this application is not a Constitutional matter for which I should not be entitled to compensation for my time, resources, and other cost for the trouble of being dragged through post judgment applications by the Attorney General who pays no fees or expenses for actions brought by or against her office in any Court in Ghana.

WHEREFORE I swear to this affidavit as an Interested Party, and the Plaintiff in the substantive action and review application.

SWORN AT ACCRA THIS 30TH
DAY OF MARCH 2015

DEPONENT

BEFORE ME

REGISTRAR SUPREME COURT

COMMISSIONER OF OATHS

THE REGISTRAR
SUPREME COURT
ACCRA

AND FOR SERVICE ON:

1. THE ATTORNEY GENERAL, ATTORNEY GENERAL'S DEPARTMENT, MINISTRIES, ACCRA.
2. 2ND DEFENDANT/RESPONDENT PER ITS LOCAL MANAGER, ANDRE MARIA ORLANDI, BUNGALOW NO. 10 TRASSACO YARD, OFF ABURI ROAD, PANTANG, ACCRA.
3. 3RD DEFENDANT/RESPONDENT ALFRED AGBESI WOYOME, HOUSE NO. 16B, 6TH STREET TESANO, ACCRA