

THE HIGH COURT RULING IN THE SPECIAL PROSECUTOR v CECILIA ABENA DAPAAH – OSP AS A ROGUE INSTITUTION: MARTIN A. B. K. AMIDU

The Ruling in the application on notice filed on 8 August 2023 by Kissi Agyebeng, the Special Prosecutor, in the High Court, Accra, for an order to confirm his unlawful administrative seizure and freezing of the money and bank accounts of Ms. Cecilia Dapaah in the case of Special Prosecutor v Cecilia Abena Dapaah, Suit No. FT/0072/2023, High Court (Financial & Economic Crime Division 2), Accra, 31 August 2023 (Unreported) settled beyond every reasonable doubt that the Office of the Special Prosecutor (OSP) has been turned by the Special Prosecutor into an unconstitutional unruly monster.

The ruling of the court also establishes that the OSP and the Special Prosecutor behaved as a rogue law enforcement institution acting capriciously, arbitrarily and without candor in trampling upon the basic guaranteed fundamental human rights and freedoms of Cecilia Dapaah in unlawfully arresting and searching her matrimonial residences, confiscating her assets without being informed of the reasons for her arrest, searches, seizures and administratively freezing of her assets and investments. The ruling of the High Court further confirmed previous decisions of the court in which the court made orders confirming the proper exercise of the discretionary power vested in the OSP pursuant to Sections 2, 3, 23, 38, and 40 of the Office of the Special Prosecutor Act, 2017 (Act 959), Regulation 19 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L.I. 2374) and Order 19 of the High Court (Civil Procedure) Rules, 2004 (C.I.47) such as the case of the Special Prosecutor v Talent Discovery Limited (Suit No. MSTF/079/2019).

On 7 September 2023 I published a discourse responding to a press release by Kissi Agyebeng, the Special Prosecutor, dated 5 September 2023 entitled “Ghanaians need to wake up before the Office of the Special Prosecutor becomes an unconstitutional unruly monster” in which I contended inter alia that the OSP is gradually being turned by Mr. Kissi Agyebeng, the Special Prosecutor, into an inquisitorial institution and not the anti-corruption law enforcement and prosecutorial office envisaged under Sections 2 and 3 of Act 959. I was constrained by hallowed investigatory and prosecutorial traditions, principles, ethics, and morality from commenting on the ruling of the High Court given on 31 August 2023 based on media conjectures and reportage on the decisions made. A good Samaritan made available a certified true copy of the ruling stamped on 5 September 2023 to me after reading my article published on 7 September 2023. This has enabled me to examine and analyze the ruling and to come to the considered conclusions I have summarized in the first two opening paragraphs of this discourse.

The certified true copy of the ruling of the court in the Special Prosecutor v Cecilia Abena Dapaah is made up of thirty-nine (39) pages and it took some time and energy to read, examine and make a detailed analysis and notes of the salient issues, findings, and decisions of the court. The results leave me with grave doubts whether Kissi Agyebeng who holds himself out as a professional investigator and prosecutor read the 39 page certified true copy of the ruling of the Court before he issued his press release dated 31 August 2023. I also doubt whether he carefully read the certified true copy before issuing his further press release dated 5 September 2023 which was issued on the same day the ruling subsequently made available to me had been stamped as the certified true copy. After comparing Kissi Agyebeng’s press releases dated 31 August 2023 and 5 September 2023 with the Court’s ruling it became obvious that if the OSP, with all the human and material resources at its disposal, had read, examined, and analyzed the ruling of the High Court in this case the OSP

might not have made the professionally incompetent statements contained in those two press releases ridiculing the decisions of the Court.

The findings and decisions of the High Court may be summarized in its own words from pages 38 to 39 of the unreported certified ruling as follows:

“From the records and evidence before this court, the Applicant has not been able to provide any cogent and sufficient legal reasons as to why the accounts of the Respondent were frozen or why this court should confirm the said freezing, except to postulate that the Respondent is being investigated for corruption and corruption-related offences, a fact which the Respondent has denied in her affidavit in opposition. And from the definition of “tainted property” noted earlier in this ruling, the Applicant could neither show proof that the Respondent used her accounts and other investments held in the two banks in connection with the commission of an offence; or that monies standing in those accounts and in other investments were derived, obtained, or realized as a result of the commission of corruption or corruption-related offences.” (See pages 38 to 39 thereof).

In my previous discourse on the unlawful and unconstitutional conduct of the Special Prosecutor in exercising capricious and arbitrary powers in fishing for evidence against citizens for unspecified corruption or corruption-related offences I insisted that there is no offence under Sections 2, 3 and 79 of Act 959 known broadly as investigation or prosecution for corruption or corruption-related offences. I have made this contention *ad nauseam* because Kissi Agyebeng, the Special Prosecutor has always refused or failed to state the specified offence under Section 79 with which he investigated and tried citizens in the media and the court of public opinion for his alleged unspecified corruption offences. In the Labianca case, the Professor Frimpong Boateng case, and this Cecilia Dapaah case, Kissi Agyebeng unlawfully and unconstitutionally and characteristically violated Articles 14 and 19 of the 1992 Constitution by not informing the suspects of the specified corruption or corruption-related offence pursuant to Sections 2, 3, and 79 under which they were being invited for interrogation, arrested, and investigated, and tried in the media/court of public opinion instead of in a court of law.

The ruling of the High Court in the Special Prosecutor v Cecilia Abena Dapaah establishes for the first time the specified offence under the Criminal Offences Act, 1960 (Act 29) apportioned to the OSP under section 79 of Act 959 for which Kissi Agyebeng speculatively, unlawfully arrested, unlawfully searched the matrimonial residences of Cecilia Dapaah, and unlawfully confiscated money found in her matrimonial homes. The speculative offence under which Kissi Agyebeng staged his media hysterical unlawful arrest, warrantless searches, seizures and freezing of Cecilia Dapaah’s properties is Section 239 of Act 29. But one cannot make this discovery from the ruling of the court unless one has the patience, energy, and the professional trait of a committed and dedicated lawyer to his duty to read the whole ruling because this is only discoverable from pages 31 through to 39 of the ruling of the court.

The court found and decided the unlawfulness of the seizure of the alleged tainted property at Cecilia Dapaah’s matrimonial home without referring to Section 239 of Act 29 as the offence under which she was being purportedly investigated under Section 79 of Act 959 at the time of her arrest. (See pages 12 to 24 of the ruling thereof). However, it is after the Court’s examination of the definition of “corruption and corruption-related offences” under Section 79 of Act 959 that the court states for the first time for the benefit of the public that:

“In this application, counsel for the Applicant submitted that the Respondent is being investigated for corruption and corruption-related offences under section 239 of Act 29.

It is provided under Section 239 of Act 29 as follows:

- (1) A public officer or a juror who commits corruption, or wilful oppression, or extortion, in respect of the duties of office, commits a misdemeanor;
- (2) A person who corrupts any other person in respect of a duty as a public officer or juror commits a misdemeanor.” (See page 31 to 32 thereof).

As the Court rightly stated, to succeed under Section 239 of Act 29:

“... there must be in existence reasonable grounds – i.e. that the person or entity being investigated has committed corruption, wilful oppression, or extortion in respect of the duties of his/her office – before the applicant can take steps to freeze the account of that person or entity to facilitate investigations. It is the considered view of this court that the legislature did not intend the Special Prosecutor to act in a vacuum or arbitrary in respect of freezing of assets of individuals and entities to facilitate investigations.... These reasonable grounds, with respect, must be based on actual acts of infractions and not on speculations and guesses.” (See page 31 to 32 thereof).

The ruling of the court states at page 33 that the Special Prosecutor’s grounds of suspicion of the commission of a specified corruption and corruption-related offence under Section 239 of Act 29 as stated in paragraph 12 of the Applicant’s affidavit was:

“12. In a directional advice dated 31 July 2023, the Attorney-General directed to the Director-General of the Criminal Investigations department of the [Ghana] Police service to investigate the true ownership and sources of amounts reportedly stolen from the residence of the respondent therein to enable the Attorney-General take a comprehensive decision.... This directive affirms the reasonableness of the investigations being carried out by the OSP as to the sources of the large cash sums of money associated with the respondent herein”.

The Court found and decided that the indication by the Applicant, the Special Prosecutor, that the Respondent, Cecilia Dapaah, was placed under arrest and was being investigated for corruption and corruption-related offences was without any proof to substantiate that assertion. The Court concluded:

“No caution statement was taken from the Respondent, or if taken, there is no evidence of that before this court, and this court is not in any position to guess what happened at the residence of the Respondent before, during and after the said arrest. Significantly, the Respondent denies being investigated nor being charged under any offence known to the laws of this country. It is trite that when an averment is denied, it is not enough for the party making the averment to repeat same on oath but to go ahead and provide further proof of such averment. This the Applicant failed to do.” (See page 34 thereof).

The Court also found and decided that the search of Cecilia Dapaah’s matrimonial home by the Special Prosecutor without a search warrant from a court constituted an unlawful violation of Section 32(1) (b) of Act 959 and Section 88 of the Criminal Offences and Procedure Act, 1960, (Act 30) stating in its own words that:

“This court holds that based on the available facts, there was no justifiable basis for the authorized officers of the Applicant to exercise the powers of seizure without a court warrant or order....” (See page 23 thereof).

The Special Prosecutor's friends who are professional media and legal practitioners have gone to the extent of making insinuations at the ruling of the High Court which they may not have read and questioning why Act 959 did not allow the OSP to obtain confirmations of its administrative seizures of assets and freezing of bank accounts without giving notice to the affected parties. It has been argued that the OSP should be treated as Special by the courts in disregard of the provisions of Act 959 and the 1992 Constitution. Other friends of the Special Prosecutor who know that a suspect is at liberty to remain silent and to challenge the prosecution to prove its case against him or her beyond a reasonable doubt have gone to the extent of calling upon Cecilia Dapaah to publicly state the sources of her assets and investment. These clearly constitute media hysteria and public lynching of suspects in the court of public opinion. The Special Prosecutor's press release of 5 September 2023 appears to be a continuation of the originally generated public lynching hysteria his media/lawyer friends and he began on 24 July 2023.

The ruling of the High Court in the Special Prosecutor v Cecilia Abena Dapaah contains several binding findings and decisions on any future conduct of the OSP in the investigation and prosecution of the case. In accordance with the findings and decisions of the High Court the several violations of Act 959 and the fundamental rights and freedoms particularly Article 23, (I will add, Articles 14 and 19), of the 1992 Constitution has rendered the evidence and materials obtained by the OSP through its unlawfully and unconstitutional arrest, searches, seizures and administrative freezing of Cecilia Dapaah's assets and investment fruits of the poisonous tree that will prejudice a fair and impartial investigation and prosecution of this case by the Special Prosecutor.

I have just read online today, that the Special Prosecutor, who cannot conduct his investigations on the quiet as befitting of the professionalism of the OSP I founded, has notified the media again that he has filed a new motion at the High Court seeking confirmation of the seizure and freezing orders of the financial assets of Cecilia Dapaah. This is seeking a second bite at the cherry. The ruling of the High Court dated 31 August 2023 subsists, is binding and has not been appealed against. I cannot as former professional investigator and prosecutor with decades of experience make any further comment on the new motion without having access to the filed copy and knowing how the Special Prosecutor overcame the several binding findings and decisions of the High Court, and the fruits of the poisonous tree before making his new application to the Court. My only prayer is that no offence of perjury is discovered by the High Court in the OSP's new application.

This discourse had been devoted to an examination and analysis of the certified true copy of the ruling of the High Court dated 31 August 2023 which was not available to me at the time I wrote my considered view of the Special Prosecutor's further press release dated 5 September 2023. The certified true copy of the ruling of the High Court vindicates my published opinion on 7 September 2023 and dated 6 September 2023 which should be read alongside this discourse for a holistic understanding of the necessity for the OSP remaining a professional law enforcement institution and not an unlawful and unconstitutional unruly monster. A rogue law enforcement institution becomes itself a crime scene needing to be cleansed to uphold the integrity of Act 959 and the 1992 Constitution.

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