

IN THE MATTER OF ARTICLE 146 OF THE
1992 CONSTITUTION OF THE REPUBLIC OF
GHANA.

AND

IN THE MATTER OF THE PETITION
ALLEGEDLY BROUGHT BY CERTAIN
EMPLOYEES OF THE ELECTORAL
COMMISSION FOR THE REMOVAL FROM
OFFICE OF THE CHAIRPERSON OF THE
ELECTORAL COMMISSION PURSUANT TO
ARTICLE 146 OF THE 1992 CONSTITUTION.

**WRITTEN ADDRESS FILED FOR AND ON
BEHALF OF CHARLOTTE OSEI (MRS)
CHAIRPERSON OF THE ELECTORAL
COMMISSION (RESPONDENT).**

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Chairman and honorable members of the Committee,

1.0 INTRODUCTION.

1.1 In this address, we will submit that;

- i. The petition which the Committee has been constituted to investigate is incompetent, tainted with fraud and brought mala fide.
- ii. In the unlikely event that the Committee decides to deal with the merits of the petition notwithstanding its incompetence, then we shall further submit that Petitioners have prematurely triggered the impeachment procedure set out in article 146 of the 1992 Constitution (the Constitution) for the removal of the Chairperson of the Electoral Commission (hereafter referred to as “the Respondent”).

We shall submit also that, in the unlikely event that the Committee decides that Petitioners have legitimately triggered the impeachment procedure for the removal of Respondent, Petitioners have failed to prove the allegations upon which the petition is grounded.

- iii. Finally, we shall contend, in the unlikely event yet again that the Committee takes the view that Petitioners have proved the allegations upon which Petitioners seek the removal of the Respondent, the allegations upon which Petitioners seek the removal of Respondent do not meet the constitutional preconditions stipulated in article 146 of the Constitution for the removal of the Electoral Commission’s Chairperson (Respondent).
- 1.2 It is only after addressing the Committee in the manner above set out that we shall wind up our address. In addressing the Committee in the manner above proposed, we are in no doubt whatsoever that we will take much of the Committee’s time, but we think it very important so to do, given the constitutional significance of this matter.
- 1.3 We shall, subject to the leave of the Committee, now address the Committee on the competence of the petition which the Committee has been constituted to investigate.

2.0 COMPETENCE OF THE PETITION.

2.1 In the Respondent's witness statement, Respondent stated that the petition is incompetent. Respondent also said that her lawyers will deal with the subject of the competence or otherwise of the petition. This is found in paragraph 2.20 of the Respondent's witness statement.¹

2.2 The legal grounds on which we contend that the petition, in respect of which the Committee has been tasked with the responsibility of investigating, is incompetent will be discussed in the subsequent paragraphs.

2.3 *The petition is not signed.*

2.3.1 A reading of the documents which triggered the process leading to the constitution of the Committee for the present proceedings will confirm that the documents are three, namely;

- i. The cover letter addressed to His Excellency the President of the Republic of Ghana by virtue of which the document containing the allegations being investigated by the Committee was forwarded to the President.
- ii. The document containing the allegations, some of which this Committee has been constituted to investigate.
- iii. The document which contains a list of individuals represented as the petitioners.

2.3.2 We note right from the outset that the cover letter addressed to the President has been signed by Maxwell Opoku Agyeman, Esq who held himself out as lawyer for the petitioners. Attached to this cover letter is what is supposed to be the petition itself. It is this document which contains the allegations made against Respondent. This document is not signed by any of the petitioners including Mr. Forson Ampofo

¹ Page 12 of Mrs. Charlotte Osei's Witness Statement.

himself who testified on behalf of the petitioners in the course of the proceedings.

2.3.3 When Petitioners opened their case through their purported representative, Mr. Forson Ampofo, Respondent's lawyers put it to Mr. Ampofo during cross-examination that none of the documents set out above was signed by any of the petitioners.

2.3.4 First, Mr. Ampofo testified as follows;

“Q. Was this witness statement shown to any of the other petitioners?

A. Yes, that is why they all signed.”²

2.3.5 After so testifying, it did not take Mr. Forson long to admit that his testimony was false. He almost immediately admitted that he alone signed his witness statement. After this embarrassing admission the following ensued between Mr. Ampofo and Respondent's lawyer:

“Q. Did the other petitioners sign any other document apart from this one?

A. Yes, the petition we sent to the President. It was well explained to them before they signed it.

Q. I put it to you that the petition that was sent to the President was not signed by any of the petitioners, including you.

A. We signed it and gave it to our lawyer.

Q. Do you have a copy of it?

A. It is with my lawyer.”³

2.3.6 Having disputed the fact that none of the petitioners signed the petition which Mr. Forson disagreed with, it was expected that Mr. Forson will provide evidence to prove that the petition was signed by the petitioners. Petitioners, however

² The record of proceedings dated 20th February, 2018, Page 4.

³ Ibid, Pages 4 & 5.

failed to do anything to prove Mr. Forson's testimony that the petition was signed until they closed their case.

2.3.7 Further to the submission made at paragraph 2.3.6 above, it is further submitted that Petitioners' lawyer in whose presence Mr. Forson testified, and alleged that Petitioners had signed the petition, also failed to produce the petition which Mr. Forson alleged, was signed by all the petitioners.

2.3.8 We think it significant to emphasize a major point which Mr. Forson's testimony clarified. This point is that, the petition was prepared by Petitioners themselves and handed over to their lawyer. This is very clear from the testimony above quoted.

2.3.9 The submission made at paragraph 2.3.8 above is bolstered by the contents of the cover letter by which the petition was sent to the President. In the very opening paragraph of the cover letter which is written by Petitioners' lawyer, it is stated as follows;

"I respectfully attach herewith the above named petition from my clients who are concerned staff of the Electoral Commission."

2.3.10 The cover letter states without equivocation that its (the cover letter's) function, is merely to introduce the petition "from" his clients. It is therefore clear that the petition was not settled by Petitioners' lawyer for and on their (Petitioners') behalf.

2.3.11 Our submission is that the evidence before the Committee, in so far as the petition is concerned therefore is that the petition was not signed by any of the petitioners. The legal consequence of the absence of signatures is that the document purporting to be a petition is not legally cognizable hence it is incompetent to initiate proceedings for the removal of the Respondent.

2.3.12 The argument made in the preceding paragraph is supported by the decision of the Supreme Court in the case of **Agyei-**

Twum v Attorney-General & Akwetey⁴. In that case, Prof. Ocran JSC, first drew a distinction between a person’s legal competence in terms of legal standing to bring removal petitions, and the appropriateness of the document purporting to be a petition⁵.

2.3.13 The learned Justice accordingly held as follows:

“If a person has standing to bring a removal petition, but that document purporting to be a petition turns out not to be a legally cognizable petition, then the so-called petition ought to be thrown out in spite of the petitioner’s initial standing to bring a removal petition. I will develop this point further.

There is no question that article 146(3) and (4) neither prescribes nor stipulates any particular form, format, or content for the presentation of petitions. But, my Lords, 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.”⁶

2.3.14 Prof Ocran JSC followed his statement above quoted with an emphatic statement. He then held as follows;

“So I would conclude that a legally improper petition is no petition at all.”

2.3.15 We submit that although the Constitution does not prescribe a particular format for petitions under article 146, the form of a petition submitted pursuant to this article must not derogate from the basic tenets of the process known as a petition.

2.3.16 Our submission made at paragraph 2.3.15 above, is supported by the case of ***Oppong v Attorney-General***⁷ where

⁴ [2005- 2006] SCGLR 732

⁵ See page 796 of the report.

⁶ Ibid, Pages 796-797

⁷ [2000] SCGLR 275.

Atuguba JSC held that the courts do justice according to three main yardsticks. These yardsticks are; statute law, common law and the well-known practice of the courts. The well-known practice of the courts is that, for a petition to be valid, it must be signed by the petitioner himself or by his lawyer on his behalf.

2.3.17 We need not belabour this point. Our submission is that the petition before the Committee is void for the lack of signatures of the petitioners. The petition is therefore incompetent.

2.3.18 Before we wind up our argument on this point, we note that in her determination of the question whether the petition had made out a prima facie case, the Chief Justice noted that it is important in matters of the kind being investigated by the Committee to apply “critical tests...to assure process integrity.”⁸

2.3.19 The learned Chief Justice then provided a definition for “petition” and proceeded thus;

“...it is fundamentally important for the petition to contain the Petitioner’s address (or that of her legal representative) and the residential or official address of the Respondent. Whilst there are no prescribed formats, these are the key formal tests...Thus up to now, it is the accepted practice that any written document, providing the requisite addresses for service, calling for the removal of the person named therein on any of the constitutionally stipulated grounds is admissible.”⁹

2.3.20 The first observation we make with regard to the Chief Justice’s view of a petition is that, it fundamentally omits the requirement of signing which can only be an oversight. We take the view that, it can only be an oversight because, it is beyond any doubt whatsoever that a petition must be signed as a precondition for its validity.

⁸ See page 5 thereof.

⁹ At page 5.

- 2.3.21 The next point that we note is that, even from the tests propounded by the learned Chief Justice, the petition investigated by this Committee is still incompetent. The reason is that the petition did not indicate any address for service on Respondent.
- 2.3.22 Finally, we note that in the determination, the learned Chief Justice, conceded that the Agyei Twum case had advocated a strict approach to scrutinizing petitions but elected to relax the rules stated in the said case. On the subject of petitions made pursuant to article 146 of the 1992 Constitution, the law is stated in the case of **Agyei-Twum v Attorney-General & Akwetey**¹⁰.
- 2.3.23 In the case just cited, the Supreme Court settled the basic standards which must be met with regard to petitions within the meaning of article 146. The Supreme Court noted in the said case that petitions of this kind must start with a formal recitation of the misconduct allegedly perpetrated by the official sought to be removed, followed by the specific catalogue of the acts or means used to implement the said misconduct or untoward scheme, all stated positively on the authority of the accuser but certainly not "a rehash of allegations born of allegations".
- 2.3.24 A reading of the petition referred to the Presidency will confirm without a shadow of doubt that it is grounded, as the Supreme Court noted in the case cited, upon "a rehash of allegations born of allegations".
- 2.3.25 We note here that in her determination, the Chief Justice took the view that the petition is competent. The view taken by the Chief Justice is clearly per incuriam the decision of the Supreme Court.
- 2.3.26 The Committee will observe that there is no formal recitation of the misconduct allegedly perpetrated by the Chairperson with a specific catalogue of the acts or means used to implement the said misconduct or untoward scheme, all stated positively on the authority of the accusers.

¹⁰ [2005- 2006] SCGLR 732.

2.3.27 Reference is made to the judgment of His Lordship Professor Modibo Ocran in the decision referred to where the learned Justice discussed the constitutional requirements of a petition within the meaning of article 146. His Lordship now of blessed memory held as follows:

"The document presented to the President...will probably pass muster if meant as a memorandum to be submitted to a special investigator or investigative body, who is to make its own inquiries and then prepare the equivalent of the articles of impeachment...But as a document meant to be submitted directly to an article 146(6) committee.., or even to an intermediate body charged with the finding of a prima facie case prior to the committee's deliberations and decision, I consider this petition woefully below the legally acceptable standard of fairness. So I would hold that a legally improper petition is no petition at all"¹¹

2.3.28 All that is contained in the petition are allegations upon allegations, all of which are without substance. It was held in the ***Agyei-Twum case*** that a petition for the removal of a public official is flawed if it consists only of simply compounding allegations and hurling them at the public official.¹²

2.3.29 Our humble submission to the Committee is that, decisions of the Supreme Court form part of the laws of Ghana under article 11(1)(e) and (2) of the 1992 Constitution of the Republic of Ghana. Anybody or authority placed in a situation where the law must be applied to decide a particular matter must apply the law as stated by the Supreme Court.

2.3.30 We further submit that, even if it is conceded that the test laid down by the Supreme Court in the ***Agyei-Twum case*** advocated a strict approach to dealing with petitions of the kind before the Committee, the learned Chief Justice (especially in performing a duty which is essentially administrative) did not have the choice of relaxing, or less still, abandoning that test stated in the aforesaid case.

¹¹ At page...

¹² See pages 799-801.

2.3.31 We accordingly submit that this Committee is not bound by the conclusions reached by the learned Chief Justice that the petition is competent. The reason is that the conclusion reached by the learned Chief Justice is per incuriam the decision in the ***Agyei-Twum case***. This Committee therefore has an obligation as the final authority in the matter to so declare it.

2.3.32 It is important to underscore the fact that the consequences of the Chief Justice's decision to relax or even ignore the standards stated in the ***Agyei Twum case*** for assessing petitions is that a challenge could easily be mounted against the propriety of referring the matter to the Committee for investigation and indeed the instant proceedings for having violated the laws of Ghana which all citizens are obliged to uphold.

2.3.33 We finally submit that as this Committee is required to make recommendations to the President after its investigations, such recommendations must necessarily be made in accordance with the law and which includes a determination of the competence or otherwise of the petition.

2.3.34 Further to the point above made, a recommendation to the President which includes a determination of the competence or otherwise of the petition of the kind being investigated by the Committee also provides useful guidance as to how such petitions will be presented and dealt with in future.

2.3.35 We shall now proceed with the second ground upon which we contend that the petition is not competent. (Can we add that recent jurisprudence on procedure confirms the fact that blunders in originating processes should not be compromised?)

2.4 ***The Petition is tainted with fraud.***

2.4.1 Respondent testified in her witness statement that the petition is tainted with fraud¹³. We have already noted that the petition was not signed by the petitioners. This fact, as already submitted, not only renders the petition void but also,

¹³ See paragraph 5.0 of Respondent's witness statement.

significantly, the identities of the petitioners cannot be ascertained on the face of the petition.

- 2.4.2 Counsel for petitioners attached the names of persons from whom the petition is alleged to have emanated. There is however no information on the face of the petition and no evidence was adduced to prove that the persons named in the list authorised the making and submission of the petition on their behalf.
- 2.4.3 There is no scintilla of evidence which proves that the persons allegedly bearing the names contained in the list actually exist or even if they exist, that they knew of and instructed Maxwell Opoku Agyeman, Esq to act on their behalf.
- 2.4.4 Respondent dedicated paragraph 5.0 of her witness statement testifying that the petition is tainted with fraud. Respondent particularly contended in her witness statement, that the list of names dispatched to the President after the purported petition was sent to him (the President) was contrived by Counsel for petitioners.
- 2.4.5 In Respondent's witness (statement), Respondent challenged the alleged petitioners and the lawyer to prove that Maxwell Opoku-Agyemang had been instructed by each of the individuals named in the list submitted by him¹⁴ to the President.
- 2.4.6 Our submission is that, it was legitimately expected that in the course of proving their case, Petitioners will adduce evidence to prove, not only the identities of each petitioner, but also the fact that all of them had instructed Maxwell Opoku-Agyemang to submit the petition to the President. Petitioners testified through Mr. Forson Ampofo whose evidence did nothing to prove the issues raised by Respondent.
- 2.4.7 The point made in this submission is that, in Maxwell Opoku-Agyemang's cover letter, he represents that he was acting for seventeen (17) individuals. This is denied by Respondent who

¹⁴ Paragraph 5.5 of Respondent's Witness Statement.

contends that Maxwell Opoku-Agyemang was not acting for and on behalf of any such number of individuals.

2.4.8 The law is that, a person who makes an averment or assertion which is denied by his opponent, has the burden to establish that his averment or assertion is true. Such a person, as it has been held, does not discharge the burden unless he leads admissible and credible evidence from which the fact or facts he asserts can be properly and safely inferred. **Memuna Moudy and Others v Antwi**¹⁵.

2.4.9 Our submission is that in the teeth of Respondent's denial of Maxwell Opoku-Agyemang's representations and the challenge to him to prove his authority to act for all those mentioned in the petition, failure to adduce evidence to prove his instructions to act for and on behalf of the names listed as petitioners in this case vindicates Respondent's testimony that the petition is tainted with fraud.

2.4.10 The cardinal principle of law on proof is that, a person who makes an averment or assertion which is denied by his opponent, has the burden to establish that his averment or assertion is true. The law is that, the burden is not discharged unless he leads admissible and credible evidence from which the fact or facts he asserts can be properly and safely inferred. **Memuna Moudy and Others v Antwi**¹⁶.

2.4.11 In this case, it was represented that the petition being investigated by the Committee was presented by 17 petitioners. It was also very falsely represented in evidence that these 17 petitioners signed the petition and not stopping there, even signed Mr. Ampofo Forson's witness statement. The principle stated at paragraph 2.4.10 above says that where the representations made are denied, Petitioners have the burden of proving it by admissible and credible evidence.

2.4.12 In this case, Respondent not just denied the representations made by Petitioners by a bare denial which would have been sufficient to trigger the rule on proof stated above,

¹⁵ [2003-2004] 2 SCGLR 967 Per Wood, JSC at pages 974-975.

¹⁶ [2003-2004] 2 SCGLR 967 Per Wood JSC (as she then was) at pages 974-975. See also *Majolagbe v Larbi* [1959] GLR 190 and *Zabrama v Segbedzi* (1991) 2 GLR 221 at 246.

Respondent (in her evidence) went on to question the credibility of the petition which was not signed. Respondent also (in her evidence) questioned the credibility of the list of individuals represented as the petitioners in this case. Respondent did not rest there. Respondent further cross-examined Mr. Ampofo Forson on these matters. None of these issues elicited the slightest of responses from Petitioners until they closed their case.

2.4.13 On the basis of the submissions above made as supported by the authorities, there can be no doubt that Petitioners' representations have been established without doubt whatsoever to be false. The law says that the clearest evidence of fraud is the making of false representations.

2.4.14 The definition of fraudulent misrepresentation can be found in Snell's Equity (29th ed.) at page 548. For easy reference I refer to it in full. The text is as follows:

"Definition. Fraud which Courts of Equity remedied concurrently with courts of Common Law can be defined with some precision. It consists of a false statement of fact which is made by defendant to plaintiff knowingly or without belief in its truth, or recklessly, without caring whether it be true or false with the intent that it should be acted upon and which is in fact acted upon by plaintiff. Defendant will be liable in such a case even though the misrepresentation was made with no corrupt motive and with no expectation of profit..."¹⁷

2.4.15 The above statement encapsulates our submission made thus far. We accordingly submit that to falsely represent the petition as originating from some seventeen (17) unidentifiable persons purporting to be members of staff of the Electoral Commission is undoubtedly, fraudulent.

2.4.16 Our submission that the petition is tainted with fraud is further confirmed by investigations which revealed that one of the persons named in the petition as a petitioner is actually deceased. This was admitted by Forson Ampofo during cross-examination:

¹⁷ See *Dolphyne (No. 3) v Speedline Stevedoring Co Ltd and Another* [1996-97] SC GLR 514- [p 523] Per Amuah JSC.

“Q. There is a gentleman who works at the EC in Accra, called George Adjavukewe.

A. Yes, I know him.

Q. Do you know where he is presently?

A. He is deceased.”¹⁸

2.4.17 The answers given by Forson Ampofo who purported to act on behalf of all petitioners clearly corroborate Respondent’s case that the identities of all petitioners, whose names were submitted, are questionable and further characterize the petition as fraudulent.

2.4.18 We further submit that at least, on the face of the petition, there should have been very clear evidence that the petition was credible. The signature of each petitioner should have been appended to the petition and the list of names submitted as the petitioners especially when it was questioned by Respondent.

2.4.19 We also submit that granted even that a petition may be signed by a lawyer for and on behalf of a petitioner, the Committee will note that this petition was not signed by the alleged Petitioners’ lawyer, and was not even remotely represented as having been so signed.

2.4.20 As earlier submitted above, Respondent also contends that the instant petition has been brought in bad faith. The arguments made here that the petition before the Committee is tainted with fraud apply with equal force to the argument to be made on the point about the bona fides of the petition. We now proceed to argue the last point relating to the competence of the petition.

2.5 ***The Petition is brought in bad faith.***

2.5.1 To prove her contention that the petition is orchestrated in bad faith, Respondent adduced uncontested evidence to prove that the petition was premeditated. The audio recording attached to Respondent’s witness statement and marked 10

¹⁸ Record of proceedings dated 20th February 2018, page 3.

put Respondent's testimony on this point beyond reasonable doubt.

2.5.2 The contents of the audio recording need no elaborate discussion here. The audio recording reproduces a conversation between Mrs. Pauline Adobea Dadzawa, a Commissioner who testified before the Committee in favour of Petitioners, and a journalist. (Kwesi Parker also testified for Respondent but was never questioned on the audio tape). The audio recording captures Mrs. Pauline Adobea Dadzawa;

- i. Confirming that she and three other Commissioners are united on one side against Respondent.
- ii. Confirming categorically that together with the other three Commissioners, they would ensure Respondent's removal from the Commission as its Chairperson.
- iii. Confirming in advance the presentation to His Excellency the President of the Republic of Ghana, of the petition which is the subject matter of the Committee's present investigations.

2.5.3 It is significant to add that Mrs. Pauline Adobea Dadzawa testified before this Committee and of all the things that she (Mrs. Pauline Adobea Dadzawa) testified about, she neither disputed the contents of the audio recording nor challenged Respondent's contention that the petition was premeditated.

2.5.4 The point above made is further bolstered by the fact that Petitioners again failed to dispute Respondent's position that the petition was premeditated when Respondent testified before the Commission. Worst of all, Petitioners remained mute even when the person who originated the audio recording appeared before the Committee to testify.

2.5.5 The Court of Appeal held in the case of **Quagraine v Adams**¹⁹ that where a party made an averment and his opponent fails to cross-examine on it, the opponent will be deemed to have acknowledged, sub silentio, that averment.

¹⁹ [1981] GLR 599.

- 2.5.6 In this case, Respondent did not just leave her contention that the petition was premeditated at the level of averments, but the Respondent went further to adduce evidence to prove it. Neither Respondent's averments nor evidence was challenged.
- 2.5.7 It was held in the case of **Takoradi Flour Mills v Samir Faris**²⁰ that where evidence is led by a party and that evidence is not challenged by his opponent in cross-examination, and the opponent did not tender evidence to the contrary, the facts deposed to in the evidence are deemed to have been admitted by the party against whom it is led, and must be accepted by the court.
- 2.5.8 Suffice it to say that Petitioner's contention also that the petition was premeditated is supported with lopsided evidence to prove it and is wholly admitted by Petitioners.
- 2.5.9 The undisputed evidence that the petition before the Court is premeditated and actuated by malice, alone, should clearly put the petition to an ignominious rest and we hereby conclude our argument that the petition is incompetent because it was brought in bad faith.
- 2.6 The points above discussed raise the basic question that has once been asked although in the context of proceedings for the removal of the Chief Justice. The question is whether His Excellency the President of the Republic of Ghana must forward every petition that makes its way to his desk for investigations.
- 2.7 In the case of **Agyei Twum v Attorney-General**²¹, Dr. Date-Bah JSC noted as follows:
- “When one compares Article 146(3) with Article 146(6), it becomes evident that there is a gap in the logical sequencing of action under Article 146(6). According to the literal language of Article 146(6), no one is required to examine a petition brought against the Chief Justice to ascertain whether it establishes a prima facie case, before the President refers it to a Committee established by him. Once any

²⁰ [2005-2006] SCGLR 882.

²¹ Supra, note 4.

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

- 2.8 This observation must definitely apply to all other petitions for the removal of Justices of the Supreme Court. Otherwise, the Chief Justice will also be inundated with a series of frivolous petitions which she has to dedicate substantial time to evaluate when it is obvious that the document presented to the President called the “petition” does not even meet the threshold of a petition.
- 2.9 Our submission is that where, as in this case, His Excellency the President of the Republic of Ghana receives a petition which initially has no petitioners, such a petition must be treated with immediate contempt by the President.
- 2.10 Further to the point above, the President is put in an awkward position if the President, as in this case, notices the defectiveness of the petition (because it has no petitioners) and then allows the petitioner to (or attempt to) correct the petition before forwarding it to the Chief Justice.
- 2.11 Our submission is that if the President can assess the petition and determine prima facie that it is incompetent and requires further documents or processing to rectify the defect, the President must conversely be entitled to dismiss such a petition in limine (after the preliminary assessment) on the ground that it is fundamentally defective. This will save the President from worryingly erring on the side of the petitioner.
- 2.12 In any case, when the President noticed that the petition had no petitioners, he requested to know who his petitioners were. The result is that Petitioners’ lawyer submitted to the President a list of seventeen (17) individuals. None of these individuals signed against their names. Their identities were not disclosed on the face of the

list and there is no reason to believe that they even exist or are Ghanaians.

- 2.13 Apart from saying that the petitioners are all staff of the Commission, it would have been useful for the petitioners to at least describe their designations at the Commission. This would have given the petition some basic credibility. This would have avoided the situation where, as it turned out, the 17 petitioners were led by a driver of the Commission, who claimed that the source of his information was senior authorities of the Commission who could not speak for themselves but trusted a driver to speak for them.
- 2.14 The legal competence of the petition apart, we have noted that the evidence confirms without a shred of doubt that the petition is tainted with fraud and was brought in bad faith. We shall, hereafter, deal with our next ground stated in paragraph 1.1(ii) that the petition is premature.

3.0 THE PETITION IS PREMATURE.

- 3.1 In the introductory part of this address, we submitted that in the unlikely event that the Committee decides to deal with the merits of the petition notwithstanding its incompetence, then we shall contend that Petitioners have prematurely triggered the impeachment procedure set out in article 146 of the 1992 Constitution. It is this point that we address now.
- 3.2 The power to determine breaches or otherwise of the procurement rules of the Republic of Ghana is vested in the Public Procurement Authority (PPA). The point just made is firmly entrenched in the Public Procurement Act, 2003 (Act 663)(as amended by ACT_914). We shall hereafter simply refer to this statute as either “the Act” or “Act 663”.
- 3.3 The long title of the Act specifies its purpose. It says that the purpose of the Act, among others, is to provide for public procurement and to establish the Public Procurement Board. The objects of this Board are set out in section 2 of the Act.
- 3.4 The Board has, among its statutory objects, the obligation “to harmonize the processes of public procurement in the public service to secure a judicious, economic and efficient use of state

resources in public procurement and ensure that public procurement is carried out in a fair, transparent and non-discriminatory manner.”

3.5 In furtherance of its statutory objects the Board is by virtue of section 3(d)(e) and (u) of the Act entrusted with, inter alia, the statutory responsibility to;

“(d) monitor and supervise public procurement and ensure compliance with statutory requirements;

(e) have the right to obtain information concerning public procurement from contracting authorities;

(u) perform such other functions as are incidental to the attainment of the objects of this Act”

3.6 The statutory duties of the PPA Board are completely distinguishable from the constitutional obligations cast on this Committee in terms of its investigative functions which has been triggered by the petition against Respondent.

3.7 Our submission, however is that, in so far as the substance of the allegations which this Committee is required to investigate are concerned, the Committee’s mandate with regard to the specific allegations which the Committee is required to investigate raise a very serious and intricate legal question vis-a-vis the functions of the PPA Board.

3.8 The reason for which we make the submission set out at paragraph 3.7 results from the fact that the functions of the PPA Board include ensuring “compliance with statutory requirements” in the procurement process. The task of detecting a contravention or otherwise of the procurement rules therefore is placed squarely within the statutory mandate of the PPA’s Board.

3.9 Having regard to the statutory functions of the PPA’s board therefore, it is our submission that where, as in this case, an allegation is made that a person has breached the rules on procurement, recourse must first be had to the PPA’s Board whose statutory responsibility it is, to detect and prevent the breach after conducting an investigation into the matter.

3.10 In so far as breaches of the rules on procurement are concerned, the Public Procurement Act, 2003 (Act 663) as amended by the Public Procurement (Amendment) Act, 2016 (Act 914) requires the Public Procurement Board to investigate alleged breaches of the procurement rules. Section 89(1) of Act 663 therefore provides as follows:

“The Board may appoint a person to conduct an investigation into any matter related to the conduct of procurement proceedings by a procurement entity, or the conclusion or operation of a procurement contract if it considers that an investigation is necessary or desirable to prevent, or detect a contravention of this Act.”

3.11 Upon conclusion of investigations, a report is forwarded to the Board which then acts upon the report after complying with the requirement of section 90(2) of the Act which requires that a person affected by the report be given an opportunity to be heard.

3.12 After considering the report, section 90(3) of Act 663 as substituted by Act 914 provides that;

“90(3) The Board shall, if satisfied that there has been a contravention of a provision of this Act or any other enactment in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which actions shall include:

- (a) annulment of the procurement proceedings;
- (b) cancellation of the procurement contract;
- (c) rectification of anything done in relation to the proceedings; or
- (d) a declaration consistent with the relevant provisions of this Act.”

3.13 On the basis of the statutory provisions quoted at paragraph 3.12 above, we submit that it is only after proceedings under the procurement rules have been exhausted that it is legitimate and proper to take action to remove a public officer affected by article 146 for breaching the rules on procurement.

- 3.14 It is our further submission that given that a procurement breach may be rectified by the Board, the removal of a public officer affected by article 146 from office on grounds of procurement breaches without exhausting the remedies provided for under the same rules completely undermines the Act. The reason is that it leaves the PPA Board with limited options in terms of its statutory mandate.
- 3.15 The point made at paragraph 3.14 above is that, it will be clearly incongruous for the Committee to recommend the removal of a person for breaches of the procurement rules prior to any investigation by the PPA Board, (only) for the PPA Board, to recommend rectification (not annulment or cancelation of the contract) and anything done in relation to the proceedings. The natural and most reasonable option left to the PPA Board after the Committee recommends the removal of a person of Respondent's stature is to rubberstamp or simply avoid its statutory duties to investigate and take appropriate decisions on the matter.
- 3.16 In making this submission, we have noted and conceded that it is within the province of this Committee to make recommendations to the President that acts of misbehavior or incompetence have been established against Respondent warranting her removal from office as the Commission's Chairperson.
- 3.17 The question, however, which lingers is this; ***will it not rather be appropriate for the statutory body entrusted with the mandate for investigating procurement breaches to investigate same in the exercise of its statutory mandate first and reach its conclusions and indeed take any of the courses open to them under section 90(3) of Act 914 in order for this Committee's mandate to then be triggered to determine whether or not the breaches established by the PPA Board amount to acts of misbehaviour or incompetence or both within the meaning of article 146 of the Constitution justifying Respondent's removal as the Commission's Chairperson?***
- 3.18 Our submission therefore is that although this Committee has constitutional power to determine whether a person's actions amount to acts of misbehaviour or incompetence or both within the meaning of article 146 of the Constitution justifying the person's

removal from office, the statutory mandate to determine whether or not an official has breached the procurement rules is first that of the PPA Board.

- 3.19 We further submit that, a conflict is imminent and a usurpation of statutory functions is inevitable if this Committee takes definite positions on the allegations which all centre on procurement, and the PPA Board, then carries out its statutory functions of investigating the same procurement allegations. The conflict is only avoided where the PPA Board decides to endorse this Committee's position without doing what its statutory obligations have charged it to do which amounts to a dereliction of duty.
- 3.20 We finally submit that with regard to issues of procurement, it will be premature and indeed legally improper for any investigation undertaken pursuant to article 146 of the Constitution to result in the removal of a public officer affected by article 146 unless the statutory procedures for dealing with breaches of the procurement rules are followed.
- 3.21 We shall draw the curtain on our submissions on this point here and proceed to argue our next point.

4.0 PETITIONERS HAVE FAILED TO PROVE THE ALLEGATIONS UPON WHICH THE PETITION IS GROUNDED.

- 4.1 Our discussion of this point will focus on the following points;
- i. The nature of Petitioners' case.
 - ii. The evidence adduced by Petitioners to prove their case.
 - iii. Evaluation of the witnesses called by Petitioners to prove their case.
 - iv. The Respondent's case.
 - v. Evidence adduced by the Chairperson in defence to the allegations.

- vi. Evaluation of the evidence adduced by Chairperson to prove her case.
- vii. Evaluation of the totality of the evidence adduced during the proceedings.

4.2 ***The Nature of Petitioners' case.***

4.2.1 In so far as the instant proceedings are concerned, Petitioners' case is set out at paragraphs 5, 6, 7, 8, 18 and 27 of the petition. It is the allegations stated in those paragraphs of the petition which Her Ladyship the Chief Justice referred to the Committee for investigation after finding that a prima facie case had been made out in respect of them.

4.2.2 Petitioners' case can be conveniently reduced to two propositions; namely;

- i. Respondent acted unilaterally in engaging various entities to provide services to the Commission. The effect of this contention is that, Respondent engaged the entities without the knowledge and input of the other members of the Commission either directly or indirectly.
- ii. Secondly, Respondent executed the contracts for the engagement of the entities in breach of the Public Procurement Act, 2003 (Act 663). The effect of this argument is that there exist some specific provisions of Act 663 which Respondent contravened in the engagement of these entities.

Having discussed Petitioners' case, we shall now discuss the evidence adduced by Petitioners to prove the allegations contained in their petition.

4.3 ***Evidence adduced by the Petitioners to prove their case.***

4.3.1 In discussing the evidence adduced by Petitioners to prove their case, we cannot help but in some instances analyze the evidence adduced.

4.3.2 Apart from Mr. Ampofo Forson who testified for himself and purportedly for and on behalf of the other petitioners,

Petitioners called six (6) other witnesses to testify in support of their allegations against Respondent.

4.3.3 Four out of the seven witnesses are members of the seven (7)-member Electoral Commission. The point that we must make with regard to these Commissioners even at this stage is that, Respondent's uncontested (and for that matter admitted) testimony is that one of these Commissioners was recorded as saying that she (Pauline Adobea Dadzawa) and others were united in their resolve to remove Respondent from office as the Commission's Chairperson.

4.3.4 Respondent's uncontested (and for that matter admitted) testimony is that Pauline Adobea Dadzawa accordingly predicted that the instant petition will be brought for the purposes now being investigated by the Committee. In the light of the undisputed evidence just referred to, we can say without any fear of contradiction that the instant petition is actually brought by these Commissioners who have masqueraded behind Petitioners to petition the President for Respondent's removal. By the time we conclude our discussion on this part of our address, the point just made will be obvious.

4.3.5 Be that as it may, the point made at paragraph 4.3.4 above explains why Petitioners did not react to Respondent's challenge to them that the petition is tainted with fraud. Petitioners refused to react even when Respondent stated in her witness statement that Pauline Adobea Dadzawa was recorded as saying that there are other members of the Commission united with her, in the desire to remove Respondent. There is no need to flog this point.

4.3.6 Petitioners called two other witnesses. These are the Commission's Director for Finance and the PPA's Chief Executive Officer.

4.3.7 To put the evidence adduced by these witnesses in the appropriate context, we shall set out each of the allegations that this Committee is called upon to investigate, discuss them in relation to the key elements of each allegation and

then proceed to assess the evidence adduced by Petitioners to prove them.

4.3.8 The reason for which we find it important to set out the elements of each allegation is that, Petitioners bear the burden of proof in so far as establishing by way of evidence the allegations which this Committee is called upon to investigate. The decision of the Supreme Court in the case of **Ackah v Pergah Transport Ltd & Others** vindicates the submission just made.

4.3.9 In the case just cited, the Supreme Court held that a party who bears the burden of proof is to produce the required evidence of **the facts in issue that has the quality of credibility** short of which his claim may fail.

4.3.10 The method of producing evidence, the Supreme Court held, is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact.

4.3.11 It is against the backdrop of the submission above made that we now deal with the first allegation that this Committee is required to investigate. This allegation says that;

- i. Respondent engaged the services of Messrs. Sory @ Law without recourse to the Commission.
- ii. Respondent engaged the services of Messrs. Sory @ Law without going through the procurement process.
- iii. There is no formal contractual arrangement between the Commission and Messrs. Sory @ Law and the basis of fees computation for services rendered by the lawyers is unknown.

4.3.12 To prove Petitioners' allegation against Respondent that Sory @ Law was engaged by Respondent unilaterally and in breach of the rules on procurement, Petitioners by themselves and

through their elected representative, (Forson Ampofo) poorly repeated the allegations contained in the petition.

4.3.13 Reference is made particularly to paragraphs 5 and 6 of Forson Ampofo's witness statement. A reading of these paragraphs will confirm that Mr. Forson merely restated the allegation in the petition and provided nothing of evidentiary value to support his claim. Our submission is that, to the extent that Mr. Forson represented Petitioners, Petitioners failed to substantiate or adduce a scintilla of evidence to prove any of their allegations.

4.3.14 It has been held that the various methods of producing evidence includes not only the testimonies of the parties and material witnesses but documentary and other things described as real evidence without which a party cannot succeed in establishing the requisite degree of credibility concerning a fact in the mind of the tribunal or court.²²

4.3.15 As the cross-examination of Mr. Forson on this specific allegation will show, Mr. Forson constantly testified that he did not know or was not aware of the key facts on the engagement of Sory @ Law which formed the basis of the allegation upon which he presented himself to testify. Mr. Forson admitted during cross-examination that he did not even know the circumstances under which Sory @ Law was engaged by the Commission. This is captured below for the purpose of clarity:

“Q. Are you privy to the engagement of Sory @ Law by the EC?

A. No.”²³

4.3.16 The question which arises logically from this response of Forson Ampofo is that, if he was not privy to the engagement of Sory @ Law by the EC, then on what basis does he allege, on behalf of the other petitioners, that the lawyers were engaged by the Respondent without having recourse to other members of the Commission.

²² See the case of *Nortey v African Institute of Journalism and Communication & Others* [2013-2014] 1 SCGLR 703.

²³ Record of Proceedings dated 14th March 2018.

- 4.3.17 There is no need to do any thorough evaluation of the value of Mr. Forson's testimony on this allegation and the rest of the allegations. Mr. Forson conceded, when asked questions regarding his own allegations, that he was counting on others to testify to prove the allegations which he had made against Respondent. We shall therefore proceed to deal with the evidence of the four members of the Commission called by Petitioners to testify on the allegations relating to the engagement of Sory @ Law.
- 4.3.18 As already noted, Respondent adduced evidence right from the outset that some members of the Commission, as per Mrs. Dadzawa's own admitted confession, were committed together with Mrs Dadzawa, to every effort to remove Respondent as the Commission's Chairperson.
- 4.3.19 Our submission is that the testimonies of these Commission members who were not mentioned by Mrs. Dadzawa, points to only one logical conclusion. This conclusion is that, when Mrs. Dadzawa emphatically stated in the tape recording that there were other Commissioners united with her (Mrs. Dadzawa) for purposes of removing Respondent as the Commission's Chairperson, Mrs. Dadzawa meant these other Commissioners who testified for Petitioners^[CO1].
- 4.3.20 The reason for which we make the submission above made is that, these Commission members, namely; Georgina Opoku Amankwaa (Deputy Chair in charge of Corporate Services), Amadu Sulley (Deputy Chair in charge of Operations), Pauline Adobea Dadzawa and Ebenezer Aggrey-Fynn testified not only against well documented evidence but against logic and common sense.
- 4.3.21 For example, these Commissioners challenged Respondent's testimony that there were no records at the Commission which showed that the Commission had agreed to contract Sory @ Law. Having taken that position, it was expected that they would adduce evidence to prove that there are records of proceedings at which the engagement of Sory @ Law was discussed. They produced none. This means that Respondent was right when Respondent testified that the proceedings at which it was decided to engage Sory @ Law were not recorded.

4.3.22 We do not find it useful and time-efficient to discuss all the evidence adduced by these Commissioners in detail on this point. We will proceed to deal with the credibility issues raised by their testimonies on this allegation.

4.3.23 The first point we make with regard to the allegation on Sory @ Law is that, these Commissioners all agreed that there was no record of the appointment of the Commission's previous lawyers. They also failed to produce any record on the appointment of Sory @ Law as contended by Respondent. The rhetorical question to ask here then is; why did they dispute Respondent's testimony when Respondent contended that there are no records to confirm that Sory @ Law's appointment as the Commission's lawyers was the Commission's decision and not Respondent's?

4.3.24 Another point which completely undermines the credibility of the testimonies of these witnesses is the fact that, these Commissioners failed to prove that Sory @ Law's appointment was Respondent's unilateral decision; a claim which is false given their own conduct which shows that Sory @ Law's appointment was the Commission's collective decision.

4.3.25 The documentary evidence as confirmed by the conduct of these Commissioners, put it beyond doubt whatsoever that the appointment of Sory @ Law was the Commission's collective decision. The absence of any whiff of protest by these Commissioners was admitted by the Deputy Chairperson in charge of Corporate Services, as quoted below:

“Q. To the best of your knowledge did any member of the Commission object to the representation of the EC by Sory at Law?

A. No, not that I know of.”²⁴

4.3.26 The undisputed documentary evidence on record is that these Commissioners had full knowledge and co-operated with Sory @ Law in the performance of their duties as the Commission's lawyers without cavil.

²⁴ Ibid, page 7.

- 4.3.27 It is at this point that we emphasize the admission by three Commissioners who testified that they went to court several times with lawyers from Sory @ Law who appeared in Court to represent the Commission.
- 4.3.28 The points so far made which expose the fact that these Commissioners were undoubtedly incredible lacking in credibility, is put beyond doubt when account is taken of the fact that two other Commissioners testified and provided documentary proof that the Commission collectively took the decision to engage Sory @ Law to represent the Commission.
- 4.3.29 The testimony of Dr. Joseph Kwaku Asamoah did little, if not further undermined the testimony adduced by Petitioners to prove this allegation. This witness testified that Sory @ Law was engaged “*without going through a competitive tender process of engaging the service of consultants as in the case of legal services required by the Public Procurement Act to which the Commission is obliged to comply.*”²⁵
- 4.3.30 The point which will be later examined is that the competitive tender process as a method of procurement does not apply to any contract for consultancy services by virtue of section 34A (2), the Fifth Schedule and the interpretative section of Act 663.
- 4.3.31 Surprisingly, Dr. Asamoah had himself testified as to Respondent’s threshold in so far as the procurement of goods and services are concerned. Act 663 as amended gives Respondent, as head of entity, the latitude to contract services, the value of which falls below GHS100,000, without going through any procurement process and without the involvement of any of the committees in the procurement structure at the Commission.
- 4.3.32 The submission made at paragraph 4.3.31 above is confirmed by section 18(3f) and the Second Schedule to the Act as amended. It is in this regard that we refer to the testimony of Dr. Asamoah who testified at paragraph 16 of his witness statement as follows;

²⁵ Page 4 of Joseph Asamoah’s witness statement.

“16 That by the nature of the Public Procurement Act, 2003 (Act 663) as amended and the Public Procurement (Amendment) Act, 2016 (Act 914), the stages of public procurement beyond the threshold of head of entity is not entrusted into the hands of any single individual. This means that decisions leading to an award of contract by a public entity in excess of the threshold of head of entity must at all times be taken by the Entity Tender Committee, Tender Evaluation Committee and the Tender Review Committee and not a single individual.”²⁶

4.3.33 Given his own testimony on Respondent’s threshold, it is unthinkable that Dr. Asamoah will still be impeaching the procurement of the services of Sory @ Law by the Commission on grounds of non-compliance with rules on procurement.

4.3.34 Dr. Asamoah’s decision to contradict himself in his own witness statement, makes him clearly [incredible lacking in credibility](#). Apart from the contents of his witness statement, the documentary evidence he attached to his witness statement made the position he took on the engagement of Sory @ Law untenable.

4.3.35 The exhibits attached to the witness statement of Dr. Asamoah confirmed that none of the tasks for which Sory @ Law was engaged exceeded Respondent’s threshold.

4.3.36 We would not waste the time of the Committee discussing in detail the argument that there is no contact to support the engagement of Messrs. Sory @ Law by the Commission.

4.3.37 In the first place, there is no law which requires contracts for legal services to be evidenced in writing so as to be valid. The law generally recognizes all contracts written or oral. The evidence adduced and admitted by Petitioners’ own witnesses is that the Commission does not sign written contracts with their lawyers. The Commission’s lawyers are engaged on a case by case basis.

²⁶ Ibid.

4.3.38 Further to the point above made, the law requires that remuneration for lawyers should be done on a case by case basis. This is stipulated in Rule 5(2) of the Legal Profession (Professional Conduct and Etiquette) Rules, 1969 (L.I 613). Payment for legal services are agreed upon depending on the length and difficulty of each case. This cannot be predetermined because no person has an idea of the type of case that will be brought against them.

4.3.39 We shall not make any further comments on Petitioners' evidence on this point.

4.3.40 We shall now move on to the allegation contained in paragraph 6 of the petition.

4.4 ***Evidence adduced to prove paragraph 6 of the petition.***

4.4.1 At paragraph 6 of the petition, it is alleged that;

- i. Respondent unilaterally abrogated the contract with STL without recourse to the Commission.
- ii. Respondent single-handedly renegotiated the contract with the vendor without the involvement of the Commission.
- iii. Respondent re-awarded the contract to STL in breach of the rules regulating procurement.

4.4.2 Petitioners made an embarrassing mess of themselves when they adduced evidence to prove the allegations summarized above. The undisputed evidence with regard to the STL contract is that, a series of documentary evidence put it beyond doubt that the STL contract was terminated by the Commission by reason of its illegality.

4.4.3 The point made at paragraph 4.4.2 above is confirmed by email correspondences between Respondent and Dr. Asamoah and two other deputy chairpersons. Petitioners' own Dr. Asamoah, relied on exhibit JAK 5 in his witness statement.

4.4.4 In exhibit JAK 5 Respondent stated twelve good reasons why the STL contract was not in accordance with law. In the same

exhibit, Respondent then advised that it was necessary to rectify the legal anomalies detected.

4.4.5 Dr. Asamoah's exhibit JAK 5 is followed by JAK 6. A reading of exhibit JAK 6 will confirm that the Deputy Chairperson in charge of Corporate Services tried to answer the issues of illegality raised by Respondent in exhibit JAK 5. Exhibit JAK 6 was also copied to the Deputy Chairperson in charge of Operations and Dr. Asamoah.

4.4.6 Exhibits JAK 5 and JAK 6 obviously evidence a consultative process. By these exhibits, it is Petitioners themselves who make out Respondent's case that the accusation against Respondent that she acted unilaterally is false.

4.4.7 Exhibit JAK 6 makes it clear that the attempt by the Commission's Deputy Chairperson in charge of Corporate Affairs to explain away the legal and procedural flaws of the STL contract was futile as Respondent pointed out to her that the answer provided did not deal with the issues raised in exhibit JAK 5.

4.4.8 Exhibit JAK 6 records the fact also that the decision to abrogate the STL contract and re-award it to STL in accordance with the law was notified to Dr. Asamoah and the two other Deputy Chairpersons. In exhibit JAK 6 Respondent is recorded as communicating~~ing~~ thus;

“Consequently after speaking with the Deputy Chairman Ops, I am taking the necessary steps to abrogate the contract today and give us the opportunity to rectify this process. Mr. Asamoah please engage STL on restarting the process.”

4.4.9 The statement above quoted is self-explanatory. Respondent had spoken to the Deputy Chairperson on the matter. This Deputy Chairperson did not deny the veracity of the contents of exhibit JAK 6.

4.4.10 Exhibits JAK 5 and JAK 6 therefore put it beyond any doubt whatsoever that Respondent never acted unilaterally. In so far as the allegation that the contract was re-awarded to STL in

breach of the rules on procurement is concerned, the least said about it the better.

- 4.4.11 Documentary evidence was tendered through Dr. Asamoah, who admitted during cross examination that, it was he (Dr. Asamoah) who was tasked with the responsibility of initiating the process towards re-awarding the contract to STL.
- 4.4.12 The documents tendered in evidence through Dr. Asamoah record Dr. Asamoah as accordingly initiating the process. This process was initiated after the PPA had given approval for same. Indeed, Petitioners' own witness from the PPA confirmed that such approval was given.
- 4.4.13 The earlier contracts which were abrogated were made pursuant to the sole sourcing method of procurement which had been approved by the PPA Board. In the re-award of the same contract to the same supplier in a bid to rectify the legal and procedural flaws which bedeviled the earlier contract, there was no need as confirmed by Petitioners' own witness to seek fresh approval from the PPA.
- 4.4.14 In so far as this allegation on the STL contract is concerned, the Committee will note with no waste of time whatsoever that the documentary evidence which was supplied by Petitioners themselves undermined their case. The documentary evidence provided by Petitioners themselves were email correspondences between the parties. The law is that the facts recited in a written document are conclusively presumed to be true as between the parties to the document.²⁷
- 4.4.15 Petitioners actually corroborated Respondent's case on the matter. The well-established rule is that where the evidence of a party on a point is corroborated by the witness of his opponent, whilst that of this opponent on the same issue stands uncorroborated, a court ought not to accept the uncorroborated version in preference to the corroborated one unless for good and apparent reason the court finds the corroborated version incredible, impossible or unacceptable.²⁸

²⁷ See the case of *In Re Koranteng (Decd); Addo v Koranteng & Others* [2005-2006] SCGLR 1039.

²⁸ See the case of *Augustine Yaw Manu v Madam Elizabeth Nsiah* [2005-2006] SCGLR 25, Per Lartey, JSC at page 33.

4.4.16 ***Evidence adduced to prove paragraph 7 of the petition.***

The evidence adduced to prove paragraph 7 of the petition is no better. In so far as paragraph 7 of the petition is concerned, Petitioners are required to prove the following;

- a. That Respondent requested for the allocation of a new building for use as office complex without the approval of the Commission.
- b. Respondent unilaterally awarded a contract to the tune of GHS3.9 million for demarcation and partitioning of the said office complex without recourse to the Commission.
- c. The contract sum awarded by Respondent is higher than the level approved by the Public Procurement Authority.

4.4.17 With regards to the accusation that Respondent did not seek the approval of the Commission before requesting a new office premises although the old office premises was plainly unsafe for workers of the Commission, Petitioners did not establish any rule, or policy or precedent which Respondent breached, justifying why, assuming this accusation to be true, Respondent is guilty of stated misbehavior or incompetence which is the only basis upon which their petition will be accorded any merits.

4.4.18 Secondly, and like happened with regard to the other allegations, Petitioners own Dr. Asamoah relied on an exhibit JAK 11, which is a letter written by Respondent to the Chief of Staff for allocation of office space. This letter confirms first of all that the request was officially made.

4.4.19 The only evidence which Petitioners adduced in a bid to prove that Respondent acted without their knowledge is the evidence of the four Commissioners called by Petitioners. These Commissioners testified that the Commission had no knowledge of the request made by Respondent to the Office of the President for new office space and were not informed of the contract for demarcation and partitioning of the office.

- 4.4.20 Their testimony was immediately exploded by two other Commissioners who provided documentary proof of the falsehood of the testimony of the other Commissioners. The documentary proof was in the nature of minutes of a meeting at which the other Commissioners were informed that there was the need to seek alternative office space. The rule as already noted is that the facts contained in the minutes are conclusively presumed against all the parties to those minutes.
- 4.4.21 The point made at paragraph 4.4.20 above is established by the testimony of Sa-adata Maida, who attached minutes of the Commission's meeting of February 2016 to support her contradiction of the oral testimonies of the other four Commissioners called by Petitioners.
- 4.4.22 Sa-adata Maida bolstered her testimony by confirming the process which followed after Respondent informed members of the Commission of the need to acquire a new office space in view of its added responsibilities as the secretariat of the Association of African Election Authorities (AAEA).
- 4.4.23 The result of a courtesy call on the President of the Republic by Respondent together with Sa-adata Maida who is also a member of the Commission was brought to the attention of all Commission members.
- 4.4.24 Petitioners' witnesses this time again corroborated Respondent's case by admitting that they visited the new office. Their admitted conduct is not consistent with their claim of ignorance which they represented to the Committee. None of these Commissioners protested against this step taken in good faith and in the interest of the Commission.
- 4.4.25 The evidence reflects that Respondent visited the new premises with the Deputy Chairpersons who expressed satisfaction with the allocation of the said office. How then can the same Commission members feign ignorance of the request which preceded the allocation?
- 4.4.26 We now deal with the other allegation made in paragraph 7 of the petition which is in respect of the award of the

consultancy contract for the partitioning and demarcation of the new office premises.

4.4.27 The accusation that Respondent denied knowledge of signing any contract relating to the award of the aforesaid contract, having regard to Petitioners own evidence, is unfortunate. Petitioners relied on the minutes of the Commission held on the 17th May, 2017, the record of which minutes, Petitioners allege, confirm that Respondent denied signing consultancy contracts for the partitioning and demarcation of the office premises.

4.4.28 A reading of paragraph 7.0 of Exhibit GOA 'E', will reveal that it is recorded that "***The Chairperson said she does not remember and that he can enquire from the Director of Finance***". Further it is stated that "***but the Chairperson insisted that she cannot remember as she had signed a lot of contracts and so an enquiry can be made from the Director of Finance.***"

4.4.29 It is obvious from the above-quoted part of the minutes that the evidence adduced by Petitioners to prove this point too did not support their case. Respondent did not deny signing any contract. Respondent only said that she could not remember whether or not she had signed the contract [at the amount alleged without recourse to the director of finance who had custody of all contract documentation.](#)

4.4.30 This time again, Petitioners' witness, Dr. Asamoah, admitted during cross-examination that the award of the contracts for consultancy and partitioning of the office was first approved by the PPA Board. It then went [before the ETC, then](#) through the process of evaluation after which the evaluation report was submitted to members of the Tender Review Committee.

4.4.31 Although Dr. Asamoah tried to avoid the consequences of his testimony by saying that Respondent unilaterally signed the contract, the witness failed to show that the Tender Review Committee did not give its approval to the award of the contract. This is evidenced by the following line of questions and answers during cross-examination:

“Q. Did the Tender Review Committee reject your report?

A. I am informed the other members of the Committee did not take part in the review process. Ordinarily the approval should come with a report indicating which persons attended the meeting but there was no such report.

Q. The Procurement unit of the EC generated a contract in the sum recommended by the Evaluation Committee.

A. Yes.

Q. Do you have any report from the Entity Tender Review Committee after the Evaluation Committee has submitted a report to it?

A. No.

Q. I put it to you that the reason you do not have any such report is that the Review Committee does not write any report upon receipt of a report from the Evaluation Committee.

A. I am not aware about that.”²⁹

4.4.32 From the line of questions above, the petitioners’ witness had a fine opportunity to show reports produced by the Tender Review Committee for previous contracts awarded by the Commission so as to establish his testimony that the Tender Review Committee issues reports on the reports of the Tender Evaluation Committee submitted to them. He did not.

4.4.33 Petitioners therefore failed to prove that Respondent breached any procedure in the procurement laws. We shall now deal with the point that the contract sum awarded by Respondent is higher than the amount approved by the Public Procurement Authority. The petitioners tendered in JAK 13 and JAK 18 to prove this point. These exhibits are letters from the PPA which permitted the Commission to use

²⁹ Record of proceedings dated 11th April, 2018, Pages 6 & 7.

restricted tendering as the method of procuring consultants and contractors for the partitioning of the office space.

4.4.34 Exhibits JAK 13 and JAK 18 also disprove the allegation made against Respondent that the Respondent breached the procurement laws by signing contracts in excess of the values approved by the PPA.

4.4.35 A reading of the penultimate paragraphs in both JAK 13 and JAK 18 will confirm Petitioners' view on this matter as misconceived. The wording of the penultimate paragraphs in both JAK 13 and JAK 18 is the same and is quoted below:

“Please be informed that, the approval granted you is permission to use Restricted Tendering method in accordance with section 38 (b) of Act 663 for the intended procurement activity. You are kindly advised to seek concurrent approval ferom the appropriate Tender Review Board as per the value of the intended procurement activity after completion of the tendering process.”

4.4.36 The PPA Board clearly expresses the object of the approval as relating to the method of procurement which is to be used, to wit, restricted tendering method. The Board specifically indicates that regarding the value of the contract, approval should be sought from the relevant procurement committee when the tender is completed. This shows, without a shadow of doubt, that approvals by the PPA Board relate only to the method of procurement.

4.4.37 This point is made clearer by section 38 of Act 663 which provides as follows:

“A procurement entity may for reasons of economy and efficiency and subject to the approval of the Board engage in procurement by means of restricted tendering...”

4.4.38 This section which empowers the Board to give approvals, does not state that the approvals relate to the values of the contract instead it reveals that the approval is to “**engage in procurement by means of restricted tendering**”. The

proposed contractual values contained in the Commission's request for approval may be changed and it for this reason that the Board specified that the values of the contract should be approved by the relevant procurement committee. It follows that the petitioners' claim cannot be supported by law^[CO2].

4.5 ***Paragraph 8 of the petition shall be our next focus. The elements of the allegation made in paragraph 8 of the petition are:***

- a. Respondent has awarded contracts to the tune of \$14,310,961 United States dollars for the construction of pre-fabricated district offices without recourse to the Commission.
- b. The value of these contracts is in excess of the approved threshold by the Public Procurement Authority.
- c. Upon receipt of the advance mobilization under the approval of Respondent, Messrs. Contracts & Cads Limited has failed to meet the contract terms.
- d. Notwithstanding the clear breach of the contractual terms, Messrs. Contracts & Cads Limited has requested for additional payment, which Respondent has approved.
- e. The Director of Finance has stopped the payment of this request and this accounts for one of the reasons of Respondent's disaffection for the Director of Finance.

4.5.1 With regards to point (a), Forson Ampofo and Joseph Asamoah repeated the same allegation without providing any evidence on how the Commission was deprived of knowledge of these contracts. Indeed, Dr. Asamoah's own testimony on the procurement process undermines Petitioners' case on this point.

4.5.2 The four members of the Commission who were called on behalf of petitioners were silent on how these contracts were concluded on their blind side. Having adduced no evidence in support of this claim, we shall not spend time on this point.

4.5.3 Point (b) is also without basis by virtue of sections 38 and 40 of Act 663 which make it clear that approvals given by the PPA board are in relation to the method of procurement adopted by the entity. This point is buttressed by JAK 22 in which the PPA board stated that the approval given is for permission to use restricted tendering method for the intended procurement activity. As per the value of the procurement activity, approval is to be obtained from the Tender Review Board (which is the Tender Review Committee for the EC) after completion of the tendering process. This effectively dispels the petitioners' contention that the amount contained in the PPA letter is to be abided by strictly.

4.5.4 In reference to points (c) and (d), the petitioners did not adduce any evidence on how Messrs Contracts & Cads Limited breached any of the terms of the contract awarded to it. The petitioners made this sweeping allegation without supporting it with any material evidence which show the alleged failure to meet the contract terms and a request made by Messrs Contracts & Cads for additional payment. No documentary evidence of this request was adduced before the Committee.

4.5.5 In addition, there is no evidence that the Respondent approved any additional payment to the company. The Director of Finance who was called by petitioners did not exhibit any memorandum from the Respondent which authorizes any payment to the company.

4.5.6 In respect of paragraph (e) that the Director of Finance stopped payments to be made to Messrs Contracts & Cads and that this occasioned Respondent's disaffection for him, Joseph Asamoah neither testified to having stopped making payments to Messrs Contracts & Cads Ltd nor being in a strained relationship with the Respondent. There is therefore no basis for this allegation^[CO3].

4.6 ***We shall now assess the evidence adduced in support of the allegation in paragraph 18 of the petition. The elements of the allegation as found in the petition are:***

- a. There is no contract with Dream Oval Limited yet the Respondent has consistently approved \$76,000 United States Dollars for payment to the company.
- b. The approval by Respondent for payment to Dream Oval Limited without contract is contrary to the Financial Administration Act.

4.6.1 On point (a), the petitioners' witness, Joseph Asamoah, testified that the donor funding received by the Commission with which it made payments to Dream Oval Limited constitute public funds therefore the Respondent ought to have adhered to Act 663. This contention has no legal foundation when the definition of 'public funds' is considered. Section 98 of Act 663 defines "public funds" as follows:

"public funds include the Consolidated Fund, the Contingency Fund and any other public funds established by Parliament."

4.6.2 The ending of this provision, which says "and any other public funds established by Parliament", characterizes the nature of funds which fall within the domain of public funds. An application of the ejusdem generis rule of interpretation effectively indicates the category of funds contemplated by this section and in respect of which the Public procurement law applies. Donor support not being a part of funds established by Parliament, it cannot legitimately be contended that Act 663 applied to the mode of use of these funds.

4.6.3 With regards to point (b), it is instructive to note that the law which the petitioners allege Respondent to have breached has long been repealed. There is no law in existence currently which is titled "Financial Administration Act" and an alleged illegality cannot be determined on the basis of an enactment which no longer exists.

4.6.4 Further, assuming the Act was even in force, the petitioners did not cite any particular provision of the Act against which the conduct of the Respondent can be tested and also adduced no evidence to show the contents of this law which they allege to have been breached. By so doing, the

petitioners have not discharged the burden on them to produce the requisite evidence.

4.7 We shall now deal with paragraph 27 of the petition. As pertains to the contents of this paragraph, the following must be proved:

- a. Respondent unilaterally awarded a contract of about \$25,000 to a South African company, Quazar Limited.
- b. The contract awarded by Respondent was to change and redevelop the Commission's logo under the guise of rebranding.
- c. The unilateral award of the contract by Respondent to Quazar Limited was done without going through tender contrary to the Public Procurement Act.

4.7.1 With respect to point (a), none of the members of the Commission who were called upon by the petitioners gave evidence on how the contract to Quazar Limited was awarded without their knowledge and approval. They were silent on this point thus the allegation of the petitioners stands unproven.

4.7.2 Similarly, on point (b), no evidence was adduced by the petitioners to show that the actual reason for awarding the contract to ~~Dream Oval~~ Quazar Ltd was for a redevelopment of the Commission's logo disguised as rebranding.

4.7.3 On point (c), apart from the fact that the petitioners failed to show how unilaterally the contract was awarded, the petitioners' contention that the contract to Quazar Ltd for consultancy services ought to have gone through tender, is legally flawed. As earlier argued, the Tender method of procurement provided in the Fifth schedule (whether national or international) does not cover contracts for consultancy services but rather, it covers contracts for technical services.

4.7.4 Reference to JAK 31 and JAK 33 show that Quazar Ltd was contracted to provide consultancy services and not technical services thus petitioners' allegation that the tender process should have been adopted is not consistent with the law.

4.7.5 From the assessment of the evidence adduced by petitioners, it is evident that the petitioners did not provide evidence to prove some aspects of their allegations and the evidence adduced in proof of some parts of the allegation are questionable. We shall now continue with an evaluation of the witnesses called by the petitioners.

4.8 ***Evaluation of witnesses called by Petitioners to prove their case.***

4.8.1 In this part of our address, we shall evaluate the credibility of the witnesses called to testify in favor of Petitioners. The Evidence Act, 1975 (NRCD 323) gives some guidelines on the points to note when assessing the credibility of a witness and the evidence offered by the witness.

4.8.2 Section 80(2) of NRCD 323 provides that the;

“(2) Matters which may be relevant to the determination of the credibility of the witness include, but are not limited to

- a) The demeanor of the witness;
- b) The substance of the testimony;
- c) The existence or non-existence of a fact testified to by the witness;
- d) The capacity and opportunity of the witness to perceive, recollect or relate a matter about which the witness testifies;
- e) The existence or non-existence of bias, interest or any other motive;
- f) The character of the witness as to traits of honesty or truthfulness or their opposites;

- g) A statement or conduct which is consistent or inconsistent with the testimony of the witness at the trial;
- h) The statement of the witness admitting untruthfulness or asserting truthfulness.”

4.8.3 For the purpose of our discussion, the credibility of the petitioners’ witnesses will be discussed by reference to one or more of the matters stated in section 80(2) above. At this point, we proceed to evaluate each one of the petitioners’ witnesses.

4.9 ***Mr. Ampofo Forson.***

4.9.1 This witness, a petitioner himself, was represented as Petitioners’ representative and accordingly, purportedly spoke on behalf of all the petitioners.

4.9.2 The Committee will recall that Respondent applied to expunge parts of Mr. Ampofo Forson’s witness statement on the ground that it not only contained matters of inadmissible hearsay but also because it contained matters in respect of which he had no personal knowledge. This application was only partially successful for reason that we desire not to restate here.

4.9.3 Suffice it to say that the first sign that Mr. Ampofo Forson is incredible was exposed when the source of his information which is the basis for his testimony was tested in cross-examination.

4.9.4 Mr. Forson testified in his witness statement that as the Chairman of the Ashanti regional branch of the Public Services Workers Union, he attended management meetings where he obtained some of the information about which he testified in his witness statement.

4.9.5 Mr. Forson’s claim that he had the privilege of attending management meetings of the Commission was exposed to be untrue. This is evidenced by the following responses given by Mr. Forson during cross-examination:

“Q. I am putting it to you that the Ashanti Region branch of the Workers Union is not represented at the EC’s management meeting.

A. **I agree. What I have been saying is that if the Union needs to meet the EC management we are part of it.**

Q. I put it to you that **the only time representatives of the Union meet with the EC management is when you have issues with the EC management.**

A. **I agree.**”³⁰

4.9.6 From the testimony above quoted, it is obvious that the representations made by Mr. Forson Ampofo in his witness statement that he had the privilege of attending meetings held by the management team of the Commission and from which meetings he obtained the information about which he testified, is a lie.

4.9.7 The point above made re-emphasized the argument earlier made that Mr. Ampofo had no personal knowledge of matters about which he purportedly testified in his witness statement.

4.9.8 Further to the point above made, we refer the Committee to paragraph 4 of Mr. Forson’s witness statement. In this paragraph Mr. Forson says categorically that; **“these acts of procurement breaches came to my personal attention and can confirm that such breaches duly happened”**³¹. He continued with another statement that, **“I made further inquiries into the matter through official and unofficial means especially through the Director of Finance of the Commission who confirmed these allegations.”**

4.9.9 Cross-examination of this witness made it clear that, as a driver, he had not the remotest of knowledge of what the word “procurement” means, let alone knowledge of what its rules are to talk about breaches.

³⁰ Record of Proceedings dated 20th February, 2018, Page 3.

³¹ Page 1 of Mr. Forson Ampofo’s witness statement.

- 4.9.10 By the time Mr. Forson finished his testimony, it became obvious that as Petitioners' purported representative, he did nothing but undermine the substance and credibility of the petition.
- 4.9.11 Our submission is that Mr. Forson's testimony clearly vindicated Respondent's case that the petition, at best, was mounted on hearsay allegations which runs counter to Professor Modibo Ocran's admonition in the **Agyei-Twum case** that allegations in a petition brought under article 146 of the Constitution must not be picked from the rumor mill.
- 4.9.12 This preliminary discussion of Mr. Ampofo Forson's testimony now leads us to a discussion of his testimony on the allegations contained in the petition.
- 4.9.13 In respect of the engagement of Sory @ Law which forms the basis of the allegation in paragraph 5 of the petition, the witness revealed himself as completely ignorant of how Sory @ Law was engaged, payments made to Sory @ Law and the persons who authorised the payments.
- 4.9.14 As regards paragraph 6 of the petition, the substance of his testimony confirmed his lack of credibility. Significant points to note are that, first of all, Forson Ampofo does not know the value of the original contract which he claimed Respondent had unilaterally abrogated and in respect of which he and the other petitioners categorically stated that "*the abrogation, re-negotiation and award of the contract to the same vendor was more expensive compared to the original contract*".³²
- 4.9.15 Secondly, the witness admitted a lack of knowledge of the events surrounding the abrogation of the contract with STL and the specific person who abrogated the contract. This is made clearer when a section of the record reproduced below is cursorily read.

"Q. Are you aware that it was Dr. Asamoah who wrote to Super Tech Ltd there was the need to abrogate that contract?"

³² Paragraph 14(g) of witness statement of Mr. Forson Ampofo.

A. I don't know and I don't believe that is the truth. If that is so, he would not have told me the contract was abrogated by the respondent.

Q. I put it to you that it was Dr. Asamoah who sent an email dated 17th August, 2015 informing them about the abrogation of the contract, and copied same to the respondent and her two deputies.

A. That is contrary to what he Dr. Asamoah told me, so when he comes here he will answer.

Q. I further put it to you that the Director of Finance Dr. Asamoah admitted that the contracts that were abrogated were illegal contracts.

A. I don't know that. He will answer when he comes here.

Q. I therefore put it to you that your testimony that the respondent unilaterally abrogated the contract is untrue.

A. If that is it means Dr. Asamoah did not tell me the truth, and he has to explain when he comes here.”

4.9.16The above quoted reveals that Forson Ampofo does not have the capacity to perceive and speak to the very matters on which he testified.

4.9.17As pertains to the allegation in paragraph 7 of the petition on the allocation of office space to the Commission, Mr. Forson alleged during cross-examination that he spoke to only three out of the 7 members of the Commission who told him that the members of the Commission had no knowledge of the request made to the Presidency. Although this point was disputed during cross-examination, no effort was made to get any of the members he allegedly spoke to, to corroborate his account that he was actually spoken to by the Commission members who trusted attheir driver to fight their case, if any, for them better.

4.9.18In any case, the Committee will note that in his witness statement, the witness actually stated emphatically that all

members of the Commission (and not the three he allegedly spoke to) were not aware of the said request and allocation whereas he had actually spoken to only three members of the Commission.

4.9.19 Regarding the allegation in paragraph 8 of the petition, it became obvious during cross-examination that Mr. Forson Ampofo did not even understand the nature of the offices which formed the subject of the contracts Respondent was alleged to have unlawfully concluded. This is evidenced by the following which ensued between the witness and Counsel for the Respondent:

“Q. When it is said a building is prefabricated, do you understand it?

A. I don’t know, I don’t understand it.”³³

4.9.20 The witness could not answer key facts relating to the allegation which he reproduced in his witness statement and constantly referred them to be answered by the Director of Finance or the Deputy Chairperson in charge of Corporate Services.

4.9.21 The witness similarly expressed lack of knowledge, in his witness statement on key issues raised in paragraphs 18 and 27 of the petition. The brief points above made clearly expose Mr. Forson as a plainly incredible witness.

4.9.22 His testimony was clearly tainted with traits of dishonesty, betraying his lack of knowledge of the substance of the matters about which he testified before the Committee. We shall now proceed to evaluate the second witness of the petitioners, Joseph Asamoah.

4.10 ***Dr. Joseph Kwaku Asamoah.***

4.10.1 The credibility of this witness can be impeached on grounds of plain dishonesty and bad faith (in the sense of bias, prejudice and interest). This witness’s own statement and his answers during cross-examination confirmed this summary of his testimony. The witness not only testified

³³ Record of proceedings dated 21st February, 2018, page 4.

contrary to the very documents he relied upon to support his testimony, but unabashedly spoke against the same documents.

4.10.2 First of all, at paragraph 18 of his witness statement, Dr. Asamoah alleged that upon assuming office, Respondent begun corresponding with him and the Deputy Chairpersons on the contracts awarded to STL “**for reasons best known to her**”.

4.10.3 The impression created by Dr. Asamoah in his witness statement referred to, at paragraph 4.6.2 above is that, he had no knowledge of the reasons for which the Respondent corresponded with him and the Deputy Chairpersons on the said contract and also that Respondent had some personal (but undisclosed) interest in the said contract.

4.10.4 This testimony turned out to be completely false. In so testifying, Dr. Asamoah even forgot that his own exhibits contradicted his witness statement. Reference^[CO4] is made particularly to his own exhibit marked JAK 5 in which the Respondent stated twelve good reasons for which the Respondent deemed it necessary to discuss the contract. Several correspondences which were tendered through him and which he was privy to, exposed his testimony as a complete lie. Our submission is that, feigning ignorance of these reasons and testifying contrary to documentary evidence on the matter is without doubt, despicably deceptive especially for a man of his stature.

4.10.5 Secondly, Dr. Asamoah testified in his witness statement in respect of the consultancy for the-partitioning of the new office as well as the construction of the pre-fabricated offices that the Respondent breached the procurement laws for awarding these contracts at values in excess of the amounts contained in the approval letters from the Public Procurement Authority.

4.10.6 During cross- examination, the witness admitted playing a key role in the award of the contracts in excess of the values he turned round to accuse Respondent of failing to pay regard to.

- 4.10.7 Mr. Asamoah conceded that as head of the Commission's Tender Evaluation Committee, he recommended the award of the contract to the appropriate entities at the higher values he was now criticizing Respondent for. Dr. Asamoah also conceded that it was his department which prepared contracts for Respondent's execution.
- 4.10.8 Realizing how untenable his position is, in view of his complicity in the process he was criticizing, Dr. Asamoah said that he had advised otherwise, yet Respondent proceeded to sign the contracts.
- 4.10.9 Our submission is that Dr. Asamoah's attempt to repair his rather pathetic effort at justifying his conduct is again patent when it is noted that Dr. Asamoah failed (when challenged) to point to one document in which he advised Respondent that the signing of the contracts at values in excess of that approved by the PPA violates the procurement laws.
- 4.10.10 Dr. Asamoah even testified against the plain terms of his witness statement, when he says that in all of the situations in which he recommended the award of the contracts at figures higher than that approved by the PPA and in respect of which he himself generated the contracts for signing, Respondent acted unilaterally.
- 4.10.11 During cross-examination he admitted that the appropriate Committee to which he submitted his evaluation report for approval never rejected the valuation. He however said that he had information that Respondent acted unilaterally by signing the contract. This information was not contained in his witness statement.
- 4.10.12 Our submission in respect of the point made at paragraph 4.6.11 above is that, Dr. Asamoah's explanation clearly came as an afterthought after he was confronted during cross-examination with the fact that his own account of the process leading to the signing of the contract (as set out in his witness statement) confirms that Respondent did not act unilaterally.
- 4.10.13 The following questions confirm the point above made;

- i. If Mr. Asamoah knew that it is illegal to award the contract above the values submitted to the PPA for approval, why did he not indicate it in any of his reports?
- ii. Why did Mr. Asamoah's department generate contracts for values higher than that approved by the PPA and send them to Respondent to sign when he knew that this was illegal?
- iii. How come none of Mr. Asamoah's advices to Respondent that it is illegal to sign contracts in excess of that approved by the PPA is recorded in at least one document, such as his numerous evaluation reports, or in a memo accompanying the contracts he prepared for Respondent to sign?

4.10.14 The stark hypocrisy and bad motives which is the reason for this testimony is obvious when account is taken of the fact that as the head of the Tender Evaluation Committee, he then ought not to have recommended the award of the contract at values higher than that which he knew was not approved by the PPA.

4.10.15 It is submitted also that, Dr. Asamoah should also not have generated contracts higher than that in excess of what was approved by the PPA. Indeed, Mr. Asamoah's bad faith is also confirmed when note is taken of the fact that although he suggests breaches of the procurement law by reason of Respondent's execution of contracts in excess of that approved by the PPA, he does not point at the specific provision of the law which says that after the PPA (which approves only the method of procurement) has approved the method of procurement (and not the value even if it is stated in the letter requesting approval), it is required that fresh approval is sought only in respect of the value.

4.10.16 In all of his testimony, Dr. Asamoah falsely represents himself as the saintly public official who tried to ensure compliance with the law to no avail. So committed was Dr. Asamoah to bearing false witness against Respondent that he not only testified contrary to the very documents he relied on

in his testimony but also his witness statement and actually forgets the fact that, as the head of the Tender Evaluation Panel who recommended the award of contracts higher than that approved by the PPA and not stopping there, generated contracts based on his own recommendations, he is also guilty of infractions of the procurement laws if the award of the contracts at the higher values breaches the procurement rules.

4.10.17 The points discussed most definitely impeach the credibility of Dr. Asamoah, whose testimony was not consistent with his own documents and witness statement and his dogged inclination to asserting the truthfulness of some of his statements when neither logic nor common sense favoured them. We shall not belabor the point.

4.10.18 We shall now discuss the credibility of the four members of the Commission who testified in favor of the petitioners. We propose to evaluate them as a whole by reason of the fact that their evidence dealt with almost the same issues and was identical. Where necessary for purposes of clarity we shall mention the name of the particular Commission member whose conduct and evidence requires special attention.

4.11 ***The Four Commissioners.***

4.11.1 The evidence of the Commissioners is impeached on grounds of bad faith and a lack of truthfulness. Before dealing with their evidence which vindicates this point, we note first of all that none of the four Commissioners gave evidence to show that for all six allegations which this Committee is investigating, Respondent acted unilaterally.

4.11.2 With respect to the allegation that Sory @ Law was engaged without recourse to the Commission, the Commissioners testified that they were unaware of the circumstances leading to the engagement of Sory @ Law or that the Commission had any contractual relationship with the law firm.

4.11.3 When tested against admitted and for that matter, undisputed facts, the testimony of these Commissioners is shown to be untrue. These facts are as follows;

- i. From the period 2015 to 2016, the Commission faced several suits in court and this fact was admitted by the Deputy Chairperson in charge of Corporate Services.
- ii. During this period, the Commission as the Commissioners would want the Committee to believe, did not appoint any lawyers to represent it in the suits.
- iii. Commissioners followed lawyers from Sory @ Law to Court when Sory @ Law appeared to represent the Commission.
- iv. No Commissioner ever wrote a memo (as Fynn did to ascertain whether Respondent has signed a particular contract or not) raising the issue as to the appointment of Sory @ Law.
- v. Payments made to Sory @ Law were done with the knowledge of some of these Commissioners, who minuted on some of the documents relating to the payments.

4.11.4 The first interrogatory which makes out our point here is this; if indeed the three Commissioners did not know about the engagement of Sory @ Law and the feedback from Rebecca Adjalo on a possible engagement of state attorneys to represent the Commission on the flurry of law suits against it was not forthcoming, what steps did these Commissioners take to deal with these law suits?

4.11.5 The next interrogatory is this; when these Commissioners were going to Court without knowledge of the appointment of Sory @ Law to represent the Commission, what did the Commission agree on that as they appeared in Court, they should tell the Court?

4.11.6 The interrogatory above stated is better put thus; what did these Commissioners who showed up in Court without any knowledge that the Commission had lawyers intend to tell the Court when the case was called?

- 4.11.7 Finally, did these Commissioners, upon seeing lawyers from Sory @ Law appear in Court for the first time, ask when they were employed and who contracted them?
- 4.11.8 The untruthfulness of their testimony is therefore exposed by the fact that these Commissioners attended court several times, at which time, to their minds, no lawyer had been contracted by the Commission to represent the Commission in Court. The question as already noted is simple; What practical steps did they take to find lawyers for the Commission since they believed that the Commission had not engaged Sory @ Law?
- 4.11.9 Again, the Commissioners testified that there were no records at the Commission which showed that a decision had been taken by the Commission to engage Sory @ Law and also that there was no deed which showed the terms of engagement of Sory @ Law.
- 4.11.10 The dishonesty inherent in this testimony is that during cross-examination, all the Commissioners admitted to not having ever seen records of the decision of the Commission to engage Lynes, Quashie-Idun in the past or any record of the contract which existed between the previous solicitors and the Commission.
- 4.11.11 If they did not find anything wrong with the arrangement by which the Commission dealt with the previous solicitors of the Commission for several years before Respondent's appointment as the Commission's Chairperson, where lies the cause for alleging that the same arrangement used in engaging Sory @ Law is illegal this time around?
- 4.11.12 With regard to the STL contract, the Commissioners testified that Respondent unilaterally abrogated the Commission's contract awarded to STL. Exhibits JAK 5 and JAK 6 attached to Dr. Asamoah's witness statement completely exposed the Commissioners (who have the status of Justices of our Superior Courts) as criminally untruthful. The exhibits referred to put it beyond doubt that in every step of the way, the Commissioners were informed and even took

part in discussions (as they corresponded on them) in relation to the contract.

4.11.13 It was also patently false when the Commissioners testified that they were not aware of the request and subsequent allocation of office space to the Commission. The Commissioners did not dispute the fact that they visited the office premises and did not raise any issues on the acquisition of the said property. In fact, the evidence of the other Commission members who testified in favor of the Respondent showed that all the Commission members expressed satisfaction with the new office premises.

4.11.14 In particular reference to the evidence of Mrs. Pauline Adobea Dadzawa, this Commissioner was silent on the allegations made against her which were supported by uncontroverted evidence that the petition now being investigated was orchestrated by Mrs. Pauline Adobea Dadzawa and some of the other Commissioners.

4.11.15 Apart from the untruthfulness of the other Commissioners which is also a ground for impeaching Mrs. Pauline Adobea Dadzawa, this Commissioner's testimony is also impeached on grounds of bias, motive and interest.

4.11.16 Our submission is that from the contents of the tape recording where Mrs Dadzawa is heard talking about the petition even before it was presented, it is safe to infer that the other Commissioners who testified against Respondent are the Commissioners she referred to in the tape recording as united with her in their desire to remove Respondent from office.

4.11.18 In terms of motive, bias or interest, where it can be shown that the witness was actuated to testify by reason of a previous disagreement with the person against whom the testimony is given or by reason of a personal interest other than a genuine willingness to contribute to the administration of justice and the maintenance of law and order, the witness is not credible.³⁴

³⁴ R v Shaw (1888) 16 Cox 503.

4.11.19 From the contents of the audio recording which is before this Court and which is admitted by the parties including Mrs. Pauline Adobea Dadzawa who, at least honorably shied away from it, there can be no doubt that Mrs Dadzawa played an active role in instigating the bringing of the petition for Respondent's removal. She and her colleague Commissioners clearly testified in defiance of logic and common sense for reasons only of mischief.

4.11.20 We also submit that Mrs. Dadzawa's hatred towards the Respondent is revealed by this audio recording. Our submission is that the audio recording questions, without any controversy whatsoever, the credibility of Mrs. Dadzawa and her other friends on the Commission (presumably those who testified for Petitioners).

4.11.21 We shall now deal briefly with the testimony of Mr. Adjenim Boateng Adjei.

4.12 ***Adjenim Boateng Adjei.***

4.12.1 The testimony of this witness also failed the credibility test in some respects especially by reference to the provisions of Act 663. Our submission is that, to the extent that this witness testified on matters of law, we expected that his testimony would be justified by reference to specific statutory provisions justifying his conclusions. Our expectations in this regard were not met.

4.12.2 The first point we note with regard to this witness's testimony is his testimony at paragraph 7 of his witness statement where the witness says that notwithstanding the latitude given by the Act to Respondent as head of entity to procure services for sums not exceeding GHS 100,000, PPA's approval is nevertheless required where the services contracted are procured through the use of the single source procurement method.

4.12.3 We note right from the outset that this testimony is not correct. Attached to the witness' statement is an exhibit ABA 1 which the witness relies upon to prove his testimony. A

reading of exhibit ABA 1 will confirm that it provides for approval in relation to the single source procurement method pursuant to section 40 (1)(d) of Act 663.

4.12.4 Section 40(1)(d) shows that it is the method of single-source procurement which a procurement entity intends to use which must be approved by the Board of the PPA. There is no mention made in this section of approvals relating to the value of the procurement to be carried out.

4.12.5 The intendment of the section is to restrain procurement entities from limiting participation in the procurement process at their own pleasure thus the prior approval of the Board must be obtained before the adoption of that method of procurement. The evidence of this witness is inconsistent with the letter and the spirit of Act 663 and therefore cannot be relied upon as a valid proposition of law.

4.12.6 Further to the point made in paragraph 4.8.4, there is no provision in the Act which says that the threshold granted to the Respondent as head of entity is not applicable when the single source method of procurement is adopted.

4.12.7 When recourse is made to Section 18(3f) of the Act, it is found that the only limitation to the latitude granted to heads of entities is in the case where the amount involved exceeds the approval threshold of head of entities provided in the Second Schedule. It is therefore untrue that Respondent's right to contract within her threshold is hampered by the method of procurement employed.

4.12.8 The witness again misconceived the essence of approvals by the PPA Board when he testified in paragraph 13 that the Commission was required under best practice to apply to PPA for approval on the final contract sum which was in excess of the amount stated in the approval letter. The witness provided no basis whatsoever for the best practice he alluded to.

4.12.9 In addition, a look at ABA 3, which he attached to his witness statement disproves this supposed point of law which the witness testified on. The penultimate paragraph of ABA 3 shows that the approval granted by the Board is for

permission to use restricted Tendering as a method of procuring consultancy services. The Board advised the Commission to seek approval from the appropriate tender review board as to the value of the intended procurement activity after completion of the tendering process.

4.12.10 Apart from the fact that the reason for including the penultimate paragraph is rooted in Act 663 itself, it also accords with logic that approval of values of the intended procurement should be made by the relevant committee in the procurement process. This is because, the amounts stated in the letter of approval are merely proposed sums ([estimates](#)) which are subject to change depending on the tenders received and the value of the tender which will be finally accepted by the entity.

4.12.11 The point made in [paragraph 4.8.10](#) is confirmed by ABA 4 which repeats the same advice to the Commission in respect of the value of the contract to be awarded. We shall not belabor the point.

4.12.12 It has been made obvious from the foregoing assessment that the substance of the witness' testimony is not a true reflection of the law which he purported to testify on. The witness has only given his own interpretation of the law which does not pass as a true and proper interpretation of Act 663 if its letter and spirit are considered.

4.12.13 Having evaluated the witnesses called by petitioners, we hereby conclude our discussion of the petitioners' case and move on hereafter to discuss the case of the respondent.

4.13 *The Respondent's case.*

4.13.1 The crux of the Respondent's case is captured in her witness statement. In this statement, Respondent dealt with each of the allegations contained in the six paragraphs of the petition which are the subject of investigation by the Committee.

4.13.2 In sum Respondent;

- i. Questioned the validity and bona fides of the petition.
- ii. Maintained that at all times material to the petition, she acted together, and with the knowledge and consent of the other members of the Commission in respect of the matters complained about in the petition.
- iii. Maintained that all procurements made by the Commission were done in accordance with the relevant rules on procurement.

4.13.3 Respondent gave credible, corroborated and uncontroverted evidence to support her case in respect of each of the allegations the subject matter of the Committee's investigations. It is therefore Respondent's evidence that we shall now discuss.

4.14 Evidence Adduced by the Respondent in defence to the allegations.

4.14.1 Respondent testified herself in defence of the allegations the subject matter of the Committee's investigations. Her testimony was corroborated not only by Petitioners' witnesses but also by the witnesses she called to testify in support of her case.

4.14.2 We have already made submissions on the evidence adduced by Respondent on the validity and bona fides of the petition. We shall therefore not repeat the arguments here. Suffice it to say that, Respondent called seven witnesses. These witnesses are as follows;

- i. Two members of the Commission as established by the Constitution.
- ii. The secretary to the Entity Tender Committee and head of the Procurement Unit of the Commission.
- iii. The deputy head of the Commission's Procurement Department.
- iv. A broadcast journalist;

- v. A director of CPM Africa Limited a consultant contracted by the Commission; and
- vi. The head of the donor desk unit of the Commission. These witnesses gave evidence in addition to the evidence adduced by the Respondent herself.

4.14.3 Respondent's own evidence and that adduced by these witnesses will be discussed subsequently. In discussing the evidence adduced by Respondent's witnesses to support Respondent's case, we shall discuss their testimonies in relation to the allegations that Respondent is defending in terms of the Committee's investigations. We shall therefore proceed to deal with the first one.

4.15 ***The allegation in Paragraph 5 of the petition.***

4.15.1 The first allegation that this Committee is required to investigate is that stated at paragraph 5 of the petition. It is alleged in that paragraph of the petition that Respondent unilaterally engaged Sory @ Law without the knowledge of the other Commissioners and in breach of procurement laws of the Republic of Ghana.

4.15.2 Respondent flatly refuted this allegation in her testimony. Respondent testified on a number of matters relating to Sory @ Law. Respondent's testimony on this point is summarized subsequently. Respondent, first, testified that the decision to engage Sory @ Law was taken at a meeting of the Commission in September 2015 but minutes were not taken owing to the emergency nature of the meeting.³⁵

4.15.3 Although Petitioners tried through their witnesses (the other Commissioners) to displace this testimony, all the evidence adduced by Petitioners' witnesses only confirmed that Respondent was right when she testified that no minutes records the decision to engage Sory @ Law. The reason is that none of Petitioners' witnesses adduced any evidence to prove any records which reflect the deliberations during which Sory @ Law was appointed as the Commission's lawyers.

³⁵ See paragraph...of her witness statement.

- 4.15.4 Respondent next testified that because of the nature of court proceedings, it was impossible, assuming that the engagement of Sory @ Law was required to be subjected to the procurement process, to abide by the procurement requirement and still effectively defend cases brought against the Commission. This fact, is a matter in respect of which members of the Committee with a judicial background can take judicial notice of. We will therefore not flog it.
- 4.15.5 Respondent also testified that because it was impossible to foresee the nature and types of cases and the fora in which these cases will be commenced, it was not possible to agree a fee in advance for the conduct of these cases by Sory @ Law.
- 4.15.6 The evidence adduced confirmed that, indeed one of the Deputy Chairpersons was delegated to negotiate the fees with Sory @ Law. Sory @ Law's letters and invoices to the Commission and the minutes on them, together with the payment vouchers confirm Respondent's testimony on this matter.
- 4.15.7 Respondent's testimony was not only corroborated by the documentary evidence attached to Respondent's case but also the witnesses called by her. We refer first to the evidence of Sa-adatu Maida, a Commissioner, who testified among others in her witness statement that the Commission's need to procure the services of a lawyer was due to the eruption of cases against the Commission before the 2016 elections.
- 4.15.8 Of particular importance is the evidence of Rebecca Kabukie Adjalo, another Commissioner, who indicated that she had first suggested Sory @ Law to the former Chairperson of the Commission for a possible engagement but no step was taken until the issue came up in the September 2015 meeting at which there was a unanimous decision to engage the law firm.
- 4.15.9 As already submitted, the fact that the decision to engage Sory @ Law was NOT unilaterally taken is confirmed by the exhibits attached to Respondent's witness statement, some of which show that some letters were addressed to other officials of the Commission and the payment vouchers

evidencing payments to the firm were approved and minuted on by the accounts and audit departments of the Commission over which the Deputy Chairperson in charge of Corporate Services has oversight responsibility and supervision.

4.15.10 The point in paragraph 4.7.11 above is corroborated by the evidence of petitioners' witness, Dr. Joseph Kwaku Asamoah, who narrated the procedure for payments by the Commission.³⁶

4.15.11 The procedure outlined by Dr. Asamoah confirmed clearly that Respondent has no hand in in the payment process by which Sory @ Law was partially paid for its services. Dr. Asamoah's own exhibits JAK 2, JAK 3 and JAK 4 show that authorization for all the payments made to Sory @ Law were made by Dr. Asamoah.

4.15.12 The collective decision to engage Sory @ Law is also bolstered by evidence that Commission members, including the four Commission members who testified for petitioners, attended court with lawyers from Sory @ Law and were usually briefed on cases by these lawyers. On no occasion whatsoever, was there a query raised by any Commission member as to the engagement of Sory @ Law. This therefore puts the matter to rest.

4.15.13 Respondent's contention also that the engagement of Sory @ Law did not breach any rule of procurement is confirmed by the fact that the rules on procurement permit the engagement of Sory @ Law especially where, as in this case, the value of each of the services for which Sory @ Law was engaged, did not exceed the statutory mandate of the Head of Entity. Petitioners' own witness (Dr. Asamoah)³⁷ corroborated the fact that the value of each of the services rendered by Sory @ Law, did not exceed the threshold of the Commission's Head of Entity.

4.15.14 Much ink has been spilled on the subject of the engagement of Sory @ Law already. We will therefore not

³⁶ Record of proceedings dated 12th April, 2018, Page 1.

³⁷ JAK 2

detain the Committee with any further arguments on this point.

4.16 ***The allegation in paragraph 6 of the petition.***

4.16.1 In allegation 7 set out in the petition, it is alleged that the Respondent unilaterally abrogated the STL contracts and re-awarded same without the involvement of members of the Commission. The petitioners also alleged that a tender process ought to have been used.

4.16.2 The evidence which debunked this allegation is overwhelming. The evidence is largely documentary. Petitioners' own witness; Dr. Asamoah attached some of these documents to his witness statement.

4.16.3 Respondent also attached two email correspondences marked 22 and 23. In these email correspondences, Respondent informed the Deputy Chairpersons and the Director of Finance of breaches of law apparent in the STL Contracts awarded by the Deputy Chairpersons.

4.16.4 Of significance is exhibit 25 written by the Commission's Director of Finance to Respondent in which the Director of Finance confessed a lack of knowledge of the procurement processes leading to the award of the contracts to STL. We also refer to exhibit 26, which is an email written by the Deputy Chairperson in charge of Operations. In exhibit 26, the Commission's Deputy Chairperson in charge of Operations confessed his lack of knowledge of the procurement processes generally and particularly, his misunderstanding of the purpose of the STL Contracts which he witnessed.

4.16.5 The cumulative effect of Respondent's evidence which is supported by documentary proof is that members of the Commission were duly informed of the reasons for which it was necessary to terminate the STL contracts and actually duly participated in the process by writing emails on the subject. The re-engagement of STL following the approved process was also transparently initiated.

4.16.6 Exhibit 27 shows the correspondence between the Director of Finance and an official of STL in which the Director of Finance initiates the process towards re-engaging STL. The documentary trail of evidence confirming the process by which STL was re-engaged put it beyond doubt that Petitioners' claim against Respondent that she unilaterally abrogated and re-awarded the contracts to STL is a total lie.

4.16.7 The prior authorization granted by the PPA to the Commission to use sole sourcing in procuring the items from STL means that the Commission could not have used any other method of procurement therefore petitioners' claim that a tender process should have been used does not accord with the provisions of the law.

4.16.8 In sum Respondent's case that due process was followed in the termination and re-award of the same contract to the same STL was vindicated by the one sided credible and well documented evidence which supported Respondent's case.

4.16.9 We now discuss Respondent's testimony on allegation 7.

4.17 ***The allegation in Paragraph 7 of the petition.***

4.17.1 Respondent's testimony in respect of this allegation was corroborated by the heads of the Procurement Unit at the Commission and by two members of the Commission. This allegation was that the Respondent's request to the Presidency for office space was on the blind side of members of the Commission and the contracts relating to the partitioning and demarcation of the office were awarded unilaterally and in breach of the procurement laws.

4.17.2 As earlier noted, a member of the Commission who testified for Respondent, Sa-adata Maida said that Respondent informed members of the Commission sometime towards the end of 2015 that there was the need to acquire an enlarged office space given the Commission's additional responsibilities of accommodating the Association of African Election Authorities.

- 4.17.3 Respondent accordingly requested the Presidency for assistance in acquiring a property for the purpose stated at paragraph 4.9.2 above. The correspondence on this is attached to Respondent's witness statement and marked. Exhibit SM 1 attached to Sa-adata Maida's witness statement also confirms the fact that Respondent duly informed members of the Commission after the allocation of the property to the Commission.³⁸
- 4.17.4 There is no evidence on the face of exhibit SM1 that any of the members of the Commission objected to the allocation of the property to the Commission or even questioned the process by which it was acquired. None of the Commission members who testified in favor of the Petitioners gave evidence that they raised any concerns regarding the process and the allocation of the property to the Commission.
- 4.17.5 Sa-adata Maida's testimony was corroborated by the uncontroverted testimony of another Commissioner; Rebecca Kabukie Adjalo. Given the evidence adduced on this allegation which all confirmed this allegation as malicious, we shall wind up our discussion of the evidence adduced by Respondent in defence of this allegation here.
- 4.17.6 The point we must make however with regard to this allegation is the fact that, Respondent proved, again with documentary evidence that the current premises of the Commission is unsafe, contrary to what Petitioners alleged, hence the need to seek alternative office space. See the Fire Report attached to Respondent's witness statement and marked 36.
- 4.17.7 It is also significant to add that Respondent's efforts at procuring safer and better office working conditions for the Commission was not for her personal benefit but for the safety of all the staff and the security of national data kept at the office.
- 4.17.8 The award of the consultancy contract for the demarcation/partitioning of the Commission's new office

³⁸ See paragraph 5.6 of exhibit SM 1.

premises, as the evidence proved, was done in accordance with due process also.

4.17.9 Respondent testified that the Commission sought and obtained approval from the PPA to deploy restricted tendering to procure the services of a consultant. Respondent's testimony on the procedure for the award of the contract is supported by exhibits 42 and 43 attached to her witness statement. These documents could not be contradicted by any other documents.

4.17.10 The consultancy contract was awarded to Messrs ~~Cads, Contracts and Services~~ CPM Africa after the Commission's Tender Evaluation Committee recommended Messrs ~~Cads, Contracts and Services Ltd~~ CPM Africa for the award of the contract.

4.17.11 The evidence on the process leading to the award of the contract to ~~Messrs Cads, Contracts and Services Limited~~..... was corroborated by the testimony of the Commission's Head of Procurement Unit as well as the Deputy Head of the same unit. The exhibits attached to their witness statements prove beyond reasonable doubt that ~~Messrs Cads, Contracts and Services~~^[CO5]..... Limited were engaged in accordance with due process.

4.17.12 The effect of the evidence adduced by Respondent to defend this allegation is that Respondent did not act unilaterally in acquiring office space for the Commission and the consultancy contract for the demarcation/partitioning of the office space was properly and legally awarded. We shall deal next with the allegation in paragraph 8 of the petition.

^[CO6]4.18 ***The allegation in paragraph 8 of the petition.***

4.18.1 This allegation borders on contracts awarded for the construction of pre-fabricated offices for the Commission in various districts across the country.

4.18.2 On this allegation, The Commission's Head and Deputy Head of the Procurement Unit both testified on the process that led to the award of the contracts for the construction of pre-fabricated offices. Their elaborate testimonies on the steps

taken prior to and subsequent to the award of the contract, were never contradicted.

4.18.3 Indeed, The Commission's Director of Finance who is actually Petitioners' Chief witness, admitted during cross-examination that the final contractual values were the amounts recommended by the Evaluation Committee (which he chaired) in a report submitted to the Entity Tender Review Committee for approval.³⁹

4.18.4 With regard to the evidence on this allegation, we think it necessary to repeat the point earlier made that the allegation that members of the Commission had no knowledge of these contracts is disproved not only by the detailed testimonies of the two heads of the Commission's Procurement Unit, but corroborated by Dr. Asamoah's own detailed testimony on the steps taken leading to the award of the contract and his own direct participation in it through the Tender Evaluation Committee and the subsequent submission of a report to the Entity Tender Review Committee which comprises two Deputy Chairpersons.

4.18.5 The testimonies of the witnesses above referred to, also confirmed the same procurement process with regard to the award of the contract for consultancy services in respect of the construction of the pre-fabricated offices.

4.18.6 The evidence adduced in support of Respondent's case on this allegation proves authoritatively that the allegations made against Respondent on this allegation are untrue. We shall now discuss the evidence adduced by the Respondent in response to the allegation in paragraph 18 of the petition.

4.19 ***The allegation in paragraph 18 of the petition.***

4.19.1 The allegation in paragraph 18 of the petition is that there is no contract with Dream Oval Ltd yet the Respondent has made payments to it. This allegation is also disputed by Respondent. Respondent's testimony is corroborated by the evidence of Hamid Kodie Fisa who is the head of the Commission's donor desk.

³⁹ Record of proceedings dated 11th April, 2018, Pages 8 & 9.

4.19.2 Hamid Kodie Fisa tendered in evidence exhibit HKF 3 which is a notification of award of contract from the Commission. It provides details of the contract and the obligations of the company. Of significance is the penultimate paragraph in this document which reads:

“We would be grateful if you could inform the Commission of your acceptance or otherwise by close of day on Thursday, 11th February, 2016. Without an acceptance letter, there is no contract.”

4.19.3 The paragraph above quoted clearly confirms that all that was required was for a letter of acceptance to be written in order for a contract to come into existence. A contract need not be in any particular form unless the law requires that a formal writing designated as a contract be signed between the parties.

4.19.4 We must point out here that Hamid Kodie Fisa is a more credible witness in so far as matters regarding this contract is concerned as compared to Dr. Asamoah the quality of whose testimony we have already discussed.

4.19.5 There is another point that must be noted with regard to the Dream Oval contract. The Dream Oval contract was concluded on the back of a prior agreement between USAID and the Commission. The Dream Oval contract was therefore signed on the basis of funding made available by USAID. The funds therefore do not originate from public funds contrary to Dr. Asamoah’s testimony.

4.19.6 The logical consequence of the point made in paragraph 4.11.5 is that by the operation of law, the execution of the contract is not subject to compliance with Act 663 due to the fact that donor funds do not constitute public funds as defined by section 98 of the Act. It defines public funds to;

“... include the Consolidated Fund, the Contingency Fund and any other public funds established by Parliament.”⁴⁰

⁴⁰ See also article 175 of the 1992 Constitution.

4.19.7 Section 96 of the Act also specifies that procurement with international obligations arising from a grant or concessionary loan to the Government shall be done in accordance with the terms of the grant or loan subject to the prior review and 'no objection' of procurement procedures by the Authority. The intendment of this section is to ensure that the terms of a grant or loan from an international source are complied with.

4.19.8 It is for this purpose that Hamid Kodie Fisa testified that the USAID has not complained of any breach of its policies or the process of procuring Dream Oval Limited.

4.19.9 We need not discuss this point further. The allegation being defended here is not that the funds were not expended in accordance with the terms of agreement reached between USAID and the Commission. The allegation is that the rules on procurement were breached.

4.19.10 We now proceed to discuss the evidence adduced with regard to the last allegation.

4.20 ***The allegation in paragraph 27 of the petition.***

4.20.1 This allegation is that Quazar Ltd was unilaterally contracted by the Respondent and an international tender process should have been used in awarding the contract.

4.20.2 The testimony on this allegation completely explodes it. The testimony on this is provided by Hamid Fisa who gave evidence in favour of Respondent. The contract with Quazar Limited was funded by the United Nations Development Program (UNDP). The support was provided following a request to the UNDP by a Deputy Chairperson, Ms Georgina Opoku Amankwaa who had by letter marked HKF 8 and attached to Hamid Kodie Fisa's witness statement, placed a request for financial support in the development of the Commission's strategic plan.

4.20.3 Hamid Kodie Fisa testified that, an assessment having been made by the UNDP, the UNDP advertised for applications from companies for re-packaging of the Commission's strategic plan. The quotations received were evaluated by a

team of three which included a representative of the Commission, specifically the Director of Finance who testified in favor of petitioners. This is evidenced by HKF 6 also attached to Mr. Fisa's witness statement.

4.20.4 Quazar Ltd provided the most economical quotation which was approved by the evaluation team constituted under the auspices of the UNDP. The process leading to the award of the contract to Quazar Ltd was not handled by the Commission solely as testified to by Mr. Fisa. The UNDP had a controlling hand in every step taken towards the award of the contract to Quazar Limited. Petitioners' allegation therefore that Respondent awarded the contract unilaterally is therefore clearly false.

4.20.5 Further, Hamid Fisa testified that the change of the Commission's logo was part of the Commission's strategic plan. The contract for the change of logo was however funded by Government of Ghana. The award of the contract was done in accordance with the "request for quotations" method of procurement provided for in section 42 of Act 663 as amended.

4.20.6 The thresholds for the "request for quotations" method of procurement stated in the Fifth Schedule to Act 663 as amended make it clear that the award of the contract to Quazar Ltd in terms of Dr. Asamoah's own exhibit JAK 30 was proper. The contract was therefore concluded in accordance with the appropriate method of procurement stated in Act 663.

4.20.7 The point made at paragraph 4.12.5 therefore exposes Petitioners' allegation that a tender process ought to have been used as hollow. Petitioners' claim that an international competitive tendering process ought to have been used is inconsistent with the provisions of section 45(1) of Act 663 which says that;

“(1) International competitive tendering shall be used whenever open competitive tendering is used and effective competition cannot be obtained unless foreign firms are invited to tender.”

4.20.8 The plain meaning of this statutory provision is that it is only after a competitive tendering process has first been used and effective competition was not ensured, that an international competitive tendering process can be used. In this case, the process did not even commence with the competitive tender method, on what basis therefore will an international competitive tendering method be used? We shall now move onto an evaluation of the evidence adduced by Respondent in proof of her case.

4.21 *Evaluation of the evidence adduced by Respondent in proof of her case.*

4.21.1 ~~At this stage, we shall evaluate the evidence adduced by Respondent in support of her case.~~ Our evaluation of the evidence adduced by Respondent will focus on the admissibility, relevance and weight of the evidence adduced by Respondent and her witnesses for purposes of ~~defending~~ the allegations made against Respondent ~~by the~~ Petitioners.

4.21.2 In evaluating the evidence adduced by Respondent in defence to the allegations made against her by Petitioners, we shall not detain this Court with any discussions on the evidence adduced with regard to the validity, fraudulence and bona fides of the petition.

4.21.3 The reason for which we make the submission above is that, issues relating to the petition ~~were~~ ~~as~~ earlier discussed by reference to the wholly admitted and uncontested evidence adduced to prove them. All the evidence adduced in support of the allegation was admitted without objection.

4.21.4 Significantly, the person who may have objected to the admission of some of the evidence (Mrs Pauline Dadzawa) waived her right to object to it even when she had the opportunity to appear before the Commission at Petitioners' instance.

- 4.21.5 It has been held that a person can waive what the law has ordained for their benefit including fundamental human rights.⁴¹
- 4.21.6 It has been held also that) if a party failed (as required by the Evidence Decree, 1975 (NRCD 323) to object to the admission of evidence which in his view, ought not to be led, he would be precluded by section 5(1) of the Decree to complain on appeal or review about the admission of that evidence unless the admission had occasioned a substantial miscarriage of justice. Factors helping to determine whether or not a substantial miscarriage of justice had occurred have been set out in section 5(2).⁴²
- 4.21.7 We shall therefore refrain from discussing the evidence regarding the validity, fraudulence and bona fides of the petition. In any case, Petitioners could not have objected to the evidence on any of the grounds for excluding such evidence

4.22 ***Evaluation of Respondent's evidence on paragraph 5 of the petition.***

- 4.22.1 Apart from Respondent's own testimony, two Commissioners corroborated Respondent's testimony that the decision to appoint Sory @ Law to conduct the flurry of cases brought against the Commission did not result from Respondent's unilateral decision.
- 4.22.2 The two Commissioners called by Respondent corroborated her (Respondent's) testimony not only in relation to the decision to appoint Sory @ Law as the Commission's lawyers but also in respect of the circumstances of appointment. The two Commissioners confirmed that Sory @ Law was appointed as the Commission's lawyers under urgent circumstances. This was not disputed by Petitioners and their witnesses.
- 4.22.3 We had also earlier pointed to the fact that the conduct of the other four Commission members who testified in support of Petitioners corroborates Respondent's case regarding the circumstances of the engagement of Sory @ Law. At the risk of repeating ourselves, we say here again that these Commissioners attended court on several occasions as admitted by them and

⁴¹ See the cases of *Edusei v Attorney-General* [1998-99] SCGLR 753 at pages 758 onwards per Acquah JSC (as he then was), *Standard Chartered Bank Ghana Limited v Western Hardwood Limited And Another* [2009] SCGLR 196 at per Atuguba JSC at page 201 and *Dhalomal v Pupulampu* [1984-86] 1 GLR 341.

⁴² See the case of *Edward Nasser Co Ltd v McVroom* [1996-97] SCGLR 468 at headnote (1).

confirmed by exhibits 14, 15 and 16 with lawyers from the law firm, held meetings with the same lawyers and received briefings from the said lawyers without cavil and pointed to no record to corroborate their claim that they raised issues regarding the engagement of Sory @ Law. Further, the payment vouchers attached to the Respondent's witness statement show the involvement of the Commission's Finance and Accounts departments over which the Deputy Chairperson in charge of Corporate Services has direct supervision and oversight. A reading of the notes and minutes on the documents relating to the payments to Sory @ Law will confirm that none of the Commissioner's ever questioned the payments.

4.22.4 In addition, the Respondent's evidence that Sory @ Law had been engaged on a case by case basis was corroborated not only by Sa-adatu Maida and Rebecca Adjalo, but also, Mr. Forson Ampofo who was petitioners' representative. He admitted that he was aware that Sory @ Law had been engaged on a case by case basis.⁴³ The invoices and letters written by Sory @ Law demanding payments for services rendered charged for each case conducted by them and explained the basis for the charges.

4.22.5 In this regard, it is important to point out that, by law, it is not proper to engage a lawyer to conduct varied services at a fixed fee. For instance, in matters of litigation, it is impossible reach fees on the cases to be conducted by a lawyer because, no one can envisage the type(s) of cases to be brought against them and in which forum and the nature of the services to be rendered by the lawyer. Cases initiated by writ of summons are conducted differently and involve different effort from those commenced by originating notice of motion.

4.22.6 For this reason the Legal Profession (Professional Conduct and Etiquette) Rules, 1969 (L.I.613) require lawyers to be separately remunerated for each instruction received from their clients. The Commission's decision to agree fees with Sory @ Law therefore accords with the law. It is against this backdrop that Respondent, during cross-examination, stated the following:

⁴³ Record of proceedings dated 14th March, 2018, Page 1.

“Q. With regard to your para. 7.12 where you talk about the engagement of Sory at Law on a case by case basis is not correct.

A. It is true. It was particularly because of the situation the EC was in with regard to Lynes, Quashie-Idun. The firm was just submitting bills after the case. For instance, in respect of the Election Petition I came to meet a bill of GHS4 million, so it was important we negotiate fees in advance hence the present decision.”

4.22.7 The Respondent’s response from the record seems convoluted but it is put in its context by the very first statement which asserts that; “It is true.”

4.22.8 From the totality of the evidence adduced by Respondent in defence to this allegation, her version was supported by documentation, more coherent, logical and accorded more with the admitted factual circumstances. It is for this reason that we contend that as between Respondent and Petitioners, Respondent’s evidence on this point is definitely more credible.⁴⁴

4.22.9 Respondent’s testimony on the STL contract which is set out at paragraph 6 of the petition is impeachable. It is proved by documentation which corroborated her case. The same documents completely undermined the efforts by Petitioners’ witnesses do distort the truth relating to the engagement of STL.

4.22.10 The volume of documentation which established the manner in which STL was engaged completely rendered every effort by Petitioners to push through their tales on the STL contract plainly incredible. The decision of the Supreme Court in the case of Professor **Stephen Adei & Anor v Grace Robertson & Anor**⁴⁵. In that case, it was held that, unless a document in evidence is invalid on ground of breach of a statute or has been shown not to be authentic, a court of law would consider it favourably in preference to inconsistent oral testimony.

4.22.11 The evidence on this matter had already been reviewed. We shall therefore not repeat a discussion of well documented evidence in

⁴⁴ Paragraph 6 of the Petition.

⁴⁵ Civil Appeal No J4/2/2015 dated the 10th day of March 2016 settles this point.

our evaluation of the evidence. We shall simply rely on the documentary evidence rule.

4.22.12 We shall deal next with Respondent's evidence in respect of the allegation contained in paragraph 7 of the petition.

4.23 ***Paragraph 7 of the petition.***

4.23.1 Respondent's evidence on this allegation was clearly more credible than Petitioners. There is documentary corroboration of Respondent's testimony that the Commissioners were duly informed of the steps taken to procure new office premises for the Commission. There is also documentary proof of the fact that the Commission's office premises had become unsafe for the Commission's workers. We again rely on the documentary evidence rule here.

4.23.2 Respondent's testimony on this was corroborated by two Commissioners whose testimony confirmed the documentary evidence referred to. We shall again not repeat a discussion of the evidence which we have already discussed.

A. Our submission is that, the fact that Petitioners and their witness failed to displace the documentary proof that the other Commissioners were duly informed of the effort to procure alternative office space for the Commission and their failure to dispute the fact that the other Commissioners visited the new office premises without a whiff of protest leaves the credibility of Respondent's evidence on this allegation intact.

4.23.3 The testimony on consultancy contracts relating to the new office which also formed the subject matter of the allegation contained in paragraph 7 of the petition was solid, logical and credible. In the first place, Petitioners own Dr. Asamoah testified to the procurement process. It was elaborate.

4.23.4 As already pointed out, Dr. Asamoah effort to correct his own evidence which clearly pointed to the fact that Respondent never acted unilaterally in the award of the consultancy contracts, only exposed him as incredible. Dr. Asamoah admitted during cross-examination that he had no notice from the same Committee that

they had rejected the report of Dr. Asamoah's own Tender Evaluation Committee.

4.23.5 It must be emphasized at this point that, Petitioners did not adduce evidence to prove any established practice at the Commission by which members of the Tender Review Committee meet and issue reports to indicate their approval or otherwise of contracts evaluated by the Evaluation Committee. The practice which Dr. Asamoah himself testified to during cross-examination was that a contract was subsequently prepared upon his having received confirmation from the Tender Review Committee so to do for Respondent to sign. We shall now proceed to evaluate the evidence adduced by Respondent on the allegation contained in paragraph 8 of the petition.

4.24 ***Paragraph 8 of the petition.***

4.24.1 Respondent's evidence on this allegation related to award of the consultancy contracts for the construction of the pre-fabricated offices. As again was the case, Dr. Asamoah's testimony in chief traced the procurement process up to the final point where the report of the Tender Evaluation Committee was submitted to the Tender Review Committee for approval. The process testified to by Dr. Asamoah confirmed that the procurement process was duly followed

4.24.2 Dr. Asamoah's testimony was even made better by the Head and Deputy Head respectively of the Commission's Procurement Unit who also testified in great detail on the process. Cross-examination did nothing to dent their credibility. Their testimonies which were clearly corroborated by Dr. Asamoah was definitely more credible than Petitioners' witness's testimonies on the matter especially when their testimonies were plainly contradictory. Respondent's evidence that no breach of the procurement laws was committed is confirmed by the fact that, the values of each contract concluded were the exact amounts which the Tender Evaluation Committee had advised to be appropriate in respect of each contract and which values were approved by the Tender Review Committee.

4.24.3 We shall address the point as to the fact that the values of the contracts awarded, exceeded that approved by the PPA later. Suffice it to say that, the PPA's Chief Executive who testified for

Petitioners, conceded that it offended no law if the Commission did not revert to the PPA where as in this case the values of the contracts exceeded that submitted to the PPA for approval. Only best practices, as the PPA's Chief Executive testified, required it.

4.24.4 The submissions made on Respondent's evidence on this point too leaves no doubt that Respondent's evidence is more credible than Petitioners whose most important witness on this allegation was Dr. Asamoah. We shall leave our evaluation of Respondent's evidence here and proceed to evaluate Respondent's evidence with regard the allegation contained in paragraph 18 of the petition.

4.25 ***Paragraph 18 of the petition.***

4.25.1 Respondent's evidence with regard to the Dream Oval contract is corroborated by the most credible witness on the subject. This witness is the official responsible for matters of the kind in which Dream Oval is involved. Hamid Kodie Fisa is the head of the Commission's donor desk and is responsible for donor support which comes to the Commission. Apart from this fact, this witness's testimony is supported by documentary proof.

4.25.2 Mr. Hamid Fisa tendered in evidence of an award made by the Commission to Dream Oval Limited which stated on the face of it that where an acceptance letter is not submitted by the company, there is no contract. A cursory reading of this statement will lead every reasonable mind to understand that the only thing needed for a contract to take effect is a letter of acceptance from the company.

4.25.3 In any case, by performing the contract, the law acknowledges a contract to have come into existence by conduct unless any law forbids it. We would not repeat our arguments on the procurement issues that arise with regard to donor funds. The law is that they are not public funds. Even on this statutorily regulated matter, Dr. Asamoah still thought it necessary to dispute by insisting that such funds are public funds. Dr. Asamoah's credibility which was already mortally bruised by his falsehoods exposed in his testimony on the STL contract was worsened when he insisted that donor funds are public funds. It may de leave a trier of fact in no other position but to believe Mr. Fisa's testimony hook, line and sinker.

4.25.4 It must be stated here again that the USAID has not complained about any breach of its policies on the basis of which it donated the

funds to the Commission. It is at this point that we shall now deal with Respondent's evidence on the final allegation that this Committee is constituted to investigate.⁴⁶

4.25.5 Mr. Fisa again testified on this point too. The points made with regard to his testimony apply here too. We shall therefore not repeat them here. The funds with which Quazar Ltd was contracted to assist the Commission with its strategic plan was provided and the contract supervised by UNDP itself.

4.25.6 Our submission is that, given the fact that the UNDP set up its own evaluation team (including the Director of Finance of the Commission) which evaluated quotations received, it leaves us only with one conclusion. This conclusion is that Petitioners' witnesses who testified in support of the allegation on this point were clearly lying.

4.25.7 After concluding the contract with Quazar for the re-packaging of its strategic plan, the company contracted with the Commission for a change of its logo. The evidence adduced shows that the contractual engagement was by means of price quotations.

4.25.8 The evidence of Mr. Hamid Fisa is confirmed by reference to the Fifth Schedule to the Act which states the thresholds permitting the Commission's Head of Entity to proceed with the procurement. The value of the contract awarded to Quazar Ltd falls below any of the thresholds stated.

4.25.9 On this basis, the evidence adduced by the Respondent in defence to the allegation is grounded in law. The cumulative effect of the evidence adduced by Respondent is that the allegations made by the petitioners were unproven for which reason the allegations should be dismissed.

4.26 *Evaluation of the totality of the evidence adduced during the proceedings.*

4.26.1 We have in this address, discussed the evidence adduced by both Petitioners and Respondent in support of their respective cases.

⁴⁶ Paragraph 27 of the petition.

4.26.2 In this part of our address, we shall briefly undertake a review of the totality of the evidence adduced by both parties. Having said that, we note that in our discussion of the evidence adduced by both parties in the instant proceedings we have on so many occasions assessed their quality. We shall therefore refrain from a lengthy discussion of the totality of the evidence adduced by the parties to prove their respective cases.

4.26.3 We shall assess the totality of the evidence adduced by the parties by reference to the two main issues that the Committee is investigating which are that;

- i. Respondent allegedly acted unilaterally in the matters forming the subject matter of the petition.
- ii. Respondent allegedly breached the rules of procurement with regard to the engagement of certain entities.

4.27 ***Alleged unilateral acts of Respondent.***

4.27.1 There was no evidence adduced by Petitioners to prove Respondent's alleged unilateral acts. The totality of the evidence adduced by Petitioners rather proved that Respondent acted with the knowledge and consent of the Commission in all matters.

4.27.2 The allegation that Sory @ Law was unilaterally engaged by Respondent was completely undermined not only by the documentary evidence produced by Petitioners themselves but also by the testimonies of Petitioners' own witnesses who confirmed attending court with Sory @ Law.

4.27.3 When challenged, Petitioners' witnesses could point to no proof that they ever raised a whiff of protest or questioned the engagement of Sory @ Law to act for the Commission. The documentary evidence revealed various minutes by several officials of the Commission on invoices sent to the Commission by Sory @ Law.

4.27.4 As pointed out earlier in this address, it is very interesting that without any knowledge and discussion whatsoever as to representation for the Commission in its cases, these Commissioners happily showed up in Court in the belief that a lawyer will pop out of the sky to defend the Commission in court.

- 4.27.5 The totality of the evidence adduced on this point supports Respondent's position that Sory @ Law was engaged with the knowledge and consent of all members of the Commission. As the evidence also confirms, Sory @ Law was engaged on a case by case basis. Sory @ Law therefore billed the Commission for each case they conducted on behalf of the Commission. The bills submitted by Sory @ Law to the Commission did not exceed the threshold of the Head of Entity.
- 4.27.6 The documentary evidence adduced in respect of the STL contract also confirmed without a shred of doubt that the process leading to the abrogation of the contract and re-awarding it to STL was consultative especially between Respondent and the two Deputy Commissioners for Operations and Corporate affairs respectively as well as Dr. Asamoah. The procurement process was duly followed before the award of the contract to STL.
- 4.27.7 Exhibits 25 and 26 show admissions by the Deputy Chairperson in charge of Operations and the Director of Finance on some of the reasons which led to the abrogation of the STL contracts.
- 4.27.8 Exhibit 27 also proves that the Respondent was not the person who re-negotiated with STL and also explodes the allegation that Respondent re-awarded the contracts single-handedly and exposes it as a complete falsehood.
- 4.27.9 The evidence adduced with regard to the allegation that Respondent acted without recourse to the Commission in requesting for office premises for the Commission and that Respondent awarded a contract for the demarcation and partitioning of the said office, in breach of the rules on procurement rather established the contrary.
- 4.27.10 On the point made in the immediately preceding paragraph, the oral and plainly incredible testimonies of Petitioners' witnesses was exploded by documentary proof to the contrary and evidence that Petitioners' witnesses previously acted inconsistently with regard to their testimonies on the new office building.
- 4.27.11 We shall not detain the Committee with lengthy submissions on the quality of the evidence adduced to prove the allegation that Respondent acted unilaterally on the matters upon which Petitioners have mounted their petition.

- 4.27.12 We shall also not detain the Committee with lengthy arguments on the allegations that Respondent breached the rules on procurement with regard to certain contracts centered mainly on the point that the values of the contracts exceeded the values indicated to the PPA at the time the Commission sought approval from the PPA prior to the award of the contract.
- 4.27.13 The accusations of unilateral conduct in the award of these contracts is completely undermined by Petitioners' own Dr. Asamoah who traced the process leading to the award of each contract. Dr. Asamoah even admitted that it was his Committee which recommended the award of the contracts at values higher than that indicated to the PPA.
- 4.27.14 In any case, we have already pointed out that the argument that the engagement of Sory @ Law ought to have received the prior approval of the PPA cannot be correct because of the admissions made by Dr. Asamoah and the representative of the PPA who testified on Petitioners' behalf. These witnesses testified to Respondent's threshold on the award of contracts. For each of the cases for which Sory @ Law was contracted, the charges did not exceed Respondent's threshold. Section 34A (1) under Part Four of Act 663 lists the methods of procurement and states that a procurement entity "**may**" conduct procurement in accordance with any of the methods listed. The meaning of this provision is that a procurement entity is not bound by any particular method of procurement provided in the Act.
- 4.27.15 It is further provided by section 34A (2) of the Act that the methods of procurement shall be used subject to and in accordance with the thresholds in the Fifth Schedule.
- 4.27.16 A reference to the Fifth Schedule to Act 663 shows that the competitive tender method of procurement applies only to "goods, works and technical services" whether it is an international competitive tender process or a national competitive tender process. This means that the engagement of the law firm for **consultancy services** and not technical services, cannot be conducted by means of a competitive tender process.
- 4.27.17 The definition of 'consultancy services' and 'technical services' in section 98 of Act 663 bears out the difference between the two

types of services and reinforces the non-application of a competitive tender method to the engagement of Sory @ Law. For purpose of clarity, the definitions are reproduced below:

“98 “consultancy services” means services which are of an intellectual and advisory nature provided by firms or individuals using their professional skills to study, design and organize specific projects, advise clients, conduct training or transfer knowledge;

“technical services” means services which are tendered and contracted on the basis of performance of a measurable physical output such as drilling, mapping, aerial photography, surveys, seismic investigations, maintenance of facilities or plant and similar operations”

4.27.18 The above quoted section puts the matter beyond dispute. Again, the Respondent led evidence to show that the fees charged by the law firm fall within the threshold of head of entity for ‘services’ as provided in the Second Schedule to the Act.

4.27.19 Section 18(3)(f) of Act 663 which, inter alia, provides the functions of the head of a procurement entity states that the head of entity shall “refer to the entity tender committee for approval, a procurement above the approval threshold of the head of entity.” The logical consequence of this provision is that where the contractual value falls within the threshold of the head of entity, the head of entity can legally undertake procurement without the approval of any other person or committee.

4.27.20 We have also noted that there is no provision in the Act which says that a procurement entity is required to revert to the PPA, where after the PPA gives its initial approval, an evaluation of the value of the contract discloses that the initial values indicated to the PPA (whose approval was only sought in relation to the method of procurement) is exceeded.

4.27.21 In all, we must say that Petitioners’ evidence and the testimonies of their witnesses is incredible for the following reasons;

- i. There was clear motive, bias, prejudice and interest by some of Petitioners’ witnesses in the matter.

- ii. Petitioners and their witnesses repeatedly spoke against documentary evidence which did not support their allegations.
- iii. Petitioners and their witnesses even testified against their previous conduct inconsistent with their present position.
- iv. Petitioners and their witnesses testified against plain statutory provisions which did not support their case.
- v. Petitioners and their witnesses even testified against parts of their witness statements when it became obvious that those parts undermined their case.

4.27.22 The points above made are supported by our submissions which point to the testimonies of Petitioners and their witnesses whose testimonies in many respects was not only contradicted by the documents relating to any fact in issue but also plainly inconsistent with the previous conduct and also contrary to logic and common sense.

4.27.23 On each occasion where they were required to substantiate their testimonies with any tangible evidence, they offered rather to give incredible explanations.

4.27.24 We shall rest our discussion of this part of our address here.

4.28 NO STATED MISBEHAVIOUR HAS BEEN ESTABLISHED FROM THE EVIDENCE ADDUCED.

4.28.1 We shall now address the Committee on our argument that the allegations upon which Petitioners seek the removal of the Chairperson do not meet the constitutional requirements stipulated in article 146 of the Constitution.

4.28.2 ***The petition makes out no ground for removal of the Chairperson under article 146 of the constitution.***

4.28.3 We will not detain the Committee with any lengthy arguments on this point. Our submission to the Committee is that the allegations upon which Petitioners seek the removal of the Chairperson do not meet the constitutional requirements stipulated in article 146 of the Constitution. We shall in this part of our submission therefore, focus on the constitutional requirements stated in article 146 of the Constitution. This article states the specific nature of the allegations upon which there can even be a valid petition for the removal of the Chairperson.

4.28.4 A reading of article 146 will leave this Committee in no doubt whatsoever that the grounds upon which a petition may be brought for the removal of the Chairperson are specific. The effect of article 146 therefore is that, the allegations upon which there can be a just demand for the removal of the Chairperson from office, must fall within the legal parameters specified in the aforesaid article.

4.28.5 For purposes of demonstrating that the allegations upon which Petitioners seek the removal of the Chairperson from office do not meet the constitutional requirements of article 146 therefore, it is necessary to subject it to discussion.

4.28.6 Article 146 clause 1 of the 1992 Constitution states the grounds upon which a petition may be brought legitimately for the removal of the Respondent as Chairperson of the Electoral Commission. These grounds are expressly spelt out as follows:

- i. Misbehavior, or
- ii. Incompetence, or
- iii. Inability to perform the functions of office arising from infirmity of body or mind.

4.28.7 Although there have been numerous instances when article 146 proceedings have been triggered against the persons to whom the article is applicable, there are known judicial decisions which have explained its true and proper scope. As the laws of Ghana permit us to seek foreign aid in such circumstances from other common law jurisdictions, we shall refer to just two decisions.

4.28.8 A discussion of the cases to be relied upon here will confirm that the misbehaviour and incompetence which can legitimately found impeachment proceedings under article 146 must relate to the official duties of the person sought to be impeached.

4.28.9 The meaning of "misbehaviour", was considered in **Clark v Vanstone**⁴⁷, in the Federal Court of Australia. The applicant, Clark, was the chairperson of the Aboriginal and Torres Strait Islander Commission ('ATSIC'). The Minister for Immigration and Multicultural and Indigenous Affairs had power to suspend an ATSIC commissioner on the ground of misbehavior and the Minister purported to exercise this power against the applicant. The applicant brought judicial review proceedings to challenge his suspension and the judge, Gray J, embarked upon a careful examination of the meaning of "misbehaviour".

4.28.10 In paragraph 78 of his judgment, Justice Gray held as follows;

"One proposition can be gleaned from these limited authorities. It is that the meaning to be given to the word 'misbehaviour' will depend entirely upon the context of the legislative provision in which the term is used. There is no universal meaning of misbehaviour when it is used in a statute or other legislative instrument. When a statute provides for removal from office of a statutory officer on the ground of misbehaviour, it takes its meaning from the statutory context."

4.28.11 Gray J went on, in paragraph 83, to warn against the adoption of a rigid definition. He said:

"... to force misbehaviour into the mould of a rigid definition might preclude the word from extending to conduct that clearly calls for condemnation ... but was not ... could not have been foreseen when the mould was cast."

4.28.12 It is paragraph 85 of Gray J's judgment which is worth citing in full. The judge said this:

"It is clear from these expressions of opinion that, in order to constitute misbehaviour by the holder of an office, the conduct concerned need not be criminal conduct and need not occur in the course of the performance of the duties of the office. For present purposes, the important proposition to be drawn from these expressions of opinion is that, in a case in which the term 'misbehaviour' is used with reference to the holder of an office, the content of its meaning is to be determined by reference to the effect

⁴⁷ [2004] FCA 1105

of the conduct on the capacity of the person to continue to hold the office. In turn, the capacity to continue to hold an office has two aspects. The conduct of the person concerned might be such that it affects directly the person's ability to carry out the office. Alternatively, or in addition, it may affect the perceptions of others in relation to the office, so that any purported performance of the duties of the office will be perceived widely as corrupt, improper or inimical to the interests of the persons, or the organisation, for whose benefit the functions of the office are performed. In either case, the danger is that the office itself will be brought into disrepute as a result of the conduct of its holder. If that is likely to be the case, then the conduct is properly characterised as misbehaviour for the purposes of the relevant legislation."

4.28.13 This meaning of the word "misbehaviour" was cited with approval in the case of ***Lawrence v. The Attorney General (Grenada)***⁴⁸.

4.28.14 In that case, Lord Scott of Foscote held as follows;

"misbehaviour" describes conduct that the perpetrator has been told or taught not to do. These examples demonstrate the need for a context. Judges are appointed to the High Court to hold office during "good behaviour". According to Halsbury's Laws of England, 4th Ed.Reissue, Vol.8(2) "behaviour" in this context means "... behaviour in matters concerning the office, except in the case of conviction upon an indictment for any infamous offence of such a nature as to render the person unfit to exercise the office, which amounts legally misbehaviour although not committed in connection with the office."

4.28.15 Having regard to the above judicial considerations of the word "misbehavior" our submission is that the view taken by Her Ladyship the Chief Justice in her determination that a prima facie case had been made out by parts of the petition to the effect that in terms of article 146 clause 1 of the 1992 Constitution, a Justice (whose terms and conditions apply to the Chairperson) can be found guilty of misbehaviour if the person "is required by law to perform a certain official function or duty in a particular way but failed or neglects to do so".

⁴⁸ [2007] UKPC 18 (26 March 2007), See the Majority Judgment delivered by Lord Scott of Foscote.

4.28.16 The question then is whether it can legitimately be contended, from the allegations made against Respondent, that Respondent has failed to perform her official duties.

4.28.17 We invite the Committee to adopt the approach advocated by the authorities above cited and part of the Lady Chief Justice's view of the meaning of the word "misbehavior" above referred to.

4.28.18 As Gray J pointed out in his judgment above quoted "the important proposition to be drawn ...is that, in a case in which the term 'misbehaviour' is used with reference to the holder of an office, the content of its meaning is to be determined by reference to the effect of the conduct on the capacity of the person to continue to hold the office."

4.28.19 The question that arises in so far as the allegations and evidence adduced herein is concerned, is whether they have any effect on Respondent's capacity to continue to hold office as the Commission's Chairperson?

4.28.20 The answer to the question posed above, as Gray J says, requires an examination of two aspects. First, the question is whether Respondent's conduct, "affects directly" Respondent's ability to carry out the functions of her office?

4.28.21 Alternatively, as Gray J says, do the allegations and the evidence adduced to prove them, assuming them proven, "affect the perceptions of others in relation to the office, so that any purported performance of the duties of the office will be perceived widely as corrupt, improper or inimical to the interests of the persons, or the organisation, for whose benefit the functions of the office are performed"?

4.28.22 In either case, as Gray J pointed out, "the danger is that the office itself will be brought into disrepute as a result of the conduct of its holder. If that is likely to be the case, then the conduct is properly characterised as misbehaviour for the purposes of the relevant legislation."

4.28.23 It is in this context that we contend that the allegations upon which Petitioners seek the removal of the Respondent do not meet the constitutional requirements stipulated in article 146 of the Constitution.

4.28.24 We have already analyzed the allegations and the evidence adduced to prove them. None of them or even a combination of them all has the effect of;

- i. impacting Respondent's capacity to continue to hold the office; or
- ii. affecting directly the Respondent's ability to carry out the office; or
- iii. affecting the perceptions of others in relation to the office, so that any purported performance of the duties of the office will be perceived widely as corrupt, improper or inimical to the interests of the persons, or the organisation, for whose benefit the functions of the office are performed.

4.28.25 In her determination that a prima facie case has been made out for purposes of investigation, the Chief Justice noted as follows:

"...the petition must contain facts which point to any of the grounds for removal, as set out in Article 146(1) ... If those facts do not amount to any of the grounds for removal, then that ends the matter. Fourthly, the facts asserted must be supported by evidence; they cannot be mere allegations supported by allegations"⁴⁹

4.28.26 Her Ladyship also pointed out that;

"Considering the gravity of the possible outcome of the petition, it is important that the allegations must not be frivolous, vexatious or arbitrarily deployed merely to scandalize or unnecessarily bring the person against whom it is made into opprobrium."⁵⁰

4.28.27 Petitioners have provided no shred of evidence to support any of the allegations relating to procurement breaches relied upon in the petition. There is no shred of evidence that the Chairperson by herself engaged in any such breaches. The breaches if any, are breaches of the Commission as a corporate entity.

4.28.28 We have already pointed out that the instant petition is even premature. In this regard we submitted that since it lies in the province of the Public Procurement Authority (PPA) to rectify breaches of the procurement law, it is only proper to take into account the recommendations of the PPA on this matter.

⁴⁹ Prima Facie Determination by the Chief Justice, page 5.

⁵⁰ Ibid, page 6.

4.28.29 It is provided by section 16 of the Public Procurement (Amendment) Act, 2016 (Act 914) that;

“16(1) A procurement entity is responsible for procurement, subject to this Act and any other conditions that may be established in Regulations and administrative instructions issued by the Minister in consultation with the Board.

(2) Procurement decisions of an entity shall be taken in a corporate manner and the internal units concerned shall contribute to the decision making process.”

4.28.30 This section makes it clear that the responsibility for procurement is still that of the procurement entity but not the PPA. The PPA only approves the method of procurement. It does not approve the value of the procurement. The emphasis of section 16(2) of the Act is that in taking procurement decisions, the procurement entity must act in a corporate manner. It only means that the corporate structures of the procurement entity must be adhered to.

4.28.31 The liability of the head of entity is limited only to acts that are specifically prohibited by the Act. This is provided for expressly under section 17 of Act 914;

“17. (1) The head of entity and an officer to whom responsibility is delegated are responsible and accountable for action taken and for instructions as regards the implementation of this Act.

(2) The liability of the head of entity or officer to whom responsibility is delegated is however limited to acts that are inconsistent with this Act.”

4.28.32 Having regard to the provisions quoted, especially where as in this^[c07] case, Petitioners have not been able to state any specific provision of the procurement laws that have been breached, no case is made out against Respondent.

5.0 CONCLUSION.

5.1 We hereby draw the curtains on our submissions in this address at this point.

5.2 Per the manner by which we have addressed the Committee, we have proven that the petition, which occasioned the present proceedings, is incompetent on grounds that it is tainted by fraud, its presentation was actuated by malice and it is premature.

5.3 In discussing the petitioners' case, we have established that the petitioners did not discharge their burden of proving each and every element of the allegations being investigated by this Committee. The petitioners' witnesses lacked credibility therefore their evidence cannot be relied upon. Essentially, their evidence constituted allegations born of allegations.

5.4 The Respondent, on the other hand, adduced cogent evidence to disprove all the allegations made against her and further showed that the allegations in the petition cannot be supported both in law and in fact.

5.5 Significantly, none of the allegations made against Respondent amounts to an impeachable conduct contemplated under article 146 to warrant the removal of the Respondent from office as Chairperson of the Commission and we submit that the Committee makes its recommendations accordingly.

Respectfully submitted.

DATED AT SORY@LAW, ACCRA THIS 1ST DAY OF JUNE, 2018.

.....
SOLICITORS FOR (MRS. CHARLOTTE OSEI (MRS).
LICENCE NO. GAR 15280/18
CHAMBERS REGISTRATION NO. 0003354/17

TO:
THE SECRETARY,
COMMITTEE INVESTIGATING PETITION FOR THE
REMOVAL OF THE CHAIRPERSON

OF THE ELECTORAL COMMISSION.

ATTN: FREDERICK BAIDOO

AND FOR SERVICE ON PETITIONERS OR THEIR LAWYER: J. OPOKU AGYEI whose address for service is OPOKU AGYEI AND COMPANY, 6 Royalt Castle Road, Kokomlemle, Accra.