

**CASE FILE NO.:**

**IN THE MATTER OF THE COMMISSION ON HUMAN RIGHTS  
AND ADMINISTRATIVE JUSTICE ACT, 1993**

**AND  
IN THE MATTER OF CHAPTER 18 OF THE 1992 CONSTITUTION**

**BETWEEN:**

**TRUTH AND ACCOUNTABILITY FORUM**

**COMPLAINANT**

**AND**

**H.E FORMER PRESIDENT JOHN  
DRAMANI MAHAMA**

**RESPONDENT**

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**DECISION**

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**1.0. INTRODUCTION**

The Commission on Human Rights and Administrative Justice (the Commission) on 20/6/2019 received a complaint from Truth and Accountability Forum (TAF) (hereinafter referred to as “the Complainant”), which involved allegations of vote buying and corruption contrary to Article 218 and Chapter 24 of The Fourth Republican Constitution of Ghana, 1992 (the Constitution) and section 7(1) (a) and (f) of the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456) against *H.E John Dramani Mahama, former President of the Republic of Ghana* (hereinafter referred to as “the Respondent”). The complainant also made reference to sections 239, 240 and 241 of the Criminal Offences Act 1960 (Act 29).

In accordance with Regulation 3 of the Commission on Human Rights and Administrative Justice (Investigations Procedure) Regulations, 2010 (C.I.67), the Commission assigned investigators to conduct preliminary investigations into the complaint. This decision is the outcome of the findings of the preliminary investigations.

## 2.0. THE ALLEGATIONS

The summary of allegations is that:

- a) On or about Tuesday, 2nd April 2019, the Respondent presented forty (40) vehicles comprising Nissan Pick-up and Renault Duster Saloon Cars to the National Democratic Congress Party (NDC), ahead of its Presidential Primaries.
- b) The National Chairman of the NDC, Mr. Samuel Ofose Ampofo was reported to have thanked His Excellency John Dramani Mahama for the presentation of vehicles to the NDC and assured him that the *“VEHICLES WILL BE USED TO CAMPAIGN VIGOROUSLY FOR HIS RE-ELECTION AS PRESIDENT FOR THE 2020 GENERAL ELECTIONS”*.
- c) The presentation of the vehicles by the former President *“...is clear case of vote buying gesture and an act of corruption, as it had one of the Flag bearership aspirants Mr. Goosie Tanoh, protesting vehemently and this eventually impacted on the results of the primaries which the respondent won massively”* and *“...must be probed by the Commission and it is against Section 238-241 of the Criminal Offenses Act 1960 (Act 29) which frowns on any act of bribery and vote buying.*
- d) The Complainant then invited the Commission to institute *“...an investigation into the source of funding for the 40 vehicles donated to the party as it is publicly known that there were numerous corruption allegations leveled against the Respondent while in office as President which caused stirs in the country as there were large calls for his impeachment. That should its complaint be left uninvestigated, will defeat the values of Probity and Accountability, which underpins the constitution, 1992”*.
- e) *That it is convinced that it is for the purpose of article 55 of the Constitution that expressly provide for the framework and conduct that individuals associated with political parties in Ghana must operate especially in respect for a former President and a Presidential aspirant, the timing of this act and the circumstances under which the vehicles were donated is a recipe for corruption.*

### 3.0 Mandate of Commission

On the issue of the Commission's mandate in respect of this complaint, reference is made to Articles 218, 284 and 287 of the Constitution; and section 7 (1) (a), (e) and (f) of Act 456.

Article 218 of the Constitution provides for the functions of the Commission to include:

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

*(e) to investigate all **instances of alleged or suspected corruption**, and the misappropriation of public moneys by an official and to take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigation”*

Articles 284 and 287 of the Constitution provide that:

*“284. A public Officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.”*

*“287. (1) An allegation that a public officer has contravened or has not complied with a provision of this Chapter shall be made to the Commissioner for Human Rights and Administrative Justice and, in the case of the Commissioner of Human Rights and Administrative Justice, to the Chief Justice who shall, unless the person concerned makes a written admission of the contravention or non-compliance, cause the matter to be investigated.*

*(2) The Commissioner of Human Rights and Administrative Justice or the Chief Justice as the case may be, may take such action as he considers appropriate in respect of the results of the investigation or the admission.”*

Section 7 of Act 456, which mirrors Article 218 of the Constitution also provides:

*“In accordance with article 218 of the Constitution, the functions of the Commission are:*

*s. 7 (1)(a) to investigate complaints of violations of fundamental rights and freedoms, injustice, **corruption**, abuse of power and unfair treatment of any person by a **public officer** in the exercise of his official duties;*

*(e) to investigate allegations that a public officer has contravened or has not complied with a provision of Chapter Twenty-four (Code of Conduct for Public Officers) of the Constitution.*

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

It is clear from all the above enactments that the Commission has the mandate to investigate allegations of corruption and conflict of interest provided that the person against whom any such allegations are made (the Respondent) must in the first instance be a public officer.

#### **4.0 ISSUES**

At this stage two preliminary issues have been set down for determination:

- i. Whether the Respondent, a former President, is a public officer; and
- ii. Whether the Respondent, if not determined to be a public officer, is nevertheless subject to the corruption investigation mandate of the Commission.

#### **5.0 APPLICABLE LEGAL FRAMEWORK AND PRINCIPLES OF LAW**

The underlisted legal framework and principles of law and judicially determined cases are deemed applicable in the determination of the above preliminary issues:

4.1 The Fourth Republican Constitution of Ghana, 1992:

- a) Article 68 – conditions of office of (former) President
- b) Article 190 – scope of public service
- c) Article 218 – constitutional functions of the Commission
- d) Chapter 24 – code of conduct for public officers
- e) Article 288 – meaning of public officer
- f) 295(1) – meaning of public office

4.2 The Commission on Human Rights and Administrative Justice (Act 456):

- a) Section 7 – statutory functions of the Commission
- b) Section 13- discretion to refuse to investigate a complaint

#### 4.3 Criminal Offence Act 1960 (Act 29)

- a) Section 239 - corruption of and by public officer or juror
- b) Section 240 - explanation as to corruption by public officer
- c) Section 241 - explanation as to corruption of public officer

#### 4.4 The Commission on Human Rights and Administrative Justice (Investigations Procedure) Regulations, 2010 (C.I.67):

- a) Regulation 3r3 – preliminary investigations

#### 4.5 Relevant case law

- a) CHRAJ v. A-G and Kamara [2011] 2 SCGLR 746 – circumstances under which the Commission may investigate a private person for corruption allegations
- b) Brown v. Attorney General & Others [2010] SCGLR 183- meaning of what constitutes a “charge” on the Consolidated Fund

## 6.0. CONSIDERATION OF THE ISSUES

### *i. Whether the Respondent, a former President, is a public officer*

Article 288 of the 1992 Constitution provides that unless the context otherwise requires, “*Public Officer*” means a person who holds a public office”. The term “public office” is further defined in Article 295(1) to include “*an office the emoluments attached to which are paid directly from the Consolidated Fund or directly out of moneys provided by Parliament and an office in a public corporation established entirely out of public funds or moneys provided by Parliament.*” Black’s Law Dictionary (9<sup>th</sup> edition) defines emolument as:

*“Any advantage, profit, or gain received as a result of one’s employment or one’s holding of office.”*

It is instructive to note that the Complainant correctly captured the designation of the Respondent in the heading of the Complaint as: “*PETITION AGAINST HIS EXCELLENCY JOHN DRAMANI MAHAMA, FORMER PRESIDENT OF THE REPUBLIC OF GHANA*”. This is an **admission** that the Respondent has since left the high public office of President of the Republic of Ghana and he cannot by any stretch of imagination be construed as someone holding a public office. Indeed judicial notice is taken by the Commission that at present the occupant of the high

public office of President of the Republic of Ghana effective 7<sup>th</sup> January 2017 up until date is H.E Nana Addo Dankwa Akufo-Addo. In fact, Article 68 (2) of the Constitution bars the Respondent as former President and any former President for that matter from holding *any office of profit or emolument, except with the permission of Parliament in any establishment*. Thus, the pension payable to the Respondent under the 1992 Constitution cannot and does not in law constitute an emolument payable to a serving or active public office holder. Black's Law Dictionary (9<sup>th</sup> edition) defines pension as:

*"A fixed sum paid regularly to a person (or to the person's beneficiaries), esp. by an employer as a retirement benefit."*

Therefore, although the Respondent's pension is a charge on the Consolidated Fund, this act alone cannot qualify the Respondent as a public officer properly so called. The Respondent's pension is a charge on the Consolidated Fund because the Constitution itself says so. Article 68(7) of the Constitution provides that "*The salary and allowances payable to the President and any pension or gratuity payable to him on leaving office shall be charged on the Consolidated Fund.*" Note that the words "*pension...payable*" to the President is followed by the phrase "on leaving office". So, while an incumbent President is properly construed as the FIRST PUBLIC SERVANT (public officer) in Ghana, a former President as in the case of the Respondent cannot be construed as a public officer within the meaning of the Constitution.

His Lordship Jones Dotse, JSC, in the case of *Brown v. Attorney General & Ors [2010] SCGLR 183* construed the word "**charge**" as "*debt, financial liability, lien, or encumbrance*" to be performed by the Government of Ghana. Also, Anin-Yeboah, JSC (as he then was), in that case construed the word "charge" as an "*obligation which is imposed on the Consolidated Fund to be fulfilled*" by the Government of Ghana. Therefore, the Respondent's pension being a charge on the Consolidated Fund amounts to a constitutional obligation imposed on the Consolidated Fund to be discharged by Government of Ghana and not by reason of the fact that the Respondent is a public officer.

In conclusion, the mandate of the Commission which is expressed in Article 218 and Chapter 24 of the Constitution as well as s.7 (1) of Act 456 deal specifically with public officers, and since the position of a Former President is not a public office, the investigative mandate of the Commission under these enactments does not extend to the Respondent, a private person.

The Commission must however clarify that if the allegations were in respect of or connected with the time when Respondent was a sitting President and therefore a Public Officer *stricto sensu* the Commission's investigative reach or mandate over him would surely be exercisable. The time of the occurrence of the allegations by the Complainant is therefore very crucial in this matter.

*ii. Whether the Respondent, not being a public officer, is nevertheless subject to the corruption investigation mandate of the Commission*

Analyzing this issue involves assessing the propriety of the Commission's mandate to investigate the Respondent, a private person, for corruption allegations. This issue is on 'all fours' with the issue addressed by the Supreme Court in the case of **CHRAJ v. Attorney-General and Baba Kamara [2011] 2 SCGLR 746** (The Kamara case). In this case, the Court held that a private person such as the Respondent herein may be subject of investigation by the Commission in respect of corruption allegations where that private person is found to be complicit in an ongoing corruption investigation by the Commission of a public officer(s). Dr. S.K. Date-Bah, JSC, who gave the lead judgment, held as follows:

*"The second defendant's argument seems to us to be intended to stultify a significant part of the investigative operations of the plaintiff. It is intended to defeat one of the purposes for which the Constitution made provision for the establishment of the plaintiff. From the language and context of article 218, it is indubitable that one of its purposes is to enable the plaintiff's effective investigation of corruption by public officials. Accordingly, in our view, a purposive and holistic interpretation would require words to be implied into article 218 enabling the plaintiff to investigate **private persons alongside public officials**, even if private persons are not expressly specified in any particular paragraph of the article, where such investigation of a private person is necessary in order to expose the total picture of the corruption in which the **public official is alleged to have participated**. Such implication is needed to give efficacy to the intention and purpose of the framers.*

*This argument in support of the plaintiff's first relief applies equally to the plaintiff's second relief, namely, a declaration that on a true and proper interpretation of article 218(e) of the 1992 Constitution the mandate of the plaintiff "to investigate all instances of alleged or suspected corruption and misappropriation of public moneys by officials" covers situations in which **an individual, entity and/or person though not a "public official" is alleged***

*to be involved or implicated in an act or alleged bribery or corruption involving public officials and which is under investigation by the Commission.”*

The Presiding Justice, Sophia Akuffo, JSC, as she then was, also held as follows:

*“It is in recognition of the nexus between transparency (honest dealing and ethical conduct) and the desired social order enshrined in the Constitution, that CHRAJ was established by the Constitution itself as one of the key institutional mechanisms for assuring a level playing field for all in the enjoyment of the benefits that would flow from a nation run on sound constitutional principles. For the court to accept the 2<sup>nd</sup> Defendant’s invitation to place a narrow interpretation on the language of article 218(e), would amount to doing grave damage to both the language and purpose of the provision and would also result in placing on CHRAJ functional limitations that are not justified by the ideals and principles underlying the Constitution and so clearly expressed in the Directive Principles. Article 218(e) includes in the functions of CHRAJ, the duty to:-*

*“...investigate all instances of alleged or suspected corruption and the misappropriation of public funds by officials and to take appropriate steps, including reports to the Attorney General and the Auditor General, resulting from such investigations.”*

*If in the course of investigating an instance of alleged or suspected corruption by public officials a member of the private sector (natural or corporate) becomes enmeshed in the matter, CHRAJ will be duty bound to extend the scope of its investigation to cover the activities of such person, in order to plumb the full and true depth of the instance of ‘alleged or suspected corruption ... by officials’. It would be derogating from the duty imposed on it by article 218(e) to draw any such artificial lines and boundaries as have been contended by the 2<sup>nd</sup> Defendant.”*

From the foregoing, the Respondent, a private person, can only be investigated for corruption allegations under Article 218 (e) of the Constitution and s.7 (1) (f) of Act 456 where it were to emerge in an ongoing corruption investigation of a public officer(s) by the Commission that the Respondent herein is complicit. The allegation against the Respondent by the Complainant is certainly not within the ratio decidendi of the Supreme Court decision in **the Kamara case** (supra) as illustrated above. This is because there is no other Respondent in the complaint before the Commission let alone that Respondent being a public officer.



The Complainant further invited the Commission to investigate the Respondent for corruption and vote buying under sections 239-241 of Act 29. Just as stated in the Kamara case (**supra**), the Commission is barred from investigating the Respondent, who is a private individual, for any bribery or corruption allegations unless the Respondent were to be found in any of the circumstances described by Date-Bah, JSC, as:

*“situations in which an individual...though not a “public official” is alleged to be involved or implicated in an act or alleged bribery or corruption involving public officials and which is under investigation by the Commission.”*

## **6.0. FINDINGS OF FACT AND CONCLUSIONS**

At the end of the preliminary investigations into the allegations of the Complainant against the Respondent, the Commission came to the following findings of fact and conclusions:

6.1 That the Respondent, H.E former President John Dramani Mahama is not a public officer.

6.2 That the mandate of the Commission under Article 218 and Chapter 24 of the 1992 Constitution as well as s.7 (1) (a) and (e) of Act 456 deal specifically with public officers, and since the Commission has found as a fact that the position of a former President is not a public office, the anti-corruption investigative mandate of the Commission does not apply to Respondent, a private person.

6.3 The Commission additionally finds as fact that Respondent is not complicit in any ongoing corruption investigation by the Commission involving any public officer(s). Investigation of corruption allegations against a public officer that implicates a private person makes that private person liable to the Commission’s corruption investigation mandate based on the Supreme Court’s interpretation of Article 218 of the 1992 Constitution in **the Kamara case supra**.

## **7.0. DECISION**

From the evidence available to the Commission after its preliminary investigations into the allegations, the Commission has decided to exercise its power under section 13 of Act 456 to refuse to investigate the allegations further in accordance with section 13 (1) (b) which provides that:

*“(1) (b) that having regard to all the circumstances of the case, any further investigation is unnecessary, it may refuse to investigate the matter further”*

Complaint is accordingly dismissed as without merit.

**DATED AT THE COMMISSION ON HUMAN RIGHTS AND  
ADMINISTRATIVE JUSTICE, OLD PARLIAMENT HOUSE, THIS 28<sup>TH</sup>  
DAY OF MAY 2020.**

  
**JOSEPH WHITTAL  
COMMISSIONER**