



REPUBLIC OF GHANA

# OFFICE OF THE PRESIDENT

SECRETARY TO THE PRESIDENT

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Ref. No. ORS 1911/20/943

3<sup>rd</sup> July, 2020

*Dear Auditor - General :*

## **RE: ACCUMULATED ANNUAL LEAVE – MR. DANIEL YAW DOMELEVO**

The attention of the Office of the President has been drawn to a letter with reference number AG/OP/20/8 dated 3<sup>rd</sup> July, 2020, which is yet to be delivered to this Office but has been circulated widely in the media and on social media. We note that the said letter is dated 3<sup>rd</sup> July, 2020, with an official reference number from the office of the Auditor-General, although you commenced your leave on 1<sup>st</sup> July, 2020. That, notwithstanding, the contents of the letter have been duly noted.

First of all, for the avoidance of any doubt, your accumulated annual leave of 123 working days, which you were directed to take with effect from Wednesday, 1<sup>st</sup> July, 2020, was in respect of the period 2017 to 2019, which you had worked without taking any annual leave, and did not include 2020. If, however, you have decided to include your annual leave for the year 2020, then it is expected that you will resume work after a well-deserved leave of 167 working days, with effect from 1<sup>st</sup> July, 2020.

Secondly, it is necessary to correct the wrong impression you have sought to create in the public domain regarding the President's directive to you to proceed on your accumulated annual leave. The President has at all times acted based on sound legal principles, the rule of law and good governance practices, and the good people of Ghana cannot be misled by your lack of understanding of the position of the law, for which you may be forgiven since you are not a lawyer.

By letter dated 30<sup>th</sup> December, 2016, signed by the then Secretary to the then President, Ambassador Kwesi Quartey, your appointment to the office of Auditor-General was to take effect from 30<sup>th</sup> December, 2016, made subject to the conditions of service as well as the rules and regulations governing the post of the Auditor-General, which you accepted and have, ever since, been performing the functions of the office. Under your conditions of service, you are expected to take 44 working days leave with full pay in a calendar year of continuous service. You were, thus, required by the conditions of service of your appointment to take your annual leave in every calendar year of continuous service, that is 2017, 2018 and 2019. As stated above, you have informed us that you have now decided to add 2020 to your accumulated leave, which we have accepted.

As you are well aware, the power to appoint the Auditor-General is vested in the President and the appointment is done in accordance with article 70 of the Constitution. Per article 297 (a) of the Constitution, that power to appoint includes the power to "*exercise disciplinary control over persons holding or acting in any such office*". Thus, to the extent that you fail to comply with a basic term of your appointment such as taking annual leave, the President has the power to exercise disciplinary control over you to ensure that you comply with the terms of your

appointment. The exercise of that constitutional power vested in the President does not affect the independence of your office, which the Constitution so rightly guarantees.

Article 187 (1) of the Constitution and section 10 (2) of the Audit Service Act, 2000 (Act 584) (**Audit Service Act**) state that the office of the Auditor-General is a public office. The office of the Auditor-General is a public office and is subject to the labour laws of Ghana, and unless there is a specific enactment that applies to the terms of his appointment to the contrary, the provisions of the Labour Act, 2003 (Act 651) (**Labour Act**) applies. Section 1 of the Labour Act, which is headed "Scope of application", provides as follows:

This Act applies to all workers and to all employers except the Armed Forces, the Police Service, the Prison Service and the Security and Intelligence Agencies specified under the Security and Intelligence Agencies Act, 1996 (Act 526). [Emphasis added.]

The office of the Auditor-General is not part of the categories of workers excluded from the scope of application of the Labour Act, namely, the Armed Forces, the Police Service, the Prison Service and the Security and Intelligence Agencies, specified under the Security and Intelligence Agencies Act, 1996 (Act 526). The provisions of the Labour Act therefore apply to the Auditor-General, subject to the Constitution and the Audit Service Act.

Both the Constitution and the Audit Service Act guarantee the Auditor-General the right to take his annual leave as stipulated in his terms of appointment without it being varied to his disadvantage. See article 187 (12) of the Constitution, which is repeated in section 10 (7) of the Audit Service Act. The Auditor-General's right to leave of absence is spelt out in the Labour Act, which provides that every worker is entitled to annual leave in a year. Section 20 (1) of the Labour Act provides as follows:

In an undertaking every worker is entitled to not less than fifteen working days leave with full pay in a calendar year of continuous service.

As stated earlier, in your case, you are entitled to 44 working days in a calendar year of continuous service. Since your appointment to office, you have taken only 9 working days out of the 132 working days of annual leave that have accumulated over the last three years – 2017, 2018 and 2019. In the case of the 9 working days that you took, you, by letter dated 24<sup>th</sup> January, 2020, notified the Chief of Staff of your annual leave and stated that in your absence, Mr. Benjamin Cudjoe, Deputy Auditor-General, will act "*except that he cannot represent me at the Board*". As Auditor-General, it is expected that you would be a master of the Audit Service Act and not insert such an exception, contrary to the Audit Service Act, in your letter. Section 6 (5) of the Audit Service Act gives the person acting in your absence the power to attend a meeting of the Board and form part of the quorum for a Board meeting. The Auditor-General has no power to amend that provision of the law to determine whether the person acting on his behalf can or cannot attend the meeting of the Board.

According to the Labour Act, you could not forgo your annual leave and any agreement to relinquish your entitlement to your annual leave shall be void. Section 31 of the Labour Act provides as follows:

**An agreement to relinquish the entitlement to annual leave or to forgo the leave is void.**

You may therefore not agree with the President (your appointing authority) to relinquish your entitlement to the accumulated leave or to forgo same. You may also not agree to be paid in cash in exchange for the accumulated annual leave. Such an agreement would be void under section 31 of the Labour Act. The courts have held, in interpreting section 31 of the Labour Act, that annual leave is mandatory and that one of the purposes of section 31 is to prevent the worker from converting his accumulated annual leave to cash to the detriment of his health and wellbeing. See **Samuel M. K. Adrah v. Electricity Company of Ghana** [22<sup>nd</sup> February, 2018] (Civil Appeal No.: H1/149/2017) [2018 DLCA 5153].

Accordingly, you cannot forgo your accumulated annual leave. Furthermore, you cannot offer to take cash in exchange for your accumulated annual leave. Such an offer, if accepted, would amount to an agreement which would be void under section 31 of the Labour Act. Thus, your assertion that you may waive your entitlement to annual leave is unlawful and misconceived. It was for this very reason that section 31 of the Labour Act was enacted. And this is why your annual leave accumulated, and also why the unfortunate convention has developed where accumulated leave is taken as terminal leave by many people in the public service.

Thirdly, it is most unfortunate that you choose to cast aspersions on and impute bad faith, without legal or factual basis, to the President. One would have expected that a person occupying the office of the Auditor-General of the Republic would exercise restraint and circumspection when addressing letters to the Office of the President. The political undertones of your letter are most unfortunate and ought not to be encouraged. I need not remind you that the Auditor-General is an office and not a person such that if the person for the time being occupying same is unavailable the office ceases to exist. Handing over all matters relating to the office of the Auditor-General will not have any implication for its constitutional independence and operation.

As stated above, the constitutional independence of the office of the Auditor-General is guaranteed and rightly so. It does not however give licence for illegal conduct. Contrary to your false belief, the President does not think that your work is embarrassing his government. In fact, the President has ensured that you have been provided with all the necessary resources needed for the efficient running of the office of the Auditor-General and considers your work a critical part of good governance in the Republic.

The assertion that the decision for you to take your accumulated annual leave was not taken in good faith is also unfortunate and without any foundation. The Office of the President did not know that part of your duties is to keep a record of appointees of the President who have not taken their annual leave since 2017, such that you can make the false claim of selectivity. You can be assured that the decision for you to take your accumulated annual leave was not taken in bad faith. Rather, given your own publicization of your deteriorated relationship with your Board, which notified you severally of not taking your annual leave, the President was the only person vested with constitutional power to direct you to proceed on your accumulated annual leave.

In line with good governance practice, taking annual leave ensures that the officer has the opportunity to rest and be refreshed to continue performing the functions of his office efficiently. There is also the collateral reason that allows the appointing authority to assess the work of its appointee including financial administration. It is expected that the Deputy Auditor-General, Mr. Johnson Akuamoah Asiedu, to whom you have handed over the office of the Auditor-General, will continue to perform the functions of the office with diligence and utmost professionalism during your period of absence.

Accordingly, the directive of the President stands, as amended above to 167 working days, with effect from 1<sup>st</sup> July, 2020.

While this letter is being sent to you through normal channels, we have taken the liberty to publish it publicly in the same medium by which your letter came to our attention.

Please accept the President's best wishes.



**NANA BEDIATUO ASANTE**  
**SECRETARY TO THE PRESIDENT**

**MR. DANIEL YAW DOMELEVO**  
**AUDITOR-GENERAL**  
**OFFICE OF THE AUDITOR-GENERAL**  
**ACCRA**

Cc: The Vice President  
Jubilee House, Accra

The Chief of Staff  
Jubilee House, Accra

The Hon. Minister  
Ministry of Finance, Accra

The Chairperson  
Public Services Commission, Accra

The Head of Civil Service  
Office of the Head of Civil Service, Accra

Mr. Johnson Akuamoah Asiedu  
Deputy Auditor-General, Accra