

COPY

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 Registrar
 HIGHER COURT
 ACCRA

IN THE SUPERIOR COURT OF JUDICATURE
 IN THE HIGH COURT OF JUSTICE
 (FINANCIAL DIVISION)
 GREATER ACCRA REGION
 ACCRA – A.D. 2023

SUIT NO. FT/0074/2023

IN THE MATTER OF SECTIONS 32, 38, 39 & 40 OF THE OFFICE THE SPECIAL PROSECUTOR ACT, 2017 (ACT 959)

AND

IN THE MATTER OF REGULATION 19 OF THE OFFICE OF THE SPECIAL PROSECUTOR (OPERATIONS) REGULATIONS, 2018, (LI 2374).

AND

IN THE MATTER OF AN APPLICATION FOR THE CONFIRMATION OF ORDER OF FREEZING OF SUSPECTED TAINTED PROPERTY AND CONFIRMATION OF SEIZURE OF SUSPECTED TAINTED PROPERTY

BETWEEN

THE SPECIAL PROSECUTOR
 Office of the Special Prosecutor
 6 Haile Selassie Avenue
 South Ridge, Accra

APPLICANT

AND

CECILIA ABENA DAPAAH

1ST RESPONDENT

DANIEL OSEI KUFUOR

2ND RESPONDENT

4 Manhia Street
 Abelemkpe, Accra
 GA-093-8056

AFFIDAVIT IN OPPOSITION TO MOTION FOR CONFIRMATION OF ORDER OF FREEZING OF SUSPECTED TAINTED PROPERTY AND CONFIRMATION OF SEIZURE OF SUSPECTED TAINTED PROPERTY

1. I, **CECILIA ABENA DAPAAH**, of 4 Manhia Street, Abelemkpe, Greater Accra Region of the Republic of Ghana, do hereby make oath and say that:
2. I have the 2nd Respondent's authority and consent to depose to this affidavit in opposition on our joint behalf. Unless otherwise stated, the facts herein are within my personal knowledge and belief.
3. I am the deponent herein and the 1st Respondent.
4. 2nd Respondent and I were served with the Applicant's Motion for confirmation of seizure and order of freezing of suspected tainted property on 20th September 2023 and are opposed to it.
5. Applicant's Motion is absurd, grounded on false allegations and brought in utmost bad faith and brazen disregard of Act 959 and this Honourable Court's Ruling of 31st August 2023 on the Applicant's earlier application brought for the same reliefs in respect of the same subject matter and substantially the same facts.
6. We deny paragraph 6 of the Applicant's Affidavit in Support and say that as of 5th September 2023 when Applicant re-seized the money and refroze my bank accounts, 2nd Respondent and I were not being investigated for and had not been charged with any identifiable offence known to the laws of Ghana and which are broadly described as a "corruption or corruption-related offence" under Act 959. We have to date not been charged with any such offence.
7. In further answer to paragraph 6 of Applicant's Affidavit in Support, I say that Applicant had already re-seized the money the subject of this application and refrozen my bank accounts the subject of this application on 5th September 2023, **before** he invited me for further interrogation on 7th September 2023 and revealed for the first time that he is "*investigating cases of corruption and corruption related offences and specifically the offences of corruption using public office for private benefits ...*".

8. I am also informed by our Counsel that contrary to the content of paragraph 6, Counsel for the Applicant in his oral submissions on 17/08/2023 misrepresented to this Court that I was being investigated for the specific offence of corruption under Section 239 of Act 29. This was captured at pages 31 to 32 of EXHIBIT CAD3.
9. I deny paragraphs 7, 8, 17, 18, 19, 22, 23, 24 and 25 of the Affidavit in Support as being false, prejudicial and or containing misrepresentation of facts and law.
10. I am advised by Counsel and verily believe same to be true that Applicant's bold assertion that 2nd Respondent is covering up for me in respect of the ownership and source(s) of money that we reported stolen from our home is not only false but shows his prejudice and lack of the impartiality required to execute his mandate in conducting investigations.
11. Among other baseless accusations in his Affidavit in support, the Applicant accused me of "*feigning*" lack of knowledge of the source of my late brother's wealth. Even my decision to exercise my constitutional right to remain silent is described by the Applicant in derogatory and misleading terms to create the wrong impression that I "*recoiled*" from answering questions during my earlier interrogation in July 2023.
12. At the hearing of this Application, our Counsel will pray the Court to strike out irrelevant, offensive, scandalous, false and oppressive affidavit evidence deposed to on oath and related documents exhibited on the Applicant's behalf, including:
 - a) Statements in paragraph 6 of Applicant's Affidavit in Support
 - b) Paragraph 8 of the Affidavit in Support
 - c) Exhibits OSP2, OSP6, OSP8, OSP7, OSP10, OSP12, OSP 12A, OSP17 and OSP18
 - d) Paragraph 18(i), (v), (vi), (vii), (viii), (ix)(xiii), (xiv) and (xv)
 - e) Paragraph 25(i), (ii), (iii), (iv), (v), (vi), (vii) and (i).
13. While embarking on a fishing expedition for evidence, the Applicant recklessly and/or deliberately misrepresented the following facts:

- a) That I said in **Exhibit OSP5** that I had registered a sole proprietorship called Dermacare Cosmetics when I made no such statement in **Exhibit OSP5**. I never mentioned registering any business called Dermacare Enterprise. I rather stated *“Dermacare shop dealing in cosmetics, skincare, shoes, bags and other miscellaneous items”* and that Dermacare was a sole proprietorship. Good faith investigation would have revealed that on 26th July 1994, I registered a business that was carried on at Dermacare Shop in Dzorwulu, Accra.
- b) That I have an undisclosed and undeclared real estate business when I have no real estate business and Applicant has not provided a scintilla of evidence that I do.
- c) That I concealed my identity by using aliases to sell property to third parties when Applicant’s own **Exhibit OSP16** shows that I rather sold property in a representative capacity for Nana Yaa Ode. Nana Yaa Ode also known as Nana Ode Nyarko was my mother (now deceased).
- d) That money was being transferred from my deceased brother’s account into my account when the truth is that funds were transferred from Cal Bank from an account in the name “The Late Nana Akwasi Essan” to which I am a signatory. This account was opened with funeral donations collected by Cal Bank at my late brother’s funeral. The correct account name is conspicuously stated in Applicant’s **Exhibit OSP18** and the Applicant could easily have ascertained the mandate on the account from Cal Bank. The funds are transferred to me for payment of the school fees of my late brother’s children.
- e) That 2nd Respondent and I have not informed the Police about the discovery of the \$590,000 which formed part of the initial \$1,000,000.00 reported stolen when we informed the investigating officers on 25th July 2023, a fact that good faith and diligent investigations would have unearthed.

14. The events leading to the present application began in October 2022. On or about 6th October 2022, 2nd Respondent lodged a complaint at the Tesano Police station against Patience Botwe, a former house help of ours whom he chanced upon in one of our rooms after she had used a forged key to gain access.
15. 2nd Respondent and I later realized that various sums of money and valuables had been stolen from our home. We reported this to the Police and a trial was subsequently commenced against Patience Botwe in the Circuit Court. However, the Court had to discharge her when her Ghana card was produced indicating that she was 17 years at the time.
16. This resulted in her re-arrest and fresh charges being filed at the Juvenile Court. During the proceedings before the Juvenile Court, the panel members went on a three (3) week strike. By the time they resumed sitting Patience Botwe who was on bail had absconded and her surety was nowhere to be found. The case was subsequently struck out.
17. Subsequently, in June 2023, Patience Botwe was re-arrested, and the Police began prosecuting her and other accomplices for stealing in the Circuit Court, Accra. News of the arrest of Patience Botwe and her accomplices as well as details of the items reported stolen was widely circulated in the media with disparaging commentary impugning my integrity as a Minister of State.
18. Consequently, on 21st July 2023, I issued a brief statement and resigned as the Minister for Sanitation and Water Resources on 22nd July 2023.
19. Based on the media frenzy particularly in relation to the sums of money reported stolen from our home, the Applicant suddenly arrested me on 24th July 2023, searched our matrimonial home at Abelemkpe and two other properties at Tesano and Cantonments and took a cautioned statement from me.
20. During the search the Applicant found and seized cash sums of Five Hundred and Ninety Thousand United States Dollars (US\$590,000.00) and Two Million Eight Hundred and Sixty-Two Thousand and Seven Ghana Cedis

(GHS2,862,007.00) from the matrimonial home at Abelemkpe. On 26th July 2023, the Applicant also ordered the freezing of my bank accounts with Prudential Bank and SG Bank.

21. No warrant was issued for my arrest or the search that ensued. I was merely informed in my cautioned statements taken on 24th and 28th July 2023, that the Applicant was investigating a case of corruption and corruption-related offence in which I am involved. I was not told the specific corruption or corruption-related offence that I was suspected to have committed. My cautioned statements of 24th and 28th July 2023 have been exhibited by the Applicant as **Exhibits OSP4** and **OSP5** respectively.

22. On 8th August 2023, the Applicant filed an application for confirmation of his seizure of the money the subject matter of this application and confirmation of his freezing orders in respect of my bank accounts the subject of this application, on the grounds that the money seized and the funds in my bank accounts are suspected tainted property. A copy of the earlier application filed on 8th August 2023 is exhibited and marked as **EXHIBIT CAD1**.

23. I filed an Affidavit in Opposition on 15th August 2023. The application was heard on 17th August 2023 and adjourned to 31st August 2023 for Ruling. A copy of my Affidavit in Opposition is exhibited and marked as **EXHIBIT CAD2**.

24. On 31st August 2023, His Lordship Justice Edward Twum delivered his Ruling and dismissed the Applicant's Motion in its entirety. A copy of the Ruling is exhibited and marked as **EXHIBIT CAD3**. His Lordship made several crucial findings including the following:

(a) *"It is obvious from this submission by counsel for the Applicant that **the Applicant is in doubt as to the true ownership of the alleged tainted property... In the respectful view of this court, the Applicant has failed to justify the reasonableness of his suspicions. It is reasonable to expect the Applicant to first determine the ownership of the alleged tainted property and verify its legitimate sources before arriving at the conclusion that the seized property may be tainted. Indeed, any statement to the***

effect that the property is or may be tainted at this stage when its ownership and sources is yet to be determined by the Applicant is premature and far-fetched.” (@ pages 20 and 21 of EXHIBIT CAD3)

(b) *“It appears to this court that if the Respondent and her spouse had intended to conceal, destroy, or dissipate the alleged tainted property from the 5th day of July 2023 when the facts became public knowledge after their house helps and the others had been arraigned, they would have done so. For the Respondent and her spouse to have kept the alleged tainted property in their matrimonial home all this while when the matter was being discussed in the public domain and whilst the police were conducting further necessary investigations into the stealing case was ample testimony, it may seem to this court, that the Respondent and her spouse had no motive to conceal, destroy or dissipate the alleged tainted property, unless the Applicant can prove otherwise.” (@ page 22 of EXHIBIT CAD3)*

(c) *“A combined reading of subsection 1(b) of Section 32 of Act 959 and Section 88 of Act 30, clearly indicates to this court that the Applicant required an order of a court or a warrant to enter the premises of the Respondent to conduct the search and seizure functions imposed on it by Act 959 in the absence of any proof of intention on the part of the Respondent to conceal, destroy or dissipate the alleged tainted property, the proof which lies on the Applicant. This court holds that based on the available facts, there was no justifiable basis for the authorized officers of the Applicant to exercise the powers of seizure without a court warrant or order, and to that extent, this court holds that the Applicant exercised the powers of seizure without any justifiable legal basis whatsoever, and on that basis, this court holds that the Applicant exercised the powers of seizure wrongly as the requisite conditions precedent to the exercise of such powers were, in the respectful view of this court, absent and same could not be proved by the Applicant in this application. It will therefore not be fair, just, and reasonable for this court to confirm such a wrongful exercise of discretionary powers by the Applicant or its authorized officers.” (@ page 23 of EXHIBIT CAD3)*

- (d) *“Reasonable grounds must be established by the Special Prosecutor before considering the freezing of property, especially when the Applicant has indicated to this court that the Respondent is being investigated for corruption and corruption-related offences as defined by Act 959. These reasonable grounds, with respect, must be based on actual acts of infractions and not on speculations and guesses. What then was or were the reasonable ground(s) the Applicant took into consideration before the Respondent's accounts were frozen? It appears to this court that the Applicant took this action based on the directive dated 31st July, 2023 issued by the Honourable Attorney-General to the Director General of the Criminal Investigations Department of the Ghana Police Service (Exhibit "OSP2") requesting the Director General to, among others, "broaden the investigations on money laundering and other financial crimes to cover the complainants in order to establish the matters raised' in the said directive.” (@ page 32 of EXHIBIT CAD3)*
- (e) *“This court could not find any justifiable basis upon which the Applicant froze the accounts of the Respondent in the face of the denials by the Respondent that she is being investigated by the Applicant, denials which the Applicant could not provide any evidence to rebut.” (@ page 35 of EXHIBIT CAD3)*
- (f) *“From the records and evidence before this court, the Applicant has not been able to provide any cogent and sufficient legal reasons as to why the accounts of the Respondent were frozen or why this court should confirm the said freezing, except to postulate that the Respondent is being investigated for corruption and corruption-related offences, a fact which the Respondent has denied in her affidavit in opposition. And from the definition of "tainted property" noted earlier in this ruling, the Applicant could neither show proof that the Respondent used her accounts and other investments held with the two banks in connection with the commission of an offence; or that the monies standing in those accounts and in other investments were derived, obtained, or realized as a result of the commission of corruption or corruption-related offences.” (@ page 38 of EXHIBIT CAD3)*

25. I am advised by Counsel and verily believe same to be true that the High Court made a definitive determination that the Applicant failed to establish as a condition precedent that he was indeed investigating me on reasonable suspicion that I had committed or was about to commit any of the eleven (11) specific corruption offences defined and interpreted in section 79 of Act 959.
26. Between 31st August 2023 when the Court gave its Ruling and 5th September 2023 when Applicant refroze my bank accounts and re-seized the money the subject of this application, the status quo remained. The Applicant did not inform me or the 2nd Respondent of the specific identifiable corruption or corruption related offence we are being investigated for neither did he charge us with any such offence.
27. I am also advised by Counsel that the High Court rightly held that Applicant's jurisdiction to deal with "*tainted property*" is restricted to property which is tainted as a result of being "(b) derived, obtained or realized as a result of the commission of a corruption or corruption-related offence" as stipulated in the eleven (11) offences as defined under section 79 of Act 959.
28. I am advised by Counsel that save bandying about the phrase "*unexplained wealth*" the Applicant in relying on the same facts prevailing as of 31st August 2023, has again failed to demonstrate in this application that the money seized from our matrimonial home and the funds in my bank accounts are tainted property as defined by Act 959.
29. I am advised by Counsel that the High Court found that **the condition precedent** for the Applicant to classify funds in my bank accounts as tainted property as a result of a specified corruption offence **had not been met before** my unjustifiable arrest, interrogation, search, seizure of money from my residence and the freezing of my accounts.
30. I am advised by Counsel and verily believe same to be true that by arresting me without specifying the specific corruption or corruption related charges I was being arrested for, that arrest violated the highest law of the land and disregarded my constitutionally guaranteed rights.

31. I am therefore advised by Counsel and verily believe same to be true that the Applicant could not rely on the unlawful arrest and search of 24/7/2023 to re-seize the money the subject of this application and to refreeze my bank accounts on 5th September 2023.
32. This is why Lordship Justice Edward Twum ordered the Applicant to return the money seized from my Abelemkpe residence to me within seven (7) days from the date of the order and to unfreeze my bank accounts.
33. On 31st August 2023, the Applicant issued a statement to register his disagreement with the High Court's Ruling (EXHIBIT CAD3), but Applicant did not appeal against it. A copy of the Applicant's statement dated 31st August 2023 is exhibited and marked as **EXHIBIT CAD4**.
34. On 4th September I received a call to report to Applicant's office at 10am on September 5, 2023. On 5th September 2023, I arrived at Applicant's office Premises in the company of my lawyers at 10am. Upon my arrival, I was informed that the meeting had been arranged to facilitate the return of the seized money to me, as ordered by the High Court on 31/08/23.
35. After being made to wait for hours and lengthy processes, the money was released to me at about 2:30pm on the 7th floor of the Applicant's premises. However, within minutes of making my way to the car park with the money and as I was exiting, I was directed to return to the 7th floor with the money.
36. When I got to the 7th floor, I was told by one of the Applicant's officers that he had "*the pleasure*" to inform me that the Applicant was re-seizing the money. They proceeded to take the money to recount it and then served me with notice of the re-seizure.
37. I finally exited the Applicant's premises around 4:30pm and about five minutes afterwards my attention was drawn to a public notice that had already been issued by the Applicant on the re-seizure of the money and re-freezing of my bank accounts that day.

38. It was apparent that Applicant had prepared the public notice in advance as the last act in a well-orchestrated plan to make a mockery of complying with the Court's Ruling, but I was shocked to find that the public notice was published on the Applicant's website as early as 10:14am on 5th September 2023, hours before the purported release and re-seizure of the money that day. A copy of the Applicant's public statement which was published on his website at **10:14am** on 5th September 2023 is exhibited and marked as **EXHIBIT CAD5**.

39. In **EXHIBIT CAD5**, the Applicant alleged that *"Subsequent to the indicated ruling and order of the High Court and the compliance by the OSP with the said ruling and order, the ongoing investigations by the OSP of Ms. Dapaah has uncovered varying and sometimes conflicting accounts of the ownership and source(s) of the large sums of money reportedly stolen from her residence..."*

40. The Applicant's statement meant that his ongoing investigations had uncovered varying and conflicting accounts of the ownership of the sums of money reportedly stolen from our residence "subsequent to" or after his compliance with the Court's Ruling on 5th September 2023.

41. Even if the Applicant's statement in Exhibit CAD5 were true, it rather reveals that as of 5th September 2023 when Applicant re-seized the money and refroze my accounts, Applicant had still not determined the ownership and/or sources of the money, contrary to the Court's Ruling that determining ownership is a condition precedent that the Applicant must satisfy before classifying the money as suspected tainted property which could then warrant its seizure and /or the freezing of my bank.

42. Indeed, it was rather on 6th September 2023, the day after the re-seizure of the money and the re-freezing of my accounts, that 2nd Respondent and I were invited for further interrogation by the Respondent. This is confirmed by the date on 2nd Respondent's further cautioned statement exhibited by the Applicant as **Exhibit OSP10**.

43. 2nd Respondent's further interrogation on 6th September 2023, took almost four (4) hours and mine had to be deferred to the next day because I had to accompany 2nd Respondent to a pre-scheduled doctor's appointment.
44. On 7th September 2023, acting on the advice of Counsel and considering the Applicant's arbitrariness in the re-seizure and refreezing of my accounts and his prior prejudicial statement in Exhibit CAD5 that he had "*subsequent to*" his compliance with the Ruling uncovered varying and conflicting accounts of the ownership and sources of the money stolen from our home, I opted to exercise my constitutional right to remain silent.
45. My decision to remain silent is justified by the Applicant's attempt in this application, to rely on his **Exhibit OSP10**, the further cautioned statement taken from 2nd Respondent on **6th September 2023** as justification for his re-seizure of the money and refreezing of my accounts **a day before on 5th September 2023**.
46. Again, the Respondent has alluded to my decision to remain silent on **7th September 2023** and is seeking to rely on that as further justification for the confirmation of his re-seizure of the money and re-freezing of my bank accounts which he did **two days prior, on 5th September 2023**.
47. I am advised by Counsel and verily believe same to be true that having exercised his administrative powers to re-seize the money and to refreeze my accounts on 5th September 2023, the Applicant cannot justify his suspicions by relying on the cautioned statements in **Exhibits OSP10 and OSP6** which were taken **after** the re-seizure and refreezing.
48. I am further advised by counsel and verily believe same to be true that when the High Court ruled on the facts presented by the Applicant in his 8th August application, the Applicant was estopped from relying on those same facts to re-seize the amounts of money and to refreeze my accounts without first obtaining a warrant or court order for a fresh search and/or seizure.

49. I am advised by counsel and verily believe same to be true that unlike a withdrawal or discontinuance of an application, the OSP's application of 8th August 2023 was conclusively determined on its merits and therefore the Applicant is precluded from re-seizing the money and re-freezing my accounts without satisfying the conditions precedent that remained outstanding as of 5th September 2023.

50. Applicant has not demonstrated that there is any basis to suspect the money found at our home are from a corrupt source or that the funds in my bank accounts are tainted property or the proceeds of corruption or corruption-related offences.

51. Moreover, I am advised by Counsel that in confirming a freezing order the Court is enjoined to balance the economic right of the affected persons against the State's power to fight corruption and in this case granting the application would be unwarranted and will cause me undue hardship.

52. Applicant has failed to consider that the funds in my accounts include my earnings from various past employments, pension, and treasury bill investments among others, which cannot be tainted property by any stretch of the imagination.

53. Applicant has effectively held onto the money he seized from our residence and kept my bank accounts frozen since 24th July and 26th July respectively, which is in excess of the statutory sixty (60) days within which he is required to release seized property if he fails to prefer charges.

54. I am advised by Counsel and verily believe same to be true that having failed to satisfy the statutory conditions precedent for applying to confirm the seizure of and freezing orders of the sums found at my home and in my bank account respectively, this Honourable Court must dismiss this application with punitive costs for abuse of the Court's due process.

55. Wherefore I swear to this Affidavit in Opposition.

SWORN IN ACCRA, THIS ^{5th}
DAY OF OCTOBER 2023

Chapal
.....
DEPONENT

BEFORE ME *[Signature]*
COMMISSIONER FOR OATHS



AND FOR SERVICE ON THE SPECIAL PROSECUTOR, OFFICE OF THE SPECIAL
PROSECUTOR, 6 HAILLE SELASSIE AVENUE, SOUTH RIDGE, ACCRA.

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
(FINANCIAL DIVISION)
ACCRA – A.D. 2023

COURT CASE NO: FT/0074/2023

IN THE MATTER OF SECTIONS 32, 38, 39 & 40 OF THE OFFICE OF THE SPECIAL
PROSECUTOR ACT, 2017 (ACT 959)

AND

IN THE MATTER OF THE OFFICE OF THE SPECIAL PROSECUTOR (OPERATIONS)
REGULATIONS, 2018 (L.I. 2374)

AND

IN THE MATTER OF AN APPLICATION FOR CONFIRMATION OF ORDER OF
FREEZING OF SUSPECTED TAINTED PROPERTY AND CONFIRMATION OF SEIZURE
OF SUSPECTED TAINTED PROPERTY

BETWEEN

THE SPECIAL PROSECUTOR

Office of the Special Prosecutor
6 Haile Selassie Avenue
South Ridge - Accra

APPLICANT/RESPONDENT

AND

1. CECILIA ABENA DAPAAH

2. DANIEL OSEI-KUFUOR

Both of 4 Manhia Street
Abelemkpe, Accra
GA-093-8056

1ST RESPONDENTS/APPLICANT

2ND RESPONDENT

CERTIFICATE OF EXHIBITS

I, Richard T. Nana, Commissioner for Oaths, hereby certify that I identified the following documents which have been attached to the Respondent's Affidavit in Opposition to the Applicant's Application for

Confirmation of Order for Freezing of Suspected Tainted Property and Confirmation of Seizure of Suspected Tainted Property.

- 1) **EXHIBIT CAD1** -- Applicant's Application for confirmation of order of freezing of suspected tainted property and confirmation of seizure of suspected tainted property filed on 08/08/23 (Suit No. FT/0072/2023).
- 2) **EXHIBIT CAD2** -- 1st Respondent's Affidavit in Opposition filed on 15/08/23 (Suit No. FT/0072/2023).
- 3) **EXHIBIT CAD3** -- Ruling in Suit No. FT/0072/2023 dated 31/08/23.
- 4) **EXHIBIT CAD4** -- Applicant's Press Release dated 31/08/23.
- 5) **EXHIBIT CAD5** -- Applicant's Press Release dated 05/09/23.

BEFORE ME



COMMISSIONER FOR OATHS

EXHIBIT CAD1

Filed at
at
No. 12345
HIGH COURT
ACCRA

IN THE SUPERIOR COURT OF JUSTICE
IN THE HIGH COURT OF JUSTICE
(FINANCIAL DIVISION)
GREATER ACCRA REGION
ACCRA. - A.D. 2023

Court Case No.

IN THE MATTER OF SECTIONS 32, 33, 39 & 40 OF THE OFFICE OF
THE SPECIAL PROSECUTOR ACT, 2017 (ACT 959)

IN THE MATTER OF REGULATION 19 OF THE OFFICE OF THE
SPECIAL PROSECUTOR (OPERATIONS) REGULATIONS, 2018
(L.I. 2374)

IN THE MATTER OF AN APPLICATION FOR CONFIRMATION OF
ORDER OF FREEZING OF SUSPECTED TAINTED PROPERTY AND
CONFIRMATION OF SEIZURE OF
SUSPECTED TAINTED PROPERTY

BETWEEN

THE SPECIAL PROSECUTOR
Office of the Special Prosecutor
6 Haile Selassie Avenue
South Ridge, Accra

APPLICANT

AND

CECILIA ABENA DAPAAH
4 Manbia Street
Abelenkpe, Accra
GA-093-8056

RESPONDENT

THIS IS EXHIBIT/DOCUMENT
MARKED CAD1 REFERRED TO
THE AFFIDAVITS SWORN AT ACCRA
THIS 5th DAY OF Oct, 2023
BY C. A. Dapaa
BEFORE ME
COMMISSIONER FOR OATHS



[Handwritten signature]

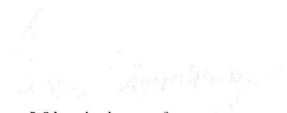
MOTION ON NOTICE:
APPLICATION FOR CONFIRMATION OF ORDER OF
FREEZING OF SUSPECTED TAINTED PROPERTY
AND CONFIRMATION OF SEIZURE OF
SUSPECTED TAINTED PROPERTY

=====

TAKE NOTICE that the Special Prosecutor shall move this Honourable Court on an application to confirm the freezing order issued by the Special Prosecutor in respect of the bank accounts and investments of the Respondent domiciled at Prudential Bank Limited and Societe Generale Ghana as suspected tainted property; and the confirmation of the seizure by the Office of the Special Prosecutor of the property of the Respondent upon the grounds contained in the accompanying affidavit and for any further order(s) as the Court may deem fit.

Court to be moved on the 11th day of July 2023 at 9 o'clock in the forenoon or so soon thereafter as the Republic may be heard.

Dated at the Office of the Special Prosecutor, 6 Haile Selassie Avenue, South Ridge, Accra this Eighth day of August 2023.


Kissi Agyebeng
Special Prosecutor

The Registrar
High Court
(Financial Division)
Accra

And for service on the Respondent.



IN THE SUPERIOR COURT OF JUSTICE
IN THE HIGH COURT OF JUSTICE
(FINANCIAL DIVISION)
GREATER ACCRA REGION
ACCRA - A.D. 2023

Filed on
.....
.....
HIGH COURT
ACCRA

Court Case No.

IN THE MATTER OF SECTIONS 32, 36, 39 & 40 OF THE OFFICE OF
THE SPECIAL PROSECUTOR ACT, 2017 (ACT 959)

IN THE MATTER OF REGULATION 19 OF THE OFFICE OF THE
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IN THE MATTER OF AN APPLICATION FOR CONFIRMATION OF
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BETWEEN

THE SPECIAL PROSECUTOR
Office of the Special Prosecutor
6 Haile Selassie Avenue
South Ridge, Accra

APPLICANT

AND

CECILIA ABENA DAPAANY
4 Manhia Street
Abelemkpe, Accra
GA-093-8056

RESPONDENT

AFFIDAVIT IN SUPPORT OF
MOTION FOR CONFIRMATION OF ORDER OF
FREEZING OF SUSPECTED TAINTED PROPERTY
AND CONFIRMATION OF SEIZURE OF
SUSPECTED TAINTED PROPERTY



I, AKUA ADIYIAH of 6 Haile Selassie Avenue, South Ridge, Accra make oath and say as follows that:

- 1 I am the deponent herein and a State Attorney at the Office of the Special Prosecutor.
- 2 I have the authority of the Special Prosecutor to depose to the facts contained in this affidavit, which have, unless otherwise stated, come to my personal knowledge in the course of my duties.
- 3 The applicant is the Special Prosecutor of the Republic and head of the Office of the Special Prosecutor tasked with the mandate of investigating and prosecuting specific cases of alleged or suspected corruption and corruption-related offences; recovering the proceeds of corruption and corruption-related offences; and taking steps to prevent corruption.
- 4 The respondent was, until 22 July 2023, the Minister for Sanitation and Water Resources.
- 5 The applicant brings this application in pursuance of sections 32, 38, 39, and 40 of the Office of the Special Prosecutor Act, 2017 (Act 959) and regulation 19 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L.I. 2374).
- 6 On 5 July 2023, the Republic, on the basis of a complaint filed by the respondent herein and her spouse, commenced criminal proceedings in the Circuit Court, Accra against four (4) persons on an amended charge sheet on various counts of theft in Court Case No. D4/155/2023 *The Republic v. Patience Botwe & Three Ors.* The charges recounted that *inter alia* between July and October 2022 the accused persons allegedly stole valuable items from the residence of the respondent herein and her spouse at Abelemkpe, Accra – including cash amounts of One Million United States dollars (US\$1,000,000.00) and Three Hundred Thousand euros (€300,000.00) which belonged to the respondent.
- 7 The OSP found that in her initial complaint to the police, the respondent stated that Eight Hundred Thousand United States dollars (US\$800,000.00) of the amount reportedly stolen from her residence belonged to her deceased brother and Three Hundred Thousand cedis (GH¢300,000.00) was contribution towards her mother's funeral which was contained in a box. The respondent did not indicate who owned the remainder of Two Hundred Thousand United States dollars (US\$200,000.00) and Three Hundred Thousand euros (€300,000.00).



- 8 *Circa* 21 July 2023, after several negative media publications, the respondent issued a public statement claiming that there were noticeable inconsistencies between the amounts of money being discussed in the public domain and the thrust of the original complaint in the matter. Attached and marked as Exhibit "OSP1" is a copy of the statement issued by the respondent. Thus, by her statement, the respondent was clearly casting doubt on the cash sums stated on the charge sheet in D4/155/2023 *The Republic v. Patricia Botwe & Three Ors.* as matched against the original complaint to the police. The respondent resigned from her position as Minister for Sanitation and Water Resources on 22 July 2023.
- 9 On the basis of the totality of the criminal intelligence gathered by the OSP and that large sums of money were physically stashed at the residences of the respondent *circa* between July and October 2022, the Special Prosecutor directed full investigation into corruption and corruption related offences involving the respondent (in accordance with regulation 6 of L.I. 2374) as the circumstances reasonably indicated to the OSP that the source of the cash sums stated as belonging to the respondent (a public officer at the time) on the charge sheet in D4/155/2023 *The Republic v. Patricia Botwe & Three Ors.* was suspicious and that the cash sums were suspected tainted property as being proceeds from corruption and corruption-related offences.
- 10 On 24 July 2023, the OSP placed the respondent under arrest on charges of corruption and corruption-related offences. The OSP subsequently conducted searches in three (3) residential properties associated with the respondent at Cantonments, Abelenkpe and Tesano in Accra.
- 11 The searches led to the discovery of the cash sums of Five Hundred and Ninety Thousand United States dollars (US\$590,000.00) and Two Million Seven Hundred and Thirty Thousand cedis (GH¢2,730,000.00) at the Abelenkpe residence. Authorised officers of the OSP seized the discovered cash sums on reasonable grounds that they were suspected tainted property in accordance with section 32(1) of Act 959 as it was necessary to exercise the power of seizure to prevent concealment of the cash sums.
- 12 In a directional advice dated 31 July 2023, the Attorney General directed the Director General of the Criminal Investigations of the Police Service to investigate the true ownership and sources of the amounts reportedly stolen from the residence of the respondent herein to enable the Attorney General take a comprehensive decision. Attached and marked as Exhibit "OSP2" is a copy of the Attorney General's directions. This directive affirms the reasonableness



of the investigation being carried out by the OSP as to the sources of the large cash sums of money associated with the respondent herein.

- 13 The Special Prosecutor, considering it necessary to facilitate the investigations, issued a freezing order against the bank accounts and investments of the respondent domiciled at Prudential Bank Limited and Sociere Generale Ghana in accordance with section 38(1) of Act 959 and regulation 19(1) of L.I. 2374. Attached and marked as Exhibits "OSP3" and "OSP4" are copies of the freezing order.
- 14 In pursuance of section 32 of Act 959, the deponent avers that it is the reasonable estimation of the OSP that the seized property is suspected tainted property and it is necessary to prevent its concealment or loss.
- 15 In pursuance of sections 38 of Act 959, the deponent avers and confirms that the OSP is investigating the respondent for suspected corruption and corruption-related offences and that there are reasonable grounds to believe that the frozen properties are suspected tainted property and also that there are reasonable grounds to believe that a confiscation order shall be made under Act 959 in respect of the property.
- 16 The Special Prosecutor prays this Honourable Court to confirm the seizure of the suspected tainted property and the freezing order in pursuance of sections 32(2) & 38(2) of Act 959 and regulation 19(2)(b) of L.I. 2374, and further in terms of 40(3) of Act 959.

Wherefore I swear to this affidavit in support of the application.

Sworn in Accra this
day of August 2023


DEPONENT

BEFORE ME

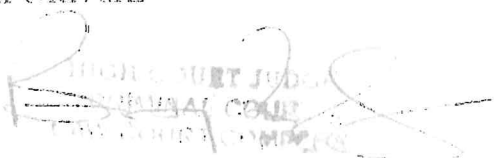

HIGH COURT JUDGE
COMMERCIAL COURT
THE COURT COMPLEX
COMMISSIONER FOR OATHS



EXHIBIT CAD 2

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
(FINANCIAL DIVISION)
GREATER ACCRA REGION
ACCRA – A.D. 2023

FILED on 15/10/2023
at 1:38 PM
HIGH COURT
ACCRA

SUIT NO. FT/0072/2023

IN THE MATTER OF SECTIONS 32, 38, 39 & 40 OF THE OFFICE THE SPECIAL
PROSECUTOR ACT, 2017 (ACT 959)

AND

IN THE MATTER OF REGULATION 19 OF THE OFFICE OF THE SPECIAL
PROSECUTOR (OPERATIONS) REGULATIONS, 2018, (LI 2374).

AND

IN THE MATTER OF AN APPLICATION FOR THE CONFIRMATION OF ORDER OF
FREEZING OF SUSPECTED TAINTED PROPERTY AND CONFIRMATION OF SEIZURE
OF SUSPECTED TAINTED PROPERTY

BETWEEN

THE SPECIAL PROSECUTOR

Office of the Special Prosecutor
6 Haile Selassie Avenue
South Ridge, Accra

APPLICANT

AND

CECILIA ABENA DAPAAH

4 Manhia Street
Abelemkpe, Accra
GA-093-8056

THIS IS EXHIBIT/DOCUMENT
MARKED **CAD 2** REFERRED TO
THE AFFIDAVITS SWORN AT ACCRA
THIS **15** DAY OF **Oct** 20**23**
BY **C. A. Dapaa**
BEFORE ME
[Signature]
COMMISSIONER FOR OATHS

RESPONDENT

AFFIDAVIT IN OPPOSITION TO MOTION FOR CONFIRMATION OF ORDER OF
FREEZING OF SUSPECTED TAINTED PROPERTY AND CONFIRMATION OF SEIZURE
OF SUSPECTED TAINTED PROPERTY

I, **CECILIA ABENA DAPAAH**, of 4 Manhia Street, Abelemkpe, Greater Accra Region
of the Republic of Ghana, do hereby make oath and say that:

1. I am the deponent hereto and the Respondent.
2. On 8th August 2023, the Applicant filed an application for confirmation of order of freezing of alleged suspected tainted property and the seizure of alleged suspected tainted property.
3. I was served with the Applicant's Motion on Monday 14th August 2023 and I am opposed to it.
4. I deny paragraph 2 of the Applicant's Affidavit in Support and state on the advice of my Counsel that the deponent has failed to provide evidence of her authority to depose to the Affidavit in Support.
5. The Applicant acknowledges in paragraph 10 and 11 of his Affidavit in Support that he seized a sum of US\$590,000 and GHC 2,730,000 from my matrimonial home at Abelemkpe on 24th July 2023 under Section 32(1) of Act 959.
6. That I am a 69-year-old woman who has worked for over 45 years in my life at various places including the World Bank, a Member of Ghana's Parliament and a Minister of State in various governments, and who is also married to an Architect of over 50 years standing.
7. I am advised by Counsel and verily believe same to be true that, under Section 32(2) of the same Act 959, Applicant was mandated to seek a confirmation order within 7 days of seizing the amounts on 24th July 2023.
8. As of 8th August 2023, when the Applicant filed this application for confirmation of the seizure, the statutorily period prescribed for doing so had long lapsed.
9. I am therefore advised that, in the circumstances, the instant application is in flagrant violation of the mandatory requirements of the statute regulating the Applicant's functions. This Honourable Court can neither

entertain an application for a confirmation order of the seizure carried out on 24th July 2023 nor grant an order confirming that seizure since the application is in contravention of the Applicant's own enabling Act.

10. I am further advised by Counsel and verily believe same to be true that contrary to Section 40 of Act 959, the Applicant has failed to satisfy the conditions precedent for applying for a confirmation of the freezing order against my bank accounts and investments domiciled at Prudential Bank LTD. and Societe General Ghana.
11. I am neither being investigated for, nor charged with any identifiable offence known to the laws of Ghana and which are broadly described as a "corruption or corruption-related offence" under Act 959.
12. At the hearing of this application, my Counsel shall raise a preliminary objection regarding the Applicant's failure to properly invoke the jurisdiction of this Honourable Court due to its breach of Act 959.
13. Save the attribution of ownership of the cash amounts of USD 1 million and €300,000, I admit paragraph 6 of the Applicant's Affidavit in Support.
14. Save that I have not amended my initial complaint to the police, I admit paragraph 7 of Applicant's Affidavit in Support, and further, say that, neither in my initial complaint to the Ghana Police Service nor in any statement to the Police, did I lay claim to the amounts of US\$ 1 million and €300,000.
15. Save that prior to my resignation as Minister for Sanitation and Water Resources on 22nd July 2023, I issued a public statement on 21st July 2023 as contained in Applicant's Exhibit OSP 1, I deny paragraph 8 of the Applicant's Affidavit in Support.
16. Contrary to Applicant's assertion, I did not say "*there were noticeable inconsistencies between the amounts of money being discussed in the public domain and the thrust of the original complaint in the matter*".

What I said as evidenced by Exhibit OSP 1 is that *“there are noticeable inconsistencies between what is being discussed in the public domain and the thrust of the original complaint in the matter”*.

17. Applicant’s flawed interpretation that I “was casting doubt on the cash sums stated in Suit No. D4/155/2023 as matched against the original complaint to the police” arises from the Applicant’s own unjustified importation of the words *“amounts of money”* into my statement in Exhibit OSP 1.
18. When I stated that *“there were noticeable inconsistencies between what is being discussed in the public domain and the thrust of the original complaint in the matter”* I was referring to the allegation that I had claimed ownership of the cash sums of US\$1 million and € 300,000 that were reported stolen from my matrimonial home.
19. Save that the Applicant found cash sums at my Abelemkpe residence alone, I deny paragraph 9 of the Affidavit in Support.
20. I am also advised by Counsel and verily believe same to be true that the allegation that, the criminal intelligence allegedly gathered by the Applicant and the circumstances indicate that the cash sums found in my matrimonial home are from suspicious sources and suspected tainted property being proceeds from corruption and corruption-related offences, are utterly unfounded, speculative and without reasonable basis.
21. Applicant failed to indicate the nature of criminal intelligence gathered or circumstances that reasonably indicate that the cash sums found in my matrimonial home or reported stolen are suspected tainted property and proceeds from corruption and corruption-related offences.
22. I am advised by Counsel and verily believe same to be true that Applicant cannot justify his suspicions with the statement in the charge sheet in Suit No. D4/155/2023 that the cash sums of \$1 million and €300,000 belong

to me when the same Applicant concedes in paragraph 7 of his Affidavit in Support and his Exhibit OSP 2 that I did not claim ownership of the cash sums stated as belonging to me on the charge sheet in Suit No. D4/155/2023.

23. In a zealous attempt to have my bank accounts and investments frozen, Applicant has failed to consider that the sums of money in my accounts are funds legally acquired years before I became a Minister of State.
24. Applicant also failed to consider that the funds in my account include my earnings from various past employments, pension, and investments among others, which cannot be tainted property by any stretch of imagination.
25. Applicant has not demonstrated that there is any basis to suspect that the funds in my bank accounts are tainted property or the proceeds of corruption or corruption-related offences.
26. Having exercised its administrative powers to seize cash sums found at my home and to freeze my bank accounts on 24th July and 26th July 2023 respectively, the Applicant cannot justify his suspicions by relying on the **subsequent** directional advice of the Attorney-General on 31st July 2023 directing the police to now investigate the source and true ownership of the very amounts Applicant maintains belong to me. The Attorney-General in his advice to the police for further investigations, rightly did not make any judgment as to the ownership of the amounts or direct for me to be charged with any offence.
27. The conclusion that the sums of monies found at my home are from a corrupt source is therefore clearly unsubstantiated, without any basis in the laws governing the Applicant's work and should be dismissed by this Honourable Court.
28. Wherefore I pray accordingly.

SWORN IN ACCRA, THIS 15th

DAY OF AUGUST 2023

CA Appaal

DEPONENT

BEFORE ME

[Signature]

COMMISSIONER FOR OATHS



AND FOR SERVICE ON
THE SPECIAL PROSECUTOR
SOUTH RIDGE
ACCRA

EXHIBIT CAD3

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (FINANCIAL & ECONOMIC CRIME DIVISION 2) HELD IN ACCRA ON THURSDAY THE 31ST DAY OF AUGUST, 2023 BEFORE HIS LORDSHIP JUSTICE EDWARD TWUM SITTING AS A VACATION JUDGE

SUIT NO. FT/0072/2023

THE SPECIAL PROSECUTOR

APPLICANT

VS.

CECILIA ABENA DAPAA

RESPONDENT

PARTIES: THE RESPONDENT PRESENT
APPLICANT ABSENT

COUNSEL: MS. AKUA ADIYIAH FOR THE APPLICANT PRESENT

MR. DOMINIC BRENYA-OTCHERE PRESENT WITH MS. BENEDICTA AKITA AND MR. KALIVIN McQUAYE HOLDING THE BRIEF OF MS. VICTORIA BARTH FOR THE RESPONDENT

RULING

BACKGROUND

This is a ruling on an application on notice brought for and on behalf of the Special Prosecutor (hereinafter "the Applicant") against Miss Cecilia Abena Dapaah (hereinafter "the Respondent") for an order of this Court

CERTIFIED TRUE COPY

REGISTRAR
HIGH COURT
CRIMINAL COURT
LAW COURT COMPLEX
08/09/2023

THIS IS EXHIBIT/DOCUMENT MARKED <u>CAD3</u> REFERRED TO THE AFFIDAVITS SWORN AT ACCRA THIS <u>5th</u> DAY OF <u>Oct 23</u> BY <u>E. A. Dapaah</u> BEFORE ME COMMISSIONER FOR OATHS

confirming the freezing order in respect of suspected tainted property and confirmation of seizure of suspected tainted property pursuant to sections 32, 38, 39 and 40 of the Office of the Special Prosecutor Act, 2017 (Act 959), Regulation 19 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L.I. 2374) and Order 19 of the High Court (Civil Procedure) Rules, 2004 (C.I.47.)

The Applicant filed the instant application at the Registry of this court on the 8th day of August, 2023 praying this court to confirm the seizure of suspected tainted property by the authorized officers of the Applicant and the freezing of suspected tainted property against the Respondent. The Respondent filed an affidavit in opposition to the Applicant's motion on the 15th day of August, 2023.

The Applicant's Case

It is the case of the Applicant that the Respondent herein was, until the 22nd day of July 2023, the Minister for Sanitation and Water Resources. The Respondent says on the 5th day of July, 2023, the Republic, acting on a complaint filed by the Respondent and her spouse, commenced criminal proceedings against four persons at the Circuit Court, Accra in the case of *The Republic vrs. Patience Botwe and Three Ors* under suit number D4/155/2023. It is the case of the Applicant that the facts of the said case indicated that between the months of July and October, 2022, the accused persons therein allegedly stole valuable items, including money in the sums of One Million United States Dollars (US\$1,000,000.00) and Three Hundred Thousand Euros (€300,000.00) from the residence of the Respondent and her spouse.

It is the case of the Applicant that in her initial complaint to the police, the Respondent indicated that US\$800,000.00 of the amount reportedly stolen from their matrimonial home belonged to her deceased brother and GHC300,000.00 was contribution towards Respondent's mother's funeral. According to the Applicant, the Respondent did not indicate to the police who owned the remainder of the Two Hundred Thousand US Dollars (US\$200,000.00) and the Three Hundred Thousand Euros (€300,000.00). The Applicant says following several negative media reportage, the Respondent issued a public statement claiming that there were noticeable inconsistencies between the amounts of money being discussed in the public domain and the thrust of the original complaint in the matter (and attached the Respondent's public statement issued on the 21st day of July 2023 as Exhibit "OSP1").

According to the Applicant, the Respondent, by her public statement aforesaid was clearly casting doubt on the cash sums stated on the charge sheet in the case of *The Republic v. Patience Botwe & 3 Ors.* as matched against the original complaint to the police. The Applicant says based on the totality of criminal intelligence gathered, the Applicant determined that large sums of cash were stashed in the residence of the Respondent and subsequently directed full investigations into corruption and corruption-related offences involving the Respondent in accordance with Regulation 6 of L.I. 2374 on the assumption that the large sums of money mentioned in the charged sheet in the suit stated supra was suspicious and that the said sums were suspected tainted property as being proceeds from corruption and corruption-related offences,

considering the fact that the Respondent was a public figure at the time of the incident.

Consequently, the Applicant says the Respondent was formally placed under arrest on the 24th day of July, 2023 on charges of corruption and corruption-related offences, and subsequently conducted searches in three (3) residential properties associated with the Respondent and situated at Cantonments, Abelenkpe and Tesano, all in Accra, and discovered cash in the sums of Five Hundred and Ninety Thousand US Dollars (US\$590,000.00) and Two Million Seven Hundred and Thirty Thousand Ghana Cedis (GHC2,730,000.00) at the Abelenkpe residence of the Respondent. The Applicant says following the discovery, authorized officers of the Applicant's Office seized the cash on reasonable grounds that they were suspected tainted property in accordance with section **32(1) of Act 959** to prevent the concealment of the cash sums by the Respondent. It is the case of the Applicant that to date, the facts revealed that the ownership of those amounts remain in dispute and the sources remain highly doubtful even though they were found in the possession of the Respondent.

The Applicant alludes to a directive from the Attorney-General directed at the Director General of the Criminal Investigations Department of the Ghana Police Service (**Exhibit "OSP2"**) to investigate the true ownership and sources of the amounts reportedly stolen from the residence of the Respondent, and according to the Respondent, this gives credence to the reasonableness of the investigations being carried out by the Applicant

regarding the sources of the large sums of money associated with the Respondent.

It is the case of the Respondent that having considered it necessary to conduct further investigations into the affairs of the Respondent and to facilitate such investigations, he issued freezing orders against the bank accounts and investments of the Respondent held with Prudential Bank Limited and Societe Generale Ghana (Exhibits "OSP3" and "OSP4" respectively) in accordance with section 38(1) of Act 959 and Regulations 19(1) of L.I. 2374.

The Applicant therefore prays this court to confirm the seizure of the suspected tainted property and the freezing orders (Exhibits "OSP3" and "OSP4") pursuant to sections 32(2), 38(2) and 40(3) of Act 959 and Regulations 19(2)(b) of L.I. 2374.

The Respondent's Case

The Respondent opposes the application and an affidavit in opposition setting out the grounds for Respondent's opposition was filed on the 15th day of August, 2023.

First, it is the case of the Respondent that the Deponent who deposed to the Affidavit in Support attached to the Applicant's motion did not provide any evidence of her authority to depose to the said Affidavit in Support. It is the further contention of the Respondent that per **section 32(2) of Act 959**, the Applicant was mandated to seek confirmation order within seven (7) days of seizing the sums of money which occurred on the 24th day of July, 2023 and as at the time the Applicant filed this

application on the 8th day of August, 2023, the statutory period prescribed under **section 32(2) of Act 959** had long lapsed and says this application is in flagrant violation of the mandatory requirements of the statute regulating the Applicant's functions (i.e. Act 959).

Again, the Respondent contends that the Applicant has failed to satisfy the conditions precedent set out under **section 40 of Act 959** for applying for confirmation of the freezing order against her bank accounts and investments held with the two banks, Prudential Bank Limited and Societe Generale Ghana, indicating that she is neither being investigated for, nor charged with any identifiable offence known to the laws of Ghana and which are broadly described as "corruption or corruption-related offence" under **Act 959** and to that extent, the Applicant has failed to properly invoke the jurisdiction of this court due to Applicant's breach of **Act 959, section 32(2)**. The Respondent counters the Applicant's argument that the Applicant needs to establish any one of the grounds set out under **Section 40 of Act 959** to satisfy the court to grant a freezing order, and argues that the grounds set out in **Section 40(1)(a-f) of Act 959** are conjunctive and not disjunctive as the Applicant wants this court to believe. The Respondent argues further that each of those grounds in **Section 40(1)(a-f) of Act 959** is followed by a semi-colon then followed by the word "and" after **subsection (1)(e)** and a full stop at the end of **subsection (1)(f)**. Based on the foregoing, the Respondent contends that the whole of **Section 40(1)** is one sentence setting out cumulative grounds that must be satisfied by the Applicant before this court can confirm the freezing order.

It is the contention of the Respondent that she did not lay claim to the sums of US\$1.0 million and €300,000.00 in her initial report to the police, and says that the assertion by the Applicant in paragraph 8 of the Affidavit in Support to the effect that the Respondent issued a public statement claiming that there were noticeable inconsistencies between the amounts of money being discussed in the public domain and the thrust of the original complaint in the matter is not truthful and factual because such an assertion is inconsistent with the content of the public statement she issued on the 21st day of July, 2023, clarifying that the noticeable inconsistencies she alluded to in her public statement of July 21, 2023 was rather in reference to the allegation that she had claimed ownership of the cash sums of US\$1.0 million and €300,000.00 that were reported missing from her matrimonial home, even though she did not claim ownership of those sums of money in her report to the police.

The Respondent further contends that the allegation by the Applicant that criminal intelligence allegedly gathered by the Applicant and the circumstances of it indicates that the cash sums found in the Respondent's matrimonial home are from suspicious sources and suspected tainted property being proceeds from corruption and corruption-related offences are utterly unfounded, speculative and without reasonable basis as the Applicant failed to indicate the nature of criminal intelligence gathered or the circumstances that reasonably indicate that the cash sums found in Respondent's matrimonial home or reported stolen are suspected tainted property and proceeds from corruption and corruption-related offences.

It is the case of the Respondent that the Applicant failed to consider that the sums of money in Respondent's accounts were funds that were legally acquired long before Respondent became a Minister of State, and that the funds in her bank accounts frozen by the Applicant include Respondent's earnings from various past employments, pension and investments among other sources which cannot be tainted property by any stretch of imagination because the Applicant has not demonstrated that there is any basis to suspect that the funds in Respondent's bank accounts are tainted property or proceeds of corruption and corruption-related offences.

The Respondent says that having exercised its administrative powers to seize cash sums found in the Respondent's matrimonial home and subsequently freezing the Respondent's bank accounts, the Applicant cannot turn around to justify his suspicions by relying on the administrative directive issued by the Attorney-General to the Director General of the Criminal Investigations Department of the Ghana Police Service. The Respondent says that the Attorney-General in the said directive did not conclude or determine the ownership of the amounts nor ordered the Respondent to be charged.

The Respondent concludes that the conclusion reached by the Applicant to the effect that the sums of monies found at Respondent's matrimonial home are from corrupt sources is clearly unsubstantiated, and without any reasonable basis per the legislation governing the Applicant's work and prays this court to dismiss the application.

ISSUES FOR DETERMINATION

From the facts of this application gleaned from the affidavits of both parties and the submissions of counsel for the Applicant and the Respondent, the following issues are discernible for the determination of this court:

- i) Whether or not the State Attorney, the Deponent who deposed to the Affidavit in Support attached to the Applicant's motion was authorized in writing by the Applicant.
- ii) Whether or not the conditions precedent to seizing the suspected tainted property by the Applicant from the matrimonial home of the Respondent were met by the Applicant to invoke the jurisdiction of this court to confirm same.
- iii) Whether or not the Applicant brought the instant application with regards to the confirmation of seizure of alleged suspected tainted property out of time per the provisions of Act 959.
- iv) Whether or not the condition or conditions precedent to the freezing of suspected tainted property were met by the Applicant to invoke the jurisdiction of this court to confirm the freezing.

THE LAW AND THIS CASE

Now this court will proceed to determine the issues raised from the affidavit evidence and the submissions by both parties.

On the issue of whether or not the State Attorney, the Deponent who deposed to the Affidavit in Support attached to the Applicant's motion was authorized in writing by the Applicant, it was the contention of the Respondent that in the absence of a written authorization from the Applicant, Miss Akua Adiyiah, the Deponent, lacked the requisite capacity or authorization to depose to same as provided for in **Section 39 of Act 959**.

The Applicant's response is that the objection by counsel for the Respondent has no foundation in law since the authority envisaged under **Section 39 of Act 959** is purely administrative and an internal procedure in the operations of the Office, and the regularity of such an act must be presumed under **Section 37 of the Evidence Act, 1975 (NRDC 323)**.

It is provided under **Act 959, section 39** as follows:

"An application for confirmation of a freezing order shall be made on notice to the respondent and shall be accompanied by an affidavit sworn to by the Special Prosecutor or an officer authorized in writing by the Special Prosecutor to swear the affidavit detailing the grounds for the confirmation."

From the records, the Affidavit in Support was not deposed to by the Honourable Special Prosecutor himself but by an officer supposedly authorized by him. Who then is an *authorized officer* as defined by **Act 959**?

Act 959, Section 79 (the Interpretation Section of the Act) defines “*authorized officer*” as follows:

“In this Act, unless the context otherwise requires, “Authorised officer”, means an officer of the Office, a police officer or any other public officer authorised by law to exercise police powers.”

In the said Affidavit in Support, the Deponent identified herself as Akua Adiyiah, a State Attorney at the Office of the Special Prosecutor. Clearly, this description amply put the Deponent in the category of *Authorised Officers* as defined by Section 79 of Act 959. This is a case where this court is of the considered view that the “*indoor management*” rule, though usually applicable in our company law jurisprudence, can be applied here.

His Lordship Afreh JSC (as he then was) in the case of Godka Group of Companies v P.S. Global [2001-2002] SCGLR 918 stated the rule at page 932 of the report in the following terms.

“In any case a person contracting with a company is not required to demand the production of a resolution authorizing the board, the general meeting, an officer or agent of the company, as the case may be, to enter into the contract. It has been established since the case of the Royal British Bank v. Turquand (1856) 6 E and B 327; [1843-60] All E.R. Rep. 435 [Exchequer Chamber] that a person dealing with a company is entitled to assume, in the absence of facts putting him on notice or inquiry, that there has been due

compliance with all matters of internal management and procedure required by the Regulations of the company. This is the Rule in Turquand's case or the "Indoor Management" Rule". (emphasis mine.)

Additionally, as rightly submitted by Counsel for the Applicant, presumption of regularity has been codified under our laws. It is provided under **Section 37(1) of the Evidence Act, 1975 (NRCD 323)** that

"It is presumed that official duty has been regularly performed".

From the foregoing, it is the considered view of this court therefore that a State Attorney at the Office of the Special Prosecutor is vested or assumed to be vested with the Special Prosecutor's written authority to depose to such an affidavit without the need to show proof of any written authorizations from the Special Prosecutor, and to that extent, the objection by the Respondent to the capacity of or the lack of it on the part of the Deponent to depose to the Affidavit in Support is far-fetched and without any justifiable basis and to that extent the objection by the Respondent is accordingly dismissed by this court.

This court will now proceed to determine both issues **(ii)** and **(iii)** together, i.e. whether or not the conditions precedent to seizing the suspected tainted property by the Applicant from the matrimonial home of the Respondent were met by the Applicant to invoke the jurisdiction of this court to hear the matter, and whether or not the Applicant brought the instant application with regards to the confirmation of seizure of

alleged suspected tainted property out of time per the provisions of **Section 32(1) and (2) of Act 959**.

It is the contention of the Respondent that per **Section 32(2) of Act 959**, the Applicant's motion for confirmation of the seizure of suspected tainted property from the matrimonial home of the Respondent ought to have been brought before this court within seven (7) days of the seizure. According to counsel for the Respondent, the language of **Section 32(2) of Act 959** is very clear and leaves no room for a secondary meaning or waiver and said the word "shall" used in the Section put it beyond dispute that it is a mandatory requirement that must be satisfied to properly invoke the jurisdiction of this court. Moreover, the Respondent said **Act 959** did not make provision for extension of time.

In support of her submissions on this issue, counsel for the Respondent cited the case of **The Republic vs. High Court (Fast Track Division), Accra; ex parte National Lottery Authority (Ghana Lotto Operators Association and Others - Interested Parties)** [2009] SCGLR 390, and contended that this court has no authority to grant the Applicant immunity from its breach of **Section 32(2) of Act 959** as doing so would amount to the court exercising excess jurisdiction.

It is provided under **Section 32(2) of Act 959** as follows:

*"The Special Prosecutor shall apply to the Court on notice **within seven days** to confirm the seizure." (Emphasis mine.)*

From paragraphs 10 and 11 of the Applicant's affidavit in support, the suspected tainted property allegedly belonging to the Respondent was seized from Respondent's matrimonial home on the **24th day of July, 2023** and the application to confirm the seizure was filed at the Registry of this court on the **8th day of August, 2023, fourteen (14) clear days** after the seizure, and it is the case of the Respondent that this infraction by the Applicant should not be countenanced by this court.

Section 32(2) of Act 959 with respect, was couched in mandatory terms, and the Applicant was statutorily mandated to seek confirmation of the seizure of suspected tainted property from the matrimonial home of the Respondent **within seven days of the seizure** but the Applicant failed to do so without any justifiable reason(s). It is the considered view of this court that **Section 32(2) of Act 959** clothed this court with jurisdiction to hear applications for confirmation of seizures of suspected tainted properties if such applications are brought timeously, i.e. within seven days of the seizure. After the expiration of the mandatory seven days, the jurisdiction of this court to hear any application for confirmation of any such seizure by the Applicant is ousted. By bringing the instant application when the mandatory seven days had lapsed, the Applicant sought to invoke a jurisdiction this court is not seized with, and by extension, this court cannot purport to perform a task it lacks jurisdiction to do.

Courts of law owe it a duty to uphold the law at all times in line with the judicial oath, and therefore any court which condones infringements of legislative provisions or fail to uphold same will be failing in the discharge of its functions as enshrined in the 1992 Constitution and

other relevant laws. It is trite or well-known principle of law that where an enactment set out the procedure for invoking the jurisdiction of a court or tribunal., the party must comply with it or he will be thrown out of court.

(See the following cases:

- i. Adryx Mining and Metal Ltd. & Ors vrs. Ashanti Goldfields Ltd. [1999-2000] 2 GLR 753.
- ii. Republic vrs. High Court, Sekondi; ex parte Perkoh II [2001-2002] 2 GLR 460 at page 467 per Benin JA. CA.)

This time-tested legal principle was espoused by Her Ladyship Georgina Wood JSC (as she then was) in the Supreme Court case of Agyemang (substituted by) Banahene & Others v. Anane [2003-2004] 1 SCGLR 241 SC when she stated as follows:

“Courts of law must follow the law. As a rule, courts are not expected to endorse concessions, compromises or agreements by parties which are contrary to, inconsistent with or not warranted by any rule of law or procedure. Thus, in any proceedings, where the step taken by a party or parties violates any constitutional or statutory provision or is not sanctioned by any substantive rule of law or procedure, the court has a duty to reject it...”
(Emphasis mine.)

Similar sentiments were expressed by His Lordship Francois JSC (as he then was) in the case of the Republic v High Court, Kumasi, ex parte

Khoury [1991] 2 GLR 393 SC when he said at page 399 of the report that:

“This court has a duty to enforce the Statutes of this land.”

At page 403 of the same case, His Lordship Wiredu J.S.C. (as he then was) said:

“I think any attempt on the part of any court to entertain any application of the type under consideration (i.e., after a party has lost twice) where the losing party did not seem to respect time limits imposed by the law, would be defeating the intended purpose of the legislature. Courts are enjoined to insist on time being observed strictly...” (Emphasis mine.)

Similarly, His Lordship Date-Bah JSC (as he then was) in the case of The Republic vs. High Court (Fast Track Division), Accra; ex parte National Lottery Authority (Ghana Lotto Operators Association and Other Interested Parties) (supra) forcefully stated, in his concurring opinion, the apex court’s abhorrence of judges condoning breaches of Acts of Parliament in the following terms:

“I agree that the order made on the 1st day of April 2009 by his Lordship Justice Asante granting the Interested Parties an interlocutory injunction pending an appeal should be brought to this court and be quashed. The learned judge acted in obvious excess of his jurisdiction. No judge has authority to grant immunity to a party from the consequences of breaching an Act of

Parliament. But this was the effect of the order granted by the learned judge. The judicial oath enjoins judges to uphold the law, rather than condoning breaches of Acts of Parliament by their orders. The end of the judicial oath set out in the Second Schedule of the 1992 Constitution is as follows:

“I will at all times uphold, preserve, protect and defend the Constitution and laws of the Republic of Ghana.”

***This oath is surely inconsistent with any judicial order that permits the infringement of an Act of Parliament.”** (Emphasis mine.)*

This court finds fortification in the above cited decisions of the Supreme Court in agreeing with the Respondent that this court lacks the requisite jurisdiction to entertain the application with regards to the confirmation of the seizure pursuant to **Section 32(1) of Act 959** in view of the glaring breach of **Section 32(2) of Act 959** by the Applicant by failing to bring this application within seven days of the seizure of the suspected tainted property.

The legislative breaches by the Applicant noted above aside, this court deems it important to address other obvious breach of **Act 959** by the Applicant in seizing the alleged tainted property from the matrimonial home of the Respondent, and this will be addressed soon.

It is provided under **Section 32(1)(a) and (b) of Act 959** as follows:

“(1) An authorized officer may seize property if that authorized officer has reasonable grounds to suspect that the property is tainted and

(a) it is necessary to exercise the power of seizure to prevent the concealment, loss or destruction of the property; or

(b) the circumstances are so urgent that immediate exercise of the power without the authority of a warrant or the order of a Court is required.”

A careful reading of this provision clearly indicates to this court that before the Applicant or an authorized officer of the Applicant can exercise the power of seizure of a suspected tainted property, certain basic requirements will have to be met or satisfied. In the respectful view of this court, the following conditions precedent must be satisfied by the Applicant before proceeding to exercise the power of seizure without a court's warrant or order:

- 1) the authorized officer must satisfy this court that at the time of the seizure, **he or she has reasonable grounds to suspect that the said property was tainted;**
- 2) the authorized officer must also satisfy the court that **the seizure was necessary to prevent the concealment, loss or destruction of the property; and**
- 3) that **the urgency of the situation practically made it impossible for the said authorized officer to obtain a warrant**

or an order of the court before exercising the power of seizure.

Before proceeding to deal with the above conditions' precedent, this court deems it appropriate to explain what constitutes tainted property at this point.

Section 79 of Act 959 defines "tainted property" as follows:

"tainted property" means property

(a) used in connection with the commission of an offence; or

(b) derived, obtained or realized as a result of the commission of a corruption or corruption-related offence."

Clearly, from this definition, tainted property must be any property used in connection with the commission of an offence or any property which is derived, obtained or realized from the commission of a corruption or corruption-related offence.

It is therefore important for an authorized officer of the Applicant, embarking on the exercise of the power of seizure, to ensure the existence of these basic criteria and not just any fanciful suspicion(s) or speculative guesses, and the burden of satisfying the court of the existence of these conditions lies on the Applicant.

The question to ask then is: Did the authorized officers of the Applicant who exercised the power of seizure have reasonable grounds to believe that the seized property was used in connection with the commission of

crime, or that the said property was derived, obtained or realized as a result of the commission of a corruption or corruption-related offence?

In his submissions before this court, counsel for the Applicant admitted in part (and same was deposed to in the Affidavit in Support) as follows:

“So far, the facts reveal that the ownership of those amounts remain in dispute, even though found in the possession of the Respondent who is a former public officer as at the time of her arrest.” (Emphasis mine.)

It is obvious from this submission by counsel for the Applicant that the Applicant is in doubt as to the true ownership of the alleged tainted property. Admittedly, it was found in the matrimonial home of the Respondent where the Respondent stays with the spouse and others. There is also evidence that the Respondent and the spouse jointly reported to the police about their missing cash and other valuable items, an indication that the supposedly tainted property may or may not belong to the Respondent and the spouse individually or jointly or to other family members as evidenced by the Applicant’s own averments in paragraphs 6 and 7 of the Affidavit in Support.

Now the question is, if the Applicant is unsure as to the ownership of the property he suspects to be tainted, how did the Applicant reach that conclusion considering the definition of tainted property in **Section 79 of Act 959**? In the respectful view of this court, the Applicant has failed to justify the reasonableness of his suspicions. It is reasonable to expect the Applicant to first determine the ownership of the alleged tainted

property and verify its legitimate sources before arriving at the conclusion that the seized property may be tainted. Indeed, any statement to the effect that the property is or may be tainted at this stage when its ownership and sources is yet to be determined by the Applicant is premature and far-fetched.

It is trite learning that ownership and possession are not the same. The person in possession of a chattel may or may not be the owner of the said chattel, and therefore the claim by the Applicant that the alleged tainted property were found in possession of the Respondent and therefore that convinces the Applicant to seize the property and commence an investigations into corruption and corruption-related offences against the Respondent is akin to putting the cart or the chariot before the horse.

Again, per the provisions of **Section 32(1) of Act 959**, the Applicant was to justify to the satisfaction of this court that the seizure was necessary to prevent the concealment, loss or destruction of the alleged tainted property and the circumstances must be so urgent that it was impracticable for the authorized officer(s) to obtain a court warrant or order to effect the seizure. The wording of **Section 32(1) of Act 959** shows clearly that the legislature in drafting this Section of the Act had in mind the likelihood of arbitrary exercise of the powers of seizure by the Office or its authorized officers and therefore made a provision to prevent that. Otherwise **Section 32(1) of Act 959** would not have been necessary, or the legislature would have omitted it. Again, this subsection is in conformity with **Section 88 of the Criminal and Other**

Offences (Procedure) Act, 1960 (Act 30), which deals with search warrants and the procedures thereof.

From the records, the Respondent and her spouse detected the pilferage of cash sums and valuable items from their residence between the period of July and October 2022 and subsequently made a report to the police leading to the arrest of their house helps and subsequent police investigations into alleged stealing offences. On 5th July 2023, the police preferred charges against the Respondent's house helps and others in the case of the *Republic vrs. Patience Botwe and Three Ors. (Suit No. D4/155/2023.)* It is significant to note that during this long period from when the matter was reported to the police until the accused persons were charged, the Respondent (or her spouse) did not deem it expedient to conceal, destroy or dissipate the alleged tainted property.

Again, the accused persons were arraigned on the 5th day of July, 2023 and the Respondent issued a public statement on the 21st day of July, 2023 on the matter, and on the 24th day of July, 2024, the Applicant is alleged to have arrested the Respondent and seized the alleged tainted property, nineteen clear days after the facts of this matter came to the public domain, and yet the Respondent did not conceal, destroy or dissipate the alleged tainted property. It appears to this court that if the Respondent and her spouse had intended to conceal, destroy or dissipate the alleged tainted property from the 5th day of July, 2023 when the facts became public knowledge after their house helps and the others had been arraigned, they would have done so. For the Respondent and her spouse to have kept the alleged tainted property in their matrimonial home all this while when the matter was being discussed in the public

domain and whilst the police were conducting further necessary investigations into the stealing case was ample testimony, it may seem to this court, that the Respondent and her spouse had no motive to conceal, destroy or dissipate the alleged tainted property, unless the Applicant can prove otherwise.

A combined reading of **sub section 1(L) of Section 32 of Act 959 and Section 88 of Act 30**, clearly indicates to this court that the Applicant required an order of a court or a warrant to enter the premises of the Respondent to conduct the search and seizure functions imposed on it by Act 959 in the absence of any proof of intention on the part of the Respondent to conceal, destroy or dissipate the alleged tainted property, the proof which lies on the Applicant. This court holds that based on the available facts, there was no justifiable basis for the authorized officers of the Applicant to exercise the powers of seizure without a court warrant or order, and to that extent, this court holds that the Applicant exercised the powers of seizure without any justifiable legal basis whatsoever, and on that basis, this court holds that the Applicant exercised the powers of seizure wrongly as the requisite conditions precedent to the exercise of such powers were, in the respectful view of this court, absent and same could not be proved by the Applicant in this application. It will therefore not be fair, just and reasonable for this court to confirm such a wrongful exercise of discretionary powers by the Applicant or its authorized officers.

Having held that the Applicant breached **Section 32(2) of Act 959** by bringing out of time, the instant application with regards to the confirmation of the seizure of alleged tainted property from the

matrimonial home of the Respondent and having held that the Applicant exercised its power of seizure wrongly without following due process, this court shall order and hereby orders the Applicant to return the alleged tainted property – the cash sums of US\$590,000.00 (Five Hundred and Ninety Thousand US Dollars) and GHC2,730,000.00 (Two Million, Seven Hundred and Thirty Thousand Ghana Cedis) - to the Respondent within seven days from the date of this Ruling.

This court will now proceed to deal with the issue of whether or not the condition or conditions precedent to the freezing of suspected tainted property were met by the Applicant to invoke the jurisdiction of this court to confirm the administrative freezing orders.

It is provided under the 1992 Constitution, Article 18 as follows:

“(1) Every person has the right to own property either alone or in association with others.

(2) No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.”

It is important for state officials vested with the mandate to exercise discretionary powers to be mindful of this constitutional provision in the

performance or discharge of their duties. (See **Article 23 of the 1992 Constitution.**)

The Applicant issued administrative freezing orders (**Exhibits “OSP3” and “OSP4”**) against the bank accounts of the Respondent held with Societe Generale Ghana and Prudential Bank Limited on the 26th day of July, 2023 to facilitate investigations into the affairs of the Respondent for suspected corruption and corruption-related offences pursuant to **Section 38 of Act 959**. The Applicant opines that he has reasonable grounds to believe that the frozen properties are suspected tainted properties. The Applicant also stated in part in paragraph 15 of the Affidavit in Support that he has reasonable grounds to believe that a confiscation order shall be made under **Act 959** in respect of the property.

It is however the case of counsel for the Respondent that per **Section 40 of Act 959**, certain conditions precedent must be established by the Applicant to invoke the jurisdiction of this court to hear and determine this application with respect to the confirmation of the administrative freezing orders against the Respondent’s accounts. Counsel said contrary to the submission by counsel for the Applicant to the effect that the Applicant needs to establish only one of the grounds in **Section 40(1)(a-f) of Act 959**, it is the Respondent’s contention that the grounds set out in **Section 40(1)(a-f)** are conjunctive and not disjunctive. Counsel said each of the grounds is followed by a semi-colon then the word “and” follows the semi-colon after **Section 40(1)(e)** and then full stop appears after **Section 40(1)(f)**, indicating that the whole of **Section 40(1)** is one sentence setting out cumulative grounds that must be

satisfied before the court confirms the freezing order. Counsel for the Applicant however is of the view that the interpretation placed on Section 40(1) of Act 959 by counsel for the Respondent will lead to absurdity.

It is therefore important for this court to make a determination as to whether or not the Applicant has to satisfy all the grounds set out in Section 40(1) of Act 959 or one ground will suffice to invoke the jurisdiction of this court to confirm the freezing orders.

Section 40(1) of Act 959 provides as follows:

“(1) Where an application is made for a freezing order, the Court shall issue the order if it is satisfied that

(a) The respondent is being investigated for corruption or a corruption-related offence;

(b) The respondent is being charged with corruption or a corruption-related offence;

(c) There are reasonable grounds to believe that the property is tainted;

(d) The respondent derived benefit directly or indirectly from corruption or a corruption-related activity;

- (e) *The application seeks a freezing order against the property of a person other than the respondent because there are reasonable grounds to believe that the property is tainted property and that the property is subject to the effective control of the respondent; and*
- (f) *There are reasonable grounds to believe that a confiscation order shall be made under this Act in respect of the property.”*

It appears to this court that the interpretation being placed on **Section 40(1) of Act 959** by the counsel for the Respondent is too restrictive and to that extent will defeat the purpose for which the legislature promulgated the law. It is trite learning that “*the basic principle in the construction of statutes is that statutes must be read as a whole document and not piecemeal and construed purposively to achieve the legislative purpose*”. (See Justice Dennis Dominic Adjei: Modern Approach to the Law of Interpretation in Ghana, (Third Edition) at page 130).

His Lordship Atuguba JSC (as he then was) in the case of Tsatsu Tsikata vrs. The Republic (Criminal Appeal No. J3/3/2011 dated 19th January, 2011 (unreported)) cited with approval a quotation from the case of *Rex v Dick Ogbulu Opia* (1942) 8 WACA 114 when he stated as follows:

“Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a

construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, by rejecting them altogether, or by interpolating other words, under the influence, no doubt, of an irresistible conviction that the Legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning.”

The Long Title of **Act 959** read as follows:

“An ACT to establish the Office of Special Prosecutor as a specialized agency to investigate specific cases of alleged or suspected corruption and corruption-related offences involving public officers and politically exposed persons in the performance of their functions as well as persons in the private sector involved in the commission of alleged or suspected corruption and corruption-related offences, prosecute these offences on the authority of the Attorney-General and provide for related matters.”

It is clear from the Long Title of **Act 959** that the intention or purpose of the legislature is to empower the Office of the Special Prosecutor to thoroughly investigate specific cases of suspected corruption and corruption-related offences involving public officials and politically-exposed persons, as well as private sector operators in the performance of their duties, prosecute these offences and apply the requisite sanctions accordingly. A cursory look at **Section 40(1) of Act 959** will

show that if the Special Prosecutor is to satisfy all the grounds set out therein at the same time before a freezing order could be obtained from a court, it will be almost impracticable for the Special Prosecutor to discharge the functions of his office with regards to securing freezing orders from the courts as such task will be herculean, and in my respectful view, this cannot be the purpose or intentions of the legislature. Construing sub-sections (a-f) of Section 40(1) of Act 959 conjunctively, with the greatest of respect to the counsel for the Respondent, will lead to absurdity and defeat the purpose for which the legislature promulgated Act 959. This court holds that the grounds set out in Section 40(1) of Act 959 are mutually exclusive of each other and should be construed disjunctively, and the word “and” at the end of Section 41(1)(e) should be construed as “or” to give effect to the intentions of the legislature, and to that extent, it will suffice if the Special Prosecutor could establish any one of the grounds stated therein to the satisfaction of this court.

Now I will proceed to determine whether or not the Applicant was able to satisfy the court that it had placed the Respondent under investigations as pertains under Section 40(1) of Act 959 to invoke the jurisdiction of this court to confirm the freezing orders. The Applicant stated in paragraph 15 of the Affidavit in Support that the Respondent is being investigated for corruption and corruption-related offences. What then constitutes corruption and corruption-related offences?

Section 79 of Act 959 define “corruption and corruption-related offences” as follows:

“corruption and corruption-related offences” means offences under (a) Sections 146, 151, 179C, 239, 253, 254, 256, 258 and 260 of the Criminal Offences Act, 1960 (Act 29);

(b) Section 92(2) of the Public Procurement Act, 2003 (Act 663);

(c) Existent offences under enactments arising out of or consequent to offences referred to in paragraphs (a) and (b).”

It will be seen from the definition that “corruption and corruption-related offences are offences that must relate to specific offences under **Act 29**, **Act 663** or existing offences under enactments arising out of or consequent to offences under Act 29 and Act 663.

This court deems it appropriate at this point to take a look at the various offences that falls under **corruption and corruption-related offences** as defined by **Section 79 of Act 959**.

- i) Section 146 of Act 29 deals with offences relating to dishonestly receiving;
- ii) Section 151 of Act 29 deals with offences relating to extortion by means of threat;
- iii) Section 179C of Act 29 deals with offences relating to using public office for profit;
- iv) Section 239 of Act 29 deals with offences relating to corruption of and by public officer or juror;

- v) Section 252 of Act 29 deals with offences relating to accepting or giving bribe to influence public officer or juror;
- vi) Section 253 of Act 29 deals with offences relating to corrupt practices by judicial officer or juror;
- vii) Section 254 of Act 29 deals with offences relating to corrupt selection of juror;
- viii) Section 256 of Act 29 deals with offences relating to corruption, intimidation, and personation in respect of election;
- ix) Section 258 of Act 29 deals with offences relating to falsification of returns at election;
- x) Section 260 of Act 29 deals with offences relating to withholding of public money by public officer, and
- xi) Section 92(2) of Act 663 deals with offences relating to procurement.

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

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

“(1) A public officer or juror who commits corruption, or wilful oppression, or extortion, in respect of the duties of office, commits a misdemeanor;

(2) A person who corrupts any other person in respect of a duty as a public officer or juror commits a misdemeanor.”

The combined reading of **Section 33 of Act 959** and **Section 239 of Act 29** will reveal that there must be in existence reasonable grounds – i.e. that the person or entity being investigated has committed corruption, wilful oppression, or extortion in respect of the duties of his/her office - before the Applicant can take steps to freeze the account of that person or entity to facilitate investigations. It is the considered view of this court that the legislature did not intend the Special Prosecutor to act in a vacuum or arbitrary in respect of freezing of assets of individuals and entities to facilitate investigations. Reasonable grounds must be established by the Special Prosecutor before considering the freezing of property, especially when the Applicant has indicated to this court that the Respondent is being investigated for corruption and corruption-related offences as defined by **Act 959**. These reasonable grounds, with respect, must be based on actual acts of infractions and not on speculations and guesses.

What then was or were the reasonable ground(s) the Applicant took into consideration before the Respondent's accounts were frozen? It appears to this court that the Applicant took this action based on the directive dated 31st July, 2023 issued by the Honourable Attorney-General to the Director General of the Criminal Investigations Department of the Ghana Police Service (**Exhibit “OSP2”**) requesting the Director General to, among others, *“broaden the investigations on money laundering and other financial crimes to cover the complainants in order to establish the matters raised”* in the said directive. (Emphasis mine.) This belief by

this court is based on the Applicant's own averment in paragraph 12 of the Affidavit in Support in which the Applicant stated as follows:

"12. In a directional advice dated 31 July 2023, the Attorney-General directed the Director General of the Criminal Investigations Department of the [Ghana] Police Service to investigate the true ownership and sources of the amounts reportedly stolen from the residence of the respondent herein to enable the Attorney-General take a comprehensive decision. Attached and marked as Exhibit "OSP2" is a copy of the Attorney-General's directions. This directive affirms the reasonableness of the investigations being carried out by the OSP as to the sources of the large cash sums of money associated with the respondent herein".
(Emphasis mine.)

From the records, there is no evidence that the Director General of CID had concluded the said investigations to establish any culpability against the Respondent and her spouse, to enable the Honourable Attorney-General to act on. And if the Attorney General had any basis to establish that the Respondent had engaged in corruption and corruption-related offences, he would not have directed the Director General of the Criminal Investigations Department to conduct further investigations. With respect, if the Applicant relied on the Attorney-General's directive as the basis for the reasonableness of the administrative freeze of the Respondent's accounts, as it seems to this court, this court can conveniently conclude that the Respondent was not treated fairly at all by the Applicant. This is because at the time the Applicant issued the administrative directives to freeze the Respondent's accounts by relying

on the Attorney-General's directive to the CID, there was no evidence whatsoever of any corruption or corruption-related offences against the Respondent and which was available to the Attorney-General. If it were so, the directive from the Attorney-General to the Director General of CID to conduct further investigations into the ownership and sources of the cash sums would not have been necessary.

Interestingly, whereas the Attorney-General's directive requested the police to broaden their investigations to cover both the Respondent and her spouse, the Applicant chose to target only the Respondent. It is true that the Respondent was a former public officer. But by the same analogy, the spouse of the Respondent is also a politically-exposed person whose activities must not escape the attention of the Applicant.

The Applicant also indicated that the Respondent was placed under arrest and was being investigated for corruption and corruption-related offences without providing any proof to substantiate that assertion. No caution statement was taken from the Respondent, or if it was taken, there is no evidence of that before this court, and this court is not in any position to guess what happened at the residence of the Respondent before, during and after the said arrest. Significantly, the Respondent denies being investigated nor being charged under any offence known to the laws of this country. It is trite that when an averment is denied, it is not enough for the party making the averment to repeat same on oath but to go ahead and provide further proof of such an averment. This the Applicant failed to do.

The Supreme Court in the case of Klay vrs. Phoenix Insurance Co. Ltd. [2012] 2 SCGLR 1139 held that

“Where a party makes an averment capable of proof in some positive way, for example, by providing documents, description of things, reference to other facts and instances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the court can be satisfied that what he avers is true.”

This court could not find any justifiable basis upon which the Applicant froze the accounts of the Respondent in the face of the denials by the Respondent that she is being investigated by the Applicant, denials which the Applicant could not provide any evidence to rebut.

This court, differently constituted, in the case of The Special Prosecutor vrs. Talent Discovery Limited (Suit No. MSTF/079/2019), granted the freezing orders against the accounts of the respondent therein because it was established that the respondent was being investigated for corruption and corruption-related offences when the Auditor-General, during an audit of the Public Procurement Authority, reported suspicious transactions related to procurement malpractices against two limited liability companies, namely Talent Discovery Limited and B-Molie Limited. It was also established through investigations that the respondent company has been used as a platform to commit the corruption and corruption-related offences by the then head of the Public

Procurement Authority and one other person. It was further established through investigations that the proceeds of their alleged activities have been deposited into their various bank accounts at various banks including accounts in the name of Talent Discovery Limited as indicated in the motion paper as well as in the affidavit in support. Based on the uncontroverted evidence available to this court in the said application, the freezing order was granted. Her Ladyship Afia Serwah Asare-Botwe J (as she then was) stated therein as follows:

“...it is on record, and same is undenied by the Respondent, that there is an ongoing investigation of an alleged corruption and corruption related as far as Talent Discovery Limited is concerned.”
(Emphasis mine.)

Clearly in the above-cited case, there was evidence before this court that an audit report had established certain infractions against certain individuals and entities, including the then head of the Public Procurement Authority. This case is distinguished on the grounds that currently, there is an ongoing investigation by the CID of the Ghana Police Service as directed by the Honourable Attorney-General, an investigation whose outcome is yet to be known per the records available to this court. This court cannot find any reasonable grounds upon which the Applicant acted to reach the conclusion it did in freezing the accounts of the Respondent. It is clear to this court that this action by the Applicant was based on speculation and mere guesses and at best reactionary to public sentiments, and not based on any criminal intelligence gathered as the Applicant wants this court to believe.

The Respondent, like all citizens of this country, is entitled to the protection of the state with regards to her right to own property among other rights as enshrined in the 1992 Constitution, and it is the responsibility of this court to ensure that state institutions do not overstep their bounds of operations to inflict pain on the citizenry without justifiable legal basis. State officials owes it a duty to the citizens of this country to exercise their discretionary powers in accordance with law. They should be guided by **Article 23 of the 1992 Constitution** which states as follows:

“Administrative bodies and administrative officials shall act fairly and reasonably comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal.”

This court is duty-bound to ensure that the citizenry is protected against any unfair, unreasonable and non-conforming acts of administrative bodies and their officials.

In the words of His Lordship Dotse JSC (as he then was) in his dissenting opinion in the case of **REPUBLIC VRS. HIGH COURT; ACCRA EX PARTE NII NUEH ODONKOR** (Civil Motion No. J5/26/2014 dated **22nd July, 2014** (unreported).

“...the Constitution 1992 has detailed provisions designed to protect persons from arbitrariness, breach of the rules of natural justice, protection against unlawful deprivation of property among several

other rights which are designed to ensure fair trial....it is clear that the Applicant had never been arrested, arraigneded before any court on a charge of serious offence or obtaining and or acquiring property with tainted property and or convicted. Granted that the 1st Interested Party has powers under Act 804 to freeze, seize and confiscate and or forfeit properties of persons being investigated, the law does not give them blanket powers. These powers are to be exercised according to due process. Due process connotes that there will be an investigation, arrest, arraignment and possibly conviction. It also has to be observed that there are constitutional provisions in the Constitution 1992, for example, article 19 and 296 thereof which protect any citizen or person charged with a criminal offence. It is therefore my contention that the failure of the 1st Interested Party to follow due process in these particular cases smacks of arbitrariness which is tantamount to denial of the basic human rights of the Applicant and others who find themselves in similar situation”.

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

and in other investments were derived, obtained or realized as a result of the commission of corruption or corruption-related offences.

In the circumstances this court holds that the freezing of the accounts of the Respondent by the Applicant was done without any justifiable legal basis, particularly at a time when another state security institution is investigating the Respondent on the same subject-matter, and on that basis this court in the interest of fairness and justice cannot confirm the administrative freezing orders issued by the Applicant on the 26th day of July, 2023 against the accounts of the Respondent held at the Societe Generale Ghana and Prudential Bank Limited as it is not just, fair and reasonable to do so, and in the circumstances the administrative freezing orders referred to supra are hereby discharged.

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REGISTRAR
HIGH COURT
CRIMINAL COURT
LAW COURT COMPLEX
05/09/2023

(SGD)
JUSTICE EDWARD TWUM
(JUSTICE OF THE HIGH COURT)

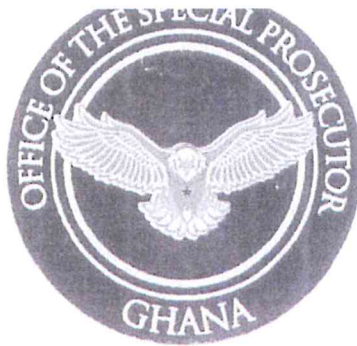


EXHIBIT
CAD 4

PRESS RELEASE

CECILIA ABENA DAPAAH

The Office of the Special Prosecutor (OSP) commenced investigation in the third week of July 2023 in respect of suspected corruption and corruption-related offences regarding large amounts of money and other valuable items involving Ms. Cecilia Abena Dapaah, a former Minister of Sanitation and Water Resources.

On 31 August 2023, the High Court, Accra refused to grant the application of the seizure and freezing orders on the grounds that the confirmation of seizure application was filed out of time; that the OSP did not provide any basis for the seizure and the freezing since it did not disclose the details of the transactions in the accounts. And further that the freezing order was based on public sentiments and without proper investigations.

While the OSP respects the Court's decision, it disagrees with the decision of the Court. First, the OSP believes that the Court's computation of the time limitation is, with respect, erroneous. The OSP searched three (3) private residences associated with Ms. Dapaah over the course of two (2) weeks. The searches and discovery were ongoing during that period. There is little doubt that the OSP filed its application within the statutory window once the search and discovery window is considered.

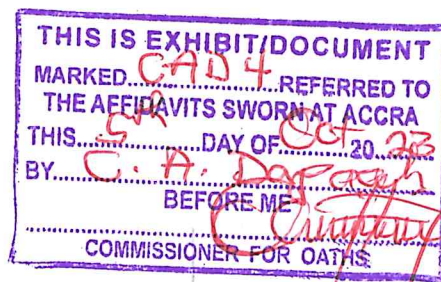
Second, the seizure by the OSP and the Special Prosecutor's freezing order were effectuated on the very firm basis of reasonable suspicion that the amounts and bank balances were tainted property as Ms. Dapaah prevaricated as to the source(s) of the amounts she reported stolen from her residence, the amounts discovered by the OSP in her residence, and the volume of transactions in her bank accounts and investments.

Third, the freezing order was not based on public sentiments. Rather, it was based on court processes filed in a criminal matter before the Circuit Court, Accra involving Ms. Dapaah as the complainant. Further, the freezing order was effected to aid the investigation, as required by law, not on the basis of the investigation, as indicated by the Court. Therefore, it cannot be said that the OSP did not carry out proper investigations to warrant the freezing order. The investigation has only commenced, and it is ongoing.

The OSP assures the public that it will take all necessary legal steps to ensure that the seized amounts and the balances in Ms. Dapaah's bank accounts and investments are neither concealed, lost, or otherwise dissipated.

[SGD]
KISSI AGYEBENG
SPECIAL PROSECUTOR
31 August 2023

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EXHIBIT
CAD 5

PRESS RELEASE

CECILIA ABENA DAPAAH

The Office of the Special Prosecutor (OSP) has complied with the ruling and order of the High Court, Accra dated 31 August 2023 by unfreezing the frozen bank accounts and investments of Cecilia Abena Dapaah. The OSP has also returned the seized cash sums of Ms. Dapaah in the presence and assent of Ms. Dapaah and her lawyers. The satisfaction by the OSP of the order of the High Court terminates the proceedings of the seizure of the cash amounts from Ms. Dapaah commenced on 24 July 2023 and the freezing of her bank accounts and investments effected from 26 July 2023.

However, the investigation by the OSP in respect of Ms. Dapaah for suspected corruption and corruption-related offences involving the ownership and source(s) of large amounts of money associated with Ms. Dapaah has been and is still ongoing.

Subsequent to the indicated ruling and order of the High Court and the compliance by the OSP with said ruling and order, the ongoing investigation by the OSP of Ms. Dapaah has uncovered varying and sometimes conflicting accounts of the ownership and source(s) of the large amounts of money reportedly stolen from her residence, the cash amounts seized from her by the OSP, and the nature and volume of transactions in her bank accounts and investments.

Consequently, subsequent to the indicated ruling and order of the High Court and the compliance by the OSP with said ruling and order, the Special Prosecutor considers that freezing the bank accounts and investments of Ms. Dapaah is necessary to facilitate the ongoing investigation. Therefore, the Special Prosecutor has invoked his statutory power under section 38(1) of Act 959 and regulation 19(1) of L.I. 2374 by directing the freezing of the bank accounts and investments of Ms. Dapaah effective 5 September 2023.

Further, subsequent to the indicated ruling and order of the High Court and the compliance by the OSP with said ruling and order, the Special Prosecutor considers that he has reasonable grounds to suspect that the cash amounts seized from and returned to Ms. Dapaah is tainted property and it is necessary to exercise the power of seizure to prevent the concealment or loss of said cash amounts. Therefore, the Special Prosecutor has again invoked his statutory power under section 32(1)(a) of Act 959 by directing the seizure from Ms. Dapaah of the cash amounts previously seized from her. Authorized officers of the OSP have seized said cash amounts from Ms. Dapaah.

[SGD]

KISSI AGYEBENG SPECIAL
PROSECUTOR

5 September 2023

6 Haile Selassie Ave.

South Ridge, Accra

GA 079 0906

www.osp.gov.gh

THIS IS EXHIBIT/DOCUMENT
MARKED... *CAD 5* ...REFERRED TO
THE AFFIDAVITS SWORN AT ACCRA
THIS... *5th* ...DAY OF... *Oct*...20...*23*
BY... *C. A. Dapaah*
BEFORE ME
COMMISSIONER FOR OATHS

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Tuesday, 05 September 2023 10:14

Cecilia Abena Dapaah Update Featured

The Office of the Special Prosecutor (OSP) has complied with the ruling and order of the High Court, Accra dated 31 August 2023 by unfreezing the frozen bank accounts and investments of Cecilia Abena Dapaah. The OSP has also returned the seized cash sums of Ms. Dapaah in the presence and assent of Ms. Dapaah and her lawyers. The satisfaction by the OSP of the order of the High Court

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