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The President

Ghana Journalists Association

Accra

Dear Sir,

**PETITION FOR THE WITHDRAWAL/SUSPENSION OF THE BEST JOURNALIST OF THE YEAR 2015
AWARD GIVEN TO ANAS AREMEYAW ANAS ON 27TH AUGUST, 2016**

On Saturday, 27th August, 2016, the Ghana Journalists Association (GJA), at its 21st Awards ceremony, gave the overall best journalist of the year, 2015 Award to Anas Aremeyaw Anas for his so-called exposé on judicial bribery and corruption.

It comes as a surprise to some of us and we begin to wonder what value you attach to your Awards. On 4th February, 2016, the highest court of the land, the Supreme Court delivered a judgment in **Suit No. J1/29/2015**, against this very Anas Aremeyaw Anas. One of the reliefs the court pronounced against Anas Aremeyaw Anas is that his conduct in publishing the so – called exposé on judicial corruption when his so-called company, **Tiger Eye PI**, had submitted petitions to the President and the Chief Justice, which petitions were yet to be addressed was unconstitutional (**See pages 5, 7, 8, 14 and 15 of the judgment enclosed herein**).

I hereunder for ease of reference and effect quote the relevant portions of the judgment. At **page 5**, the Supreme Court stated as follows:

“In the meantime the 1st Defendant (i.e. Tiger Eye PI) had taken steps to give wide publicity to the said allegations by public viewing of the video, and through social network as well as newspaper publications ...

Any publication beyond the President violates the Constitution..... Consequently, the Plaintiff seeks these... reliefs from this court:

- 1) A declaration that the 1st Defendant’s publication of its petition to the President in the media contravened Article 146(8) of the 1992 Constitution and therefore unconstitutional.**
- 2) A declaration that the conduct of the 1st Defendant acting through its Chief Executive Officer and Acting Editor of the Crusading Guide newspaper, Anas Aremeyaw Anas, in releasing the contents of the petition, through publications in the Crusading Guide newspaper, his personal facebook page, public screening of the audio – visual recordings in support of the petition at the Accra International Conference Centre on the 22nd September, 2015, containing the evidence in support of the petition, is in violation of Article 146 (8) of the 1992 Constitution and therefore unconstitutional...”**

Some of the issues the Supreme Court addressed in the case as stated at page 7 of the judgment are:

- a. Whether or not the 1st Defendant’s publication of its petition to the President in the media contravened Article 146(8) of the 1992 Constitution and therefore unconstitutional.**
- b. Whether or not the conduct of the 1st Defendant through its Chief Executive Officer and Acting Editor of the Crusading Guide Newspaper, his personal facebook page, public screening of the audio visual recordings in support of the petition at the Accra International Conference Centre on the 22nd and 23rd of September 2015, containing the evidence in support of the petition, is in violation of Article 146 (8) of the 1992 Constitution and therefore unconstitutional.**

In its judgment, the Supreme Court answered the above issues in the affirmative and granted the reliefs indicated herein in favour of the Plaintiff. By this judgment, Anas

Aremeyaw Anas and his so – called company have been declared by the Supreme Court to have violated the Constitution by this so – called exposé of corruption in the judiciary by the publications referred to herein.

Again, in the judgment, the Supreme Court prescribed various remedies available for the blatant unconstitutional conduct of Anas Aremeyaw Anas at **pages 15 to 17** of the judgment. The Supreme Court states that"

"We have identified five different modes of expressing disapproval with breach of the in camera provisions. These are:

- i. Treat the breach as contempt of the High Court**
- ii. Impose criminal sanctions if there is such legislation**
- iii. Award damages as for a constitutional infraction, where appropriate.**
- iv. Treat it as breach of an injunction**
- v. The person who is injuriously affected may sue in tort for defamation...**

In India, the Contempt of Court Act of 1971 makes a person who violates a law prescribing proceedings in camera liable in contempt of court punishable by a jail term of six months or a fine of 2, 000 rupees or both...

At common law it is contempt, with intent to impede or prejudice the administration of justice, to publish material calculated to prejudice the fair trial of a pending imminent cause. Common law is part of our laws, per Article 11(1)(e) of the Constitution 1992. Thus in the absence of legislation the common law remedy is available...

We shall next consider damages. The US Supreme Court took the views in the case of Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, US. 388 (1971) that money damages were an appropriate remedy for a violation of the right to privacy conferred by the 4th Amendment...

In an article titled "In-Camera-Proceedings" Azizur Rahman, Additional Judge, Farrakhabad, published in T.T.R.I, Journal-First Year, Issue 2-April-June, 1995, wrote this relevant passage that "... where the enactment itself makes it mandatory to proceed in

camera, it required no order... (of court)... The said provision shall have the force of an injunction in itself." This is a true representation of such a provision.

It prohibits publication of the proceedings to outsiders, thus inherently it is an injunction that is placed on disclosing the proceedings to unauthorized persons. Consequently an unlawful disclosure should be treated as though a court injunction has been violated. Whatever a violation of an injunction entails could then be effected by a court, which in our jurisprudence includes contempt proceedings...

Counsel for the 1st Defendant (Tiger Eye PI) took the view that in the event of a violation of the confidentiality rule the party affected may take action in defamation. It is a view we share. That is a right open to a party to pursue independent of or in conjunction with other remedies available for the violation."

From the copies of the various suits against Anas Aremeyaw Anas and/or his fake company, Tiger Eye PI, **(Enclosed herein are copies of the writs)**, they are facing claims for damages for defamation, damages for invasion of privacy etc.

It will be also be recalled that earlier on Anas Aremeyaw Anas and four others were cited for contempt of the High Court arising from his unconstitutional publication of the so – called exposé of judicial corruption. Torkornoo JA dismissed the application for contempt in breach of the audi alteram partem rule of natural justice. Subsequently however she realized the unlawfulness of the dismissal and set aside suo motu her own ruling and restored the contempt application which is also still pending at the High Court against Anas Aremeyaw Anas.

Anas Aremeyaw Anas attempted to violate the 1992 Constitution in October, 2015 when he went to Kumasi to publish the same so – called judicial corruption exposé but he was compelled to abandon it by a court action.

So the above is the true profile of Anas Aremeyaw Anas, your Award winner. And if an award of such weight is granted by the GJA to such a non – law abiding citizen, I wonder what the worth or value of the award is. Is the GJA rewarding lawlessness? Is it a sign for

other journalists to breach the supreme law of the law with such careless or reckless abandon in order to be rewarded by the GJA?

It must be realized that free press is a creature of the Constitution just like the Judiciary. The Supreme Court which is vested with jurisdiction to interpret the Constitution in 2006 decided in **Agyei Twum v. Attorney – General [2005 – 2006] SCGLR 732 at 785** that:

“The constitutional requirement that the impeachment proceedings be held in camera would be defeated if the petitioner were allowed to publish his or her petition to anyone other than the President. This is likely to lead to the petitioner’s allegations being aired in public while the judge’s response can only be considered in private. This would lead to grave adverse public relations consequences for the judiciary. The institution of the judiciary could be undermined without any justification.”

Earlier in **Ghana Bar Association v. Abban (GBA Case) [2003 – 2004] SCGLR 250** at page **311**, the Supreme Court stated that:

“It is important to note article 146 (8) of the Constitution, 1992 provides that the Proceedings of the committee appointed to deal with any such petition ‘shall be held in camera’. It is mandatory that such proceedings be held in private, not in public or open court as has unfortunately been done in this case. The reason for this important provision is obvious. It is to preserve, protect and safeguard the authority, dignity and independence of the judiciary.”

In the **Agyei – Twum** Case the Supreme Court was very clear that the privacy of impeachment proceedings extends even to the moment the petition is presented to the President and is referred to the Chief Justice. The **Agyei – Twum** Case is reaffirmed by **Suit No. J1/29/2015** where the Supreme Court stated at **page 12** of its judgment that:

“ what the framers of the constitution really intended was that confidentiality and privacy should apply to impeachment proceedings under this article. It would indeed be meaningless to make provision for confidentiality if the entire process is allowed to be placed in the public domain even before the respondent has been heard. Commonsense could even be brought to bear on this interpretation that the framers of the Constitution could not have intended that even before prima facie determination has been made, or

before the committee has concluded its investigations and submitted its report, the whole world should be told of the contents of the petition. That would clearly be defeating the purpose of the confidentiality and privacy that is required to such proceedings.”

There is therefore ample evidence of how lawless the Award Winner is and yet the GJA blessed him for his lawlessness. It is worthy again to refer to the opinion of the Supreme Court in **Suit No.J1/29/2015**. At **page 14** of the judgment the court states that:

“The 1st Defendant (Tiger Eye P1) caused an extensive publication of the contents of their own petition to the public at large. As at the time of these publications, the decision in the Agyei – Twum case had been published and was therefore binding on all the actors in this case. Clearly therefore, there was unconstitutional disclosure of the petition to the public. As decided in the Agyei – Twum Case, the right of the public to know did not detract from this provision which was specifically designed to achieve a certain effect. That was why the court decided in the Agyei – Twum Case that the right to know was curtailed in favour of the right to confidentiality. But the curtailment of free speech is not a permanent act. The public is not completely denied the right to know, but certainly not before a prima facie case has been made by the Chief Justice or the committee has completed its work and submitted its report, whichever of these terminates the proceedings. The rights of the people were merely postponed for a time lest the purpose of Article 146 (8) should be defeated. We would emphasize that these clear constitutional provisions must be respected if the intent and purpose are not to be rendered nugatory, which is to keep the proceedings private and confidential.”

It is worth making reference to **Article 162 (5)** of the 1992 constitution. It states this: **“All agencies of the mass media shall, at all times, be free to uphold the principles, provisions and objectives of this constitution, and shall uphold the responsibility and accountability of the Government to the people of Ghana.”**

Article 146 is part of the 1992 constitution. Indeed, **Tiger Eye P1/Anas Aremeyaw** Anas submitted its or his petition pursuant to **Article 146 (1)** of the Constitution. **Article 146 (2)** of the Constitution also provides that:

“A Justice of the superior court may only be removed in accordance with the procedure specified in this Article.” **Article 146 (8)** is part of the procedure that must be

followed but yet Anas Aremeyaw Anas, the architect of the petition brazenly refused to follow this mandatory requirement as enshrined and interpreted in **Agyei – Twum**. Is such a person worth to be awarded by GJA with the highest honour of “**The Overall best Journalist of the year, 2015**” for his unconstitutional conduct.

Let us be guided by our constitutional history. The Supreme Court declared the celebration of **31st December** unconstitutional because it marks the overthrow of a government established by law. Similarly, **Kwame Pianim** was disqualified by the Supreme Court to stand for President because of being convicted for an unconstitutional conduct.

In the case of **New Patriotic Party v. Attorney – General [1993 – 94] 2 GLR 35 (31st December Case)**, the Supreme Court expressed the following sentiments about unconstitutional conduct and the consequences. But before that the brief facts:

On 31st December, 1981, the Government of Ghana, established under the constitution, 1979 was removed from power in a military coup d'etat. The coup – makers then set up their own government provisionally (the PNDC), until such time that another constitutional government could come into being. The PNDC ruled the country from 31st December, 1981 to 7th January 1993. During that period 31st December was declared a public holiday and celebrated as such in commemoration of the military coup of 31st December, 1981.

On 7th January, 1993 Ghana's new Constitution, 1992 came into force, and with it, a new constitutional order. The PNDC was abolished and it ceased to exist with effect from that date by virtue of Section 36(1) of the transitional provisions of the Constitution, 1992.

On 14th December, 1993, the Ghanaian Times Newspaper published a release from the Information Services Department of the Ministry of Information detailing a programme of activities intended for the celebration of the twelve anniversary of the 31st December, 1981 coup and the first anniversary of the fourth Republic.

On or about 19th December, 1993, the government, acting by the Minister of Interior, announced to the nation that 31st December, 1993, among others, would be a public holiday and celebrated and observed as such. The announcement was carried by the People's Daily Graphic on 20th December, 1993.

On 21st December, 1993 the New Patriotic Party (NPP) instituted an action at the Supreme Court against the Government of Ghana per the Attorney – General for the following reliefs:

1. A declaration that the public celebration of the overthrow of the legally constituted Government of Ghana on 31st December, 1981, and the financing of such celebration from public funds is inconsistent with or in contravention of the letter and spirit of the Constitution, 1992 and more particularly to articles 3 (3), (4), (5), (6) and (7), and 35(1) and 41(b) & (f) thereof.
2. An order directing the Government of Ghana to cancel all preparations for the celebration of the overthrow of the legally constituted Government of Ghana on 31st December, 1981 aforesaid and to refrain from carrying out any such celebration financed from public funds.

The Supreme Court gave judgment in favour of the NPP. At **page 72** of the Report Adade JSC delivered himself thus:

“Article 3(4) (a) of the Constitution, 1992 confers a right, and both articles 3(4)(a) and 41(b) of the Constitution, 1992 impose a duty, on all Ghanaians to defend the Constitution, 1992. The celebrations of 31st December with carnivals, route marches etc having a tendency to glorify the coup d’etat of 31st December, will weaken the people’s resolve to enforce this right, or perform this duty, ie their resolve to frown upon, and/or reject coups, a result which will have the effect of undermining and subverting the Constitution, 1992; but surely it is an unlawful means under article 3(3)(a) of the Constitution, 1992 if only because its result is a subversion of the Constitution 1992...”

Francois JSC in his contribution to the judgment at **pages 81 and 82** also delivered himself thus:

"The Celebration

By definition, a celebration is a public observance which honours an event. It is accompanied by festivities and a general atmosphere of exhilaration. It extols and praises the event it commemorates. It is a public celebration, then obviously an entire public except those in perpetual disgruntlement with life itself, would participate in the jolly making. Example, Independence Day. But where with the advent of 31st December 1981, a sizeable section of the people recite a litany of ills and perpetual relive them, it cannot, with the best will in the world, be classified as an ideal scenario for a public celebration, nor can its baleful antecedents escape judicial notice. Logic and prudence would dictate the prohibition of such a public to-do that would only promote division and fly in the teeth of the constitutional injunction to let bygones be bygones."

Amua Sakye JSC also had this to say at page 131 of the Report:

" Article 3 (3) of the Constitution, 1992 makes it the offence of high treason for any person to suspend, overthrow or abrogate the constitution by violent or other unlawful means, or to aid and abet any other person in such acts. Article 3 (4) of the Constitution, 1992 places on every citizen the duty, and gives him the right, to defend the Constitution, and to resist any person who might seek to overthrow it and, in the case the Constitution, 1992 is overthrown, to do all he can to restore the Constitution...."

For my part, I do not see how a law which requires all of us to celebrate with funfare, feasting and dancing the overthrow by force of arms of a democratically elected government can exist side by side with these constitutional provisions ..."

Of relevance is also the case of **Ekwam v. Pianim (No. 2) and Others[1996 – 97] SCGLR 121** the brief facts of which are that Mr. Kwame Pianim, the defendant, a founding member of the New Patriotic Party(NPP), had been slated to contest the party's impending election of its candidate for the December, 1996 Presidential Election. Mrs. Ekwam, a member of the party, contended that the defendant was disqualified from contesting the 1996 elections. The basis of her claim was that the defendant had been

convicted by a public tribunal of the offence of preparing to overthrow in 1982, the then Government of the PNDC. The Supreme Court upheld the Plaintiffs case and held that the Defendant was disqualified from standing for election for the office of the President under **Article 94(2) (c) (i) of the 1992 Constitution.**

Article 94 (2) (c) (i) of the Constitution provides as follows:

“A person shall not be qualified to be a member of Parliament if he has been convicted for high crime under the constitution or high treason or for an offence involving the security of the State, fraud, dishonesty or moral turpitude.”

Thus our constitutional jurisprudence abhors blatant breaches of the 1992 Constitution and anybody found to have breached any provision of the Constitution cannot be blessed with such Awards like the one GJA conferred on Anas Aremeyaw Anas. Aikins JSC in the **31st December case** supra expressed a very relevant view at **page 136** thus:

“In my view, the 4 June and 31st December processes occasioned a breakdown of law and order, the negation of the rule of law and a circumscription of the fundamental human rights and freedoms of the individual which the Constitution seeks to protect and preserve by its preamble. The stability of the nation was shattered and polluted. There is truth in the contention that the celebration has the propensity of sending wrong signals to the youth of this country that the overthrow of the constitutional order by means of a coup d’ etat is glorious, and incites and excites disorder to institutional settlement, and a disrespect to constitutional authority,”

I adopt the same sentiments and state that the Awards the GJA honoured Anas Aremeyaw Anas with has the propensity of sending wrong signals to other journalists especially young and upcoming ones that blatant violations of our constitutional order pays. You acquire fame and wealth by violating the constitutional order. That is what the GJA Award to Anas Aremeyaw Anas on 27th August, 2016 signifies.

The Constitution of Ghana is the Supreme law of Ghana. So one wonders why a person like Anas Aremeyaw Anas, who intentionally violated the Supreme law of the Republic of Ghana, qualifies for the Award the GJA gave to him for the very conduct that the

Supreme Court declared unconstitutional. Is it that the GJA best award is given to law breakers? Or the award is given to spite the Supreme Court?

Furthermore, there are still a number of cases pending in Court against Anas Aremeyaw Anas and/or his so-called company – Tiger Eye PI over the same subject matter of the Award. One of the cases which is pending at the Supreme Court which is yet to be determined is who is the person who conducted the so-called investigations and submitted the petition. Is it Anas Aremeyaw Anas or the so-called company called **Tiger Eye PI**?

By the GJA Award, are you not prejudicing the outcome of the case before the courts especially the Supreme Court? Is it not contempt pendent lite?

I am therefore by this letter drawing your attention to the consequences of the Award GJA gave to Anas Aremeyaw Anas whilst I give you and your Honourable Association the opportunity to rectify a blatant wrong that has been inflicted on the whole of the Ghanaian public by the conferment of the said award.

Your response to my letter will determine my next line of action since I am determined to use all lawful and legal means at my disposal to ensure that the provisions of the 1992 Constitution are upheld and complied with by all persons.

I would conclude these sentiments of mine by correcting misinformation going around in both print and electronic media that I am on suspension arising out of the **Tiger Eye P1** petition. I am not on suspension. No prima facie case has been made against me to warrant my suspension. I am on administrative leave which I applied to enable me to use the legal process to clear my name and reputation which Anas Aremeyaw Anas has sought to tarnish.

Be advised accordingly

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His Lordship Justice Paul Uuter Dery

Cc: **Vice President**

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