IN THE CIRCUIT COURT (8) HELD IN ACCRA ON THE 18TH DAY OF JULY, 2023, BEFORE H/H JOJO AMOAH HAGAN

SUIT NO. D21/293/2023

THE REPUBLIC

VRS

JOYCE SAMUEL CHIDEMA @ CHOICE

RULING

1. On 6 January 2023, the accused was arraigned before this Court [differently constituted] for human trafficking offences under the Human Trafficking Act, 2005 (Act 694) as amended, procuration and trading in prostitution under the Criminal Offences Act, 1960 (Act 29), and for failure to appear before an immigration officer on entering

Ghana, and entry into Ghana through an illegal place of entry and border contrary to sections 2 and 3 respectively of the Immigration Act, 2000 (Act 573). Subsequently, the prosecutor, Mr Abu Issah Esq, withdrew all the charges preferred against the accused except the immigration offences. I, accordingly, dismissed the said charges and discharged the accused on the same. After the State had filed its disclosures and witness statements but before Case Management Conference could be conducted, counsel for the accused raised an objection to the capacity of the prosecutor [an officer of the Economic and Organised Crime Office] to prosecute the immigration offences.

2. In his submissions in support of his objection, learned counsel for the accused argued that the Economic and Organised Crime Office [EOCO] could not prosecute the offences of failure to appear before an immigration officer on entering Ghana and entry into Ghana through an illegal place of entry and border. Citing *Axim Local Council v Tandoh (1969) CC 3*, article 88 of the 1992 Constitution and section 56 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), counsel for the accused argued that the Attorney-General was required to appoint public prosecutors. Pursuant to this power of delegation, the prosecutor herein was appointed by the Attorney-

General through the Appointment of Public Prosecutors Instrument, 2020 (E.I. 62).

3. According to counsel for the accused, the offences the learned prosecutor herein was authorised to prosecute were offences provided by section 3 and their definition under section 74 of the Economic and Organised Crime Act, 2010 (Act 804) and did not include the offences preferred against the accused. Additionally, considering the punishment prescribed for the offences preferred against the accused, the said offences could not be considered serious offences within the contemplation of Act 804. Counsel accordingly prayed for the charges against the accused to be struck out.

4. Times were when the law provided for the private commencement and prosecution of criminal cases which could at any time be taken over by a public prosecutor. Thus, in the *State v Ninsin & Ors [1966] GLR 451* Justice Archer opined that

> *"[s]ection 57 [of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30)] … provides that a person who makes a complaint before a district court*

*may conduct the prosecution of the cause or matter to which the complaint relates in person or by a legal practitioner. It follows therefore that criminal cases may be prosecuted by private prosecutors as complainants or by public prosecutors authorised by the Attorney-General."*

5. I would call that period the golden age of prosecution which, if had been perpetuated, could have empowered ordinary citizens, civil society organisations, the media and other legal persons to fight crime, especially corruption-related offences and offences against the person and rights to property more effectively and perhaps competently. However, with the promulgation of the 1969 Constitution, section 57 of Act 30 became otiose for being in clear violation of article 74 of the said Constitution, clauses (3) and (4) of which read as follows:

*"(3) the Attorney-General shall be responsible for the initiation and conduct of all prosecutions of criminal offences.*

*(4) All offences prosecuted in the name of the Republic of Ghana shall be at the suit of the Attorney-General or*

*some other person authorised by him in accordance with any law."*

6. Clauses (3) and (4) of article 74 of the 1969 Constitution were re-enacted *certis verbis* in clauses (3) and (4) of article 88 of the 1992 Constitution. Eventually, section 57 was repealed by the Criminal Procedure (Amendment) Act, 2002 (Act 633) to clear any doubt regarding the authority to prosecute all criminal cases in this country. It is now unequivocal that all criminal prosecutions are conducted by the Attorney-General who is empowered to delegate his prosecutorial powers to any other person pursuant to clause (4) of article 88 of the 1992 Constitution and section 56 of Act 30. Subsection (1) of section 56 of Act 30 provides that

> *"[s]ubject to article 88 of the Constitution, the Attorney-General may, by executive instrument appoint generally, or for a specified class of criminal cause or matter, or for a specified area, public officers to be public prosecutors, and* ***may appoint a legal***

***practitioner in writing to be a public prosecutor in a particular criminal cause of matter***[1]***.***"

7. From the foregoing, Parliament cannot presume to delegate the prosecutorial powers of the Attorney-General to any institution or person without the express written authorisation of the Attorney-General. Therefore, one does not have to look only to Act 804 to determine whether the prosecutor herein has the power to prosecute offences proscribed in that Act, but also to an executive instrument which is the vehicle through which, by the provisions of subsection (1) of section 56 of Act 30, the Attorney-General may appoint public officers to be public prosecutors generally, or for a specified class of criminal cases. Given the provisions of article 88 of the 1992 Constitution and section 56 of Act 30, what I consider to be the issue in this ruling is whether, by the combined effect of E.I. 62 of 2020 and Act 804, EOCO and by extension, the prosecutor herein has the mandate to prosecute the immigration offences preferred against the accused. It is a question of mixed law and fact and the burden of producing evidence on the facts is on the prosecutor.

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[1] The emphasis represents more useful option than a bureaucratic institution as the Office of the Special Prosecutor.

8. In response to the submissions of counsel for the accused, the prosecutor relied on E.I. 2020, Act 804, and some decided cases to prove his capacity and by extension, that of EOCO to prosecute the offences preferred against the accused. The learned prosecutor submitted that EOCO was acting within its mandate by preferring the charges against the accused. His assertion was grounded firstly on the long title of Act 804 and the fact that EOCO as a specialised institution was required by law to collaborate with other law enforcement agencies including the Ghana Immigration Service; secondly, on the

definition of "serious offence" in section 74 (as amended) of Act 804 which EOCO is empowered to prosecute, especially paragraph (c) of the definition of "serious offence" in section 74 which he invited the Court to construe, *ejusdem generis;* and thirdly, flowing from the definition of "serious offence", the prosecutor argued that if construed properly the alleged prohibited conduct of the accused for which the charges were preferred took their colour from fraud and would occasion a loss to the State. Therefore the motion ought to be dismissed *in limine.* The prosecutor relied on the unreported cases of the *Republic v Shine Credit Ltd & 8 Ors (*Suit No. FT/108/2019) delivered on 5 May 2020 (Coram: Justice Afia Serwaa Asare-Botwe); the *Republic v Kwaku Damete-Kumi & 4 Ors* (Suit No. FT/003/2019) delivered on 13 March 2023 with (Coram: Justice Ellen Vivian Amoah), the *Republic v*

*Halidou Morou* (Civil Appeal No. H2/5/2022) delivered 23 March 2022 (Coram: Ofoe, Wood, and Essah JJA), and *Boyefio v NTHC [1997-1998] 1 GLR 768.*

9. In reply, counsel for the accused disputed the authority of

*Boyefio's case* in respect of the instant case and argued that E.I. 62 of 2020 was a special legislation which ought to be applied on the *generalia specialibus non derogant* maxim. He finally submitted that collaboration with other law enforcement agencies did not mandate EOCO to prosecute the offences preferred against the accused. I am inclined to accede to the submission of counsel for the accused regarding the irrelevance of the mandate of EOCO to collaborate with other security or law enforcement agencies on the issue of whether they have prosecutorial powers concerning the offences preferred against the accused and reject the same entirely as unmeritorious. I shall proceed to review the cases cited by the prosecutor.

10. In the *Shine Credit Ltd* case, the accused persons were charged with various counts of offences relating to the operation of a deposit-taking microfinance business without a licence, failure to pay tax, inducing persons to invest, and making false and misleading

statements in contravention of the Internal Revenue Act, 2000 (Act 592). An officer of the Bank of Ghana who was an accused person in that case objected to the capacity of the EOCO to prosecute him for offences against the now repealed Banking Act, 2004 (Act 673) as amended raising the question regarding the extent of the mandate of the EOCO in prosecutions. Emphasising sub-paragraphs (i) and (vi) of paragraph (a) of section 3 and the definition of "serious offence" in section 74 of Act 804, the learned justice of appeal held that

> *"[i]n essence … it is obvious that the EOCO has the power to investigate, and by the authority of the Attorney-General, prosecute financial crimes including money-laundering, tax fraud and other serious offences* ***in line with the objects of the office****."* (Emphasis added)

11. *Kwaku Damete-Kumi's* case was about whether EOCO had the power and authority under Act 804 to prosecute offences under the National Pensions Act, 2008 (Act 766). The offences involved were: failing to register an establishment under a law, and failure to submit social security contribution payments contrary to sections 83 (1) (a) and (g), and 83 (1) (d) and (h) respectively of Act 766. Relying on the

long title of Act 804, the objects of the Act under section 2, and restating the meaning of "serious offence" under sections 3 and 74 of Act 804, the learned judge, adopting the *ejusdem generis* canon of construction held in essence that EOCO had the mandate to prosecute offences preferred against the accused persons therein under Act 766. Unfortunately, the Court did not demonstrate how it applied the *ejusdem generis* canon of construction to reach its conclusion.

12. Finally, in *Halidou Morou* one of the issues before the Court of Appeal, in that case, was whether EOCO could investigate the issue of whether EOCO could conduct its investigation regarding money tainted with criminality or illegality under the Foreign Exchange Act, 2006 (Act 723) after the investigations conducted by the Ghana Revenue Authority (GRA) into the same matter. Whilst cautioning that the outcomes of investigations by the GRA should not be elevated to the position of court decisions, the Court of Appeal, *obiter*, noted that

> *"[t]he decisions of the GRA are decisions still within the domain of administrative action. Investigations and above all prosecution is an executive action controlled by the Attorney General …. In practice it performs this*

*function with the assistance of myriads of bodies like the police mainly, and other bodies like the GRA…the Attorney General can cause the investigation and reinvestigations of any case as it deems fit and further direct its prosecution…. In this case, … the Attorney*

*General* ***has endorsed the prosecution****, it should taste ill in the mouth of anyone … to question why reinvestigation by the EOCO which action undoubtedly has the endorsement of the Attorney General….The*

*question put before us simply is whether* ***the EOCO which is prosecuting*** *the Appellant* ***on the***

***endorsement of the Attorney General*** *could have investigated this matter which had also gone before the GRA and investigated. Our answer is in the affirmative."* (Emphasis added)

*Boyefio v NTHC Properties Ltd [1997-1998] 1 GLR 768* cited by the prosecutor is wholly irrelevant to the instant case.

13. It is my considered opinion after examining the decisions cited by the learned prosecutor that they do not deal with the question before the Court. Counsel must be cautious in citing cases which do not

altogether create a judicial precedent. The purpose of citing cases as authorities for the propositions and submissions made by counsel to a court—a lower court in this case—is to show that in a previous case with similar or the same facts and circumstances, the superior court gave a decision creating a binding precedent which ought to be followed by the lower court in good accord with *stare decisis* and one of the tenets of the rule of law—that the law must be certain and predictable. Because *"[e]very precedent, in the words of Redlich, has a 'directive force for future cases of the same or similar nature.'"*[2] Notwithstanding the absence of precedent, it is of overarching importance to note that *"when there is no decisive precedent … the serious business of the judge begins*."[3]

14. A resolution of the issue before the Court cannot commence without reference to section 38 of the Interpretation Act, 2009 (Act 792) which provides that

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[2] Redlich, *The Case Method in American Law School*, Bulletin No.8, Carnegie Foundation, p.37 cited with approval in B. N. Cardozo, *The Nature of the Judicial Process* (Yale University Press 1921), 22. See also the warning of Dotse JSC in the *Republic v High Court (Criminal Division) Accra; ex parte Stephen Kwabena Opuni (Civil Motion No. J5/87/2022)* delivered on 24 January 2023 (unreported) wherein the learned judge stated that it was obligatory for counsel to

"*thoroughly read reported cases before seeking to rely on them as their authorities* [and not to rely] *on the doctrine of stare decisis in cases without any corresponding resemblance and application to the case in point*."

[3] Ibid, 21

(1) *"Definitions or rules of interpretation contained in an enactment apply to the construction of the provisions of the enactment which contains those definitions or rules of interpretation.*

(2) *An interpretation section or provision contained in an enactment shall be read and construed as being applicable,*

(a) *only if the contrary intention does not appear in the enactment; and*

(b) *to the enactments relating to the same subject-matter, unless a contrary intention appears in the enactment."*

15. It is usually the case in the interpretation of statutes that where an inclusive or extending definition is used to define a word, term or phrase, such a definition extends the ordinary meaning of the word, term or phrase retaining nonetheless its ordinary meaning. Explaining

the import of "includes" in a definition, the Rt Honourable Lord Denning noted in *Deeble v Robinson [1954] 1 QB 77, 81* that

> *"[i]n such a case the word must be given its ordinary meaning (which is not defined) and in addition, it must, in relevant cases, be given the special meaning which the statute says is to be included, which I will call the "included meaning". The included meaning may be inserted out of caution, so as to make sure that it is included in the ordinary meaning: or it may be inserted as supplemental, so as to add something to the ordinary meaning."*

*16.* The Supreme Court has also held in the *Republic v Yebbi & Avalifo [2000] SCGLR 149* that the word "includes" in the definition of "public interest" under clause (1) of article 295 of the 1992 Constitution did not

clog its meaning in terms of the scope apparent in the definition. However, the words defined in the extending definition take their colour from the "company they keep"—*noscitur a sociis*—and therefore any term, word, or phrase which although not expressly stated is alleged to be a necessary component of the definition ought to necessarily fit the class of words, phrases or terms used in the extended definition. This is generally known as the *ejusdem generis rule.* Driedger explained the rule in the following passage:

> *"[w]here general words are found following an enumeration of persons or things all susceptible of being regarded as specimens of a single genus or category, but not exhaustive thereof, their construction should be restricted to things of that class or category unless it is reasonably clear from the context, or from the general scope and purview of the Act that Parliament intended that they should be given a broader specification."*[4]

In more simple terms Vaughan Williams in *Lambourn v McLellan [1903] 2 Ch 268* explains the rule thus

> *"[i]f you can find that the things described by particular words have some common characteristic which constitutes them a genus, you ought to limit the general words which follow them to things of that genus."*

17. Many a rationale has been proposed for the application of the *ejusdem generis* rule with the controlling rationale being the presumption against surplusage. As opined in *Chandris v Isbrandstein-Moller Co Ltd [1951] 1 KB 240 "if the general words have unrestricted*

[4] E. A. Driedger, *Construction of Statutes* (Butterworths 1983) 116

*meaning, the enumerated items will become a mere surplusage."* Therefore, it is without question that the proper application of the rule must lead to a restrictive construction of the general words which follow the specific words to give the general words the colour and character of the specific words enumerated in the definition.

18. In the *Republic v Saffour II [1978] GLR 193* the accused who was the chief of Assin Bereku, was alleged to have demised portions of Assin Bereku stool lands to individuals [for farming] from whom he collected various sums of money which the prosecutor considered revenue within the context of subsection (2) of section 17 of the Administration of Lands Act, 1962 (Act 123) which provided that

> *"[r]evenue for the purpose of this Act includes all the rents, dues, fees, royalties, revenues, levies, tributes and other payments, whether in the nature of income or capital, from or in connection with lands subject to this Act."*

19. At the trial, the prosecutor argued that the various sums of money collected by the accused were revenue within the meaning of subsection (2) of section 17 of Act 123. That being the case, the Minister for Lands rather than the accused had the authority to collect such

money, and since the accused did not have the authority of the Minister to collect such amounts of money, he had committed a criminal offence. The accused argued *per contra* that the sums of money he collected were not revenue but "drinks". On appeal after his acquittal by the trial court, the prosecutor contended that the words "and other payments, whether in the nature of income or capital, from or in connection with lands subject to this Act" which appeared in the definition were so wide and so general as to accommodate and include the sums of money collected by the accused. The learned judge resolved the matter thus:

> *"[w]hen such general and rather sweeping expressions as have been used in the definition under discussion stand by themselves they carry their full complement of meaning and effect; but when, as in the present case, they follow a series of specific and particular words, such general words shed a good measure of their popular meaning, and only bear that portion of it which would make them consistent with the specific words to which they are appended. This is the rule of construction popularly referred to as the ejusdem generis rule…Thus there is this limiting rule of*

*construction applicable when there is a particular description of objects, sufficient to identify what was intended, followed by some general or omnibus description. The latter description will be confined to objects of the same class or kind as the former…The definition of "revenue" in section 17 is a piece of legislation which readily lends itself to the application of the ejusdem generis rule … it consists of a series of specific words followed by a general expression. All the specific words employed belong to the same genus. The question to answer then is: What is the genus to which they belong and to which all other words sought to be included under the definition must, necessarily also belong? I do not think there is much difficulty in coming to the conclusion, on a close study of the specific words used in that definition, that they all refer to periodic payments for the use of another's property, particularly, landed property. The mode of making the payments is absolutely irrelevant. What is vital is the nature of the payment. If my view of the matter is correct then the next point to consider is whether the moneys admittedly received by the accused are of the*

*same kind or nature and consequently, belong to the same category as those specified in the definition as to make it permissible to be included in the prescribed list. On the evidence, the moneys received by the accused and for which act of receiving he stood his trial were moneys paid and received in connection with the initial arrangements for the release of land by the accused and not for its user by the grantees.*[5]

The *ejusdem generis* rule is a canon of construction which may be employed with other canons and aspects of the enactment under review to unearth the meaning of the text concerned. One such aspect of an enactment which provides aid to its construction is its long title.

20. By the provisions of section 13 of Act 792, *"[t]he long title and the preamble form part of an Act intended to assist in explaining the intent and object of the Act."* In *Okwan & Ors v Amankwa [1981] GLR 417* the Court had to determine a preliminary legal objection regarding the capacity of the plaintiff to institute the action therein for an account in respect of revenues accruing from the sale of palm trees and cocoa "abusa" tenants on family land given that by section 17 of Act 123 it

[5] Pp 201-203 see also *CHRAJ v AG (No.1) [1998-1999] SCGLR 171; Republic v High Court; ex parte Ploetner [1984-1986] 2 GLR 107.*

was the Minister for Lands or his appointee who could bring such an action. The Court noted that

> *"[t]he crucial issue to resolve in this case is "are the lands involved in this suit subject to the Act?" Act 123 is described in its title as "AN ACT to consolidate with amendments the enactments relating to the administration of Stool and other lands." This immediately puts us on our guard; the Act is not confined only to the administration of stool lands. It goes beyond stool lands, and it becomes necessary to investigate what other lands, outside stool lands properly so-called, are affected by the Act and how "stool land" is defined in the Act*.[6]

21. Applying the *ejusdem generis* rule stool land was necessarily connected to either a tribe, clan, company, community or company captain which company a piece of family land could not be deemed to

keep. Accordingly, the Court held that the plaintiff's action did not contravene section 17 of Act 123. Thus the Court employed a

[6] 423-424

combination of the long title and the *ejusdem generis* rule to unearth the true intent of the framers of Act 123 on that specific issue. However, the relevance of the long title is determinable by whether or not there exists any doubt or ambiguity in the text sought to be interpreted. This was the view of Justice Donovan in *R v Bates [1952] 2 All ER 842* when he opined that

> *"[i]n many cases, the long title may supply the key to the meaning. The principle … is that where something is doubtful or ambiguous the long title may be looked to to resolve the doubt or ambiguity, but, in the absence of doubt or ambiguity, the passage under construction must be taken to mean what it says, so that, if its meaning be clear, that meaning is not to be narrowed or restricted by reference to the long title."*

22. I should think that where there are competing views as to the construction to be put on a piece of legislation or a part thereof as in this case, and where an extended definition appertains warranting the deployment of the *ejusdem generis* rule, the Court ought to be guided, inter alia, by the long title in its disquisition.

23. The long title of Act 804 provides for an Act *"to establish an Economic and Organised Crime Office as a specialised agency to monitor and investigate economic and Organised Crime and on the authority of the Attorney-General prosecute these offences to recover the proceeds of crime and provide for related matters."* Thus whereas EOCO has "original jurisdiction" to monitor and investigate economic and organised crime, it does not have prosecutorial powers in respect of economic and organised crime except that which the Attorney-General delegates to it.

24. By the provisions paragraph 1 of E.I. 62 of 2020 the Attorney-General duly appointed the prosecutor herein to prosecute "*a criminal action that arises under the Economic and Organised Crime Act, 2010 (Act 804)."* The said paragraph stipulates that

> *"[a] person specified in the Schedule employed by the Economic and Organised Crime Office is hereby appointed by this Instrument as a public prosecutor in respect of a criminal action that arises under the Economic and Organised Crime Act, 2010 (Act 804)."*[7]

[7] The said schedule expressly mentions the prosecutor herein as one of the public prosecutors duly appointed pursuant to paragraph 1 of E.I. 62 of 2020.

25. Read together with paragraph (a) of section 3 of Act 804 the Attorney-General is deemed to have appointed the prosecutor herein

and other prosecutors of the EOCO to prosecute "serious offences that involve

i. *financial or economic loss to the Republic or any State entity or institution in which the State has financial interest'*
ii. *money laundering,*
iii. *human trafficking,*
iv. *prohibited cyber activity,*
v. *tax fraud, and*
vi. *other serious offences*

At this point, it is quite easily deducible, applying the *ejusdem generis* rule and taking into consideration the long title of Act 804 that "other serious offences" within the context of section 3 would include offences of an economic, financial and organised nature which, with particular reference to only sub-paragraph (i) above, involves financial or economic loss to the State or a State institution in which the State has a financial interest. However, the issue goes beyond section 3 of Act 804 because section 74 of Act 804 provides guidance regarding

what constitutes "serious offences" in subparagraph (vi) of paragraph

(a) of section 3.

26. "Serious offence" is defined to include

> *(a) participation in an organised criminal group, terrorism and terrorist financing, money laundering, human trafficking, people smuggling, sexual exploitation, illicit trafficking in narcotic drugs, illicit arms trafficking, trafficking in stolen and other goods, serious fraud, counterfeiting and piracy of products, smuggling, extortion, forgery, insider trading and market manipulation,*
>
> *(b) murder, grievous bodily harm, armed robbery or theft where there are predicate offences for a serious offence, and*
>
> (c) *any other similar offence or related prohibited activity punishable with imprisonment for a period of not less than twelve months."*

The offences of terrorist financing, money laundering, illicit trafficking in narcotic drugs, illicit arms trafficking, trafficking in stolen and other goods, serious fraud, counterfeiting and piracy of products, smuggling, extortion, forgery, insider trading and market

manipulation are all unequivocally economic and financial in nature. Additionally, the punishment for each of those offences is more than twelve months imprisonment. Therefore, it stands to reason that apart from corruption and bribery, EOCO and by extension, the prosecutor herein has the mandate to prosecute offences economic and financial in nature. What then is the nature of the offences of participation in an organised criminal group, human trafficking, terrorism, sexual exploitation, and people smuggling?

*The offence of participation in an organised criminal group.*

27. Section 200A of the Criminal Offences, Act, 1960 (Act 29) as amended by the Criminal Offences (Amendment) Act, 2012 (Act 849) proscribes participation in the activity of an organised criminal group and prescribes a maximum penalty of death and a minimum of not less than five years imprisonment for a contravention of the proscription. Subsection (2) of section 200A defines an organised criminal group to mean a structured group acting in concert to commit a serious offence. A serious offence under section 200A is defined to mean an offence for which the maximum penalty is death and the minimum penalty is imprisonment for not less than five years, and a structured group is defined to consist of two or more persons, that are not randomly formed, and in which the members may or may not have

defined roles, continuity of membership or which may or may not have a developed structure. I should think that offences of an organised nature as racketeering under section 200B of Act 29, and in some circumstances, terrorism and genocide, amongst others would come under this genus.

*The offence of human trafficking*

28. Subsection (1) of section 1 of the Human Trafficking Act, 2005 (Act 694) as amended by the Human Trafficking (Amendment) Act, 2009 (Act 784) defines human trafficking as

> *"(1) … the recruitment, transportation, transfer, harbouring, trading or receipt of persons for the purpose of exploitation within and across national borders by(a)the use of threats, force or other forms of coercion, abduction, fraud, deception, the abuse of power or exploitation of vulnerability, or(b)giving or receiving payments and benefits to achieve consent."*
>
> *(2)Exploitation shall include at the minimum, induced prostitution and other forms of sexual exploitation,* ***forced labour or services****,* ***salary*** *or practices similar to slavery, servitude or the removal of organs.*

*3)* ***Placement for sale, bonded placement, temporary placement, placement as service*** *where exploitation by someone else is the motivating factor shall also constitute trafficking.* (Emphasis added)

The punishment for human trafficking within the context of subsection (1) above is imprisonment for a term of not less than five years. From its very definition, human trafficking involves elements of economic and organised crime and may be a genus for the prosecution of kindred offences such as kidnapping, child stealing and enforced disappearance.

*The offence of terrorism*

29. Terrorism is defined in regulation 31 of the Economic and Organised Crime Office (Operations) Regulations, 2012 (L.I. 2183) as, inter alia, an unlawful seizure of Aircraft, unlawful acts against the safety of civil aviation, crimes against internationally protected persons, including diplomatic agents, taking of hostages, unlawful violation of airports serving international aviation, and *"any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population or to compel a Government or an*

*international organisation to do or to abstain from doing any act."* It is also defined in section 2 of the Anti-Terrorism Act, 2008 (Act 762) as amended as an act *"performed in furtherance of a political, ideological, religious, racial or ethnic cause and*

*(a) causes serious bodily harm to a person;*

*(b) causes serious damage to property;*

*(c) endangers a person's life;*

*(d) creates a serious risk to the health or safety of the public;*

*(e) involves the use of firearms or explosives;*

*(f) releases into the environment or exposes the public to*

*(i) dangerous, hazardous, radioactive or harmful substances;*

*(ii) toxic chemicals; or*

*(iii) microbial or other biological agents or toxins;*

*(g) is prejudicial to national security or public safety;*

*(h) is designed or intended to disrupt*

*(i) a computer system or the provision of services directly related to communications;*

*(ii)* ***banking or financial services****;*

*(iii)* ***utilities, transportation****; or*

*(iv)* ***other essential services****; or*

*(i) is designed or intended to cause damage to essential infrastructure.*

*(2) A person who contravenes subsection (1) commits an offence and is liable on conviction on indictment to a term of imprisonment of not less than seven years and not more than twenty-five years.* (Emphasis added)

30. Terrorism obviously has some economic and financial crime elements and may be organised in nature depending on the circumstances of the case. Most important, however, is the punishment imposed for terrorism which puts it in the class of offences categorised in section 74 as "serious offence".

*The offence of sexual exploitation*

31. Sexual exploitation is defined by section 101A of Act 29 as amended by Act 849 as follows:

> *"101A (1) Sexual exploitation is the use of a person for sexual activity that causes or is likely to cause serious physical and emotional injury or* ***in prostitution or pornography****."*

32. The punishment for sexual exploitation of another person other than a child is a term of imprisonment of not less than five years and not more than twenty-five years; or where the other person is a child, a term of imprisonment of not less than seven years and not more than twenty-five years. Under certain circumstances, this offence may be of an organised nature and certainly has elements of economic crime where prostitution and/ or pornography are involved. I suppose that the kindred offences under chapter six of Act 29 which include rape, defilement, unnatural and natural carnal knowledge, and incest amongst others may fall under this genus.

*The offence of people smuggling.*

33. What constitutes people smuggling is defined as migrant smuggling in the Immigration Act, 2000 (Act 573) as amended by the Immigration (Amendment) Act, 2012 (Act 848). Section 52A of the Immigration Act provides that

*(1) A person shall not engage in migrant smuggling.*

*(2) A person who engages in migrant smuggling commits an offence and is liable on conviction to a fine or not less than six hundred and twenty-five penalty units and not more than one thousand, two hundred and fifty penalty units or to a term of imprisonment of not less than five years and not more than ten years of to both.*

(3) *For the purposes of this section, migrant smuggling means the facilitation of the unlawful entry or departure from the country of a person* ***in order to obtain, directly or indirectly, a financial or other material benefit****.*

Here again, from the tenor of the above provision, people smuggling is financial and economic in nature.

34. Regarding paragraph (b) of the definition of "serious offence" under section 74 of Act 804 which defines "serious offence" to include

*murder, grievous bodily harm, armed robbery or theft where there are predicate offences for a serious offence,* "predicate offence" is defined as "an offence as a result of which property or benefit has been generated." Therefore, for EOCO to have jurisdiction to prosecute

murder, grievous bodily harm, armed robbery, or theft, the accused must have committed an economic or financial crime in the course of which any of the adumbrated offences in paragraph (b) of the definition of "serious offence" in section 74 of Act 804 was committed and thereby expected or intended, or did generate property or some benefit from his or her prohibited acts.

35. An analysis of the definition of "serious offence" from all the provisions above state evinces a common thread: that a "serious offence" for purposes of Act 804 is an offence of an organised nature

and/or an economic and financial outlook. An additional common thread is that none of the punishments for the offences adumbrated is less than twelve months imprisonment. The question then is whether the offences preferred against the accused fall within the class described and defined above, and the common thread contained therein.

36. Regarding count one (1), subsection (1) of section 2 of Act 573 provides that *"[a] person entering Ghana shall enter at an authorised*

*point and shall proceed to the nearest immigration office, produce the relevant travel document and complete the prescribed forms."* Under subsection (6) the punishment for contravening this provision is a fine

not exceeding five hundred penalty units or to a term of imprisonment not exceeding twelve months or to both the fine and imprisonment. On count two (2), subsection (1) of section 3 of Act 573 provides that *"[a] person shall not enter Ghana except by one of the approved places of entry into Ghana."* Per subsection (5) of section 3 of Act 573, the punishment for its contravention is a fine of not less than fifty penalty units or a term of imprisonment of not less than three months and not exceeding twelve months or to both the fine and imprisonment.

37. In my opinion, it admits of no controversy, considering the tenor of the offences preferred against the accused that they are bereft of the thread running through all the offences stipulated in paragraph (a) of

section 3 and the definition of "serious offence" in section 74 of Act

804. They are not aggravated in nature as compared to terrorism; they are not organised in nature; they are not financial or economic crimes, and most importantly, are subject to sentences which are not more than twelve months imprisonment with hard labour. Accordingly, taking into consideration the long title of Act 804, sections 3 and 74 of Act 804, the *ejusdem generis rule,* article 88 of the 1992 Constitution, and E.I. 62 of 2020, it is my considered opinion that EOCO and by extension, the learned prosecutor herein, does not have the authorisation of the Attorney-General to prosecute the offences of

failure to appear before an immigration officer on entering Ghana, and entry into Ghana through an illegal place of entry and border contrary to sections 2 and 3 respectively of Act 573. Having so determined, the corollary to that conclusion is that the charge sheet signed by the learned prosecutor and based upon which the accused was arraigned before this Court is void *in limine* and accordingly dismissed. The objection of counsel for the accused is allowed and the accused is hereby discharged.

SGD

JOJO AMOAH HAGAN
JUDGE, CIRCUIT COURT.

Legal representation

Abu Issah Esq with Abraham Brew-Sam Esq for the prosecution. Commodore Mortey Esq holding the brief of Reginald Niibi Ayi-Bonte Esq of the accused.