IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2017

CORAM: AKUFFO (MS), JSC PRESIDING
ADINYIRA (MRS), JSC
DOTSE, JSC
YEBOAH, JSC
BAFFOE-BONNIE, JSC
GBADEGBE, JSC
BENIN, JSC

WRIT NO.
JI/19/2016

14TH JUNE, 2017

OCCUPY GHANA ..... PLAINTIFF

VRS

ATTORNEY GENERAL ..... DEFENDANT

JUDGMENT

DOTSE, JSC:-

Article 187 (7) (b) (i) (ii) and (iii) of the Constitution 1992, provides as follows:-

"In the performance of his functions under this Constitution or any other law the Auditor-General

(b) **may disallow any item of expenditure which is contrary to law**

and **surcharge**

(i) the amount of any expenditure disallowed upon the person responsible for incurring or authorizing the expenditure; or

(ii) any sum **which has not been duly brought into account**, upon the person by whom the sum ought to have been brought into account;
or

(iii) the amount of any **loss** or **deficiency**, upon any person by whose **negligence** or **misconduct** the loss or deficiency has been incurred." Emphasis supplied.

Based on the above constitutional provisions referred to supra, the Plaintiffs claim the following reliefs against the Defendants before this court.

1. "That upon a true and proper interpretation of Article 187 (7) (b) (i) of the Constitution, the Auditor-General is bound to issue a disallowance or surcharge where there has been any item of expenditure on behalf of the Government that is contrary to law, so that the amount unlawfully expended is recovered from the person who was responsible for, or authorised, the expenditure disallowed.

2. That upon a true and proper interpretation of Article 187 (7) (b) (ii) of the Constitution, the Auditor-General is bound to issue a disallowance and surcharge where any person fails to bring any sum into the Government's account, so that that amount is recovered from the person by whom the amount should have been brought into account.

3. That upon a true and proper interpretation of Article 187 (7) (b) (iii) of the Constitution, the Auditor-General is bound to issue a disallowance and surcharge where the Government suffers or incurs a loss or deficiency through the negligence or misconduct of any person, so that the value of the loss or deficiency is recovered from that person (whether or not a public servant).

4. That the failure, refusal or neglect by the Auditor-General to ever issue any disallowances and surcharges in respect of (i) unlawful items of expenditure, (ii) amounts not brought into account, and (iii) losses and deficiencies incurred through negligence and misconduct, as set out in successive Reports of the Auditor-General issued since the coming into force of the Constitution, are violations by the Auditor-General of his/her obligations under the Constitution and

5. That the Auditor-General be ordered to issue disallowances and surcharges to and in respect of all persons and entities found in successive Reports of the Auditor-General to have been responsible for or to have authorised unlawful items of expenditure, not bringing sums into account, or having caused loss or deficiency through negligence or misconduct, in accordance with Article 187 (7) (b) of the Constitution."

FACTS RELIED UPON BY PLAINTIFFS

The facts relied upon by the Plaintiffs who are a pressure and advocacy group, incorporated under the laws of Ghana can briefly be summarised as follows:-

That the Auditor-General pursuant to article 187 (2) of the Constitution, has been given the constitutional responsibility to audit and issue a report therein in respect of the public accounts of Ghana and of all public offices which in this instance includes the courts, the central and local government administrations, of the Universities and public institutions of like nature, of any public corporation or other body or organisations established by an Act of Parliament.

The Plaintiffs further draw attention to article 187 (5) of the Constitution which enjoins the Auditor-General to carry out the audit of the public accounts within 6 months of the preceding financial year and submit a report, and ***"shall in that report draw attention to any irregularities in the accounts audited and to any other***

matter which in his opinion ought to be brought to the notice of Parliament". *Emphasis*

In this respect, the Plaintiffs referred to sections 20 (1) and (2) of the Audit Service Act, 2000 (Act 584) and section 2 thereof in particular which provides and states in material particulars what this report to Parliament by the Auditor-General is required to draw attention to in cases in which he has observed the following:-

a. "an officer or employee of Government has willfully or negligently omitted to collect or receive any public money due to the Government;
b. any public money was not duly accounted for and paid into the Consolidated Fund or other designated public account;
c. an appropriation was exceeded or was applied for a purpose or in a manner not authorized by law;
d. an expenditure was not authorized or properly vouched for or certified;
e. there has been a deficiency through fraud, default or mistake of any person;
f. applicable internal control and management measures are inefficient or ineffective;
g. the use or custody of property, money, stamps, securities, equipment, stores, trust money, trust property or other assets has accrued in a manner detrimental to the state;
h. resources have not been used with due regard to economy, efficiency and effectiveness in relation to the results attained;
i. in the public interest, the matter should be brought to the notice of Parliament."

It has to be noted that, the above provisions of the Audit Service Act, have taken their authority from article 187 (7) (b) of the Constitution already referred to supra, which empowers the Auditor-General to disallow any item of expenditure which is contrary to law, and having done so to surcharge (1) the amount of any expenditure so disallowed upon the person responsible for incurring or authorizing the expenditure, or

(ii) direct that, any sum which has not been duly brought into account, be brought into account upon the person by whom the sum ought to have been brought into account, or

(iii) direct that the amount of any loss or deficiency, be brought upon any person by whose negligence or misconduct the loss or deficiency has been incurred.

In other words, the person by whose conduct of negligence or misconduct the loss or deficiency occurred must be held liable.

The Plaintiffs further asseverate that since the inception of the 4th Republican Constitution on 7th January 1993, the Auditor-General has failed, neglected and or refused to carry out his mandate in fulfillment of the constitutional obligations referred to supra, which would have entitled him to retrieve the amounts, losses and or deficiencies from the offending persons for the benefit of the good people of the Republic of Ghana. This conduct of the Auditor-General according to the Plaintiffs is a violation of his constitutional mandate and obligations under article 187 (7) (b) of the Constitution.

In pursuance of their resolve to ensure that the Auditor-General complies with the above constitutional obligations referred to supra, the Plaintiffs on 12th November 2014 addressed a letter exhibited to these proceedings as exhibit OG3 entitled.

> *"Request for the exercise of Auditor-General's powers of disallowance and surcharge, and notice of action."*

In that letter, the Plaintiffs state in part as follows:-

> *"We have studied the Auditor-General's Audit Reports to Parliament for the eleven (11) years between the year ended 31st December 2002 and the year ended 31st December 2012. In that period, the Auditor-General has identified a wide range of stolen and /or misappropriated funds which are due to the public purse.* ***Nevertheless, and quite without explanation, although the Auditor-General is known to have made "recommendations", Occupy***

Ghana and most Ghanaians are not aware of a single instance in which a Disallowance and Surcharge has been made by the Auditor-General or any of his offices". *Emphasis*

The Plaintiffs then requested the Auditor-General to either comply with the constitutional obligations therein stated or face a legal challenge after the expiration of 30 days from the date of the letter.

The Auditor-General responded to the said letter on 9th December, 2014 and attached written comments therein, and this is marked as exhibit OG4 in these proceedings.

We deem it appropriate at this stage to quote in extenso the relevant portions of this exhibit OG4 as follows:-

14. **"On the matter of procedural precedence under the laws of Ghana, there is an issue of timing of the exercise of discretionary power given to the Auditor-General under Article 187 (7) (b) of the Constitution**. Article 187 (5) of the Constitution requires the Auditor-General to send this report on all irregularities (disallowance items included) to Parliament for consideration. Under section 23 of the Audit Service Act, the reports of the Auditor-General become public documents as soon as they have been presented to the Speaker to be laid before Parliament.

15. The question is, should the Auditor-General exercise his discretionary power of surcharge and start to disclose his findings through the courts for public consumption before submitting his report to Parliament or after submission to Parliament." Emphasis

It would appear that, the Auditor-General clearly perceives this power of disallowance and surcharge granted him under article 187 (7) (b) of the Constitution as discretionary and this therefore meant he is not bound to apply or enforce those provisions.

In conclusion, the Auditor-General reiterated the fact that his office has since July 2013 collaborated with the office of the Attorney-General through the formation of a joint committee to enquire into cases cited in the Auditor-General's reports spanning 2006-2011.

According to the Auditor-General as per the response in OG4 which we again refer to in extenso, *"the mandate of the Committee was to review all cases in the Auditor-General's report covering this period for further action.* ***The result of the Committee's work after several sittings since 2013 indicate that about 85% of the cases in the Auditor-General's Report for the period covered, only required administrative actions by the institutions concerned because they derive from non-compliance with applicable laws, policies and procedure"*** Emphasis

Feeling dissatisfied with the above explanations, the Plaintiffs instituted the instant action against the Attorney-General who is the nominal Defendant for and on behalf of the Auditor-General.

We must commend legal counsel for the Parties for well prepared statements of case in which they argued inter alia the following:-

1. Whether the original jurisdiction of the court was properly invoked
2. The powers and constitutional obligations of the Auditor-General of disallowance and surcharge under article 187 (7) of the Constitution.
3. The Auditor-General's narrow interpretation of his obligations under the said articles referred to supra which the Plaintiff's consider as wrong, and
4. The closing arguments of the Plaintiffs and Defendants in their statement of case.

CLOSING ARGUMENTS OF PLAINTIFF

The Plaintiffs concluded their arguments in the statement of case as follows:-

> *"Your Lordships, we have attempted in these submissions to answer the further issues set out joint (sic) by the parties. We will have humbly contended that the Auditor-General does not fully meet his obligations under Article 187 (7) (b) when he conducts audits and prepares reports that show financial irregularities. Those constitutional obligations to disallow and surcharge are only discharged* ***when, upon discovering financial irregularities, the Auditor-General takes (sic) follows the deliberate statutory steps to disallow them and then surcharge the persons responsible for causing them with any amounts lost to the State.*** *We have also respectfully argued that the Auditor-General's obligations do not even terminate when he issues a certificate of the Disallowances and Surcharges.* ***The law has created a bifurcated enforcement responsibility, first on the public entity with respect to which the irregularity occurred to receive payment within 60 days. When the amount surcharged is not paid, the head of that public entity has to institute civil action to recover same****. However, if the person surcharged files an appeal against the Disallowance and Surcharge, the Auditor-General is made the statutory respondent to that appeal. However, even this bifurcated enforcement responsibility cannot commence or arise unless and until the Auditor-General has first performed his Disallowance and Surcharge obligations." emphasis*

THE DEFENDANTS CASE

The Defendants on their part contended through learned Solicitor-General, Mrs. Helen Ziwu that the Auditor-General has not failed to carry out the constitutional mandate he bears by virtue of Article 187 (7) (b) of the Constitution as is contended by the Plaintiffs. The Defendants further argued that the powers of discharge and disallowance vested in the Auditor-General are set out in section 17 of the Audit Service Act 2000 (Act 584). We therefore deem it appropriate at this stage to set out in detail the provisions of this section 17 of Act 584.

17. Disallowance and surcharge by Auditor-General

(1) "The Auditor-General shall specify to the appropriate head of department or institution the amount due from a person on whom a surcharge or disallowance has been made and the reasons for the surcharge or disallowance.

(2) A sum of money specified by the Auditor-General to be due from a person shall be paid by that person to the department or institution within sixty days after it has been so specified.

(3) A person aggrieved by a disallowance or surcharge made by the Auditor-General may appeal to the High Court not later than the expiration of sixty days prescribed in subsection (2).

(4) In accordance with article 187 (10), the Rules of Court Committee may, by constitutional instrument, make Rules of Court for the purposes of subsection (3) of this section.

(5) A sum of money which is lawfully due under this section is recoverable, on civil proceedings taken by the head of department

in a Court as a civil debt and where the person surcharged is in receipt of remuneration from the Government or an institution, the remuneration shall be attached to the extent of the sum lawfully due." Emphasis

In other words the roadmap which the Auditor-General is expected to follow whenever he exercises his powers of surcharge or disallowance pursuant to article 187 (7) (b) and section 17 of Act 584 supra are the following:-

(i) The Auditor-General shall indicate to the appropriate head of department or institution the amount due from the person on whom the surcharge or disallowance has been raised and the reasons for it.

(ii) The sum of money indicated by the Auditor-General to be due from a person shall be paid by that person to the department or institution within 60 days after it has been indicated

(iii) An aggrieved person has 60 days from the date of the indication in subsection 2 supra to appeal against the discharge or surcharge made by the Auditor-General.

(iv) The Rules of Court Committee have been mandated under article 187 (10) of the Constitution to make Rules of Court for the actualization of subsection 3 of section 17 of Act 584.

(v) Any sum of money due under this section 17 is recoverable, by civil proceedings taken by the head of department in a court as a civil debt and where the person surcharged is on Government payroll, his salary or entitlements shall be attached to the extent of the sums lawfully due.

The above road map indicates quite clearly that the powers of the Auditor- General in respect of this Surcharge and disallowance are really extensive and are intended to

ensure that any monies that are lost through any of the processes mentioned in article 187 (7) (b) (i) (ii) and (iii) are recovered to the state.

CLOSING ARGUMENTS OF DEFENDANTS

The Defendants summarised their closing arguments very briefly as follows and we wish to quote them accordingly thus:

> *"My Lords, we respectfully submit, in conclusion that the Auditor General's obligations end when he carries out his statutory mandate as set out in Section 17 (1) of Act 584 and section 84 of Act 921 and in this regard, it is respectfully contended on behalf of the Defendants that the Auditor-General has from the inception of the 1992 Constitution carried out his statutory mandate of disallowance and surcharge."*

DEFENDANTS RAISE JURISDICTIONAL ISSUE

The Defendants raised a jurisdictional point against the Plaintiffs writ thus:

> ***"The Plaintiff has not made out a proper case which will require this honourable court to make any declarations within the meaning of Article 2 (1) (b) of the 1992 Constitution, and it is respectfully urged on this court to dismiss this action." Emphasis***

MEMORANDUM OF ISSUES

At the close of pleadings, the following issues were set down in the joint memorandum of issues agreed upon by the parties.

1. Whether or not the Auditor-General fully discharges his constitutional obligation simply by auditing and pointing out financial irregularities in the accounts of a public entity.

2. Whether or not the Auditor-General has an obligation to ensure that his powers of disallowance and surcharge duly exercised are complied with by the public entity or official directly affected by the Auditor-General's exercise of his power of disallowance and discharge.

After the setting down of the above issues, this court by an order dated 31st January 2017 requested the parties and or their counsel to file legal arguments in respect of the said two issues.

We observe that, the parties have complied with the said orders.

On the 7th of March 2017 this court again directed that further arguments of law be filed by the parties and or counsel in respect of the issue of whether the Plaintiffs have properly invoked this court's jurisdiction.

We observe that, this order has been complied with only by learned Counsel for the Plaintiffs Thaddeus Sory. We will therefore proceed to deal with these issues, and since jurisdiction is primary, we will deal with that first.

HAVE THE PLAINTIFFS PROPERLY INVOKED THE ORIGINAL JURISDICTION OF THE COURT?

It is to be noted that, articles 2 (1) (a) and (b) and 130 of the Constitution deals with the original jurisdiction of the Supreme Court. Thus the Plaintiffs action in the instant case must be measured in terms of the said provisions of the Constitution.

Out of abundance of caution, these provisions provide as follows:-

2 (1) "A person who alleges that

(a) an enactment or anything contained in or done under the authority of that or any other enactment; or

(b) any act or omission of any person

is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.

130 (1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in

(a) all matters relating to the enforcement or interpretation of this Constitution; and

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution.

In their closing arguments, learned counsel for the Defendants submitted that the Plaintiffs have not made a proper case to require this court exercise it's jurisdiction in their favour, and urged the Court to dismiss the action.

Predictably, the Plaintiffs anticipated this type of jurisdictional objection and stated as follows in their original statement of case:-

> *"From the facts so far recounted, the Plaintiff's case falls squarely within the first ambit of the court's original jurisdiction as classified by the court in the* ***Edusei case [1998-99] SCGLR 753 at pages 771-772****".*

What then are the principles in ***Edusei (No. 2) v Attorney-General*** referred to supra?

In that case, it was noted by Kpegah JSC that, *"in determining the scope or extent of this court's original jurisdiction, we must read together articles 2 (1) and 130 (1) of the Constitution. And in reading the two articles together,* ***"the courts exclusive original jurisdiction can be said to be in respect of the following situations."***

(i) enforcement of all provisions of the Constitution, except those provisions contained in Chapter 5 dealing with Fundamental Human Rights, or

(ii) The interpretation of any provision of the Constitution; or

(iii) an issue whether an enactment is inconsistent with any provision of the Constitution." Emphasis

The Plaintiffs have also filed a response in compliance with this court's order dated 7th March 2017, on this jurisdictional issue.

The facts of the instant case, which have been extensively stated, fall into categories (i) and (ii) supra. This is because the Plaintiff's are indeed asking this court to interprete article 187 (7) (b) of the Constitution in a certain direction such that when enforced it will have the desired results that they wish. But the Defendants contend otherwise. Meaning there are rival contentions.

In clear terms, the Plaintiffs are indeed requesting of this court to interprete the mandate given to the Auditor-General in the discharge of his constitutional duties or obligations. Thus, if this court accedes to that request and interpretation, then it will have to follow it with enforcement which will then lead to the Auditor-General issuing a disallowance and surcharge in all the three scenarios mentioned in articles 187 (7) (b) (i) (ii) and (iii) respectively of the Constitution.

We also observe that, the Plaintiffs, anchored their reliefs basically on the constitutional provisions and where necessary provided flesh by reference to the Audit Service Act, 2000 (Act 584) and Public Financial Management Act, 2016 (Act 921). The Defendants on the other hand have relied basically on the said statutory provisions and argued that this court has no jurisdiction.

We have on our part, considered in detail, the facts of this case which admit of no controversies whatsoever.

We have also considered the law and a plethora of decided cases on the subject, such as the following:-

1. **Republic v Special Tribunal, Ex-parte Akosah [1980] GLR 592** *which is the locus classicus on the subject-matter*
2. **National Media Commission v Attorney-General [2000] SCGLR 1**
3. **Aduamoa II v Twum [2000] SCGLR 165**
4. **Tuffuor v Attorney-General [1980] GLR 637 SC**
5. **Bimpong Buta v General Legal Council [2003-2004] SCGLR 1200**
6. **Republic v High Court (Fast Track Division) Ex-parte CHRAJ, (Richard Anane: Interested party) [2007-2008] SCGLR 213**
7. **Osei Boateng v National Media Commission [2012] 2 SCGLR 1038, just to mention a few**

We deem it necessary to refer to the observation by our respected Sister, Adinyira JSC in the case of **Okudzeto Ablakwa & Another v Attorney-General & Obetsebi Lamptey** [2011] 2 SCGLR 986 wherein she stated as follows:-

> *"Article 2 (1) of the 1992 Constitution imposes on the Supreme Court the duty to measure the actions of both the legislature and the executive against the provision of the Constitution. This includes the duty to ensure* ***that no public officer conduct himself in such a manner as to be in clear breach of the provisions of the Constitution. It is by actions of this nature that gives reality to enforcing the constitution by compelling its observance and ensuring probity, accountability and good governance.****" Emphasis*

The matter was recently put to rest by the unanimous decision of the Supreme Court in the unreported judgment of the Court in ***Emmanuel Noble Kor v Attorney-General and Another***, Suit No. JI/16/2015 dated 10th March 2016 in which it was made explicitly clear as follows:-

"It will be seen that article 2 of the Constitution is headed "Enforcement of the Constitution" and the ensuing provisions are meant to attain the enforcement of the Constitution. There is therefore express authority in the Constitution itself for the view that the enforcement jurisdiction of this court is a conspicuously independent item of jurisdiction of this court. Indeed, though it will be erroneous to say that a declaratory action cannot be brought within article 2 towards the enforcement of an ambiguous provision of the Constitution, it appears that while the enforcement purpose of that article is clear on the face of its provisions, its interpretative purpose is comparatively latent."

Based on the above decisions and the principles of law decided therein, we have no doubts whatsoever in our minds that the plaintiffs have properly invoked the original jurisdiction of this court, and this court must therefore give them a hearing in line with the principles of law stated therein.

The objection on grounds of jurisdiction is thus dismissed.

This then requires us to consider the two issues set out in the memorandum of issues.

1. WHETHER OR NOT THE AUDITOR-GENERAL FULLY DISCHARGES HIS CONSTITUTIONAL OBLIGATION SIMPLY BY AUDITING AND POINTING OUT FINANCIAL IRREGULARITIES IN THE ACCOUNTS OF A PUBLIC ENTITY

The Constitutional and Statutory mandate of the Auditor-General in respect of the public accounts of Ghana as defined in article 187 (2) of the Constitution are well stated not only in the Constitution, but also in the Audit Service Act 2000, Act (584) and the Public Financial Management Act, 2016 (Act 921) respectively.

For example, the constitutional obligations of the Auditor-General include the following:-

(i) to audit and report on the public accounts of Ghana and of all public offices. Article 187 (2)

(ii) to within six months after the end of the financial year prepare a report of his audit and lay same before Parliament drawing attention to any irregularities in the accounts audited and to any other matter which in his opinion ought to be brought to the notice of Parliament reference. - Article 187 (5).

(iii) To audit any public office upon the request of the President acting with the advice of the council of State reference. - Article 187 (8).

(iv) To exercise his Disallowance and Surcharge obligations in respect of irregularities he discovers in the performance of his functions under the Constitution or any other law, article 187 (7) (b).

It is to be noted that, these constitutional obligations even though exist separately, some can only be triggered by the performance of others. For example the Auditor-General must conduct an audit into the public accounts of Ghana before he can prepare a report to Parliament. Similarly, there must also be an audit by the Auditor-General into the public accounts before there can be any Disallowance and or Surcharge.

However, it is possible for the Auditor-General to perform the audit into the public accounts of Ghana, prepare a report and lay same before Parliament without any irregularities detected. But it is not automatic that there must be a Disallowance and Surcharge arising from every such report. These are only triggered when the report discloses irregularities in the public accounts audited.

Thus, the constitutional obligation in article 187 (7) on the Auditor-General to exercise his mandate of Disallowance and Surcharge in the manner stated are only invoked against those persons responsible for incurring the liabilities which have led to the occurrence of the events listed in articles 187 (7) (b) (i) (ii) and (iii) supra of the constitution.

Furthermore, if we consider ***The Statutory Interventions*** in Acts 584 and 921, then it becomes very clear that the Auditor-General's constitutional mandate in auditing the public accounts of Ghana far exceeds the task of auditing and pointing out the irregularities in the accounts of a public entity.

When one considers in detail, the effect of Section 20 (2) of Act 584 referred to, elsewhere in this rendition, then it becomes crystal clear that the Auditor-General, quite apart from conducting an audit into the public accounts of Ghana and preparing a report for Parliament and drawing attention to irregularities, and the matters stated therein, must definitely trigger his powers of Disallowance and Surcharge obligations, whenever these irregularities exist.

We are therefore of the considered view that the statement by the learned Counsel for the Defendants that, Section 17 of Act 584 only mandates the Auditor-General to issue management letters as indicated in exhibits AG1 to AG4 is untenable.

This is because, a careful reading of Section 17 of Act 584 referred to supra, gives very clear indications that the provisions therein stated are to be procedural steps that the Auditor-General is mandated to pursue in his quest to fulfill the Discharge and Surcharge obligations imposed upon him under the Constitution.

What is worthy of note is that, the 4th Republican Constitution has been anchored on the principles of **Freedom, Justice, Probity and Accountability and the recognition that the powers of government spring from the sovereign will of the people based on the concept of universal adult suffrage and rooted on the principle of Rule of Law,** the protection and preservation of fundamental human rights among others as stated in the preamble to the Constitution.

When we juxtapose these principles against the powers of the Auditor-General in article 187 (7) (b) and Acts 584 and 921 respectively, it becomes very clear that adequate measures have been put in place to afford any person against whom the Attorney-General has exercised his powers of surcharge and disallowance to avail himself of the

due processes in the High Court to vindicate himself, whilst at the same time ensuring that the public accounts of the state are duly protected.

That fundamental right in Section 17 subsection 3 of Act 584 which enables an aggrieved person against whom a Disallowance and Surcharge had been made by the Auditor-General to within 60 days appeal to the High Court is in itself a recognition of the fact that, failure by an aggrieved person to take those steps can lead to the disallowance and surcharge being enforced without more. This enforcement can lead to the attainment of the principles of probity and accountability enshrined in the Constitution.

We are further emboldened by the views we have expressed in this judgment when we refer to the views of the then Auditor-General in Exhibit OG2, attached to these proceedings which are the proposals of the Auditor-General for amendment of the Constitutional provisions of the office of the Auditor-General.

For example on page 16 of the proposals, under the heading ***Issues and Comments*** are the following:-

> *"The provisions of Article 187 (7) (a) & (b)* ***should be maintained and enforced.***
>
> *The independence of the Auditor-General from the direction or control of any person or authority is a key requirement under INTOSAI's Auditing standards.* ***The office of the Auditor-General has received adverse comments from Development Partners who have invested in the national budget and also from Parliament for not actively introducing measures to implement the provisions on surcharge and disallowance."*** *emphasis*

From the above, it is clear that the Auditor-General has recognized the need to maintain and enforce the provisions in article 187 (7) (a) & (b) supra and also implement and enforce the provisions on surcharge and disallowance.

There is also a tacit recognition by the Auditor-General that the provisions on disallowance and surcharge must be maintained. The problem if any is the erroneous impression in the mind of the then Auditor-General that the said powers are discretionary in nature and that perhaps that he needed more legislation to carry out this disallowance and surcharge mandate. If this be it, then it is untenable.

The memorandum to the Interpretation Act, 2009 (Act 792) states in part as follows:-

> "*In essence the Constitution must be construed or interpreted in a manner*
>
> ***(a) that promotes the rule of law and the values of good governance,***
> ***(b) that advances human rights and fundamental freedoms***
> ***(c) that permits the creative development of the provisions of the Constitution and the Laws of Ghana, and***
> ***(d) that avoids technicalities which defeat the purpose of the Constitution and of the ordinary law of the land."***

The Chambers, 21st Century Dictionary, Revised Edition, defines disallow on page 379 as follows:-

> *"verb* ***- to formally refuse to allow or accept something*** *(2) to judge something to be invalid – disallowance – noun".*

The same dictionary on page 142 defines surcharge as follows:-

> *(i) an extra charge, often as a penalty for late payment of a bill."*

When we consider the meanings ascribed to these words in the context in which they have been used in article 187 (7) (b) of the Constitution then there seems to be no doubt whatsoever that, what the words actually mean is that, ***the Auditor-General will formally refuse to accept or allow any item of expenditure that is contrary to law*** etc.

Having refused to accept or allow the expenditure as being contrary to law, the Auditor-General now proceeds to impose an extra charge as penalty for the retrieval of the amount or expenditure that he has refused to allow or accept, because it was contrary to law.

Furthermore, article 34 (1) which deals with the Directive Principles of State Policy provide thus:-

> "*The Directive Principles of State Policy contained in this chapter, shall guide all citizens, Parliament, the President,* ***the Judiciary*** *the Council of State, the Cabinet, political parties and other bodies* ***and persons in applying or interpreting this Constitution or any other law and in taking or implementing any policy decisions, for the establishment of a just and free society.****" Emphasis*

The above provisions are a clear injunction on the Judiciary to bear the above in mind when interpreting the Constitution. There is thus no room for us as a Judiciary to be pedantic in dealing with issues of constitutional interpretation. This is especially so when in article 37 (1) of the Constitution, (which also includes the provisions on the Directive Principles of State Policy). It is directed that, *"the state shall endeavour to secure and protect a social order founded on the ideals and principles of freedom, equality, justice, probity and accountability as enshrined in chapter 5 of this Constitution*." Emphasis

All constitutional interpretations must therefore bear the above provisions in mind. This is especially so when we consider provisions requiring compliance with upholding of the tenets of probity and accountability vis-à-vis the work of the Auditor-General in protecting the public purse for the public good.

On the basis of the above, the nature of the Constitution as the basic law of the land and therefore requiring pride of place has been recognized in article 11 (1) of the Constitution.

At this stage, it is useful to refer and remind ourselves of the fact that the Constitution itself in article 11 (1) (a) has given pride of place to the Constitution as the Grundnorm, that is to say it is at the apex, of the laws of Ghana. This therefore means that the constitutional provisions in article 187 (7) (b) take precedence over any other laws, and must therefore be regarded in that position.

In our opinion therefore, the mandate of the Auditor-General in exercising his constitutional obligations in article 187 (2) of the Constitution does not end simply by the performance of same and issuing a report on the irregularities in the accounts of a public entity, but goes beyond it to include the powers of Disallowance and Surcharge which we will consider next.

WHETHER OR NOT THE AUDITOR-GENERAL HAS AN OBLIGATION TO ENSURE THAT HIS POWERS OF DISALLOWANCE AND SURCHARGE DULY EXERCISED ARE COMPLIED WITH BY PUBLIC ENTITY OR OFFICIALS DIRECTLY AFFECTED BY THE AUDITOR-GENERAL'S EXERCISE OF HIS POWER OF DISALLOWANCE AND DISCHARGE

We have been persuaded by the submissions of both learned counsel for the parties herein that, apart from the constitutional provisions in article 187 (7) (b) supra, which is applicable to the circumstances of this case, the other relevant statutes are sections 17 (1) of Act 584 supra and Sections 85 (1) and 88 (1) respectively of the Public Financial Management Act, 2016 (Act 921) which provides as follows:-

> 85. (1) A Principal Spending Officer shall, on an annual basis, submit the following to the Minister and Auditor-General:
> ***(a)*** **a report on the status of implementation of recommendations made by the Auditor-General in respect of that covered entity; ` and**
> *(b)* a report on the status of implementation of recommendations made by Parliament in respect of that covered entity.
> **(2) The Attorney-General shall, on an annual basis, submit a report on the status of any action commenced on behalf of the Government to**

the Minister, Auditor-General and Parliament following findings of the Auditor-General and recommendations of the Public Accounts Committee of Parliament.

88. (1) An Audit Committee shall ensure that the head of a covered entity, to which the Audit Committee relates,

(a) **pursues the implementation of any recommendation contained in**

(i) an internal audit report;

(ii) Parliament's decision on the Auditor-General's report;

(iii) Auditor-General's Management Letter; and

(iv) the report of an internal monitoring unit in the covered entity concerned particularly, in relation to financial matters raised; and

(b) prepares an annual statement showing the status of implementation of any recommendation contained in

(i) an internal audit report;

(ii) Parliament's decision on the Auditor-General's report;

(iii) Auditor-General's Management letter;

(iv) the report on financial matters raised in an internal monitoring unit of a covered entity; and

(v) any other related directive of Parliament.

(2) An annual statement required under subsection (1) *(b)* shall

(a) **indicate the remedial action taken or proposed to be taken to avoid or minimise the recurrence of an undesirable feature in the accounts and operations of a covered entity**;

(b) **indicate the period for the completion of the remedial action; and**

(c) be endorsed by the relevant sector Minister and forwarded to the Minister, Parliament, Office of the President and the Auditor-General within six months after the end of each financial year." Emphasis supplied.

A perusal of the Constitutional provisions in article 187 (7) (b) and statutory provisions referred to supra, makes it quite clear that the bifurcated or two pronged enforcement

regime argument put up by the Plaintiffs in their statement of case is not only borne out by the relevant provisions referred to supra, but also prudent, designed to the encouragement of probity and accountability in the management of public accounts.

1. In the first procedure, the public entity against whom the irregularity has been made is required to take steps to collect or retrieve the amount from the person who incurred the liability and has been surcharged.

2. The second stage is where the person surcharged does not pay the amount and the provisions in section 17 of Act 584 supra are triggered.

As already stated supra, section 17 (1) thereof of Act 584 stipulates that it is to the head of the public entity that the Auditor-General shall specify the requirement to collect any amount due from the person on whom a surcharge or disallowance has been made and the reasons therein contained.

As stated supra, the roadmap that is envisaged by the Section 17 (1) provision of Act 584 has been indicated. This roadmap has recently been given a further boost by the enactment of the High Court (Civil Procedure) (Amendment) No. 2 Rules, which are Rules of procedure enacted by the Rules of Court Committee to further amend the High Court (Civil Procedure) Rules, 2004 (C. I. 47) by the insertion after Order 54 of the following new Order on "Disallowance and Surcharge Appeals). The enactment of C. I. 102 makes it quite certain that the powers of the Auditor-General under article 187 (7) of the Constitution are to retrieve from persons who have caused loss of public funds in their management of same which is contrary to law. The law speaks for itself and there can be no turning back on this.

However, where the person surcharged files an appeal, Order 54A rule 2 (7) and (8) of C. I. 47 constitutes the Auditor-General into the respondent to the appeal, as follows:-

(7) For the purposes of the appeal, the Auditor-General is the respondent.

This makes it quite apparent that, following the Auditor-General's exercise of the Disallowance and Surcharge, the bifurcated approach is triggered. It should also be noted that, there can be no such bifurcated approach to retrieve the sums of money so specified unless and until there has been a disallowance and surcharge.

Furthermore, Section 88 (1) and (2) of Act 921 puts the matter beyond doubt by stipulating the various steps that the head of the entity covered is expected to take in order to ensure the implementation of the Auditor-General's recommendations as contained in his management reports and final report on financial matters.

Section 85 (1) (a) and (b) on the other hand directs the Principal spending officer to submit on an annual basis, the following:-

(a) A report on the status of the implementation of the Auditor-General's report.
(b) A report on the status of the implementation of the report of the Auditor-General made by Parliament in respect of the entity covered.

In our considered opinion, in interpreting the constitutional provisions referred to in article 187 (7) (b) (i) (ii) and (iii) supra, we also have a duty to look at all the subordinate legislations which have been enacted to practicalise the harmonious effect of the constitutional provisions. These include the following:-

1. Audit Service Act, 2000 Act 584
2. Audit Service Regulations, 2011 C.I. 70
3. Public Financial Management Act, 2016 Act 921
4. High Court (Civil Procedure) (Amendment) No. 2 Rules 2016 C. I. 102

Perusal of the relevant sections of Act 584 and 921 supra, and the overriding philosophical underpinnings of the 4th Republican Constitution in it's preamble, make it quite clear that the said constitutional provision on the powers of Disallowance and Surcharge of the Attorney-General must be enforced.

We reckon the fact that, the stipulations in articles 187 (2) (3) (4) (5) and (6) of the Constitution has the operative word ***"shall",*** and this is mandatory.

However, when it comes to the vexed issue of the Disallowance and Surcharge, provisions as used in Article 187 (7) (b) the operative word is ***"may"***.

Taking a cue from the importance of the work that is attached to the office of the Auditor-General and the fact that it is the custodian and protector of the public purse, any derogation of the functions therein specified will defeat the lofty aims and objectives stated in the Preamble to the Constitution and the role and objectives of the work of the Auditor-General.

It is to be noted that, the general rules for construction or interpretation that we have become so familiar with were formulated by Judges and crystalised into rules and principles of interpretation.

See for example the mischief rule which was enunciated in ***Heydon's case*** [1584] 3 Co. Rep 7a76 ER 637], the Literal Rule which was propounded in the ***Sussex Peerage case*** [1844] 11 Co. & E 85, 8 E.R.1034], the Golden Rule enunciated in the ***Grey v Pearson*** [1857] 6. H.L.C 61, 10 E. R, 1216].

The courts in the commonwealth then moved to the now in vogue Purposive Approach. Judges in Ghana and elsewhere in the Commonwealth, have where it is considered appropriate abandoned the strict constructionist view of interpretation in favour of the purposive approach to interpretation which per Atuguba JSC in his opinion in ***Re Presidential Election Petition, Akufo-Addo & 2 others (No. 4) v Mahama & 2 Others (No. 4) 2013 SCGLR (Special Edition) page 73 at 111*** where he stated that

> ***"the purposive approach has been enthroned in the Supreme Court as the dominant rule for the construction of the Constitution."***

See also the Supreme Court case of ***Agyei Twum v Attorney-General & Akwetey [2005-2006] SCGLR 732 at 757*** where the court adopted the purposive approach to interpretation of the Constitution.

See also ***Ransford France No. 3 v Electoral Commission & Attorney-General [2012] 1 SCGLR 705 at 718*** where the court rejected a literal interpretation that was urged upon it in favour of a purposive approach claiming that a literal interpretation would lead to grave injustice.

It is in this respect that we feel the entire provisions of Article 187 to 189 on the Auditor-General and the Audit Service must be read as a whole. If that is done, then the intended effect of the work of the Auditor-General which is to ensure that public funds or accounts are handled by safe hands, and that whenever losses of any kind contemplated in article 187 (7) (b) occur, those responsible are identified and duly punished. This must be measured against the background of the fact that the practicalisation of the work of the Auditor-General will ensure that there is probity and accountability in the management of state funds. This will no doubt prevent the wanton dissipation of state resources that are meant for specific projects and activities under the Government's fiscal policies.

This therefore means that there should be no loss to the state or public in the management of state resources.

At this moment, we think judicial notice can be taken of the fact that corruption, abuse of position and embezzlement of public funds among others has become the bane of our governance structures. Reference is made to the various Auditor-General's Reports attached to these proceedings. It is our opinion that, notice must be taken of the rampant carelessness that is often times employed by those in charge of public funds in most entities.

We believe that the time has come when it is necessary to strengthen the relevant constitutional bodies set up under the Constitution such as the Auditor-General to

protect the public purse from persons who intend to embark upon personal economic recovery programmes with the public funds.

We are also of the view that, the Auditor-General is expected to name the persons who commit irregularities etc, under Article 187 (7) (b) and Section 17 of Act 584 respectively, recover the amounts from them and thereafter those persons be made to face appropriate punishment. That should be the way forward.

We therefore have a duty to ensure that the reports of the Auditor-General into the public accounts of Ghana wherein findings are made in respect of persons who act in authorizing expenditure contrary to law, or have withheld sums of money from the public account or by whose negligence or misconduct losses or deficiencies to public funds has resulted, must be treated in accordance with the Constitution and laws of Ghana, and have an immediate impact.

"To be or not to be, that is the question", reference Shakespeare in Hamlet, Prince of Denmark.

Should this court hold and rule that, because the word "may" has been used in article 187 (7) (b) of the Constitution 1992, the Auditor-General's powers of Surcharge and disallowance are not mandatory and can be exercised at the whims and caprices of the Auditor-General? Are these constitutional obligations discretionary then?

We have been privileged to have been given access to the training materials used by the Auditor-General on March 23rd 2006 in a presentation by the then Auditor-General Mr. Edward Dua Agyemang, at a seminar on public accounts management, among others, on the topic *"Public Expenditure Monitoring and Tracking- The Role of the Auditor-General"* attached to these proceedings as exhibit OG1.

We find these materials quite appropriate, and revealing. Since they also conflict with the stance of the Defendants in these proceedings, we deem it appropriate to refer to some of them as per exhibit OG1.

Powers of surcharge and approval of systems

"In the course of monitoring public expenditure, the Auditor-General has been given a unique power of surcharge by the Constitution and the Audit Service Act*. Article 187 (7) (b) of the Constitution requires that the Auditor-General may disallow any item of expenditure, which is contrary to law and surcharge."*

Any person against whom a surcharge has been raised by the Auditor-General has the power of appeal against the surcharge in the High Court.

So far this power has not been invoked against public officials because they are given the opportunity to rectify financial lapses resulting in delayed accountability.

However, because of the escalation in cash irregularities by 99.5% in 2004 involving presented payments vouchers and unacquitted payments, the Auditor-General will invoke his powers of surcharge against responsible officers for such serious compliance violations in 2006. This robust sanction will hasten and deepen accountability in the country." Emphasis

The combined effect of the above is that, as at March 2006, the office of the Auditor-General recognized the fact that the way to protect the public funds of Ghana, and prevent looting of the public purse, avoid corruption and dictatorship is to practicalise the constitutional provisions on the powers of surcharge and disallowance, granted the Auditor-General under the Constitution 1992.

However, this resolve to exercise this power from 2006 has not only been breached, but there has been stoic silence from the office of the Auditor-General to date.

We do not substitute the views of the Auditor-General in those presentations for our constitutional mandate in interpreting and enforcing the constitutional provisions in article 187 (7) (b) as we are required to do. We have only done the references in order to let it be known that, this was the thinking of the Auditor-General in 2006 on these vexed issues.

We also wish to refer to the locus classicus case of ***Tuffour v Attorney-General [1980] GLR 637***. Even though the facts of this case are well known, suffice it to be stated briefly as follows:-

The Plaintiff therein, filed a writ against the Speaker and Attorney General under Section 3 of the first Schedule to the Constitution 1979 for a declaration as follows:-

a. On the coming into force of the Constitution the Hon. Mr. Justice Apaloo was deemed to have been appointed as Chief Justice and also as President and member of the Supreme Court.
b. The application of the procedure in article 127 (1) to him and his purported vetting and rejection by Parliament were in contravention of the Constitution.
c. That Justice Apaloo remained Chief Justice and President of the Supreme Court.

Sowah JSC (as he then was) in delivering the judgment of the court, made some pronounced and notable statements regarding the nature of a written constitution such as this 4th Republican Constitution and how it also mirrors the history of the people of Ghana. Out of abundance of caution, we wish to refer to the relevant portions of that judgment.

This has been done with a view to illustrating how Constitutional provisions can be interpreted to achieve the special architecture designed to ensure a

proper equilibrium in the governance structure aimed at probity, accountability and transparency. Without these values, all is vanity in our quest for a control mechanism of our public funds or accounts. He states:-

> *"A written Constitution such as ours is not an ordinary Act of Parliament. It embodies the will of a people. It also mirrors their history. Account, therefore, needs to be taken of it as a landmark in a people's search for progress. It contains within it their aspirations and their hopes for a better and fuller life.*
>
> *The Constitution has its letter of the law. Equally, the Constitution has its spirit. It is the fountain-head for the authority which each of the three arms of government possesses and exercises. It is a source of strength. It is a source of power. The executive, the legislature and the judiciary are created by the Constitution. Their authority is derived from the Constitution. Their sustenance is derived from the Constitution. Its methods of alteration are specified. In our peculiar circumstances, these methods require the involvement of the whole body politic of Ghana.* ***Its language, therefore, must be considered as if it were a living organism capable of growth and development Indeed, it is a living organism capable of growth and development, as the body politic of Ghana itself is capable of growth and development. A broad and liberal spirit is required for its interpretation. It does not admit of a narrow interpretation. A doctrinaire approach to interpretation would not do. We must take account of its principles and bring that consideration to bear, in bringing it into conformity with the needs of the time. And so we must take cognisance of the age-old fundamental principle of constitutional construction which gives effect to the intent of the framers of this organic law****. Every word has an effect. Every part must be given effect. Perhaps it would not be out of place to remember the injunction of St. Paul contained in his First Epistle to the Corinthians, Chapter 12, verses 14-20 (King James Version):*

"For the body is not one member, but many. If the foot shall say, Because I am not the hand, I am not of the body; is it therefore not of the body? And if the ear shall say, Because I am not the eye, I am not of the body;
is it therefore not of the body? If the whole body were an eye, where were the hearing ? If the whole were hearing, where were the smelling . . . ?
But now are they many members, yet but one body."
And so a construction should be avoided which leads to absurdity. *And when a particular interpretation leads to two, shall we say "inconsistent" results, the spirit of the Constitution would demand that the more reasonable of the two should be adhered to. We must have recourse to the Constitution as a whole." Emphasis supplied*

When we put all the learning in the above quotation together, the **"may**" in article 187 (7) (b) of the Constitution 1992, becomes a mandatory may, and no longer permissive. This is to afford us the opportunity to enforce the provisions of article 187 (7) (b) which will deepen probity and accountability.

It is to be noted that the times we are in as a nation require that we deepen and institutionalize principles which will uphold proper and decent management and protection of public accounts. The tendency where public accounts are considered as a fattened cow to be milked by all and sundry must stop. Our laws on financial management must therefore be made to work to prevent absurdity in our enforcement regimes of same.

We reckon that, it is in the pursuance of these noble objectives that the Rules of Court Committee has enacted C. I. 70 and also C.I. 102 both referred to supra.

The **rationale for the above is to** give teeth to the constitutional and statutory mandate of the Auditor-General's powers on Disallowance and Surcharge to bite.

In their respective submissions, learned counsel have variously referred to and relied on Audit observations and management letters.

In essence, whilst the Defendants concede that the Auditor-General has this constitutional power or mandate of surcharge and disallowance, they argue that, the duty of the Auditor-General ends with the submission of his report. They contend further that, action on the Auditor-General's reports are to be implemented by other statutory bodies. These are the Audit Committee's established under the Public Financial Management Act, 2016, Act 921, section 85 (1) of which deals with the report and recommendations of the Auditor-General by the principal spending officer of that entity in relation to his dealings with the Auditor-General and Parliament respectively.

On the other hand, sections 86 to 88 of Act 921 deals with the Establishment of Audit Committees by various entities, the composition of the membership of such committee's and the functions of the said Audit Committees respectively.

Section 88 (1) of Act 921 has already been referred to supra. The crux of the provisions therein contained indicate that, in all cases;

1. The Audit Committees are to pursue the implementation of any recommendation contained inter alia, in the Auditor-Generals report, as decided upon by Parliament, and the Auditor-General's management letter and
2. To prepare an annual statement showing the status of implementation of any recommendation contained in the Auditor-General's report on
   (a) Parliament's decision on the Auditor-General's report and
   (b) Auditor-General's management letter, among others

What is to be noted is that, all the above requirements and procedures are statutory, based on Acts 584 and 921 respectively as well as the Audit Service Regulations, 2011 respectively. However, the Auditor-General's powers of surcharge and disallowance are constitutional and therefore have to be on a higher pedestal and given pride of place.

When we consider the combined effect of Regulations 34, 35, and 57 respectively of the Audit Service Regulations, 2011 C I. 70, which deals with Audit observations and reporting, consequences of not responding to an audit observation and issue of management letters after completion of an audit assignment respectively, it becomes very clear that these roles and functions are different in scope and magnitude from the Auditor-General's report envisaged and stipulated in articles 187 (2) (5) respectively of the constitution.

Whilst management letters are issued by Branch and sectorial heads within two weeks of an audit assignment, containing their findings, recommendations and conclusions of their assignment to the management of the entity and copied to the officials and the organisations, that of the Auditor-General is wider in scope as it is submitted to Parliament and has far reaching effects and consequences as is stipulated in articles 187 (7) (b) of the Constitution.

Audit observations per Regulation 34 (1) of C. I. 70 on the other hand are formal audit observations issued at an audit location in the course of the audit. In this respect, the audit team is enjoined under Regulation 34 (2) (a) & (b) of C. I. 70 to take steps to discuss with the audited organization the findings and recommendations arising from the audit and also obtain written responses from the audited organization. Thus these activities occur at a lower level and earlier stage of the process which culminated in the Auditor-General's report submitted to Parliament.

It is thus therefore quite clear that Audit observations, and Management letters are different in context, scope and magnitude from the Auditor-Generals' report as stipulated in article 187 referred to supra.

From the above discussions, it is quite apparent that the Auditor-General has an obligation to ensure that his powers of disallowance and surcharge duly exercised by him under article 187 (7) (b) of the Constitution are complied with by the public entity or officials directly affected by the exercise of his powers of surcharge and disallowance.

CONCLUSION

In the premises, it is our considered view that using the principles of interpretation so eloquently and powerfully explained in the decision in the case of ***Tuffour v Attorney-General***, supra and the purposive approach to interpretation generally, this court will interprete article 187 (7) (b) as having a mandatory effect in so far as the Auditor-General's report is final.

In the premises, the Plaintiffs succeed in their claims against the Defendants in respect of reliefs 1, 2, and 3 as follows:-

1. That upon a true and proper interpretation of Article 187 (7) (b) (i) of the Constitution, the Auditor-General is bound to issue a disallowance or surcharge where there has been any item of expenditure on behalf of the Government that is contrary to law.

2. That upon a true and proper interpretation of Article 187 (7) (b) (ii) of the Constitution, the Auditor-General is bound to issue a disallowance and surcharge where any person fails to bring any sum into the Government's account.

3. That upon a true and proper interpretation of Article 187 (7) (b) (iii) of the Constitution, the Auditor-General is bound to issue a disallowance and surcharge where the Government suffers or incurs a loss or deficiency through the negligence or misconduct of any person.

4. Reliefs 4 and 5 are granted in their entirety against the Defendants.

CONSEQUENTIAL ORDERS

1. As a sequel to our judgment just delivered, we further direct that, henceforth, the Auditor-General shall take steps to recover the amount unlawfully expended from the person or persons who incurred and or authorised the disallowed expenditure.

2. Secondly, the Auditor-General shall also take steps to recover the amount from the person or persons by whom the amount ought to have been brought into account.

3. Thirdly, the Auditor-General shall also take steps to recover the value of the loss or deficiency from the person or persons by whose negligence or misconduct the losses or deficiencies were incurred, (whether or not the person is a public servant).

4. Finally, the Attorney-General is hereby ordered to take all necessary steps to enforce the decisions or steps taken by the Auditor-General supra to ensure compliance including in some cases criminal prosecutions.

We have had to issue out the above consequential orders even though we are happily aware that the current Auditor-General Mr. Daniel Yao Domelevo has taken steps to train his staff under C. I. 102 to prepare them adequately for the hearings in respect of the surcharge and disallowance appeals anticipated under article 187 (7) of the Constitution.

EPILOGUE

Quoting again from the presentation by the then Auditor-General, Mr. Edward Dua Agyemang, attached to these proceedings by the Plaintiffs as exhibit OG1, which we have already referred to supra, the Auditor-General concluded that presentation as follows:-

"Let me conclude by saying that whenever people get a choice between privacy and accountability, they tend to choose privacy for themselves and accountability for everyone else. But accountability and good governance are inextricably interrelated with each other. Take away accountability from good governance and you will be left with dictatorship and corruption.

For accountability to thrive there is the need to have effective monitoring and tracking of public expenditure by the Auditor-General. The success in this endeavor depends on strong political will to adequately resource the Auditor-General to be able to hire and maintain properly trained staff and professionals; acquire the needed equipment and other resources.

The growing interest of the public in the work of the Auditor-General has demonstrated the important contribution the Auditor-General makes in helping our nation spend wisely through expenditure surveillance. The Auditor-General provides assurances to the people of Ghana through Parliament that public money is spent properly and that there is accountability." Emphasis

From the above, what is apparent is that, there is an urgent need to adequately resource not only the office of the Auditor-General, but also that of the other constitutional bodies like the Judiciary, CHRAJ and Attorney-General, just to mention a few, who are the front runners in our fight against corruption. This will ensure that the impact of these constitutional bodies in our quest to ensure probity and accountability thereby enhancing proper management and control of public funds is put on a higher pedestal.

We believe that as a nation, we have reached a critical stage in our governance systems where we must not shy away from spending wisely in order to superintend the

public purse. This is the only sure way to ensure that the good governance principles enshrined in the Constitution such as article 187 (7) (b) are not lost.

There is an old adage which states as follows *"penny wise, pound foolish".* We therefore must adequately fund these constitutional bodies including the Auditor-General to ensure maximum protection of the public funds.

Save as is stated supra, the Plaintiffs succeed substantially on their claims against the Defendants.

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

S. A. B. AKUFFO (MS)
(JUSTICE OF THE SUPREME COURT)

S. O. A. ADINYIRA (MRS)
(JUSTICE OF THE SUPREME COURT)

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