

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
ACCRA – A.D. 2022

SUIT NO. GJ/1232/2022

18/10/2022
11:00
Registrar
ACCRA

IN THE MATTER OF THE OFFICE OF THE SPECIAL PROSECUTOR ACT, 2017 (ACT 959)
AND THE OFFICE OF THE SPECIAL PROSECUTOR (OPERATIONS) REGULATIONS,
2018 (L. I. 2374) AND THE 1992 CONSTITUTION

AND

IN THE MATTER OF AN APPLICATION BY COLONEL KWADWO DAMOAH (RTD) AND
JOSEPH ADU-KYEI FOR THE ENFORCEMENT OF THEIR FUNDAMENTAL RIGHTS TO
NATURAL JUSTICE AND AGAINST ABUSE OF DISCRETIONARY POWER UNDER
ARTICLE 296 OF THE 1992 CONSTITUTION

AND

IN THE MATTER OF AN APPLICATION BY COLONEL KWADWO DAMOAH (RTD) AND
JOSEPH ADU-KYEI FOR JUDICIAL REVIEW PURSUANT TO ARTICLE 141 OF THE 1992
CONSTITUTION, SECTION 16 OF THE COURTS ACT, 1993 (ACT 459), AND ORDER 55
OF C. I. 47

AND IN THE MATTER OF:

THE REPUBLIC

VRS

1. THE OFFICE OF THE SPECIAL PROSECUTOR
6 HAILE SELASSIE AVE
SOUTH RIDGE
ACCRA
2. MR. EMMANUEL AMADU BASINTALE
FORMER SUPERINTENDENT OF POLICE (SEKONDI)
NOW OF THE OFFICE OF THE SPECIAL PROSECUTOR
6 HAILE SELASSIE AVE
SOUTH RIDGE
ACCRA

RESPONDENTS

EX PARTE:

1. COLONEL KWADWO DAMOAH (RTD.)
NO. 5 RANGOON VILLAS
7TH RANGOON CLOSE
CANTONMENTS
ACCRA
2. JOSEPH ADU-KYEI
DEPUTY COMMISSIONER OF CUSTOMS
MINISTRY OF FINANCE
REVENUE POLICY DIVISION
MINISTRIES
ACCRA

APPLICANTS

THE APPLICANTS' STATEMENT OF CASE
PURSUANT TO ORDER 55 RULE 6 (2) OF C. I. 47

Your Lordship,

INTRODUCTION

1. This is an Application for an Order of Judicial Review invoking this Court's jurisdiction under Article 141 of the 1992 Constitution, Section 16 of the Courts Act, 1993 (Act 459) and the judicial review jurisdiction under Order 55 of C. I. 47) [paragraph 59 of Affidavit] in respect of the decisions and directives contained in a report made and published by the 1st Respondent in the electronic and print media titled "Report of Investigation into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority" dated 3 August 2022, (hereinafter referred to as the "OSP Labianca Report"), in which adverse findings and directives were made by the 1st Respondent against the Applicants herein, including one other, for having committed corruption and/or corruption-related offences pursuant to an alleged investigation in which all three were invited to assist and assisted the investigation only as witnesses.

2. The Applicants submit as matters of law and legal argument that the 1st Respondent acted ultra vires its parent enactment, the Office of the Special Prosecutor Act, 2017 (Act 959), particularly Sections 2, 3, 21, 28, 74, 75 and 79 thereof; and the two subsidiary legislation made pursuant thereto, the Office of the Special Prosecutor Regulations, 2018, (L. I. 2373), particularly Regulations 2, 3, 5, 12, 16, and 18 thereof, and the Office of the Special Prosecutor (Operations Regulations, 2018 (L. I. 2374), particularly Regulations 6, 7, and 35 thereof, when the 1st Respondent constituted an investigation panel under the Chairmanship of the 2nd Respondent, an unauthorized officer of the 1st Respondent, to investigate and investigated allegations of corruption and corruption-related offences not specified under the Act that led the 1st Respondent into making the decisions and determinations resulting in the adverse findings contained in its "Report of Investigation into Alleged Commission of Corruption and Corruption-Related Offences involving

Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority” dated 3 August 2022 against the Applicants herein who were never cautioned or charged with any specified corruption and corruption-related offences under Section 79 of the Act as stated in the immediate preceding paragraph.

3. It is based on the foregoing summation of the unlawful conduct and actions of the 1st Respondent in the constitution of the investigation panel, leading to the review of the report and recommendation of the investigation panel by the Special Prosecutor of the 1st Respondent and the making of the decisions and determinations of adverse findings and direction against the Applicants contained in the OSP Labianca Report dated 3 August 2022 that the Applicants submit that this Court ought to exercise its supervisory and judicial review powers aforesaid in favour of the Applicants and declare the actions of the 1st Respondent in constituting the investigation panel and making the OSP Labianca Report dated 3 August 2022 as having been made without or in excess of the mandate or jurisdiction of the 1st Respondent under Act 959, L. I. 2373, and L. I. 2374. Consequently, the Applicants pray this Honourable Court on the detailed legal argument to be made hereunder to grant the Applicants relief of declaration, certiorari and prohibition, and restraining orders against the 1st and 2nd Respondents.

THE FACTS

4. The 1st Respondent in almost identical letters headed “Direction to Attend the Office of the Special Prosecutor” signed and addressed to the 1st and 2nd Applicants dated 20th December 2021 and 7th February 2022 informed each of the Applicants that:

“The Office of the Special Prosecutor (OSP) has commenced investigation into suspected corruption and corruption-related offences in respect of the evasion and valuation of duties relating to frozen and processed food products imported into Ghana by LaBianca Company Limited between 2017-2021. The OSP considers you a person necessary for the investigations. You are directed to attend, in person the offices of the OSP at 6 Haile Selassie Avenue, South Ridge Accra GA-079-0906 on Thursday 6 January 2022 at 11:30 in the forenoon for interviewing. You may be accompanied by counsel of your choice.”

The said letters, without reference numbers, and which did not disclose the mandate under which they were written by the 1st Respondent are exhibited to paragraphs 15 and 22 of the supporting affidavit to this application as “Exhibit KD4” and “Exhibit KD5”.

5. The interview of the Applicants referred to in their respective invitation letter eventually took place on 10 January 2022 and 16 February 2022 when they each attended the offices of the 1st Respondent and was directed to appear before a two-person interview panel chaired by the 2nd Respondent, Emmanuel Basintale, as head of the investigation panel, when the 2nd Respondent, Emmanuel Basintale, was then a Superintendent of Police stationed in Sekondi in the Western Region of Ghana as a police prosecutor. The Applicants subsequently got to know that the 2nd Respondent was not only an unauthorized officer of the 1st Respondent but was away without leave from his duty post in Sekondi as a police prosecutor without the knowledge and written permission of the Police Administration to perform the duties of an investigator at the OSP. This information came to the Applicants’ knowledge when they in online publications in “CITI

NEWSROOM” on March 17, 2022 and March 22, 2022 that the 2nd Respondent was the prosecutor “in the traffic offense case against the Mayor of Sekondi-Takoradi, Abdul Mumin Isaah” and that “the prosecutor, Superintendent Emmanuel Basintale, finally filed and served the defense counsel the disclosures the court had been waiting for since the last sitting.” [Refer to paragraph 12 of Affidavit in Support of Application].

6. The interview of the Applicants was conducted by the 2nd Respondent who informed the Applicants in the presence of their respective lawyers that they had been invited as witnesses to assist the investigation: consequently, no caution words or statements were administered to either of the Applicants before their respective interviews. The 2nd Applicant wrote a witness statement for the 1st Respondent after the interview while the 1st Applicant was given a witness statement form to complete and return at his pleasure.

7. The 1st Applicant never returned any witness statement and the 1st and 2nd Respondents never demanded one or sent the 1st Applicant a reminder. The Applicants were never invited again by the 1st Respondent for any further interview or interrogation for the commission of any specified corruption and corruption-related offences. The Applicants, therefore, considered themselves to be protected witnesses until the 1st Respondent decided otherwise to invite them as suspects for any further investigation.

8. This was the state of affairs when it came to the notice of the Applicants as a matter of surprise through the electronic and print media on 8 August 2022 that 1st Respondent, acting by Kissi Agyebeng, its Special Prosecutor, had that morning published a report entitled “Report of Investigation into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority” dated 3 August 2022, in which adverse findings were made against the Applicants and one other, for having committed corruption and/or corruption-related offences pursuant to the aforesaid investigation.

9. The 1st Respondent stated in pages 1 and 2 of the said report that “The Special Prosecutor, upon determining that the complaint was within the mandate of the OSP, authorized the commencement of preliminary investigation into the matter in accordance with regulation 5 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L.I. 2374) ... Labianca, being the main subject of the investigation, was directed to submit the following documents covering the period 2017 – 2021 in accordance with section 29 of the Office of the Special Prosecutor Act, 2017 (Act 959) and regulation 10 of L. I. 2374. ... Upon being satisfied that the circumstances of the matter reasonably indicated so, the Special Prosecutor authorized the commencement of full investigation under regulation 6 of L.I. 2374 to prevent or prosecute corruption or corruption-related offences. In aid of the investigation, several persons were invited to the offices of the OSP for interviewing and they were accorded the right to be represented by Counsel and full opportunity to respond to the complaint” (see paragraphs 3.1, 3.2 and 3.3 of the said report dated 3 August 2022).

10. After the aforesaid report of the 1st Respondent was published and discussed extensively in the electronic and print media, the 1st Respondent issued a press release and wrote a letter without reference number dated 11 August 2022, stating, inter alia, that: “Upon the completion of the investigation by the Office of the Special Prosecutor into the affairs of Labianca Company Limited and the Customs Division of the Ghana Revenue Authority, I have directed the opening of a wider investigation in respect of the issuance of customs advance rulings and markdown of benchmark values.”: the gist of this letter was issued as a press release by the 1st Respondent on 15 August 2022.(The letter was stamped “Restricted”).

11. The 1st Respondent immediately followed its letter of 11th August 2022 with another press release dated 22 August 2022 to the media insinuating the commission of crime by the Applicant, indicating inter alia, that the 1st Respondent had: “commenced investigations into the suspected corruption and corruption-related offences in respect of auction sales of vehicles and other goods by the Customs Division of the Ghana Revenue Authority between 1 July 2016 and 15 August 2022”. (see paragraphs 32 and 33 of the supporting affidavit and the attached “Exhibit KD9”).

12. The foregoing letters and press releases constituted threats by the 1st Respondent to the Applicants after the trial of the Applicants in the court of public opinion based on the earlier adverse findings and directions to investigate Applicants again and write another or other reports making similar adverse findings against the Applicants for publication and trial of the Applicants in the court of public opinion as the 1st Respondent did with the OSP Labianca Report dated 3 August 2022: the threatened investigations by the 1st Respondent are pending against the Applicants and the 1st Respondent intends to proceed with those investigations unless prohibited or restrained by this Court on grounds of procedural impropriety.

13. Consequent upon and subsequent to the aforementioned OSP Labianca Report of the 1st Respondent dated 3 August 2022 the 1st Applicant’s position as the Commissioner, Customs Division was terminated on the morning of Monday 29 August 2022 by a letter with reference number OSP127/22/889 dated 26 August 2022 directing him “... effective Friday, 26th August, 2022 ... to handover your duties and office to the acting Deputy Commissioner (Preventive)”, whilst on 16 August 2022 the 2nd Applicant received a letter with reference number CG/GRA/9.1/08/22 from the Commissioner-General of GRA seconding the 2nd Applicant, inter alia,: “... to the Ministry of Finance to work in the Revenue Policy Division. The secondment takes effect from 15th August 2022” upon the request of the Minister for Finance without any prior notice or consultation whatsoever. (See paragraphs 4, 6, 8, 9 and 10 of the supporting and accompanying affidavit and Exhibits KD3 and Exhibit KD3a thereof).

THE QUESTIONS TO BE DETERMINED, THE RELIEFS SOUGHT AND THE GROUNDS FOR THE APPLICATION FOR JUDICIAL REVIEW

14. As the supporting affidavit accompanying this application discloses the main questions for determination by this Court for which the Applicants have invoked this Court’s jurisdiction under Article 141 of the 1992 Constitution, section 16 of the Courts Act, 1993 (Act 459) and the judicial review jurisdiction under Order 55 of C. I. 47 are stated at paragraph 59 of the supporting affidavit. The reliefs sought are stated on paragraph 60 of the supporting affidavit,

while the grounds for which the reliefs are sought are stated at paragraphs 61 of the supporting affidavit. They are quoted herein seriatim for ease of reference and to aid the legal argument of this application.

“59. That accordingly and in the circumstances, the application before this Court, which invokes the Court’s jurisdiction under Article 141 of the 1992 Constitution, Section 16 of the Courts Act, 1993 (Act 459) and the judicial review jurisdiction under Order 55 of C. I. 47, is to determine the following main questions:

(i). Whether or not the 1st Respondent acted ultra vires its statutory mandate under Sections 2(a) and (b), 3 of the office of the Special Prosecutor Act, 2017 (Act 959) and Regulation 7 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374) when it wrote and published on 8th August 2022 in the electronic and print media the report titled: “Report of Investigations into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority” dated 3 August 2022 for the trial in the court of public opinion of the 1st and 2nd Applicants instead of in a court of law.

(ii). Whether or not the 1st Respondent acted ultra vires its statutory mandate under Sections 2(a) and (b), 3 and 79 of Act 959 and Regulation 7 of L. I. 2374 when without establishing any specified suspected commission of any corruption and/or corruption related offence(s) against the 1st and 2nd Applicants the 1st Respondent proceeded to make adverse findings against them based on a purported interpretation of the Customs Act, 2015 (Act 891) and the Revenue Administration Act, 2016 (Act 915).

(iii). Whether or not the 1st Respondent acted ultra vires its statutory mandate by making adverse findings in the published OSP Labianca Report against the 1st and 2nd Applicants who became protected witnesses under Section 72 of Act 959, and in breach of the fundamental rights to natural justice of the 1st and 2nd Applicants to be heard before before the OSP Report was made and published for the trial of the 1st and 2nd Applicants in a court of public opinion instead of a court of law.

(iv). Whether or not the 1st Respondent acted ultra vires its statutory mandate under Sections 21, 28, and 74 of Act 959 and Regulations 2, 3, 12, 16, and 18 of L. I. 2374 when it used or engaged the services of the 2nd Respondent, an unauthorized officer to investigate and interview the 1st and 2nd Applicants as witnesses in the Labianca Company Limited and Customs Division of Ghana Revenue Authority investigation.

(vi). Whether or not the 1st Respondent acted ultra vires its statutory mandate aforesaid when it engaged the services of the 2nd Respondent who at the time was a serving Superintendent of Police assigned to police prosecution duties in the

Western Region to interview the 1st and 2nd Applicants, submit a report with recommendation based upon which the OSP Labianca Report was made and published to damnify the 1st and 2nd Applicants.

(vii). Whether or not there are any corruption/and or corruption-related offence(s) known as “conflict of interest”, “influence peddling” or “trading of influence” or “conduct and/or action indicating a high propensity to engender corruption and corruption-related activities” under Sections 2(a), 3 and 79 of Act 959 as referred to in the 1st Respondent’s OSP Labianca Report to have warranted the adverse findings made by the Special Prosecutor, Kissi Agyebeng, against the 1st and 2nd Applicants as the 1st Respondent purported to have done and published in the media for the trial of the 1st and 2nd Applicants herein, in the court of public opinion instead of a court of law.”

60. That on the basis of depositions herein made, the Applicants seek the following reliefs against the Respondents:

(i). A Declaration that upon a true and proper interpretation of Sections 2(a), 3 and 79 of the Office of the Special Prosecutor, Act 2017 (Act 959) and Regulations 5, 6, and 7 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374), the 1st Respondent had no mandate or jurisdiction to have converted the report and recommendations of the purported investigation panel submitted to the Special Prosecutor, into the OSP Labianca Report dated 3 August 2022 in which decisions containing adverse findings and directives were made against the 1st and 2nd Applicants and published in the electronic and print media for their trial by public opinion instead of in a court of law.

(ii). A Declaration that on a true and proper interpretation of Section 72 of the Office of the Special Prosecutor Act, 2017 (Act 959) the 1st Respondent acted without authority or jurisdiction in making decisions containing adverse findings and directives against the 1st and 2nd Applicants or any other person as protected witnesses when they had not been cautioned or charged with any specified suspected corruption and /or corruption-related offence(s) and causing same to be published in the electronic and print media.

(iii). A Declaration that on a true and proper interpretation of Sections 2(a) and (b), 3 and 79 of the Office of the Special Prosecutor Act, 2017 (959) and Regulations 5, 6, and 7 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374), Sections 12, and 151 of the Customs Act, 2015 (Act 891), and Sections 103 to 106 of the Revenue Authority Act, 2016 (Act 915), the proper statutory authority with jurisdiction to establish “the evasion and valuation of customs duties relating to frozen and processed food products imported into Ghana” and accept the assessed customs values thereto for payment of customs duty, or duty short-levied, into any public account, in the absence of the establishment by the 1st Respondent of any specified commission of any corruption and/or corruption-related offence(s), is the Commissioner-General of

the Ghana Revenue Authority and not the 1st Respondent acting by the Special Prosecutor.

(iv). A Declaration that on a true and proper interpretation of Sections 21, 28, and 74 of the Office of the Special Prosecutor Act, 2017 (Act 959) and Regulations 2, 3, 12, 16, and 18 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374), the 1st Respondent acted ultra vires in holding out, permitting, and allowing the 2nd Respondent, to present himself as the Head of the Investigation Panel and to interview the 1st and 2nd Applicants resulting in the report and recommendations of the investigation panel submitted to the 1st Respondent upon which decisions containing adverse findings and directives were made in the 1st Respondent's OSP Labianca Report dated 3 August 2022 against the 1st and 2nd Applicants, and published in the media when the 2nd Respondent was not an authorized officer or investigator of the 1st Respondent.

(v). A Declaration that there is no corruption/and or corruption-related offence(s) known as "conflict of interest", "influence peddling or trading of influence" or conduct and/or activity indicating "... a propensity to engender corruption and corruption-related activities" under Sections 2(a), 3 and 79 of Act 959 as referred to in the 1st Respondent's OSP Labianca Report dated 3 August 2022, to have mandated or warranted the decisions containing adverse findings and directives made by the 1st Respondent against the 1st and 2nd Applicants or any other person.

(vi). A Declaration that accordingly, any and/ or all the purported proceedings from 10 January 2022, 19 January 2022 and 16 February 2022 together with the report and recommendations of the investigation panel, and in particular the decisions, adverse findings and directions contained in the "Report of Investigation into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority" dated 3 August 2022 are ultra vires the 1st Respondent's mandate, forbidden, illegal, irrational, procedurally improper and violative of the letter and spirit of Act 959 and L. I. 2374; and are accordingly null, void and without effect whatsoever.

(vii). An Order of Certiorari to quash and to remove from the Registry/Records of the 1st Respondent, the Office of the Special Prosecutor, for purposes of being quashed, the proceedings of the investigation panel, particularly the report of the 1st Respondent, Office of Special Prosecutor, dated 3 August 2022 called, "Report of Investigation into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority" in so far as it relates to investigations into violations of Sections 2(a), 3 and 79 of the Office of the Special Prosecutor, Act 2017 (Act 959) and Regulations 5, 6, and 7 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374), relating to the commission of corruption and/or corruption-related offences on grounds of jurisdictional error on the face of the record, irrationality, and procedural impropriety.

(viii). An Order of Certiorari to quash and to remove from the Registry/Records of the 1st Respondent, the Office of the Special Prosecutor, the adverse findings of “conflict of interest”, “influence peddling or trading of influence” or conduct and/or activity indicating “... a propensity to engender corruption and corruption-related activities” made against the Applicants contained in the decisions and directions of the 1st Respondent’s said report dated 3 August 2022 which are not specified corruption and corruption-related offences under Act 959, on grounds of jurisdictional error on the face of the record, irrationality, and procedural impropriety.

(ix). An Order of Prohibition to prohibit the 1st Respondent from assuming jurisdiction and making any report containing decisions, adverse findings and directives against the Applicants or other persons similarly situated, and publishing same in the electronic and print media by virtue of any report and recommendations by the 1st Respondent in violation of Sections 2(a) and (b), 3 and 79 of Act 959 and Regulations 5, 6, and 7 of L. I. 2374 for the alleged commission of corruption and/or corruption-related offence(s) in the future except in accordance with Section 3(3) of Act 959 and or in a court of law.

(x) A Order of Prohibition to prohibit the 1st Respondent from assuming the authority to employ the services of unauthorized persons, such as the 2nd Respondent, who have not been recruited and or appointed in accordance with Sections 21, 28, and 74 of the Office of the Special Prosecutor Act, 2017 (Act 959) and Regulations 2, 3, 12, 16, and 18 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374), in the investigation and/or prosecution of any offences under Sections 2(a), 3, and 79 of Act 959 in order to prevent the recurrence of the 1st Respondent’s ultra vires actions against the Applicants herein that resulted in bringing this Application for Judicial Review.

(xi) An Order restraining the 2nd Respondent from holding himself out as an authorized officer for the purposes of the investigation and/or prosecution of any offences under Sections 2(a), 3 and 79 of Act 959 for or on behalf of the 1st Respondent without being properly recruited and appointed in accordance with Article 195 of the 1992 Constitution and Sections 21, 28, and 74 of the Office of the Special Prosecutor Act, 2017 (Act 959) and Regulations 2, 3, 12, 16, and 18 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374).

(xii) Any further orders or directions that this Honourable Court may deem appropriate to give full effect or to enable effect to be given to the letter and spirit of the 1992 Constitution, the Office of the Special Prosecutor Act, 2017 (Act 959) and the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374) for the purposes of enforcing or securing the enforcement of the supervisory and judicial review powers of the Court.

61. That the Applicants pray the Court for the reliefs deposed to hereinbefore on the following grounds:

(i) The 1st Respondent's decision to constitute an investigation panel pursuant to Sections 2(a), 3 and 79 of the Office of the Special Prosecutor Act, 2017 (Act 959) and Regulations 6 and 7 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374) to investigate "suspected corruption and corruption-related offences in respect of the evasion and valuation of duties relating to frozen and processed food products imported into Ghana by LaBianca Company Limited between 2017-2021" and to submit a report and recommendations to the 1st Respondent, the purported investigation panel having been chaired by the 2nd Respondent, an unauthorized officer of the 1st Respondent, was ultra vires the mandate of the 1st Respondent under Act 959 and Regulations L. I. 2374.

(ii) The review determination of the investigation panel's report and recommendations pursuant to Regulation 7 of L. I. 2374 under the chairmanship of the 2nd Respondent made by the 1st Respondent acting through the Special Prosecutor, Mr. Kissi Agyebeng, dated 3 August 2022 and published in the media on 8th August 2022 on behalf of the 1st Respondent as "Report of Investigation into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority" was made in violation of Article 296 of the 1992 Constitution and without any statutory mandate or jurisdiction under Sections (2) (a) and (b), 3 and 79 of Act 959 and Regulation 7 of L. I. 2374 and is accordingly unreasonable, illegal and void ab initio.

(iii) The decision of the 1st Respondent to recruit and engage the services of the 2nd Respondent who was not seconded, transferred or appointed pursuant to Sections 21, 28, and 74 of the Office of the Special Prosecutor Act, 2017 (Act 959) and Regulations 2, 3, 12, 16, and 18 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374) was ultra vires the statutory mandate of the 1st Respondent and was unreasonable, and unlawful.

(iv) The report containing the decisions, adverse findings and directives dated 3 August 2022 and published in the media on 8 August 2022 as the OSP Labianca Report by the 1st Respondent acting by the Special Prosecutor, Mr. Kissi Agyebeng, against the 1st and 2nd Applicants who were statutorily protected witnesses under Section 72 of Act 959 is in breach of their fundamental rights to natural justice as the applicants were not cautioned or charged with any specified corruption and/or corruption-offence(s), and were accordingly made without mandate or jurisdiction, and are consequently unlawful, null, and void ab initio.

GENERAL ARGUMENTS OF LAW ON THE PRECONDITIONS FOR THE EXERCISE OF POWERS FOR JUDICIAL REVIEW IN THIS APPLICATION

15. The Applicants submit that the conduct and actions of the 1st and 2nd Respondents summarized in the narration of the facts above necessitating this application for judicial review meet all the threshold preconditions for this Court to exercise its supervisory and judicial review jurisdiction over the 1st and 2nd Respondents as the Supreme Court outlined in the case of **REPUBLIC V THE HIGH COURT, ACCRA; EX PARTE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (ADDO INTERESTED PARTY) [2003-2004] SCGLR 312 SC**, when Dr. Justice Date-Baah delivering the unanimous judgment of the Court stated, inter alia, at page 325 that:

‘... The English courts now recognize three broad grounds of judicial review, namely, illegality, irrationality and procedural impropriety. These three grounds were expressed by Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410 as follows:

“By illegality ... I mean that the decision-maker must understand correctly the law that regulates his decision-making power and give effect to it ... By ‘irrationality’ I mean what can now be succinctly referred to as “*Wednesbury* unreasonableness’ ... It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it ... I have described the third head as ‘procedural impropriety’ rather than the failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.”

16. The Supreme Court affirmed the grounds for judicial review expoused by Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410 in another unanimous judgment of the Court delivered on its behalf by Mr. Justice Anim Yeboah, JSC, (as he then was) in **ENEKWA & OTHERS V. KWAME NKUMAH UNIVERSITY OF SCIENCE AND TECHNOLOGY (KNUST) [2009] SCGLR 242 at 251**. These cases will be analyzed in detail in the cause of the legal submission hereunder.

17. The Applicants intend to present their argument of law for praying this Court for the reliefs sought in this application within the conditions set out by the Supreme Court above and as they affect the facts and provisions of the Office of the Special Prosecutor Act, 2017 (Act 959), the Office of the Special Prosecutor Regulations, 2018 (L.I. 2373) and the Office of the Special Prosecutor (Operations) Regulations, 2018 (L.I. 2374).

Arguments on the grounds, as stated, on which the Applicants are seeking the reliefs stated herein as well as in the Affidavit in Support of the Applicants’ Application.

18 The Applicants proposes to argue on grounds (i), (ii), and (iii) of the grounds for this application appearing on paragraph 61 of the Applicants' supporting affidavit accompanying this application together as they are inextricably interlinked and interwoven one to the other. Those grounds state as follows:

GROUND (i)

The 1st Respondent's decision to constitute an investigation panel pursuant to Sections 2(a), 3 and 79 of the Office of the Special Prosecutor Act, 2017 (Act 959) and Regulations 6 and 7 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374) to investigate "suspected corruption and corruption-related offences in respect of the evasion and valuation of duties relating to frozen and processed food products imported into Ghana by Labianca Company Limited between 2017-2021" and to submit a report and recommendations to the 1st Respondent, the purported investigation panel having been chaired by the 2nd Respondent, an unauthorized officer of the 1st Respondent, was ultra vires the mandate of the 1st Respondent under Act 959 and Regulations L. I. 2374.

GROUND (ii)

The review determination of the investigation panel's report and recommendations pursuant to Regulation 7 of L. I. 2374 under the chairmanship of the 2nd Respondent made by the 1st Respondent acting through the Special Prosecutor, Mr. Kissi Agyebeng, dated 3 August 2022 and published in the media on 8th August 2022 on behalf of the 1st Respondent as "Report of Investigation into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority" was made in violation of Article 296 of the 1992 Constitution and without any statutory mandate or jurisdiction under Sections (2) (a) and (b), 3 and 79 of Act 959 and Regulation 7 of L. I. 2374 and is accordingly unreasonable, illegal and void *ab initio*.

GROUND (iii)

The decision of the 1st Respondent to recruit and engage the services of the 2nd Respondent who was not seconded, transferred or appointed pursuant to Sections 21, 28, and 74 of the Office of the Special Prosecutor Act, 2017 (Act 959) and Regulations 2, 3, 12, 16, and 18 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374) was ultra vires the statutory mandate of the 1st Respondent and was unreasonable, and unlawful.

19. The Applicants also in arguing the above three grounds of the Applicants' application together shall address the questions numbered (i), (iv) and (vi) set down in paragraph 59 of the accompanying affidavit for determination by this Court:

- (i). Whether or not the 1st Respondent acted ultra vires its statutory mandate under Section 3 of the office of the Special Prosecutor Act, 2017 (Act 959) and

Regulation 7 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374) when it wrote and published on 8th August 2022 in the electronic and print media the report titled: "Report of Investigations into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority" dated 3 August 2022 for the trial in the court of public opinion of the 1st and 2nd Applicants instead of in a court of law.

(iv). Whether or not the 1st Respondent acted ultra vires its statutory mandate under Sections 21, 28, and 74 of Act 959 and Regulations 2, 3, 12, 16, and 18 I. I. 2374 when it used the services of the 2nd Respondent, an unauthorized officer to investigate and interview the 1st and 2nd Applicants as witnesses in the Labianca Company Limited and Customs Division of Ghana Revenue Authority investigation.

(vi). Whether or not the 1st Respondent acted ultra vires its statutory mandate aforesaid when it engaged the services of the 2nd Respondent who at the time was a serving Superintendent of Police assigned to police prosecution duties in the Western Region to interview the 1st and 2nd Applicants, submit a report with recommendation based upon which the OSP Labianca Report was made and published to damnify the 1st and 2nd Applicants.

20. The 1st Respondent, is a statutorily established body corporate with the object of investigating and prosecuting specified cases of alleged or suspected corruption and corruption-related offences, recovering the proceeds of corruption and corruption-related offences, and to take steps to prevent corruption with the functions enabling the Office to achieve its object clearly spelt in the Office of the Special Prosecutor Act, 2017 (Act 959), the Office of the Special Prosecutor Regulations, 2018 (L. I. 2373) and the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374). It is, therefore, trite learning that the 1st respondent can only act lawfully when it does so within the statutory mandate or jurisdiction provided for under the law establishing the Office. [See paragraph 11 of the Affidavit in Support of the Application]

21. The fact that conduct of the 1st Respondent can only be valid when it acts within its mandate was amply demonstrated by this Court in the case of the **REPUBLIC V HAJIA HAWA NINCHEMA & 6 OTHERS**, Suit No. FT/012/2019, High Court, Accra, 7 May 2021 (Unreported) in which Her Ladyship, Justice Afia Serwah Asare-Botwe (Mrs.) made a detailed consideration of the objects, functions, and the consequences of the unlawful exercise of power by the 1st Respondent when it acts outside its mandate or jurisdiction. Her Ladyship quoted extensively and discussed the provisions of Act 959 dealing with the investigative and prosecutorial mandate of the 1st Respondent as follows (page 54 to 58):

'A second matter of relevance to the determination of this charge is the issue of the mandate of the Office of Special Prosecutor.

In a Ruling of this court dated the 17th of June, 2019 in **THE REPUBLIC v. MAHAMA AYARIGA AND KENDRICK AKWASI MARFO SUIT NO. MSFT/23/2019**, this Court had occasion to discuss the mandate of the Office of Special Prosecutor. This Court determined that the mandate of the Office is very proscribed. A part of the Ruling would be relevant for our purposes;

“To settle this matter, recourse will have to be had to the legislation under which the Special Prosecutor functions.

Sections 2 and 3 of the Act on the object and the functions of the Office state:

Object of Office

2 The object of the Office is to

- a) investigate and prosecute specific cases of alleged or suspected corruption and corruption-related offences;*
- b) Recover the proceeds of corruption and corruption-related offences,*
- and c) Take steps to prevent corruption.*

Functions of Office

3 (1) To achieve the objects, the Office shall

- a) investigate and prosecute cases of alleged or suspected corruption and corruption-related offences under the Public Procurement Act, 2003 (Act 663);*
- b) investigate and prosecute allegations of corruption and corruption-related offences under the Criminal Offences Act, 1960 (Act 29) involving public officers, politically exposed persons and persons in the private sector involved in the commission of the offences;*
- c) investigate and prosecute alleged or suspected corruption and corruption-related offences involving public officers, politically opposed persons and persons in the private sector involved in the commission of the offence under any other relevant law;*
- d) recover and manage the proceeds of corruption;*
- e) disseminate information gathered in the course of investigation to competent authorities and other persons the Office considers appropriate in connection with the offences specified in paragraphs (a) and (b),*

- f) *co-operate and coordinate with competent authorities and other relevant local and international agencies in furtherance of this Act;*
 - g) *receive and investigate complaints from a person on a matter that involves or may involve corruption and corruption-related offences;*
 - h) *receive and act on referrals of investigations of alleged corruption and corruption-related offences by Parliament the Auditor-General's Office, the Commission on Human Rights and Administrative Justice, the Economic and Organized Crime and any other public body; and*
- (i) *Perform any other functions connected with the object of the Office.*

Further, section 79(c) of the Act, interprets "corruption and corruption related offences to mean;

- (a) *Sections 146, 151, 179C, 239, 252, 253, 254, 256, 258 and 260 of the Criminal Offences Act, 1960 (Act 29);*
- (b) *Section 92(2) of the Public Procurement Act, 2003 (Act 663); and*
- (c) *Existent offences under enactments arising out of or consequent to offences referred to in paragraphs (a) and (b).*

Under the Act, "politically exposed person" includes

- (a) *A person who is or has been entrusted with a prominent public function in this country, a foreign country or an international organization including*
 - (i) *a senior political party official, government, judicial or military official;*
 - (ii) *a person who is or has been an executive in a foreign country or a state-owned company;*
 - (iii) *a senior political party official in a foreign country; and*
 - (b) *An immediate family member or close associate of a person referred to in paragraph (a).*
- (Emphases mine).

...Without going to any great detail as this is a very preliminary stage of this case, it must be unequivocally stated that the mandate of Office of the Office of the Special Prosecutor is, as can be gleaned from the long title of Act 959 is;

...to establish the Office of the Special Prosecutor as a specialized agency to investigate specific cases of alleged or suspected corruption and corruption-related offences involving public officers and politically exposed persons in the performance of their functions as well as persons in the private sector involved

in the commission of alleged or suspected corruption and corruption-related offences, prosecute these offences on the authority of the Attorney-General ...

From the mandate under sections 2, 3 and 79 of Act 959, the Office may exercise its mandate under the specific Acts quoted therein in addition to “any other relevant law” so long as they are corruption or corruption-related. Clearly then, when charges are laid, the Particulars of Offence must show that the offence arises out of “corruption or corruption-related” circumstances or same must fail.

In this case, I have entirely reproduced all offences contained in the charge sheet for ease of reference. The drafting of Particulars of Offence under Counts one (1), three(3) four(4) and five(5), do not make any reference to any part of those offences having been allegedly perpetrated in furtherance of corruption and/or a corruption-related enterprise.

That is a drafting error, which, in my candid opinion, has the effect of exceeding the mandate of the Office of the Special Prosecutor.”

In this case, I have noted the drafting of the charge and the particulars in support thereof, as well as the evidence so far put before the Court. There is nothing to suggest that this offence is corruption and/or corruption related and as such is not mandated by Act 959.

I shall finally deal with the very quality of the evidence put before the Court, and determine whether it would amount to the required standard being *prima facie*.’

22. The decision of this Court in the **REPUBLIC V HAJIA HAWA NINCHEMA & 6 OTHERS**, Suit No. FT/012/2019, High Court, Accra, 7 May 2021 (Unreported) that: ‘*From the mandate under sections 2, 3 and 79 of Act 959, the Office may exercise its mandate under the specific Acts quoted therein in addition to “any other relevant law” so long as they are corruption or corruption-related. Clearly then, when charges are laid, the Particulars of Offence must show that the offence arises out of “corruption or corruption-related” circumstances or same must fail*’ is consistent with decisions on the power of the superior court in the exercise of supervisory or judicial review powers over inferior tribunals and administrative bodies.

23. The 1st Respondent, the Office of the Special Prosecutor, is without any doubt a public institution performing public functions under an Act of Parliament. Consequently, the Supreme Court put the judicial review jurisdiction of the High Court over public institutions beyond dispute when it stated unanimously in the case of **ENEKWA & OTHERS V. KWAME NKRUMAH UNIVERSITY OF SCIENCE AND TECHNOLOGY (KNUST) [2009]** SCGLR 242 at 251 that:

‘As pointed out, the university is a public institution performing public functions under an Act of Parliament. If it is established that there was abuse of any power vested in them in the discharge of their functions, judicial review should avail any member of the public who

had suffered from such abuse. The learned authors of *Constitutional and Administrative Law* (11th ed), ECS Wade and AW Bradley had this to say at page 675:

“The courts may intervene not only to prevent powers being exceeded but also prevent them being abused. The justification for this is that the exercise of discretion for an improper purpose or without taking into account all relevant considerations is regarded as failure to exercise the discretion lawfully.”

24. The Supreme Court reiterated this position as it applies to the supervisory and judicial review powers of this Court in the **REPUBLIC V THE HIGH COURT, ACCRA; EX PARTE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (ADDO INTERESTED PARTY) [2003-2004] SCGLR 312 @323** when it said that:

“In any case, whether it is an adjudicating body or not is irrelevant to the jurisdiction of the High Court to exercise judicial review over it. It is not a precondition at common law to the deployment of the prerogative writs and orders that the subject of this processes be an adjudicating body. These orders are the mechanism whereby administrative law principles are applied. Article 141 merely confirms this pre-existing common law power. Given this context, the use of the epithet “lower” does not make any difference to the availability of redress in the High Court in respect of the administrative and quasi-judicial actions of CHRAJ.”

25. The 1st Respondent stated in its “Report of Investigation into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority” dated 3 August 2022 and published on 8 August 2022 in the electronic and print media at paragraphs 3.1, 3.2, and 3.3 at pages 1 and 2 of the said report, inter alia, that:

- 3.1 The Special Prosecutor, upon determining that the complaint was within the mandate of the OSP, authorized the commencement of preliminary investigation into the matter in accordance with regulation 5 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374)...
- 3.2 Labianca, being the main subject of the investigation, was directed to submit the following documents covering the period 2017 – 201 in accordance with section 29 of the Office of the Special Prosecutor Act, 2017 (Act 959 and regulation 10 of L. I. 2374.
- 3.3 ...Upon being satisfied that the circumstances of the matter reasonably indicated so, the Special Prosecutor authorized the commencement of full investigation under regulation 6 of L. I. 2374 to prevent or prosecute corruption or corruption-related offences. In aid of the investigation, several persons were invited to the office of the OSP for interviewing and they were accorded the right to be represented by Counsel and full opportunity to respond to the complaint”

26. The 1st Respondent by these recitals contained in paragraphs 3.1, 3.2, and 3.3 of pages 1 to 2 of the report discloses that the authority for investigating and making the judgments and

decisions contained therein are derived from Regulations 5 and 6 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374).

27. The Applicants submit that except for section 3(3) of Act 959 the 1st Respondent does not have the mandate to publish adverse findings for the trial of suspects in the court of public opinion. Therefore, the making and publication of alleged adverse findings against the Applicants was unlawful, void and without effect whatsoever.

28. The Applicants submit that Regulations 5 and 6 of L. I. 2374 dealing with preliminary investigations and full investigations respectively, do not clothe the 1st Respondent with any mandate to make a report such as the 1st Respondent's investigation report dated 3 August 2022 containing adverse findings and directions aforesaid against witness or suspects for their trial in the court of public opinion instead of a court of law.

29. The relevant provisions of Regulations 5 and 6 of L. I. 2374 in so far as they relate to the purported investigation into suspected corruption and corruption related offences in respect of "...a joint application for the acceptance of values of frozen foods intended to be imported lodged at Customs Division by Labianca and Rafano Frozen Foods Company Limited on 6 April, two days after the appointment of Mr. Adu Kyei as the Deputy Commissioner of the Customs Division in charge of operations" are that:

"Preliminary inquiry or investigation

5. (1) Where the Special Prosecutor considers a complaint lodged with the Office and determines that the complaint is within the mandate of the Office the Special Prosecutor or an authorized officer shall assign the complaint
...
 - (b) for a preliminary inquiry or investigation involving some measured review, contact or observation activities in response to the complaint indicating the possibility of the commission of corruption or corruption-related offence for purposes of detecting or preventing the commission of corruption or a corruption-related offence; or
 - (c) for a full investigation where the facts and circumstances reasonably indicate that an investigation may be conducted to prevent, solve, or prosecute corruption or a corruption-related offence.
- (2) A preliminary inquiry or investigation under paragraph (b) of subsection (1) shall be conducted with as little intrusion into the privacy of individuals as the need of the situation permits and shall be terminated when it becomes apparent that a full investigation is not necessary.

Full investigation

6. (1) The Office may generally initiate an investigation into corruption or a

corruption-related offence when facts or circumstances reasonably indicate that an investigation may be conducted to prevent or prosecute corruption or a corruption-related offence

- (2) Where the Office decides to initiate a full investigation under subregulation (1), the Office shall invite for an interview
 - (a) the complainant where necessary;
 - (b) a representative of the body, organization or person against whom the complaint is made; and
 - (c) any other person considered necessary for the investigation.
- (3) A person appearing before the Special Prosecutor to respond to a complaint shall
 - (a) be informed of the particulars of the complaint;
 - (b) be afforded a full opportunity to respond to the complaint; and
 - (c) appear in person and may be accompanied by counsel.
- (4) The Office shall keep a record of the investigation.

30. The Applicants submit that whilst it is obvious from Regulations 5 and 6 of L. I. 2374 quoted in extenso above that Regulations 5 and 6 of L. I. 2374 mandate the 1st Respondent to conduct preliminary investigations and full investigations to prevent, solve or prosecute corruption or corruption-related offences, Regulations 5 and 6 of L. I. 2374 **do not** mandate the 1st Respondent to make adverse findings against persons who are the subject of those investigations whether as witnesses or suspects or to enforce those adverse findings or impose penalties by issuing directions against them, as the 1st Respondent has irrationally done. (per Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410 as in **REPUBLIC V THE HIGH COURT, ACCRA; EX PARTE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (ADDO INTERESTED PARTY)** [2003-2004] SCGLR 312 SC) (supra).

31. The Applicants submit that the only provision of the 1st Respondent's operations regulation that permits the 1st Respondent to issue any internal reports and recommendations is Regulation 7 of L. I. 2374 dealing with investigation panels which the Applicants set out in full below.

“Investigation panels

7. (1) The Office may, for the effective performance of its functions, constitute an investigation panel to investigate a complaint of alleged corruption or a corruption-related offence.
- (2) The investigation panel shall cause a **designated investigating officer or an authorized officer** to take a written investigation statement from a witness and a suspect including cautioned and charged statements to build a complete investigation docket.
- (3) A panel constituted under subregulation (1) shall report on a matter the panel has investigated and make recommendations to the Special Prosecutor.

- (4) The Special Prosecutor shall consider the report and may
 - (a) accept the recommendations;
 - (b) reject the recommendations;
 - (c) vary the recommendations, based on the evidence contained in the complete investigation docket; or
 - (d) direct that further investigations be conducted under the direct supervision of the Special Prosecutor or an authorized officer nominated by the Special Prosecutor.”

32. The Applicants submit further that it is obvious from the plain and unambiguous meaning of Regulation 7 of L. I. 2374 quoted above that the 1st Respondent, apart from requiring a panel constituted under subregulation (1) to report on the matter the panel has investigated and to make recommendations to the Special Prosecutor, the 1st Respondent is not mandated to make adverse findings, impose penalties, and give direction on the payment of those penalties into any account of the 1st Respondent. Indeed, the only lawful mandate of the 1st Respondent exercisable by the Special Prosecutor after mandatorily considering the report was to accept the recommendations, reject them, or vary them based on the evidence on the complete investigation docket or to direct further investigations under the supervision of the Special Prosecutor.

34. The 1st Respondent stated in its investigation report dated 3 August 2022 that it conducted a full investigation into suspected corruption and corruption related offences in respect of “... a joint application for the acceptance of values of frozen foods intended to be imported lodged at Customs Division by Labianca and Rafano Frozen Foods Company Limited on 6 April, two days after the appointment of Mr. Adu Kyei as the Deputy Commissioner of the Customs Division in charge of operations.” The Applicants have contended in the supporting affidavit accompanying this application that they appeared before an investigation panel constituted by the 1st Respondent at which the 2nd Respondent, Emmanuel Basintale, a Superintendent of Police, stationed in Sekondi in the Western Region as a police prosecutor was the head of the investigation panel on 10 January 2022 and 16 February 2022 to assist the investigation without being cautioned or charged for any specified corruption or corruption-related offence.

35. As is obvious from the provisions of Regulation 7 of L. I. 2374 quoted above the Special Prosecutor was not a member of the investigation panel and must therefore have written and signed the “Report of Investigations into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority” dated 3 August 2022 in the name of the 1st Respondent based on the report and recommendations of the investigation panel constituted by the Special Prosecutor pursuant to Regulation 7 (1), (2), and (3) of L. I. 2374 set forth above on the matter the panel had investigated and made recommendations to the Special Prosecutor

36. The Applicants submit that in accordance with Regulations 5, 6, and 7 of L. I. 2374 pursuant to which the 1st Respondent purported to have conducted a full investigation, written and published a report dated 3 August 2022, the 1st Respondent can lawfully conduct those investigations acting through employees of the 1st Respondent properly recruited and appointed, on departmental transfer, or secondment or otherwise lawfully engaged under Section 21 of Act 959 dealing with appointment of other staff of the Office and have the powers provided for under

section 28 thereof empowering employees or officers of the Office to exercise powers of police. The use of authorized officers in the performance of the functions of the 1st Respondent is a mandatory requirement for the validity of acts and conduct undertaken by the 1st Respondent in the execution of its functions and mandate under Act 959. It is because of the mandatory nature of Regulations 2, 3, 12, 16, and 18 of L. I. 2374 and Regulation 35 of L. I. 2374 that they are cast in mandatory language as will be shown shortly.

37. The Applicants have deposed to the fact that the 2nd Respondent who the 1st Respondent constituted to chair or be the head of the two-man investigation panel was not at the material times and has not up to date been recruited and appointed into the 1st Respondent Office or seconded to that office or transferred departmentally from the police service to that office and taken the requisite oath of office and secrecy pertaining to the office of the 1st Respondent to empower the 2nd Respondent to have headed the investigation panel constituted by the 1st Respondent and to have submitted a report of the investigation and recommendations for the consideration of the special Prosecutor. The Applicants will therefore at the hearing of this application invite this Court to take judicial notice of the fact that on 17 March 2022, and 22 March 2022 respectively, citinewsroom.com and myjoyonline.com reported online that the 2nd Respondent was the police prosecutor who appeared before the Takoradi Circuit Court 'A' presided over by His Worship Michael Ampadu in the case involving the then suspended Mayor for Sekondi-Takoradi, Abdul Mumin Issah, to first seek an adjournment which was granted to 22 March 2002 because in 2nd Respondents words as the police prosecutor: "our disclosures are ready but we could not file on time and serve the accused person's lawyers" and then on 22 March 2022 the case was again adjourned to 5 March 2022 for five witnesses to testify at the trial which shows that the 2nd Respondent could not have been an authorized officer concurrently to the 1st Respondent during the same period: see "Case against Sekondi-Takoradi Major Adjourned to March 22" and "Five persons to testify in Takoradi Mayor's traffic offence case on May 5" (on citinewsroom.com and myjoyonline.com respectively.)

38. The Applicants accordingly contend that since the 1st Respondent had no mandate to constitute any investigation panel headed by an unauthorized employee or officer of the 1st Respondent, the report and recommendations submitted by the investigation panel headed by the 2nd Respondent were made in violation of the mandate of the 1st Respondent under Act 959 and is accordingly unlawful, illegal, and *void ab initio*.

39. The Applicants submit that where a public institution composes a body to undertake an investigation or makes a decision in violation of its mandate, the public institution acts unlawfully and a court will quash any decision or findings made by such a body as decided by the Supreme Court in the case of **REPUBLIC V THE JUDICIAL COMMITTEE OF THE ASOGLI TRADITIONAL COUNCIL; EX PARTE AVEVOR & 6 OTHERS (AZAMETI & 3 OTHERS PARTIES) [2019-2020] SGLRG 311** that:

"A body charged with the responsibility for determine of disputes could only have legitimacy, if its composition or constitution is in conformity with the statute or Act which provides for its existence ... The Judicial Committee of the Asogli Traditional Council which heard the case involving the parties, not having been appointed by the traditional council, was wrongly constituted, and therefore, lacked jurisdiction to

determine the matter which came before it. The proceedings and orders of the judicial committee were therefore a nullity as they were made without jurisdiction. The trial High Court should have granted the application on this ground but not on the grounds relied on.”

40. The Applicants submit further that the 1st Respondent’s report dated 3 August 2022 entitled “Report of Investigation into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority” which contains adverse findings, imposition of penalties, and directions against the Applicants and one other is also patently unlawful, illegal and void.

41. The Applicants wish to support the foregoing legal submissions by referring to the relevant provisions of the parent Act, 959 and the L. I. 2373 and L. I. 2374 for ease of reference, to facilitate the legal arguments, and to demonstrate that the 1st Respondent violated its mandate when it used or engaged an unauthorized officer to head an investigation panel to conduct investigation in corruption or corruption-related offence for which it is mandated to investigate and prosecute under section 3 of Act 959.

42. The substantive provision on the appointment of staff for the Office is Section 21 of Act 959 and provides that:

“Appointment of other staff

21. (1) The President shall in accordance with article 195 of the Constitution, appoint other staff of the Office that are necessary for the proper and effective performance of the functions of the Office.

(2) The President may in accordance with article 195 (2) of the Constitution delegate the power of appointment in writing to the Board.

(3) Other public officers may be transferred or seconded to the Office at the request of the Special Prosecutor

(4) The Office may engage the services of relevant professional experts on the recommendation of the Board.”

43. The power of the Office includes the exercise of police powers and this is specifically granted under Section 28 of Act 959 as follows:

“Officers to exercise powers of police

28. The Special Prosecutor and authorized officers shall exercise the powers of a police officer specified in the Criminal and Other Offences (Procedure) Act, 1960 (Act 30)”

44. It is also provided in Sections 74 and 75 that authorized officers in possession of information in the performance of their functions under the Act are subject to confidentiality and immunity from civil liability in the performance of duties under the Act if the authorized officer acted in good faith and on reasonable grounds.

45. Consistent with the requirement of confidentiality and immunity of authorized officers of the 1st Respondent, Regulation 35 of L. I. 3274 mandatorily enjoins employees to take an oath of Office and an oath of secrecy to qualify as an authorized officer of the Office in the following terms:

“Oaths of Office and Oath of Secrecy

35. (1) A person,

(a) employed by the Office, or

(b) authorized to perform a function of the Office

Shall take and subscribe to the Oath of Office and Oath of Secrecy set out in the Second Schedule before assuming Office or performing a function.

(2) A person who objects to taking an oath may make an affirmation instead and the oath shall be varies accordingly.

(3) The Oath of Office and the Oath of Secrecy specified in the third column of the Second Schedule shall be sworn or affirmed by the person in the first column and be administered by the person specified in the second column of that schedule ...”

The Second Schedule list the “Persons required to take Oath” as “Officers and other employees of the Office”. The “Person before whom the Oath is to be sworn” is listed as “Minister, or High Court Judge or another person designated by the Chief Justice.”

46. The Office of the Special Prosecutor Regulations, 2018 (L. I. 2373) governs the status of employees of the Office as stated in Regulation 1 thereof.

47. Under Regulations 2 and 3 of L. I. 2373 a person who is eligible for recruitment into the Office may be appointed into the Office in accordance with section 21 of the Office of the Special Prosecutor Act, 2017 (Act 959) and where he is so appointed into the Office, the Office is mandatorily required to indicate the terms and conditions of the appointment in the letter addressed to that person and signed by the President or a person delegated by the President. (See Regulations 2 and 3 of L. I. 2373). A person appointed, seconded or otherwise engaged by the Office is mandatorily to be subjected to vetting. The date of effective appointment of an employee is the date he assumes duty (Regulation 5 thereof). Furthermore, a person recruited into the Office is also mandatorily required to complete a Personality Notes Form set out in the Second Schedule of the Regulations.

48. Regulation 12 deals with the period during which a person employed by the Office shall serve a probation after which he may be confirmed by the Special Prosecutor and exempts “a person who is on “(a) secondment to the Office; (b) departmental transfer; or (c) contract employment” from any period of probation.

49. In accordance with Regulation 16 of L. I. 2373, particularly sub-regulation (3) thereof, it is only an employee of the Office who can perform any specified duties in an authorized capacity

and at times directed by the Special Prosecutor or any other person acting under the authority of the Special Prosecutor. Regulation 16 of L. I. 2373 states:

“Conditions of service

16. (1) The Special Prosecutor shall make a copy of these Regulation available

(a) an employee in the Office; and

(b) any other employee when that person assumes duty at the Office.

(2) An employee who breaches, infringes or does not observe any provision of these Regulations is liable to disciplinary action as prescribed in these Regulations.

(3) An employee shall perform the specified duties in a capacity and at places and times as directed by the Special Prosecutor or any other person acting under the authority of the Special Prosecutor.”

(Emphasis supplied)

50 Regulation 18 then deals with seniority between employees in the Office by stating, *inter alia*, that:

“Seniority

18. (1) Seniority between new employees in the Office shall be determined by the practice in the Public Service including the date of assumption of duty and alphabetical order of the names of employees.”

51. The Applicants submit based on the foregoing quoted provisions of section 21 dealing with the appointment of other staff and section 28 which empowers an employee of the Office to exercise powers of police officers under Act 959 and Regulations 2, 3, 12, 16, and 18 of L. I. 2373 and Regulation 35 of L. I. 2374 are cast in mandatory language that the 2nd Respondent was not an authorized officer of the 1st Respondent and that the 1st Respondent acted *ultra vires* these provisions of its mandate when it constituted the investigation panel presided over by the 2nd Respondent and rendered its proceedings, report and recommendations and everything connected therewith including the “Report of Investigation into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority” dated 3 August 2022 unlawful, illegal, and void.

52. The Applicants submit that the foregoing conduct of the 1st and 2nd Respondents in constituting and taking part in heading the investigation panel upon which the 1st Respondent made its purported findings and decisions and proceeded to publish its report were exercises in total disregard to the law, arbitrarily conducted and an abuse of power and should be declared null and void and to be brought up and quashed by an order of certiorari by the Honourable Court as explained in the case of **REPUBLIC v COMMITTEE OF INQUIRY INTO**

NUNGUA TRADITIONAL AFFAIRS; EX-PARTE ODAI IV AND OTHERS [1996-97]
SCGLR 401, SC., at page 410 per BAMFORD-ADDO JSC:

“The High Court is given supervisory jurisdiction over inferior courts and tribunals for the purpose of supervising them and ensuring that they keep within the limits of their jurisdiction, and make lawful decisions which affect the rights of subjects ... No decision of an inferior court or tribunal is sacrosanct and same can be impugned and corrected if wrongful”

53. The Learned Justice had stated earlier at page 408 supra as that:

“Certiorari is in the main, a discretionary remedy and it lies to quash any findings or decision of a lower court or inferior tribunal which acts ultra vires its powers or whose decision is vitiated by error on the face of the record or which fails to observe the rules of natural justice. It is used to quash decisions not only of lower courts but other inferior tribunals **including administrative ones which are under a duty to act judicially.** (EMPHASIS SUPPLIED)

54. In the case of **ENEKWA & Others v. KWAME NKRUMAH UNIVERSITY OF SCIENCE & TECHNOLOGY (KNUST) [2009] SCGLR 242, SC.,** it was a question of the Kwame Nkrumah University of Science and Technology (KNUST) adopting a purported report failing to adhere to the requirement of “a committee of enquiry as envisaged under the Students’ Guide” which was the prevailing regulations dealing with disciplinary matters. The Supreme Court held among others in page 249 per ANIN YEBOAH JSC (as he then was) as follows:

“It is clear from what we have said earlier that there was no evidence of any report of a **committee of inquiry as envisaged under the Students’ Guide,** which both parties admit was **the prevailing regulations** dealing with disciplinary matters affecting students. **In the absence of any composition, terms of reference and proceedings of the committee, a court of law always mindful of the need to do substantial justice, must find as a fact that no such committee was, indeed, formed to undertake the duties under article 7 of the Students’ Guide. Indeed, there was no hearing given to the appellants in any lawful manner whatsoever ...**” (EMPHASIS SUPPLIED)

55. Similarly, in this case of the 1st Respondent, the question is whether or not the purported investigation was the product of an investigation panel properly or lawfully constituted as **envisaged** under Regulation 7 of L.I. 2374. The answer is a big “No”.

56. The Supreme Court went further to state at page 251 per ANIN YEBOAH JSC as follows:

‘As pointed out, the university is a public institution performing public functions under an Act of Parliament. If it is established that there was abuse of any power vested in them in the discharge of their functions, judicial review should avail any member of the public who had suffered from such abuse. The learned authors of *Constitutional and Administrative Law* (11th ed), ECS Wade and AW Bradley had this to say at page 675:

“The courts may intervene not only to prevent powers being exceeded but also prevent them being abused. The justification for this is that the exercise of discretion for an improper purpose or without taking into account all relevant considerations is regarded as failure to exercise the discretion lawfully.””

57. The Applicants pray that the “Report of Investigation into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority” dated 3 August 2022 and published on 8 August 2022 in the electronic and print media, by the 1st Respondent be brought up to this Court and quashed accordingly on the grounds argued hereinbefore as being unlawful, illegal, unreasonable, exhibiting procedural impropriety and consequently null, void and without effect whatsoever.

THREATENED INVESTIGATION AND PUBLICATIONS OF FUTHER REPORTS MAKING ADVERSE FINDINGS AGAINST THE APPLICANTS

58. The facts giving rise to this application as narrated in the supporting affidavit to this application show that the 1st Respondent threatened in press releases and letters to the Applicants “... the opening of a wider investigation in respect of the issuance of customs advance rulings and markdown of benchmark values”, and the commencement of “... investigations into the suspected corruption and corruption-related offences in respect of auction sale of vehicles and other goods by the Customs Division of the Ghana Revenue Authority between 1 July 2016 and 15 August 2022” which means that the 1st Respondent unless prohibited from doing so will again make similar adverse findings and directions against the Applicants, publish same in the media, (The Applicants will at the hearing of this application invite this Court to take judicial notice of the fact that on 17 March 2022, and 22 March 2022 respectively, citinewsroom.com and myjoyonline.com reported online that the 2nd Respondent was the police prosecutor who appeared before the Takoradi Circuit Court ‘A’ presided over by His Worship Michael Ampadu in the case involving the then suspended Mayor for Sekondi-Takoradi, Abdul Mumin Issah, to first seek an adjournment which was granted to 22 March 2002 because in 2nd Respondents words as the police prosecutor: “our disclosures are ready but we could not file on time and serve the accused person’s lawyers” and then on 22 March 2022 the case was again adjourned to 5 March 2022 for five witnesses to testify at the trial which shows that the 2nd Respondent could not have been an authorized officer concurrently to the 1st Respondent during the same period: see “Case against Sekondi-Takoradi Major Adjourned to March 22” and “Five persons to testify in Takoradi Mayor’s traffic offence case on May 5” on citinewsroom.com and myjoyonline.com respectively.)

for their trial in the court of public opinion instead of presenting any prima facie evidence of the suspected commission of specified corruption and/ or corruption-related offence for their trial before a competent court of law for the prosecution of the Applicants as mandated under section 2 and 3 of Act 959.

59. The Applicants contend that the 2nd Respondent who purportedly assumed duty with the 1st Respondent on or about 1 May 2022 as a recruited and appointed staff of the 1st Respondent

continues to hold himself out as an employee of the 1st Respondent (after resigning from the Police Service), whom the 1st Respondent has designated as its Director of Investigation even though the 2nd Respondent has not been employed in accordance with Section 21 of Act 959 and the pursuant subsidiary legislation by way of recruitment and appointment by the President of Ghana, secondment, departmental transfer or in any manner lawfully engaged as an employee of the 1st Respondent. Indeed, since the appointment of a Special Prosecutor for the 1st Respondent on 5 August 2021 the Board of the 1st Respondent was not constituted and sworn into office to assume its duties until 21 June 2022: the Board held its first meeting to elect a chairperson only on 1 July 2022 and its second meeting on 30 September 2022 which means that the 2nd Respondent could never have been properly appointed or otherwise engaged as an employee by the 1st Respondent in accordance with law.

60. The Applicants submit that the role of the Board in advising the President in the appointment of officers of the Office of the 1st Respondent has been underscored by the Supreme Court in the case **OF GHANA BAR ASSOCIATION & OTHERS V ATTORNEY-GENERAL & OTHERS (CONSOLIDATED) SUPREME COURT, [2016]** when it said that:

“It is therefore right and or correct to state that, whilst the President is mandated by the express provisions of the Constitution in articles 144 (2) and (3) to seek the advice of the Judicial Council before appointments to the Supreme Court and Court of Appeal are made, and similarly consult with the Council of State on the appointment process of the Supreme Court Judges, he is nonetheless not bound by the advice or opinion of these bodies. My understanding however is that, if these bodies did not recommend a particular candidate or nominee, the President cannot go behind that advice to appoint someone else. It also follows that, if the Judicial Council recommends a particular person and the President does not feel obliged to appoint that person, there is in fact no obligation on the President to have that person appointed. As a matter of fact, the President is not bound by any such advice. The only thing is that, the President can also not go outside the names or lists of persons recommended to him by these bodies.” (Emphasis supplied)

61. The Applicants contend that it follows that without the existence of the Board of the 1st Respondent to advise on the appointment of employees no valid recruitment and appointments of employees to the 1st Respondent Office could have been made let alone to designate an appointee to any rank, such as Director of Investigations, in the Office. It is accordingly submitted that apart from the Special Prosecutor and the Deputy Special Prosecutor, the 1st Respondent can only act within its mandate by using seconded staff, and departmentally transferred staff none of whom exist in the 1st Respondent’s office as authorized officers. Consequently, the threatened investigation, and the writing and publication of reports containing adverse findings and direction against the Applicants are likely to be made and published in the media using unauthorized officers in the performance of its functions by the 1st Respondent for the trial of the Applicants again in the court of public opinion instead of a court of law unless the 1st Respondent Office and 2nd Respondent, as its purported Director of Investigation, are prohibited from proceeding with the threatened investigations, reporting and publications of same in the media in violation of Act 959 and Regulations L. I. 2373 and L. I. 2374.

62. The Applicants submit that the investigation and publication of the 1st Respondent's report dated 3 August 2022 titled "Report of Investigation into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority" by the 1st Respondent containing adverse findings, imposition of penalties, and directions against the Applicants for the trail of the Applicants in the court of public opinion instead of a court of law was illegal and unreasonable. The 1st Respondent's unlawful actions and conduct in publishing its said report dated 3 August 2022 in the electronic and print media constituted the persecution of the Applicants in the court of public opinion and this Court has power to declare and prohibit the 1st and 2nd Respondent's from following the same unmandated procedure in any further or future investigation and persecution of the Applicants or any others suspected of the commission of specified corruption or corruption-related offences.

63. The Applicants also submit that this Court has the power to act to uphold the foregoing legal arguments of the Applicants because to do otherwise will be "morally and socially wrong" and also unconstitutional as the conduct behind the making and publication of the 1st Respondent's OSP Labianca Report dated 3 August 2022 taken as a whole amounts to persecution of the Applicants. They reveal that somewhere down the line the 1st Respondent knew it could not successfully prosecute the Applicants for any specified corruption or corruption-related offences as mandated by Act 959 in any court of law but all the same 1st Respondent wanted to "get at" the Applicants at all cost by unlawfully naming and shaming them in the court of public opinion and sought to do this under the umbrella of Act 959 and the regulations made thereunder.

64. The Applicants submit, therefore, that the 1st Respondent may not bring or in any event appear to bring, an impartial judgment to bear on the further or future investigations involving the Applicants by virtue of the 1st Respondent's violations of its mandate leading to the trial of the Applicants in a court of public opinion instead of a court of law. The Applicants accordingly pray this Court that it is just and proper, on grounds of natural justice, that an order of prohibition should go against the 1st Respondent including those through whom it has been acting such as the 2nd Respondent so that the Respondents are relieved of a most invidious task of having to subject the Applicants to the persecution revealed by the publication of the report dated 3 August 2022 persecuting the Applicants in the court of public opinion.

65. The Applicants submit that this court ought to prevent the future persecution of the Applicants in the court of public opinion instead of a court of law as the Supreme Court in **REPUBLIC V NATIONAL HOUSE OF CHIEFS, KUMASI & 2 OTHERS EX-PARTE; AHANTA TRADITIONAL COUNCIL (OSAHENE KATAKYE BUSUMAURA III - INTERESTED PARTY) [2019-2020] SCRG 620** when it stated at page 639 that:

"An order of prohibition is one of the writs issued by the High Court in the exercise of its supervisory jurisdiction. Traditionally, it is directed at lower tribunals, administrative bodies and public adjudicating authorities, forbidding them from acting contrary to the law or without jurisdiction or in excess of their jurisdiction. Both the National House of Chiefs and the Regional House of Chiefs are constitutionally and statutory bodies set up by law with clearly defined functions. Can it be said that the first respondent acted contrary to the law or in contravention of, or in excess of its statutory powers when it received the petition from the interested party and forwarded the petition to the second

respondent for its comments and advice? Or, did the second respondent act without or in excess of its statutory powers and in the process contravened the law in constituting the third respondent committee of enquiry to enquire into the petition and give its comments and advice? ...”

66. The Applicants submit that in this application of the Applicants before this Court the answers to the questions posed above by the Supreme Court in *Republic v National House of Chief, Kumasi & 2 Others Ex-Parte; Ahanta Traditional Council (Osahene Katakye Busumaura III - Interested Party) [2019-2020] SCRG 620* at page 639 are obviously, yes. Accordingly the Applicants pray this Court to issue an orders of prohibition and restraining orders prohibiting and restraining the 1st Respondent Office and the 2nd Respondent from continuing any investigations that will lead to the 1st Respondent making adverse findings and directions against the Applicants for publication in the media in violation of Act 959 and L. I. 2374 for their further trail in the court of public opinion instead of a prosecution before a court of law.

67. The Applicants now proposed to argue ground (iv) of the grounds for this application which states that:

“ GROUND (iv)

The report containing the decisions, adverse findings and directives dated 3 August 2022 and published in the media on 8 August 2022 as the OSP Labianca Report by the 1st Respondent acting by the Special Prosecutor, Mr. Kissi Agyebeng, against the 1st and 2nd Applicants who were statutorily protected witnesses under Section 72 of Act 959 is in breach of their fundamental rights to natural justice as the applicants were not cautioned or charged with any specified corruption and/or corruption-offence(s), and were accordingly made without mandate or jurisdiction, and are consequently unlawful, null, and void *ab initio*.”

68. The Applicants will in arguing the on this grounds address the following questions set down in the accompanying affidavit for determination by this Court and rely in extenso on the preceding legal argument on the unlawful conduct of the 1st Respondent in constituting the investigation, making and publishing the OSP Labianca Report for the trial of the Applicants in the court of public opinion instead of a court of law in addition to the further arguments of law made hereunder:

“(ii). Whether or not the 1st Respondent acted ultra vires its statutory mandate under Sections 2(a) and (b), 3 and 79 of Act 959 and Regulation 7 of L. I. 2374 when without establishing any specified suspected commission of any corruption and/or corruption related offence(s) against the 1st and 2nd Applicants the 1st Respondent proceeded to make decisions containing adverse findings and directives against the Applicants based on a purported interpretation of the Customs Act, 2015 (Act 891) and the Revenue Administration Act, 2016 (Act 915).

(iii). Whether or not the 1st Respondent acted ultra vires its statutory mandate by making decisions containing adverse findings and directives in the published OSP Labianca Report against the 1st and 2nd Applicants who became protected witnesses under Section 72 of Act 959, and in breach of the fundamental rights to natural justice of the 1st and 2nd Applicants to be heard before the OSP Labianca Report was made and published for the trial of the 1st and 2nd Applicants in the court of public opinion instead of a court of law.

(vii) Whether or not there are any corruption/and or corruption-related offence(s) known as “conflict of interest”, “influence peddling” or “trading of influence” or “conduct and/or action indicating “... a high propensity to engender corruption and corruption-related activities” under Sections 2(a), 3 and 79 of the Act 959 as referred to in the 1st Respondent’s OSP Labianca Report to have warranted the decisions containing the adverse findings and directives made by the Special Prosecutor, Kissi Agyebeng, against the 1st and 2nd Applicants or any other person as the 1st Respondent purported to have done and published for the trial of of the 1st and 2nd Applicants herein, in the court of public opinion instead of a court of law.”

69. As this Court in the **REPUBLIC V HAJIA HAWA NINCHEMA & 6 OTHERS, SUIT NO. FT/012/2019**, High Court, Accra, 7 May 2021 (Unreported) supra demonstrated, the investigations and purported adverse findings allegedly made by the 1st Respondent against the Applicants must fall within the investigatory and prosecutorial functions of the 1st Respondent otherwise the 1st Respondent as public institution would have acted without or in excess of its mandate or jurisdiction. This court decided that 1st Respondent is enjoined under sections 2 and 3 of Act 959 to investigate and prosecute corruption and corruption-related offences as defined under section 79 thereof.

70. This Court also rightly determined (after a detailed exposition) the mandate of the 1st Respondent, particularly the objects and functions contained in Sections 2 and 3 thereof and the definition of corruption and corruption-related offences under section 79 of the Act in the **REPUBLIC V HAJIA HAWA NINCHEMA & 6 OTHERS, SUIT NO. FT/012/2019**, High Court, Accra, 7 May 2021 (Unreported) supra that:

Further, section 79(c) of the Act, interprets “corruption and corruption related offences to mean;

(a) Sections 146, 151, 179C, 239, 252, 253, 254, 256, 258 and 260 of the Criminal Offences Act, 1960 (Act 29);

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

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

...Without going to any great detail as this is a very preliminary stage of this case, it must be unequivocally stated that the mandate of the Office of the Special Prosecutor is, as can be gleaned from the long title of Act 959 is;

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

From the mandate under sections 2, 3 and 79 of Act 959, the Office may exercise its mandate under the specific Acts quoted therein in addition to “any other relevant law” so long as they are corruption or corruption-related. Clearly then, when charges are laid, the Particulars of Offence must show that the offence arises out of “corruption or corruption-related” circumstances or same must fail.”

71. The Applicants submit that it is within the context of the law as expounded by this Court that an examination and determination is to be made as to whether or not the 1st Respondent’s report dated 3 August 2022 entitled “Report of Investigations into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority” containing adverse findings and directions against the Applicants and one other person, is patently unlawful and void. The Applicants quote hereunder portions of the adverse findings and directions made in the said report against the Applicants for ease of reference and the purposes of these legal arguments in support of this application:

“4.30 The OSP finds, that Mr. Adu Kyei’s decision to issue customs advance ruling to the applicants, resulted in a short collection of or shortfall in revenue in the amount of One Million Seventy-four Thousand cedis Six Hundred and Twenty -Seven cedis fifteen pesewas (GHC1,074,627.15) from a total of five hundred and thirty-one (531) declarations in respect of Labianca. Therefore it lies ill in Mr Adu Kyei’s mouth to claim that he saved the Republic financial loss by his conduct; and his claimed bases for his decision are unsupportable afterthought.

4.31 The OSP finds, that though Colonel (Rtd.) Damoah sought to distance himself from Mr. Adu Kyei’s decision during the interview on 16 February 2022, he gave his tacit approval to the decision and the determination stood to the benefit of the applicants. Indeed, Mr. Adu Kyei’s decision would not have passed muster but for Colonel (Rtd.) Damaoh’s apparent approval. The halfhearted seeming recantation is unhappily belated and does not absolve Colonel (Rtd.) Damoah of the ultimate responsibility for the apparent contrived decision.

...

4.33 The OSP finds that there is strong evidence that Mr. Adu Kyei's decision to issue a customs advance ruling for the applicants was procured through influence peddling or trading of influence by Ms Asomah-Hinneby by employing her position as a member of the Council of state and a member of the Board of Directors of Ghana Ports and Harbours Authority..."

4.34 The OSP further findings that the conduct of Mr. Adu Kyei and the placid coddling by Colonel (Rtd.) Damoah portends an institutional culture of lighthearted unconcern regarding impropriety of action at the Customs division of the Ghana Revenue Authority – which indicated a high propensity to engender corruption and corruption-related activities."

72. The Applicants submit that none of the adverse findings purported to have been made by the 1st Respondent against the Applicants falls within the definition of specified corruption or corruption-related offences as provided for under section 79 of Act 959 as required under this court's decision in the HAJIA HAWA NINCHEMA case supra. It is obvious from the foregoing that there are no specified corruption/and or corruption-related offence(s) known as "conflict of interest", "influence peddling" or "trading of influence" or "conduct and/or action indicating "... a high propensity to engender corruption and corruption-related activities" under Sections 2(a), 3 and 79 of the Act 959 as referred to in the 1st Respondent's OSP Labianca Report to have warranted the decisions containing the adverse findings and directives made by the Special Prosecutor, Mr. Kissi Agyebeng, against the 1st and 2nd Applicants or any other person as the 1st Respondent purported to have done and published for the trial of the 1st and 2nd Applicants herein, in the court of public opinion instead of a court of law.

73 The Applicants submit further that the findings and directions as quoted above also provide no particulars of the specified corruption and corruption-related offences allegedly found by the 1st Respondent against the Applicants in its OSP Labianca Report dated 3 August 2022 within the ambit of section 79 of Act 959 because there could be none.

74. The Applicants also submit that this explains why the report including the above adverse findings and the later consequential directions made against the Applicants, for which the Applicants have no right of appeal to any court of law, are based on speculations and conjecture that demonstrates that they were not premised on any provision of law within Act 959 or the subsidiary legislations thereto empowering the 1st Respondent to investigate and prosecute suspected corruption and corruption-related offences.

75. The Applicants submit further that 1st Respondent has no mandate under Act 959 to make adverse findings and give binding directions as though it has the powers of a Commission of Enquiry established under law: where the law intends that a public institution shall have the powers of a Commission of Enquiry to make adverse findings and give binding directions, it states so clearly and unambiguously.

76. The Applicants contend that the Constitution and the laws of Ghana guarantee the fundamental rights and freedoms of citizens to privacy, reputation, and liberty from spurious and unjust accusations of crime or wrong doing that even in the case of constitutionally established

Commissions of Enquiry established pursuant to Article 278 of the 1992 Constitution it is provided that: “Where the commission of enquiry makes adverse findings against any person, the report of the commission of inquiry shall, for purposes of this Constitution, be deemed to be the judgement of the High Court, and accordingly an appeal shall lie as of right from the finding of the commission to the Court of Appeal.”

77. The Applicants submit that the Commission for Human Rights and Administrative Justice provided for under Article 218 (a) and (e) of the 1992 Constitution has been mandated to investigate violations of fundamental human rights and freedoms, injustice, corruption, abuse of power, and unfair treatment of any person by a public officer in the exercise of his official duties. However, when CHRAJ investigates instances of alleged or suspected corruption and the misappropriation of public money by officials it is enjoined to take appropriate steps including a report to the Attorney-General and the Auditor-General, resulting from such investigations; and it may also enforce any adverse findings and directions only by bringing an action before any court in Ghana and seeking any remedy which may be available from that court (see Article 229 thereof). It does not just publish a “hanging report” subjecting affected persons to trial by the court of public opinion.

78. The Applicant submit additionally that the Office of the Special Prosecutor Act, 2017 (Act 959) and the pursuant subsidiary regulations do not mandate the 1st Respondent to make adverse findings and directions against persons alleged or suspected of the commission of corruption and/or corruption-related offences in the manner the 1st Respondent has done with the OSP Labianca Report leaving affected persons such as the Applicants without any avenue to appeal such unlawful exercise of power except by means of an application for judicial review on grounds of *ultra vires* which the Applicants have accordingly made before this Court. The only means available in the circumstances is the approach adopted by the Applicants, otherwise the Applicants shall be without remedy.

79. The Applicants submit that it follows from the foregoing that if the 1st Respondent acted *ultra vires* its mandate when it purportedly made the adverse findings against them who were mere witnesses, or persons reasonably suspected of the commission of specified corruption and/or corruption-related offences: it also acted illegally in giving directions in such purported investigation and report enforcing the payment of monetary penalties pursuant to those investigations, and publication of its report dated 3 August 2022.

80. The Applicants submit also that the only occasion that Act 959 mandates the 1st Respondent to make reports and publications to the public is in pursuance of its investigatory and prosecutorial functions under Section 3 (3) of the Act which provides that

“(3) The Office shall, on a half yearly basis, publish the following information in at least two newspaper of national circulation and on the website of the Office:

- (a) the list of corruption cases investigated and prosecuted by the Office; and
- (b) the number of acquittals, convictions and cases pending in respect of the cases prosecuted under paragraph (a) and the value of proceeds recovered if any.”

81. The “Report of Investigation into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority” does not fall within this provision of the Act to give it validity or bring it within the ambit of the mandate of the 1st Respondent under the Act.

82. The Applicants submit further that based on the foregoing arguments of law that the following final directions made and given by the 1st Respondent in its report dated 3 August 2022 was also illegal, suffered from procedural impropriety, was unreasonable and accordingly null, void and without effect whatsoever:

“5.0 Directions

5.1 On 21 March 2022 the Special Prosecutor issued an interim directive to Labianca Company Limited to pay an amount of One Million Seventy-four Thousand cedis Six Hundred and Twenty -Seven cedis fifteen pesewas (GHC1,074,627.15) , representing the short collection or shortfall of revenue arising from the issuance of the unlawful customs advance ruling by the Deputy Commission for Customs in charge of operations, Mr. Joseph Adu Kyei into the Asset Recovery Account of the Office of the Special Prosecutor.

5.2 Labianca Company Limited complied with the directive on 31 March 2022.”

83. The Applicants submit that based on the forgoing summary of the facts of this application, the 1st and 2nd Respondents violated the provisions of Act 959 and L. I. 2373 and L. I. 2374 in purporting to have investigated and made adverse findings against the Applicants when they had never been cautioned or charged with any specified corruption and corruption-related offences under Section 79 of Act 959.

84. The Applicants submit that it was not open to the 1st Respondent to ignore the mandatory provisions of Section 2(a), 3 and 79 of Act 959 and Regulation 7 of L. I. 3274 to offer the Applicants the opportunity of being tried before a court of law even if they were suspected of any corruption or corruption-related offences and purport to make unlawful adverse findings and directions against the applicants as though the 1st Respondent was a Commission of Enquiry; the 1st Respondent acted arbitrarily and capriciously in the exercise of discretion contrary to Article 296(b) when the 1st Respondent acting by its Special Prosecutor, Mr. Kissi Agyebeng, decided to make the unmandated adverse findings and directions against the Applicants who were not suspects in the investigation.

NATURAL JUSTICE – THE RIGHT TO BE HEARD

85. The Applicants submit based on the forgoing summary of the facts of this application that the 1st and 2nd Respondent violated provisions of Act 959 and L. I. 2373 and L. I. 2374 in purporting to have investigated and made adverse findings against the Applicants when the Applicants had never been cautioned or charged with any specified corruption and corruption-related offences under Section 79 of Act 959.

86. The Applicants have argued that the 1st Respondent could not have lawfully constituted an investigation panel to conduct a full investigation into corruption or corruption-related offences against the Applicants without cautioning or charging the applicants to enable it build a complete docket to make the report and recommendations to the Special Prosecutor that the Special Prosecutor could have then reviewed in making the findings and direction as the 1st Respondent stated in its report dated 3 August 2022 already referred hereinbefore. Regulation 7(1) of L. I. 2374 is unambiguous on the matter of the building of a complete docket which should include the cautioned or charged statements of persons suspected of the commission of specified corruption or corruption-related offences when it provides that:

“Investigation panels

7(1) The Office may, for the effective performance of its functions, constitute an investigation panel to investigate a complaint of alleged corruption or a corruption-related offence.

(2) The investigation panel shall cause a designated investigating officer or an authorized officer to take a written investigation statement from a witness and a suspect including cautioned and charged statements to build a complete investigation docket.(Emphasis supplied)

87. The Applicants submit that it is trite learning from the foregoing that witnesses are not suspected person from who written cautioned and charged statements are taken by an investigation panel. The Applicants have contended all along in this application that no cautioned or charged statements were taken from either of them by the investigation panel chaired by the 2nd Respondent on 10 January 2022 and 16 February 2022, consequently the Applicants became protected witnesses pursuant to section 72 of Act 959 until the 1st Respondent had formed any reasons to treat either of them as suspects in the on-going investigation. In that event, the 1st Respondent was obliged to invite each or any of the Applicants and to take cautioned or charged statement therefrom which provides the Applicants the opportunity to be heard in writing in the presence of a lawyer of their choice. Without having provided the Applicants the opportunity of being treated as suspects in the commission of any specified corruption or corruption-related offences by being cautioned or charged for same, the 1st Respondent acted without mandate and violated the protection provided the Applicants as witnesses when the 1st Respondent made adverse findings and directions against the Applicants and one other person who was also a witness. Section 72 (1) of Act 959 states:

“Protection of witness

72. (1) The special Prosecutor shall take necessary and reasonable steps to protect the safety and welfare of a witness.”

88. The Applicants submit that it is not open to the 1st Respondent under Section 72(1) and Regulation 7 (2) of L. I. 2374 to decide to turn witnesses into suspects from whom no cautioned or charge statements have been taken by a designated investigation panel or investigator and proceed to make adverse findings and directions against such witnesses for the persecution

through a written report published in the electronic and print media for the trial of those witnesses in the court of public opinion instead of a court of law.

89. The Applicants accordingly pray this Court to determine and declare that the decision by the 1st Respondent acting by the Special Prosecutor, Kissi Agyebeng, in making adverse findings against the Applicants who were statutory protected witnesses under Section 72 of Act 959 and from who no cautioned or charged statements had been taken as suspects was in breach of their fundamental right to natural justice as no specified corruption and/or corruption offence(s) were made against the Applicants and accordingly the report of the 1st Respondent dated 3 August 2022 that was published in the media on 8 August 2022 for the trial of the Applicants in the court of public opinion was done without mandate or jurisdiction under Act 959, and was consequently unlawful, null and *void ab inito*.

90. The Applicants prayer is supported by the case of **REPUBLIC v HIGH COURT, DENU; EX PARTE AGBESI AWUSU II (No. 2) (NYONYO AGBOADA (SUIT III) INTERESTED PARTY) [2003-2004] 907 SC.**, at 924 where DR. JUDSTICE DATE-BAH JSC stated that:

“Natural justice or procedural fairness demands not only that those affected by a decision should be given prior notice and opportunity to be heard (*audi alteram partem* rule), but also that there should be an entitlement to an unbiased decision-maker ... Bias or real likelihood of bias is thus a ground for the invocation of certiorari independent of the grounds of error of law on the face of the record or excess jurisdiction.”

91. The Court further explained the crucial importance of “the right to be heard” or “fair hearing” as stated in **ABOAGYE V GHANA COMMERCIAL BANK LTD [2001-2002] SCGLR 797 @ 828** per ADZOE JSC:

“It must not be lost on us that the right to be heard, which we also call the *audi alteram partem* rule is an essential characteristic of the principle of natural justice. It postulates that if any evidence is taken against a man, he must be informed and allowed an opportunity to correct or contradict all adverse facts given against him”

92. The Applicants further contend that by virtue of the violations of the rules of natural justice exhibited in the “Report of Investigation into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority” dated 3 August 2022 and published on 8 August 2022 in the electronic and print media this court ought to declare the proceedings leading up to the making of the said report as having been done without mandate and is therefore illegal, suffers from procedural impropriety and accordingly null, void and without effect whatsoever and order same to be brought up to this court and quashed accordingly.

93. The Supreme Court in the case of the **REPUBLIC v COMMITTEE OF INQUIRY INTO NUNGUA TRADITIONAL AFFAIRS; EX-PARTE ODAI IV AND OTHERS [1996-97] SCGLR 401 SC.**, at page 413 per BAMFORD-ADDO JSC supports this court in taking such a step when it held that:

“The other reason given by the Court of Appeal in setting aside the findings and recommendation was on the ground of breach of the rules of natural justice. If this is true, then **for this reason the relevant finding and recommendation cannot be allowed to stand.**” (EMPHASIS SUPPLIED)

94. The Applicants also prayed for an Order of Prohibition against the Respondents because the conduct of the 1st Respondent in making and publishing “Report of Investigation into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority” dated 3 August 2022 and published on 8 August 2022 in the electronic and print media, smacks of pure bias against the Applicants.

95. The evidence of the OSP Report being the result of bias against the Applicants and possible hatred by the 1st Respondent is that nowhere is the laws governing the functions and operations of the 1st Respondent has the 1st Respondent been mandated to publish a report in the nature of the OSP Report, being the subject matter of the Applicants’ Application.

CONCLUSION

96. The Applicants wish to conclude by making reference to Article 23 of the 1992 Constitution which states that:

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

And 296(b) of the 1992 Constitution:

“(b) the exercise of the discretionary power shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law;”

97. The Applicants hereby submit that the publication of the purported report subject of the instant Application does not fall within the provisions of Section 3 of Act 959 captured above.

98. It is further submitted that the 1st Respondent acted in violation of the object of its office as contained in Section 2 of Act 959 and also in violation of its functions are stated in Section 3 of Acts 959.

99. Furthermore, the law provides for the 1st Respondent to “investigate and prosecute” and not to “investigate and publish” its finding. Worse still, the 1st Respondent’s power of “decision” is only related to a choice of whether or not to proceed, after investigations, to prosecute or cause to be prosecuted any suspected or accused offender in a competent court of jurisdiction.

100. It must be stated here with emphasis that the 1st Respondent lacks authority to decide, pronounce upon or determine the culpability or guilt of a suspect or accused and make any orders

there-upon since the 1st Respondent is not (and lacks the power/authority of) a court of competent jurisdiction.

101. The Applicants accordingly come before this Court on the basis of the facts deposed to in the accompanying affidavit to this application and on the arguments of law hereinbefore made praying for the following reliefs deposed to in paragraph 60 of the supporting affidavit as follows:

“(i). A Declaration that upon a true and proper interpretation of Sections 2(a), 3 and 79 of the Office of the Special Prosecutor, Act 2017 (Act 959) and Regulations 5, 6, and 7 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374), the 1st Respondent had no mandate or jurisdiction to have converted the report and recommendations of the purported investigation panel submitted to the Special Prosecutor, into the OSP Labianca Report dated 3 August 2022 in which decisions containing adverse findings and directives were made against the 1st and 2nd Applicants and published in the electronic and print media for their trial by public opinion instead of in a court of law.

(ii). A Declaration that on a true and proper interpretation of Section 72 of the Office of the Special Prosecutor Act, 2017 (Act 959) the 1st Respondent acted without authority or jurisdiction in making decisions containing adverse findings and directives against the 1st and 2nd Applicants or any other person as protected witnesses when they had not been cautioned or charged with any specified suspected corruption and /or corruption-related offence(s) and causing same to be published in the electronic and print media.

(iii). A Declaration that on a true and proper interpretation of Sections 2(a) and (b), 3 and 79 of the Office of the Special Prosecutor Act, 2017 (959) and Regulations 5, 6, and 7 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374), Sections 12, and 151 of the Customs Act, 2015 (Act 891), and Sections 103 to 106 of the Revenue Authority Act, 2016 (Act 915), the proper statutory authority with jurisdiction to establish “the evasion and valuation of customs duties relating to frozen and processed food products imported into Ghana” and accept the assessed customs values thereto for payment of customs duty, or duty short-levied, into any public account, in the absence of the establishment by the 1st Respondent of any specified commission of any corruption and/or corruption-related offence(s), is the Commissioner-General of the Ghana Revenue Authority and not the 1st Respondent acting by the Special Prosecutor.

(iv). A Declaration that on a true and proper interpretation of Sections 21, 28, and 74 of the Office of the Special Prosecutor Act, 2017 (Act 959) and Regulations 2, 3, 12, 16, and 18 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374), the 1st Respondent acted ultra vires in holding out, permitting, and allowing the 2nd Respondent, to present himself as the Head of the Investigation Panel and to interview the 1st and 2nd Applicants resulting in the report and recommendations of the investigation panel submitted to the 1st Respondent upon which decisions containing adverse findings and directives were made in the 1st Respondent’s OSP Labianca Report dated 3 August 2022 against the 1st and 2nd Applicants, and published in the media when the 2nd Respondent was not an authorized officer or investigator of the 1st Respondent.

(v). A Declaration that there is no corruption/and or corruption-related offence(s) known as “conflict of interest”, “influence peddling or trading of influence” or conduct and/or activity indicating “... a propensity to engender corruption and corruption-related activities” under Sections 2(a), 3 and 79 of Act 959 as referred to in the 1st Respondent’s OSP Labianca Report dated 3 August 2022, to have mandated or warranted the decisions containing adverse findings and directives made by the 1st Respondent against the 1st and 2nd Applicants or any other person.

(vi). A Declaration that accordingly, any and/ or all the purported proceedings from 10 January 2022, 19 January 2022 and 16 February 2022 together with the report and recommendations of the investigation panel, and in particular the decisions, adverse findings and directions contained in the “Report of Investigation into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority” dated 3 August 2022 are ultra vires the 1st Respondent’s mandate, forbidden, illegal, irrational, procedurally improper and violative of the letter and spirit of Act 959 and L. I. 2374; and are accordingly null, void and without effect whatsoever.

(vii). An Order of Certiorari to quash and to remove from the Registry/Records of the 1st Respondent, the Office of the Special Prosecutor, for purposes of being quashed, the proceedings of the investigation panel, particularly the report of the 1st Respondent, Office of Special Prosecutor, dated 3 August 2022 called, “Report of Investigation into Alleged Commission of Corruption and Corruption-Related Offences involving Labianca Group of Companies and the Customs Division of the Ghana Revenue Authority” in so far as it relates to investigations into violations of Sections 2(a), 3 and 79 of the Office of the Special Prosecutor, Act 2017 (Act 959) and Regulations 5, 6, and 7 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374), relating to the commission of corruption and/or corruption-related offences on grounds of jurisdictional error on the face of the record, irrationality, and procedural impropriety.

(viii). An Order of Certiorari to quash and to remove from the Registry/Records of the 1st Respondent, the Office of the Special Prosecutor, the adverse findings of “conflict of interest”, “influence peddling or trading of influence” or conduct and/or activity indicating “... a propensity to engender corruption and corruption-related activities” made against the Applicants contained in the decisions and directions of the 1st Respondent’s said report dated 3 August 2022 which are not specified corruption and corruption-related offences under Act 959, on grounds of jurisdictional error on the face of the record, irrationality, and procedural impropriety.

(ix). An Order of Prohibition to prohibit the 1st Respondent from assuming jurisdiction and making any report containing decisions, adverse findings and directives against the Applicants or other persons similarly situated, and publishing same in the electronic and print media by virtue of any report and recommendations by the 1st Respondent in violation of Sections 2(a) and (b), 3 and 79 of Act 959 and Regulations 5, 6, and 7 of L. I.

2374 for the alleged commission of corruption and/or corruption-related offence(s) in the future except in accordance with Section 3(3) of Act 959 and or in a court of law.

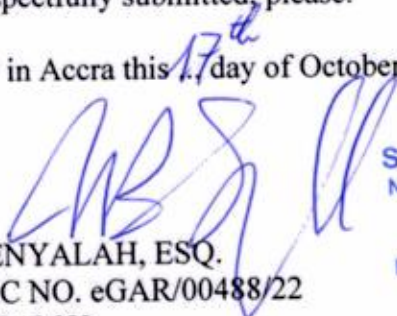
(x) A Order of Prohibition to prohibit the 1st Respondent from assuming the authority to employ the services of unauthorized persons, such as the 2nd Respondent, who have not been recruited and or appointed in accordance with Sections 21, 28, and 74 of the Office of the Special Prosecutor Act, 2017 (Act 959) and Regulations 2, 3, 12, 16, and 18 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374), in the investigation and/or prosecution of any offences under Sections 2(a), 3, and 79 of Act 959 in order to prevent the recurrence of the 1st Respondent's ultra vires actions against the Applicants herein that resulted in bringing this Application for Judicial Review.

(xi) An Order restraining the 2nd Respondent from holding himself out as an authorized officer for the purposes of the investigation and/or prosecution of any offences under Sections 2(a), 3 and 79 of Act 959 for or on behalf of the 1st Respondent without being properly recruited and appointed in accordance with Article 195 of the 1992 Constitution and Sections 21, 28, and 74 of the Office of the Special Prosecutor Act, 2017 (Act 959) and Regulations 2, 3, 12, 16, and 18 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374).

(xii) Any further orders or directions that this Honourable Court may deem appropriate to give full effect or to enable effect to be given to the letter and spirit of the 1992 Constitution, the Office of the Special Prosecutor Act, 2017 (Act 959) and the Office of the Special Prosecutor (Operations) Regulations, 2018 (L. I. 2374) for the purposes of enforcing or securing the enforcement of the supervisory and judicial review powers of the Court.”

102. Respectfully submitted, please.

DATED in Accra this 17th day of October 2022.


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