



OFFICE OF THE MEMBER OF PARLIAMENT

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South-Dayi Constituency-V/R.



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The Speaker of Parliament

Parliament House

Accra

SUBMISSION IN ANSWER TO HON AFENYO MARKIN ON THE MAJORITY/MINORITY DEBATE IN PARLIAMENT

1. Introduction:

First of all, there is the need to establish that the letter purported to have been written by the 2nd Deputy Speaker and Independent Member of Parliament for Fomena, the Hon. Amoako Asiamah is within his rights so to do. There are however, implications with regards the purpose of the letter purportedly written. It is important to note that, at all materials times, the Independent status of the 2nd Deputy Speaker is upheld if he should remain the 2nd Deputy Speaker, or he risks losing that position. This point is fortified in law. Article 96 (1) of the Constitution 1992 regarding the positions of Deputy Speakers one of which is currently occupied by Hon. Asiamah states as follows:

“There shall be two Deputy Speakers of Parliament –

(a) who shall be elected by the members of Parliament from among the members of Parliament; and

(b) both of whom shall not be members of the same political party.”

The Legal Arguments:

2. If the interpretation thereof is made that his decision to do business, and not by sitting with the New Patriotic Party (NPP) Caucus in Parliament is expressed to the numerical advantage of the NPP, then it simply stands to reason that he is counting himself as a member of the NPP for which the provisions under Article 97(1) (h) applies and of which he loses his seat automatically and cannot hold himself as a Member of Parliament of the people of Fomena. In this case, the overall implication remains that he cannot also hold himself as 2nd Deputy Speaker under Article 96 (1) (b) stated supra.

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3. What therefore is the legal effect of an Independent Member of Parliament who writes a formal letter to the Speaker informing him of his intention to form caucus with the NPP party in parliament and by which letter, the NPP can suggest that they constitute the majority in Parliament?

4. Let me then proceed to give you the legal effect of the formal letter. The first impact is that, the numerical strength of the NPP in Parliament will shoot up by one, giving them 138 from 137. If that determination is made pursuant to Order 7 of our Standing Orders, then it further means that the NPP will now appoint all the Chairmen and Vice-Chairmen of all the Committees in Parliament except those that the rules say are chaired by the Minority (such as Public Accounts, Subsidiary Legislation and Government Assurance) simply because they constitute the 'Majority'.

5. The further effect is that the NDC therefore, can only appoint Rankings and Deputy Rankings to these Committees. That's the reality of the effect of what the 2nd Deputy Speaker has done.

6. Now if the reality as stated above is the consequence of his actions, why must the effect of his decision which clearly breaches Article 97(1) (g) & (h) be ignored? For the purposes of this submissions, let me provide the stated position of the law under Article 97 dealing with the tenure of office of Members:

"Article 97(1) A member of Parliament shall vacate his seat in Parliament:

(g) if he leaves the party of which he was a member at the time of his election to Parliament to join another party or seeks to remain in Parliament as an independent member; or

(h) if he was elected a member of Parliament as an independent candidate and joins a political party".

7. And why must he be allowed to keep his 2nd deputy speakership position now that he has formally written to join or caucus with the NPP in Parliament both in fact and in law?

8. It is important to take you further to Clause 2 of Article 97 of the Constitution which would have settled this contentious matter if the NPP wish to take advantage of the situation in Parliament, and this should have occurred long before now. It says:

“Notwithstanding paragraph (g) of clause (1) of this article a merger of parties at the national level sanctioned by the parties' Constitution or membership of a coalition government of which his original party forms part, shall not affect the status of any member of Parliament.”

9. Clause (2) of the 1992 Constitution, provides the foundation for the provisions made in the Political Parties Act, 2000, Act 574, for the purpose of political parties in alliance under Section 20(1) (a) and (b). In this case, no alliance was formed ahead of the December 7th elections of 2020, and same cannot be purported to have been formed for the purpose of securing numerical advantage for the NPP.

9. Order 7 of our Standing Orders is a derivative of the constitutional provision in Article 97(1) (g) & (h) and clause (2). The provision is very clear as to what two minor political parties in Parliament can do and that is to form a coalition and caucus. That same provision forbids an independently elected Member of Parliament from entering into any “coalition” or joining any political party. If he/she does that, the seat will have to be declared vacant. So it is in the same vein that the Constitution also forbids a member who came to the House on the ticket of a political party will lose his or her seat if he or she decides to leave his or her party to become an independent member.

10. So clearly, we cannot construe and enlarge the meaning of ‘party’ as used in the Standing Orders to include Independent Members of Parliament. Never. Not even by relying on any modern mechanisms of purposive interpretations. An independent member cannot be equated to a political party as used by the framers of the Standing Orders and ascribed with qualities and features of a political party.

11. In the proper understanding, doing business with the NPP should mean ordinarily associating with NPP on all fronts in proceedings in parliament. The choice made as a Member of Parliament will make him to vote or oppose motions on the side of NPP in Parliament.

12. It does not make the Fomena MP an NPP member to create a membership advantage to the NPP in determining or making the NPP the majority side in Parliament.

13. The CPP MP 'Precedent' being relied upon, is inapplicable in this matter before us. The then CPP MP, Samia NKRUMAH did not make the side she voted for either a majority or a minority in parliament because of the numerical difference then. Neither did the side she voted counted her as one of their own making their seats gone up. We must also not forget she was from a Political Party (CPP) and NOT Independent MP as it is in the present case.

14. A membership of a party is determined by the EC upon evidence of filing and being endorsed by a party to contest an election on its ticket to Parliament. It makes you a member of that party and upon winning and entering parliament to be counted as a member of that party. Therefore, association with a party in Parliament does not confer a membership on you.

15. My position is that determining the numerical strength of a political party must strictly be by membership of the party on whose ticket you rode into parliament and not by association.

16. In politics, the definition of the word party excludes an individual. An individual cannot be considered a "party" and vice versa. The question we must ask the NPP then, is what happens if Hon. Asiamah changes his mind a month after and decides to do business with the NDC Caucus? Will that make the NDC the majority? Will that mean that the NPP will vacate their seats on the right side of the speaker for the NDC as they are seeking today?

17. Which law says that an Independent Member of Parliament is a Party properly so called? Which law says that an independent MP can decide which side of the house is Majority or Minority by virtue of where he/she decides to sit and or associate? Even the available precedents do not lend credence to that assertion.

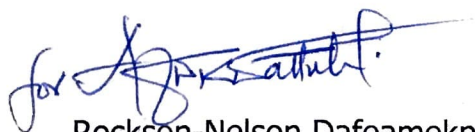
18. Is the NPP suggesting that, if they had won 137 seats and the NDC had won 130 seats, with 8 independent MPs in the 8th Parliament, the NDC would have been the Majority in the house because the 8 independent MPs had decided to do business with the NDC Caucus? Definitely not. I have no doubt that they would have insisted and asserted their 'Majoritiship' because they are the Party with more seats (137)

19. The system or principle being urged on us by the NPP that they are the Majority because an independent MP has decided to do business with them has no basis in law and in parliamentary practices and conventions and must therefore not be countenanced.

20. What the NPP is doing, is to seek to accept wholly, the impact of a decision that inures to their benefit, and refusing to accept in the same manner, the impact of a decision that affects them. In this case, the Fomena MP, who stands to benefit or lose, must properly evaluate his position in law. He may just bid farewell to Parliament because if his association is interpreted to provide numerical advantage to the NPP, then he has added to their side, and for that matter, has become a member, which effect would mean giving up his seat. The party NPP may not qualify him as a candidate based on their constitution and eventually bar him from contesting on their ticket.

Conclusion:

21. In any case, the Fomena MP was part of the proceedings on the 7th of January that led to the election of Speaker. Was his vote not taken when the majority votes went to the side of the NDC nominee? What guarantees that in such matters as to determining the national interest of Ghana, he may not from time to time, vote to support the motion of the NDC where secret ballots are allowed to determine such matters? Does he therefore, at such instances, lean towards the NDC Caucus and provides it with majority thereof?



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