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IN THE HIGH COURT
GENERAL JURISDICTION
ACCRA.

SUIT NO. CR 0678/2021

THE REPUBLIC

VERSUS

THE DISCIPLINARY COMMITTEE
GENERAL LEGAL COUNCIL
2ND FLOOR, GHANA SCHOOL OF LAW,
MAKOLA, ACCRA.) RESPONDENT

EX-PARTE: KWASI AFRIFA ESQ) APPLICANT

STATEMENT OF CASE OF THE APPLICANT SUPPORTING APPLICATION FOR JUDICIAL REVIEW

FACTS

My Lord, on the 8th of July, 2021, the Applicant received a complaint against him a copy of which is annexed as Exhibit 'A'. The Applicant replied per Exhibit 'B'. The Complainant filed a response to the Applicant's reply which is annexed as Exhibit 'C'. The proceedings of the Respondent of 15th July, 2021 is annexed as Exhibit 'D' and the charges preferred against the Respondent on the 29th of July, 2021 is exhibited as Exhibit 'E'.

Before receipt of the complaint by the Applicant on 8th July, 2021, he received an SMS text message informing him to appear before the Respondent on 15th July, 2021.

When the Applicant appeared before the Respondent on 15th July, 2021, he got to know for the very first time that the complainant had filed a further process dated 13th July, 2021, in reaction to his response dated 8th July, 2021, which had not been served on him. The Applicant drew the Respondent's attention to the non-service of the said process on him and indicated that the matter was therefore not ripe for hearing. The Respondent ignored the Applicant's intimation and caused the 8-

paged process to be served on the Applicant at the hearing and proceeded there and then to hold the preliminary inquiry without affording the Applicant an opportunity to apprise himself of the contents of the said process. The complainant's further process is annexed as Exhibit 'C'.

The Respondent informed the Applicant after the said inquiry that a prima facie case of misconduct had been established against him and adjourned to 29th July, 2021, for the charges to be laid. The proceedings of 15th July, 2021, is annexed as Exhibit 'D'.

On 29th July, 2021, Nine Counts of professional misconduct were read to the Applicant who pleaded not guilty to all the Nine Counts. The Applicant was served a copy of the Charge Sheet containing Nine Counts of misconduct (Exhibit 'E').

Five counts out of the Nine were based on the Legal Profession (Professional Conduct and Etiquette) Rules, 1969 (L.I. 613). The said Charge Sheet and/or process served on the Applicant by the Respondent is annexed to this application and marked as Exhibit 'E'.

The panel which heard the proceedings on 15th July, 2021, was different from the one that read the charges to the Applicant on 29th July, 2021. The 15th July, 2021, panel included Marful Sau JSC who was noticeably absent on the 29th of July, 2021.

All the Nine Charges in Exhibit 'E' do not arise from the complaint contained in Exhibit 'A'. The Applicant has not been given any opportunity to controvert any complaint based on the nine charges. Indeed, no complaint exists against the Applicant in respect of all the nine charges. They were levied **suo motu** by the Disciplinary Committee of the General Legal Council.

It is against the proceedings of 15th July, 2021, and 29th July, 2021, in particular the Nine Counts of Professional Misconduct levied against the Applicant, that the instant application has been filed praying this Honourable Court for the reliefs set out in the motion paper and supporting affidavit.

SUPERVISORY JURISDICTION OF THE HIGH COURT

Article 141 of the 1992 Constitution provides that:

"The High Court shall have supervisory jurisdiction over all courts and any lower

adjudicating authority; and may, in the exercise of that jurisdiction, issuesorders and directions for the purpose of enforcing or securing the enforcement of its supervisory powers."

Supervisory Jurisdiction has been defined in Article 161 of the 1992 Constitution in these terms:
"Supervisory jurisdiction includes jurisdiction to issue writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto."

Discussing the supervisory jurisdiction of the High Court, the learned author S. KWAMI TETTEH at page 23 following of his book "**CIVIL PROCEDURE, A PRACTICAL APPROACH**" says:
"The High Court has supervisory jurisdiction over all lower courts, lower adjudicating authorities and administrative authorities and, in the exercise of the jurisdiction, may issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory powers."

This position is emphasised at pages **570 – 686 OF THE LAW OF CHIEFTAINCY IN GHANA INCORPORATING CUSTOMARY ARBITRATION CONTEMPT OF COURT JUDICIAL REVIEW BY S. A. BROBBEY**. The respected jurist writes:
"Supervisory jurisdiction" has been defined in the 1992 Constitution, art 161 as "jurisdiction to issue writs or orders in the nature of *habeas corpus, certiorari, mandamus,* prohibition and *quo warranto.*" "Judicial review" is the power of examining or revising, with the view to correcting, the decisions or orders of other branches of the courts, government bodies or public institutions. In contemporary law practice, "judicial review" is used when referring to the exercise by which such decisions or orders are examined or revised by the issue of orders of *certiorari,* prohibition, *mandamus, quo warranto* and *habeas corpus.* These five are described as prerogative writs. Prerogative writs were traceable, in Anglo Saxon legal history, to the manner by which the King of England communicated his decision or pleasure to his subjects or the courts, especially after the British had conquered an area inhabited by people).

In THE REPUBLIC VS. HIGH COURT, ACCRA, EX PARTE LARYEA 1989-90 2 GLR at 101 SC per Amua Sekyi JSC held that:
"The law as we understand is that certiorari will lie to quash the decision of a Court on the ground of error of law on the face of the record if such error goes to jurisdiction, or is so obvious as to make the decision a nullity. By jurisdiction is

meant, of course, the power or authority of the Court of judge to give a decision on the issue before it; and, in this regard, the correctness or otherwise of the decision is irrelevant: for if there is no jurisdiction, the decision will be quashed although it be right.

Where, as in this case, jurisdiction is not in issue, the only ground on which the court can interfere is the unreasonableness of the decision, which must be patent. This was explained by Lord Reid in **ANISMINIC VS. FOREIGN COMPENSATION COMMISSION 1969 2 AC 147 at 171, HL** where he said:
"But there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it. It may have refused to take into account something which it was required to take into account or it may have based its decision on some matter which, under the provisions setting up, it had no right to take into account. I do not intend this list to be exhaustive.'

Also in **REPUBLIC VS. CAPE COAST DISTRICT MAGISTRATE GRADE II; EX PARTE AMOO 1979 GLR 150 at 159**, the Court of Appeal per Anin JA (as he then was) held:
"I have no doubt whatsoever that the High Court is competent to quash by certiorari the judgment and orders of inferior tribunals on the grounds of either want or excess of jurisdiction; breach of the rules of natural justice; error of law on the face of the record; and fraud, perjury or duress in procuring a decision."

At page 169 of **EX PARTE AMOO**, supra, Apaloo CJ in his characteristic erudite manner, concurred that:
"As is well known the remedy of certiorari is a useful tool in aid of justice and ought to be used to correct defects of justice whether they arise from illegality, fraud, breach of the rules of natural justice, error on the face of the record and the like. I am not even prepared to say that the category of cases in which this useful remedy can or should be used is closed."

In **BRITISH AIRWAYS VS. ATTORNEY GENERAL 1996-97 SCGLR 547 Holding 1**, the Supreme Court held that:
"...Therefore, whenever in the course of any matter brought before the Court, it

was found that there existed in any lower court any matter which in the long run would result in injustice or in illegality, it was the duty of the court to at once intervene and issue orders and directions, with a view to preventing such illegalities or injustice even before they occurred..."

In **REPUBLIC VS. KWAHU TRADITIONAL COUNCIL & ORS; EX PARTE NANA OSEI NKANSAH 1977 2 GLR 497**, it was held at 505 that:
"An order of prohibition is an order directed to an inferior court or tribunal forbidding such court or tribunal from continuing or proceeding therein in excess of its jurisdiction or in contravention of the laws of the land. It lies ... also for a departure from the rules of natural justice."

It is the Applicant's case that, he received the complaint dated 1st March, 2021, (Exhibit 'A') from the Respondent by post on 8th July, 2021, when he received a telephone call telling him to pick up a letter from the General Post Office, responded on the same day and forwarded his said response via Expedited Mail Service (EMS) to the Respondent.

Even before the Applicant received the said complaint on 8th July, 2021, he received a SMS text message from an officer of the Respondent notifying him of his meeting with the Respondent scheduled for the 24th June, 2021. The Applicant told the said officer that he was not aware of any complaint since no complaint had been served on him and followed up with a letter stating this fact and his inability to appear before the Respondent on the said date.

The said officer subsequently informed the Applicant of the receipt of his said letter and communicated to him that the meeting had been adjourned to 15th July, 2021. The Applicant again told the said officer that he had still not been served the complaint whereupon he was told that the complaint was sent by post even though the Respondent's own rules indicate that a lawyer is to be served personally or a copy of the complaint should be left at the chambers of the lawyer or on the notice board of the court if personal service is not possible. The Applicant's Chambers is always open but no communication from the Respondent was received at the said Chambers.

The Applicant duly appeared before the Respondent on 15th July, 2021, and got to know that the complainant had filed a process dated 13th July, 2021, in reaction to the Applicant's response dated 8th July, 2021 (Exhibit 'C'). Applicant informed the Respondent that he had not been served a copy of the said Exhibit 'C' therefore

the matter was not ripe for hearing per the rules of the Respondent.

The Respondent ultimately caused a copy of the 8-paged process to be given the Applicant there and then and immediately proceeded to hold a purported preliminary inquiry without affording the Applicant the opportunity to apprise himself of the contents of the said process. The Respondent then informed the Applicant that a prima facie case of misconduct had been established against him and the charges will be made known on 29th July, 2021.

In **LAGUDA VS. GHANA COMMERCIAL BANK 2005-2006 SCGLR 388,** the principle of audi alteram partem was explained in H1 as follows:
"The core idea implicit in the natural justice principle of audi alteram partem was simply that a party ought to have reasonable notice of the case he has to meet and ought to be given opportunity to make his statement in explanation of any question and answer any arguments put against it."

REPUBLIC VS GHANA RAILWAY CORPORATION, EX PARTE APPIAH & ANOR 1981 GLRD 68 H2 is to the same effect.

My Lord, at the time the purported preliminary inquiry was held, the Applicant did not know the entire case against him to enable him adequately answer the said case. Undoubtedly, this amounts to a breach of the audi alteram partem rule inherent in the rules of natural justice as justice must not only be done but to be manifestly and undoubtedly seen to be done. The Disciplinary Committee of the General Legal Council descended into the arena of conflict and was blinded by the dust of conflict.

It is also apparent that, at the time the Respondent fixed a date for the parties to appear before it, the Applicant had not been served the complaint and therefore the fixing of the said date as well as the purported proceedings consequent upon it is premature.

Quite obviously, the Respondent failed to follow its own rules by failing to serve the Applicant in accordance with its rules regarding mode of service of complaints on lawyers as well as proceeding to fix a date to inquire into the complaint without first satisfying itself that the Applicant had been served particularly when the Respondent itself had failed to comply with its own rules regarding service.

In **MUNJI (substituted by) MUMUNI VS. IDDRISU & ORS 2013-2014**

SCGLR 429, the Supreme Court held in Holding 2 that:
"...It is an intractable rule of law that, a court of justice has a duty, suo motu, to set aside its own void orders once this comes to its notice. It matters little how such orders are brought to its notice. That no exercise of discretion arises in such matters is anchored on the fundamental principle that no court must perpetuate an illegality. It is therefore no longer permissible, in deserving cases, particularly for a judge of a superior court, confronted with his or her own order which is plainly void or a clear nullity, to wring his or her hands in despair and lament that the mode by which that order is sought to be vacated does not conform strictly to the traditional procedure for setting aside orders..."

Dotse JSC in **AMOSA (NO. 1) VS. KORBOE (NO. 1) 2015-2016 2 SCGLR 1516 @ 1532**, relying on Akufo-Addo versus Quashie Idun 1968 GLR 667, CA (Full Bench), delivered himself thus:
"Amissah JA, speaking on behalf of the court at page 688 of the Report re-emphasised the position of the court thus:
"And where the balance is between inconvenience or even pecuniary harm to a party on the one hand as opposed to the condonation of law breaking on the other, as appears to be the case here, the courts should not lend their assistance to the breaking of the law."

Having shown that the Respondent failed to follow its own rules in addition to failing to afford the Applicant the opportunity of knowing the entire case against him before holding the said inquiry, there was a clear breach of the rules of natural justice. In addition to this, it is patent on the face of the record that the Respondent has charged the Applicant based on a non-existent law which is a clear illegality.

It is respectfully submitted that, on the facts and the law, the conditions exist for the Honourable Court to exercise its jurisdiction to grant an order for certiorari in favour of the Applicant.

It cannot be doubted that the continued hearing of the proceedings against the Applicant would result in a nullity and same ought to be prevented by the Honourable Court.

In **IN RE: APPENTEN (DEC'D); REPUBLIC VS. HIGH COURT, ACCRA; EX PARTE APPENTENG & ANOR 2005-2006 SCGLR 18**, it was held at H1 as follows:
"the court would uphold the following rules on the scope of the order of

prohibition, namely: (a) prohibition is not meant to prevent a person or a court from exercising general judicial functions; (b) it is rather to challenge an attempted exercise of the judicial function in specific jurisdictional situations, ie for excess or absence of jurisdiction or departure from the rules of natural justice such as the existence of actual bias or strong likelihood of bias or interest; and (c) and applicant for prohibition or certiorari is not restricted by notion of locus standi, i.e. he does not have to show that some legal right of his is at stake."

In **GHANA COMMERCIAL BANK LTD VS. COMMISSION ON HUMAN RIGHTS & ADMINISTRATIVE JUSTICE 2003-2004 SCGLR 91** at **95**, the Supreme Court held per Brobbey JSC that:
"The courts have been established to administer justice according to law. Administering justice according to law means according to the laws of the land, statutory and common law inclusive. No court will consciously order the enforcement of any decision that it knows to have infringed aspects of the laws of the land. That will be absurd and the thought of it would be inconceivable. It would only do so where there are provisions of the law permitting the infringement..."

My Lord, Order 55 of CI 47 is the procedural rule by which an Applicant may approach the High Court for the requisite supervisory jurisdiction orders.

THE NATURE OF JUDICIAL REVIEW
The Supreme Court has indicated circumstances judicial review may be sought in **BRITISH AIRWAYS v ATTORNEY GENERAL [1996-1997] SCGLR 547 at 553:**
"...ought to be exercised in appropriate and deserving cases in the interest of justice... whenever in the course of any matter brought before this court. [if] it is found that there exists in any lower court any matter which would in the long run result in injustice or an illegality, it is the duty of the court to at once intervene, and issue orders and directions, with a view to preventing such illegalities or injustice..."

Bamford-Addo JSC stated in the case of **REPUBLIC v HIGH COURT, ACCRA; EX PARTE INDUSTRIALIZATION FUND FOR DEVELOPING COUNTRIES & ANOR [2001-2004] SCGLR 348 at 354** thus:
"Certiorari is a discretionary remedy, which would issue to correct a clear error of law on the face of the ruling of the court; or an error, which amounts to lack of

jurisdiction in the court so as to make the decision a nullity."

Dr. Seth Twum JSC at page 361 of **REPUBLIC v HIGH COURT, ACCRA; EX PARTE INDUSTRIALIZATION FUND FOR DEVELOPING COUNTRIES AND ANOR,** supra, added that:
"Judicial review is of course discretionary. Consequently immense trust is placed on the judiciary to ensure its proper functioning. This court, in particular has a heavy burden of developing judicial review in ways that are dynamic ..."
His Lordship further said:
"...Judicial review is only available against a public authority concerning the protection of rights that only arise in public law."

Affirming the above decisions and throwing more light on the scope supervisory jurisdiction, Wood JSC (as she then was), in the case of **REPUBLIC v COURT OF APPEAL, EX PARTE; TSATSU TSIKATA [2005-2006] 1 SCGLR 612 at 619** posited thus:

"The clear thinking of this court is that, our supervisory jurisdiction under article 132 of the 1992 Constitution, should be exercised only in those manifestly plain and obvious cases, where there are patent errors of law on the face of the record, which errors either go to jurisdiction or are so plain as to make the impugned decision a complete nullity. It stands to reason then, that the error(s) of law alleged must be fundamental, substantial, material, grave or so serious ..."

THE IMPORTANCE OF OBEYING THE LAW
The importance of obeying the law cannot be underestimated. It is firmly entrenched in the law as espoused at page 140 of the "Discipline of Law", by Sir Alfred Denning that:
"Be you not so high. You are subject to the law and God." This was by CJ Coke and Thomas Fuller affirmed it by saying: **"be you never so high, the law is above you."**

The present position of the law as set out in **GCB v CHRAJ 2003-2004 SCGLR 91** at 95 per Brobbey JSC, is that:
"the courts have been established to administer justice according to law. Administering justice according to law means according to the laws of the land, statutory and common law inclusive. No court will consciously order the enforcement of any decision that it knows to have infringed aspects of the laws of

the land. That will be absurd and the thought of it would be inconceivable. It would only do so where there are express provisions of the law permitting the infringement."

The conduct of the Disciplinary Committee of the General Legal Council in the circumstances of this matter is an affront to commonsense and miscarriage of justice of the type deprecated in **KWAKYE VS. ATTORNEY-GENERAL 1981 GLR 944** at page 995 of the 1981 Ghana Law Report in the following words:
"It would be an affront to commonsense and a miscarriage of justice to hold that presumably all things were done properly and with due formalities. The evidence – such as it was – points clearly to the contrary, thereby rebutting the presumption of regularity."

In **TEMA DEVELOPMENT CORPORATION & ANOR v ATTA BAFFUOR 2005/2006 SCGLR 121 @ 122 Holding 2** it was held that:
"The grounds upon which an administrative action would be subject to judicial review were illegality, irrationality and procedural impropriety. By "illegality" was meant the decision-maker must understand correctly the law regulating his decision-making power. "Irrationality" could be succinctly referred to as *Wednesbury* unreasonableness – applicable to a decision which was so outrageous in its defiance of logic or of accepted moral standards that no sensible person, applying his mind to the question to be decided, could have arrived at it. By "procedural impropriety" was meant not only failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who would be affected by the decision but also failure by an administrative tribunal to observe procedural rules expressly laid down in legislation by which its jurisdiction was conferred, even where such failure did not involve any denial of natural justice. **ASSOCIATED PROVINCIAL PICTURE HOUSES LTD v WEDNESBURY CORPORATION [1948] 1 KB 223 and COUNCIL OF CIVIL SERVICE UNIONS v MINISTER FOR THE CIVIL SERVICE** (supra) (per Lord Diplock of 949 and 950-951) cited."

It behoves this Court not to acquiesce to the patent injustice of the Disciplinary Committee of the General Legal Council for no one ought to be denied justice. It is a maxim held by the courts, that there is no wrong without its remedy; and the courts have a remedy for whatever is acknowledged and treated as a wrong. Please see page 127 of **LINCOLN AS A LAWYER,** supra. As the Proclamation to the Magna Carta says:
"to no one will we deny, delay, or refuse, right or justice".

DEEGBE VS NSIAH 1984-86 1 GLR 545 @ 552 CA decides that:
"we hope that lawyers will help to achieve speedy justice for it is said that justice is sweet if it is swift."
The behaviour of the Disciplinary Committee of the General Legal Council as if it is outside the control of the Courts compels one to cite **KWAKYE VS. ATTORNEY GENERAL 1981 GLR 944 at 1046** where it was poignantly held by the legally-industrious and erudite Taylor JSC that:
"I must remark that the idea that any statutory institution, authority or tribunal or inferior jurisdiction is outside the control of the judiciary is surely incompatible with the essence and regime of a democratic system; it undermines the rule of law; it is subversive of orderly government and is an erosion of the people's liberties. In all cases, the very fact that it is a creature of statute which gives it limited powers, means that it is ipso facto not outside the control of the superior courts. If this court is to propagate the idea of uncontrollable institutions, the basis for it must be found in an unequivocal constitutional provision so clear as to be capable of no other meaning than the creation of an uncontrollable institution."

The procedure and conduct of the Disciplinary Committee of the General Legal Council is an affront to the rule of law and calls to mind the words contained in **KWAKYE VS ATTORNEY GENERAL 1981 GLR 944 at 1049,** the fifth line of the page, where it was held that:
"It is an affront to the rule of law and a blatant disgrace and slur on our legal system."

As stated in **KWAKYE VS. ATTORNEY GENERAL 1981 GLR 944 at 1057,** "there could be no question .... that clearly a blatant and outrageous injustice of immense proportion has been perpetrated...".

This Honourable Court must call a spade a spade, for as held by Taylor JSC in **KWAKYE VS. ATTORNEY GENERAL 1981 GLR 944 at 1059,** "we are free to call a spade a spade and to declare a clearly illegal act as illegal...".

The peerless, incomparable and eternally-bold Taylor JSC in **KWAKYE VS. ATTORNEY GENERAL 1981 GLR 944 at 1057** opines that: "Any country that countenances injustice may achieve some temporary respite; but in my humble opinion, such respite is illusory and the nation is without doubt poised on a path that may lead to violence. The peace and tranquility that it needs for orderly progress and development must surely elude it as long as it is capable of tolerating injustice. We must remember that an injustice against a nonentity is indeed an

injustice against each and every one of us. It is merely a case of: yesterday it was A, today it is B, and tomorrow it would be you; the biblical saying "love your neighbour as yourself" becomes meaningful if we resist injustice perpetrated against our neighbour as we will resist it if it is against us. Jiagge JA in **REP v ANLO TRADITIONAL COUNCIL EX PARTE HOR II 1979 GLR 234 @ 245,** reminded us in a poignant warning that: "a sense of injustice is a grievous thing". We must never forget that a man unjustly treated and who has no means of peacefully getting justice may resort to violence and self-help and he would be supported in his violence by good men sympathetic to his cause...."

At page 137 of the Proposals of the Commission citing Lord Hewart in **THE NEW DESPOTISM**, it was said that: "when, for any reason or combination of reasons, it has happened that there has been lack of courage on the judicial bench, the enemies of equality before law have succeeded, and the administration of the law has been brought into disrepute. In particular, there have been in the long course of English history, periods and occasions when it has been endeavoured not entirely without success, to control and pervert the course of judicial decision."

In his book, the **ROAD TO JUSTICE**, published in 1955, Sir Alfred Denning says:
"if a judge is a relative or a personal friend of one of the parties, he is disqualified. Indeed, if there are any grounds on which anyone might think that he might be biased in favour of one side or the other, he must not sit to try the case. For instance, in England it often happens that a magistrate is also a member of a local authority. It is an inflexible rule, laid down by Parliament, that he must not sit in a case in which the local authority is a party. It sometimes happens that a magistrate's wife is to be called as a witness in proceedings. Again he must not sit. If in any of the cases, by some oversight, he should sit and then it is discovered that there was the mere possibility of his being biased, his decision will be upset, even though the decision, as decision, was quite correct. The reason is because it is of the utmost importance that every person should be able to feel that his case has been tried by an upright and impartial judge. It is a settled principle of our law that justice must not only be done, but it must manifestly and undoubtedly be seen to be done."

This court is bound to interpret the law in a manner advancing the cause of justice. As held by Denning LJ (as he then was) in **SEAFORD COURT ESTATE LTD v ASHER 1949 2 KB 481 at 498:**
"Whenever a statute comes up for consideration it must be remembered that it is

not within human powers to foresee the manifold sets of facts which may arise: and that, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision... It is my fervent hope and prayer that whenever the Court is invited to interpret the provisions of the law it shall do so without fear or favour, affection or ill-will to the parties who so invited it and will show that fortitude which has been the greatest quality of the old common law. It is not to place itself above the constitution of which it is its servant. But its members will be failing in their duty if they allow convenience and expediency to be their guides or aids to interpretation...."

As Dotse JSC said in **AMOSA (NO. 1) VS. KORBOE (NO. 1) 2015-2016 2 SCGLR 1516 @ 1532,** whenever there is a balance between convenience and breaking of the law, the courts should not lend their assistance to the breaking of the law.

In **PAWLETT v ATTORNEY GENERAL 1667 HARDRES 465 at 469** it was held per Atkyns B. that "the party ought in this case to be relieved against the King, because the King is the fountain and head of justice and equity, and it shall not be presumed that he will be defective in either, and it would derogate from the King's honour to imagine that what is equity against a common person should not be equity against him."

It is a firm principle of law that statute which encroach on the rights of subjects are to be construed to respect such rights. In **REPUBLIC VS. VOLTA REGION CHIEFTAINCY COMMITTEE & ANOR EX PARTE ASOR II, 1972 1 GLR 273 at 274 H4,** the Doyen of felicitous language, Francois J (as he then was) held that:

"Statutes which encroach on the rights of subjects are to be construed, wherever possible, to respect such rights. In the instant case, the only interpretation that could be given to the first term of reference under which the committee purported to examine the applicant's capacity as a chief was that the committee was to consider the selection of stools as distinct entities to the regional house of chiefs. The committee was not authorized to examine the qualifications for office of an occupant of a stool. Dicta of Akufo-Addo C.J. In **GENERAL OFFICER COMMANDING GHANA ARMY VS REPUBLIC; EX PARTE BRAIMAH,** Court of Appeal, 3 April 1967, unreported; digested in 1968 C.C. 81; of Azu Crabbe J.A. in **AWOONOR-WILLIAMS V. GBEDEMAH,** Supreme Court, 8 December 1969, unreported; digested in 1970 CC 18 and of Pollock B. in **GRENFELL VS. INLAND REVENUE COMMISSIONERS 1876 1 Ex.D. 242**

at p. 248 applied. **WALSH VS SECRETARY OF STATE FOR INDIA 1863 10 H.L. Cas. 367 at p. 386; DAVID VS. DE SILVA 1934 A.C. 106, P.C.; BARNARD VS. GORMAN 1941 3 ALL E.R. 45, H.L. and FELTON VS. BOWER & CO. 1900 1 Q.B. 598** cited."

A decision of any court or entity which creates injustice is undesirable in extremis. As stated in **KWAKYE VS. ATTORNEY GENERAL 1981 GLR 944** at 1068, the first paragraph of the page:
"I have, no doubt, that the majority decision of this court is erroneous, if not per incuriam, since it conflicts with the unanimous decision of the same court dated 22 March 1981 in the same case, and because it creates injustice; I believe such a decision cannot survive the ravages of time. The injustice perpetrated in the name of the Constitution is indeed outrageous and if our Constitution and legal system has no remedy, then I agree with the view of Knight Bruce L.J. in **SLIM v CROUCHER (1860) 1 De G.F. & J. 518 at p. 527** where he said: "A country whose administration of justice did not afford redress in a case of the present description would not be in a state of civilization."

We are only temporarily in control of the judiciary of this country. As our young men leave our universities and become aware of the great learning developed by the common law on the operational force of the private clauses; and as their sense of justice become sharp, those of them who will ascend the bench will without doubt overrule this decision which seeks to deprive many of our people justice".

At this juncture, it is appropriate to point out that the assumption of jurisdiction and imposition of punishment by the Disciplinary Committee of the General Legal Council is no more than a capricious action and cannot be described as judicial in any way.

Justinian said: "impartiality is the life of justice, as justice is of all good government". Learned Hand said at page 60 of **SPIRIT OF LIBERTY, PAPERS AND ADDRESSES OF LEARNED HAND,** Published in 1953 that:
"I often wonder whether we do not rest our hopes too much upon constitutions, upon laws and upon courts. These are false hopes, believe me these are false hopes. Liberty lies in the hearts of men and women, when it dies there is no constitution, no law, no court can save it, no constitution no law no court can even do much to help it. While it lies there, it needs no constitution, no law no court to save it."

It is well-settled that a blind, unquestioning attitude ought not be permitted to take root in this country and that obedience to the law by all is the sure route for the attainment of justice, equity and development.

As held in **KWAKYE VS. ATTORNEY GENERAL 1981 GLR 944 at 1070,** "an action can be a judicial action or a purported judicial action if it is not capricious or illegal; a capricious or illegal action is not a judicial action or a purported judicial action...."

It is submitted that the action and conduct of the Disciplinary Committee of the General Legal Council is unlawful, wrongful, malafides and contrary to good conscience, equity and fundamental notions of law and such a decision must never be allowed to stand.

It is the position of the law as held by **HAYFRON-BENJAMIN J.SC** in **REPUBLIC v LANDS COMMISSION EX-PARTE VANDERPUIJE ORGLE ESTATES 1998-99 SCGLR 677** @ 680 H2, a party is entitled to approach the court whenever there is a threat of non-compliance with the law. In the words of the distinguished jurist:.....

> *"I hold that the Applicants were right in approaching the Court for mandamus for, wherever there is a danger or threat that an interest, whether proprietory or otherwise will be prejudiced or unlawfully interfered with, mandamus will lie ... even where there is an alternative process, it is not an inflexible rule that the statutory procedure so laid down must necessarily be followed".*

REPUBLIC VS COURT OF APPEAL EX PARTE BEDIAKO IV 1994-95 2 GBR 566 H1 decides that:
"Certiorari would issue to quash the record of an inferior tribunal for error of law apparent on the face of the record where such inferior tribunal had acted without jurisdiction or in excess of jurisdiction or had abused its powers. Lack of jurisdiction might arise from lack of authority to enter into the inquiry or some part of it or from a condition precedent to the exercise of jurisdiction..... **R VS LONDON, etc RENT TRIBUNAL, EX PARTE HONING 1951 1 ALL ER 193, R VS ACCRA SPECIAL CIRCUIT COURT EX PARTE AKOSA 1978 GLR 212, R VS MINISTER OF HEALTH 1939 1 KB 232, CA, R VS FULHAM, HAMMERSMITH and KENSINGTON RENT TRIBUNAL, EX PARTE ZEREK 1951 2 KB 1** referred to."

Respectfully My Lord, we propose to discuss the law on Prohibition which is another remedy sought in the instant application.

Bamford-Addo JSC held in **BRITISH AIRWAYS v ATTORNEY GENERAL [1996-1997] SCGLR 547 at 553,** that supervisory jurisdiction is appropriate in situations where it:
"...ought to be exercised in appropriate and deserving cases in the interest of justice... whenever in the course of any matter brought before this court it is found that there exists in any lower court any matter which would in the long run result in injustice or an illegality, it is the duty of the court to at once intervene, and issue orders and directions, with a view to preventing such illegalities or injustice..."

The clear position of the law is that whenever a condition precedent is not met or is disregarded the resulting proceedings is a nullity. The following cases supports that clear legal proposition:

ROCKSON VS. ILIOS 2010 SCGLR 341
NARTEY VS. GATI 2010 SCGLR 745 H4
AHINAKWA II VS. OKAIDJA III 2011 1 SCGLR 205
REPUBLIC VS. HIGH COURT, ACCRA, EX PARTE: SALLOUM 2011 1 SCGLR 574 @ 577
DACHEL VS. FRIESLAND FRICO DOMO 2012 1 SCGLR 41
ACCAM VS. GBERTEY 2013-2014 1 SCGLR 343
OPPONG VS. ATTORNEY GENERAL 2000 SCGLR 275
REPUBLIC VS. HIGH COURT, TEMA EX PARTE OWNERS OF MV ESSCO SPIRIT 2003-2004 SCGLR 689.

In paragraph 13 of the affidavit in support of the application the Applicant contends that the Respondent disregarded conditions precedent to the assumption and exercise of jurisdiction and therefore its decision is void. Support for this contention is **OPPONG VS. ATTORNEY GENERAL 2000 SCGLR 275 @ 276 per Atuguba JSC:**
"All the proceedings filed before a writ was issued in this case are a nullity for the simple reason that they depend upon the existence of a writ. This means that the statement of the plaintiff's case dated 14 September 1999 and all subsequent papers, including the statement of the defendants' case based on the said statement of case dated 14th September 1999, are all null and void except as to the preliminary objection raised. The irregularity in these circumstances is not a mere irregularity but a fundamental defect. MOSI VS. BAGYINA 1963 1 GLR 337, SC

cited."

This point of disregard of condition precedent resulting in a nullity is restated in **REPUBLIC VS. HIGH COURT, TEMA, EX PARTE OWNERS MV ESSCO SPIRIT 2003-2004 2 SCGLR 689 @ 690:**

Per curiam: The real issue was whether or not a writ of summons improperly indorsed according to the relevant rules of our High Court, could originate an action and thereby invoke the jurisdiction of the High Court. To put it bluntly, is such a writ of summons, not a nullity? For example, a writ not authenticated by the signature of the plaintiff or his solicitor, is a nullity. If the writ in this case is a nullity, no court can proceed to exercise whatever jurisdiction it has on that void writ of summons... The Forms referred to in Order 2, rr 3 and 6 and Order 3, r 3 are designed to enable the defendant to know, at least, in very general terms, the substantive action being brought against him. This is why Order, 3 r 2 provides that in the indorsement required by Order 2 e 1, it shall not be essential to set forth precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled."

RE LOKUMAL & SONS APPLICATION 1962 2 GLR 53 H1

"The magistrate has no such jurisdiction since the conditions precedent to the exercise of his jurisdiction were unfulfilled. R. VS. NAT BELL LIQUORS LTD 1922 2 A.C. 128 cited."

PRINCIPLE OF LAW INJURING THE INNOCENT AND BENEFITTING THE GUILTY

HANSEN VRS ANKRAH 1987-88 1 GLR 639 at 659 per Apaloo CJ

".....after all, the law must adapt itself to changing social conditions and those precedents are inapplicable to modern conditions. There is some question whether doing this will amount to judicial legislation. Refusing to follow an obviously unjust precedent cannot rightly be construed as judicial legislation. We have a constitutional authority to refuse to be bound by a precedent which injures the innocent, benefits the guilty and puts a premium on blatant breach of fiduciary duty. To do otherwise, would be an exhibition of judicial inertia wholly indefensible in our day and age."

FOLLOWED IN AFRANIE VRS QUARCOO 1992-93 GBR 1451 at 1510 per HAYFRON-BENJAMIN JSC

AFRANIE VRS QUARCOO IS ALSO AUTHORITY FOR CONDITION

PRECEDENT at 1452 H3

Regulation 18 of LI 369 required a landlord seeking possession under section 17(1)(g), (h), (i) or (k) to submit to the appropriate rent officer, the declaration specified in Form 14 of the First Schedule that the premises would not be re-let to another tenant within a specified period. The requirement was a condition precedent to the assumption of jurisdiction by any court. The respondents having failed to comply with the provision, neither the court below nor the Supreme Court had jurisdiction to order possession. **ALAWIYE VS AGYEKUM 1984-86 1 GLR 179, SFARIJILANI VS BASIL 1973 2 GLR 260, RAWANJI BROTHERS VS PATTERSON ZOCHONIS & CO LTD 1975 2 GLR 352, HAMID VS AKATA 1989-90 2 GLR 420, CA, JOSEPH VS FARISCO GHANA LTD 1991 2 GLR 151, CA, ADU VS CLEGG 1981 GLR 173, SHARPE VS NICHOLLS 1945 1 KB 382, DAVIES VS WARWICK 1943 KB 329, PARKER VS ROSEMBERG 1947 1 ALL ER 87, BOATENG VS DWINFOUR 1979 GLR 360, EPSON GRANDSTAND ASSOCIATION LTD VS CLARK 1919 535, CA** referred to.

Per Aikins JSC: in **GBEDEMAH VS OFORI 1991 2 GLR, 345**, the Court of Appeal held that the declaration could be filed before the end of the case and that the court could order for the filing before the execution of the judgment. There is no doubt in my mind that the declaration must be filed no later than the date of the judgment for possession. A declaration filed after such judgment makes nonsense of the statutory provision.

EXCESS OF JURISDICTION
REPUBLIC VS. DISTRICT MAGISTRATE, ACCRA, EX PARTE ADIO 1972 2 GLR 125 at 126 H2 & H3, CA

H2. When the term "excess of jurisdiction" is used, it may mean that from the inception of the case, the court has no jurisdiction whatsoever because the nature of the case or value involved is beyond its jurisdiction. But it may also mean that although the court has jurisdiction to hear the case, the orders which the court can pronounce are restricted by statute. If an order is therefore beyond the powers of the court, it is perfectly correct to say that it has exceeded its jurisdiction. Since the statutory notice was not affixed to the appellant's premises as required under the Act, the district magistrate exceeded his jurisdiction in granting the order of sale to the city council.

H3. Where an inferior tribunal decides a collateral issue the High Court is entitled

to look at the correctness of the decision even with the aid of extrinsic evidence, and if it appears that the decision is erroneous, then certiorari would lie to quash the decision....."

REPUBLIC VRS ADRIE & ORS; EX PARTE KPORDOAYE III 1987-88 1 GLR 624 @ H1, H3 & at page 631

H.1 It was plain from both the record of the arbitration and the affidavits filed by the parties that the arbitrators exceeded their jurisdiction when they sought to demarcate and fix new boundaries between the L and K family lands as their arbitration award, when the dispute brought before them to adjudicate upon was a land matter between M and A. The panel also breached the rules of natural justice in proceeding to carry out the demarcation of the land of the two families without having heard the applicant. And also in allowing members of both families to sit on the arbitration involving their own family lands. Dicta of Lord Pearce in **ANISMINIC LTD VS. FOREIGN COMPENSATION COMMISSION 1962 2 AC 147 at 193, HL; of Lord Thankerton in FOLI VS AKESSE 1934 2 WACA 46 at 50, PC; NYAME VS YEBOAH 1961 GLR 281, SC; SAASUO VS TEMAMBI 1962 1 GLR 439 and BAKUMA VS EKOR 1972 1 GLR 133 at 147, CA** cited.

H3. The courts were prepared to grant certiorari to quash an oral decision where it could find an error of principle. In the instant case, however, there was a record of arbitration and certiorari would lie to quash it if there was an error of law on the face of the record, or if the decision in the record was arrived at in breach of the rules of natural justice or there was evidence of lack or excess of jurisdiction. **R VS. NORTHUMBERLAND COMPENSATION APPEAL TRIBUNAL; EX PARTE SHAW 1952 1 KB 338, at 353, CA; R VS CHERTSEY JUSTICES; EX PARTE FRANKS 1961 1 ALL ER 825 at 826 and 829 and REPUBLIC VS AKIM ABUAKWA TRADITIONAL COUNCIL; EX PARTE SAKYIRAA II 1977 2 GLR 115** cited.

H4. A customary arbitration body was an adjudicating authority ..... as inferior tribunals they had to be amenable to the supervisory jurisdiction of the High Court.

.....quashed if he could satisfy the court that the arbitrators lacked or exceeded their jurisdiction, were biased or that there was fraud or breach of the rules of natural justice. Since on the evidence the arbitrators in the instant case had exceeded their jurisdiction and also breached the rules of natural justice, certiorari would lie to quash their award. Dictum of Atkin LJ in **R VS. ELECTRICITY**

COMMISSIONERS; EX PARTE LONDON ELECTRICITY JOINT COMMITTEE CO 1920 LTD 1924 1 KB 171 at 205, CA; R VS CRIMINAL INJURIES COMPENSATION BOARD, EX PARTE LAIN 1967 2 QB 864, DC, dicta of Lassey J (as he then was) in **PONG VS MANTE IV 1964 GLR 593 at 596** and of Hayfron-Benjamin J (as he then was) in **REPUBLIC VS CHIEFTAINCY COMMITTEE ON WIAMOSOHENE STOOL AFFAIRS; EX PARTE OPPONG KWAME** (supra) at 336 cited."

In REPUBLIC VS HIGH COURT, ACCRA EX PARTE EASTWOOD LTD & ORS 1994-95 2 GBR 557 H3, H4 the Supreme Court held that:
H3. Prohibition primarily law to restrain an inferior court from exceeding its jurisdiction..... **TIMITIMI VS AMABEBE 1953 14 WACA 374** referred to.

H4. The High Court was the lowest court in the hierarchy of superior courts but was a superior court with jurisdiction in all matters as under Article 140(1) of the 1992 Constitution. Accordingly nothing was out of its jurisdiction but that which specially appeared to be so..... **TIMITIMI VS AMABEBE 1953 14 WACA 374. ANISMINIC VS FOREIGN COMPENSATION COMMISSION 1969 2 AC 147, HL** referred to.

It is to be noted that where tribunal lawfully enters upon the enquiry but refuses to consider something it is required to take into account it is still acting without jurisdiction. In **REPUBLIC VS HIGH COURT, KUMASI EX PARTE ACKAAH 1994-95 1 GBR 470 @ 475,** the Supreme Court held that:
"In **ANISMINIC VS FOREIGN COMPENSATION COMMISSION 1962 2 AC 147, HL** at page 171 Lord Reid observed that it was not only where a tribunal acts without jurisdiction that its decision is a nullity, but also where, for example, after lawfully entering, upon the enquiry, it refuses to consider something it was required to take into account. The latter is precisely what the judge did in this case, and on this ground, therefore, we would grant the order prayed for in this application and remit the motion for stay of execution to the High Court in Kumasi for hearing before another judge....."

In the instant case, the Disciplinary Committee of the General Legal Council based itself on extraneous material which it used as the basis for the nine charges levelled against the Applicant. That is impermissible, illegal, wrong and contrary to procedural propriety. Counts 4 and 9 in particular, but substantially all the charges of Exhibit 'E' sufficiently attests this point.

REPUBLIC VS ADRIE & OTHERS EX PARTE KPORDOAVE III 1987-88 1 GLR 624 @ 631 shows that lack of jurisdiction may arise in several ways. The court held:

"In **BAKUMA VS EKOR 1972 1 GLR 133 at 147, CA** the Court of Appeal approved of what Lord Pearce said thus in his speech in the case of **ANISMINIC LTD VS FOREIGN COMPENSATION COMMISSION 1969 2 AC 147 at 195, HL."**

"Lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an inquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or in the intervening stage, while engaged on a proper inquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction."

REPUBLIC VS DISTRICT COURT GD. 1 DUNKWA-ON-OFFIN EX PARTE OWUSU 1991 1 GLR 136 @ 138

In the West African Court of Appeal case of **TIMITIMI VS AMABEBE 1953 14 WACA 374 at 376**, Coussey JA also stated the rule as to jurisdiction as follows:

"...want of jurisdiction is not to be presumed as to a Court of superior jurisdiction; nothing is out of its jurisdiction but that which specially appears to be so. On the other hand an inferior Court ... is not presumed to have any jurisdiction but that which is expressly provided."

See also the case of **AKYEM VS ADU; ADU VS BRANTUO (Consolidated) 1976 2 GLR 63, CA.** It is generally accepted that every superior court of record possesses inherent jurisdiction to prevent contempt of its proceedings, and exercises censorial power over its officers. In this regard, there is no distinction as to contempt in facie curiae or ex facie curiae. But when it comes to inferior courts of record, their jurisdiction to summarily commit for contempt is limited to only those contempts committed in facie curiae. In the case of **REPUBLIC VS KPEVE DISTRICT MAGISTRATE GRADE II; EX PARTE AGBOZO**, High Court, Ho, 21 July 1970; digested in 1970 CC 102, it was held that inferior courts have no inherent powers but derive their jurisdiction from powers conferred on them by statute. And that, there is no power conferred on a magistrate to enable him deal with contempt ex facie curiae.

Perhaps the best known exposition of the law is to be found in the case of **RE, A COUNTY COURT JUDGE; EX PARTE JOLLIFE 1873 28 LT 132.** This was

a case in which the county judge summoned the applicant to answer for contempt of court in writing to the local newspaper a letter which contained reflections upon the judge's conduct in a case judicially before him. The applicant then brought an application for prohibition against the county judge. This case is akin to, if not on all fours with, the instant one in the sense that both applications involved the consideration of the power to commit for contempt ex facie curiae. This is what Cockburn CJ said in the Jollife case (supra) at 133:

"We are all of the opinion that there must be a prohibition, because a County Court judge has no authority to punish a person for contempt not committed in the face of the court. It is true it is laid down by high authorities that every court of record has power to fine and imprison for contempt committed in the face of the court while the court is sitting in the administration of justice. Such a power is obviously necessary for the conduct of public justice and administration of the law, which may otherwise be interrupted or obstructed unless there is power to repress such outrages. But it is a very different thing to say that a court shall have power to fine and imprison for contempts not committed in the face of the court, and not amounting to an actual obstruction of its proceedings ... The power of committing for contempts committed in the face of the court is given to inferior courts, but they had no power so to punish contempts committed out of court. There is an obvious distinction between inferior courts created by statute and Superior Courts of law or equity. In these superior courts the power is inherent in their constitution, has been coeval with their original institution, and has been always exercised ... It is a very different thing when we come to the inferior courts, which have never exercised this power, or have never been recognized as possessing it, and we think in those courts it does not exist..... There is no conceivable legal objection to the instant application. The application herein sought will therefore be allowed and the order of prohibition will issue."

In disregarding the right of the Applicant to be furnished a copy of the response to his answer to the petition written by the Petitioner annexed as Exhibit 'C' the Disciplinary Committee of the General Legal Council based itself on expedition and said that "there had to be a stop somewhere" and it is not necessary for the Applicant to receive the said Exhibit 'C' before the Committee would embark on its enquiry.

This monstrously-mistaken view cannot be supported in law. **THE REPUBLIC VS. HIGH COURT, CAPE COAST EX PARTE MARWAN KORT 1998-99 SCGLR 833 @ 834 H1** decides per that pillar of legality and propriety, **Charles**

Hayfron Benjamin JSC, that:
"the supplementary affidavit formed part of the application, ie the motion paper and the original supporting affidavit and therefore it ought to have been served on the applicant. The failure to do so was an error of law on the face of the record."

It has also been held that expedition is no reason to sidestep the well-known rules of court. This is the decision of the Supreme Court in **AWUDOME (TSITO) STOOL VS PEKI STOOL 2009 SCGLR 681 @ 691** per BROBBEY JSC:
"that is the state of the current rules in the High Court and they have to be complied with. The policy in the High Court (Civil Procedure) Rules, 2004 (CI 47), that trials should be expedited is no ground for sidestepping well-established procedure in the court."

It cannot be controverted that the proceedings of 15th July, 2021, breached the hallowed principle of natural justice. As held by the Supreme Court in **LAGUDAH VS. GHANA COMMERCIAL BANK 2005-2006 SCGLR 388:**
"the core idea implicit in the natural justice principle of audi alteram partem was simply that a party ought to have reasonable notice of the case he has to meet and ought to be given the opportunity to make his statement in explanation of any question and answer any arguments put forward against it."

DIFFERENT PANELS FOR 15TH JULY, 2021 & 29TH JULY, 2021
Paragraph 18 of the affidavit in support of the instant application deposes that:
"That the panel of the Disciplinary Committee of the General Legal Council which purported to hear the preliminary enquiry on the 15th of July, 2021, was different from the panel which read the nine charges to me on the 29th July, 2021."
It is contrary to law for a panel which commences the hearing of a particular matter to change without any reason whatsoever. In the instant case the panel of the Disciplinary Committee of the General Legal Council on the 15th of July, 2021 included Marful Sau JSC who was noticeably absent without any reason being proferred by the Committee on the 29th of July, 2021, on which date the nine counts of professional misconduct were read to the Applicant who pleaded Not Guilty to all Nine Counts of Professional Misconduct.

REPUBLIC VS. VOLTA REGION CHIEFTAINCY COMMITTEE & ANOR EX PARTE ASOR II 1972 1 GLR 272 @ 278 decides that:
".....It cannot by writ of certiorari or otherwise interfere with the matter adjudicated upon by the inferior Court if this resided within its jurisdiction, but if such adjudication as given by a body which lacked jurisdiction in that it was of

defective constitution in the senses to which we have referred to or exceeded its jurisdiction, or whose decision was obtained by fraud or duress, the High Court cannot be deprived of its power to intervene and correct such injustice and irregularity."

This same authority holds that: "It would seem therefore that if the committee wandered **"outside its designated area"** or **"digressed away from its allotted task"** or **"strayed from the direct path which it was required to tread"** then in any of those cases, the High Court would be clothed with supervisory jurisdiction to intervene. The High Court's supervisory control of tribunals like commissions of inquiry in the light of the local cases does not seem to be in doubt.

There is the case of **AHENKORA VS. OFE 1957 2 W.A.L.R. 233**, where Windsor-Aubrey J. held that a prerogative writ would lie for excess of jurisdiction by a committee of inquiry. This aspect of the High Court's decision was confirmed by the Court of Appeal on 4 November 1957.

To the same effect is the case entitled **MBRAH VS. DONKOR; RE STATE COUNCILS (COLONY) ORDINANCE**, contained in the 1958 Cyclostyled Judgments, January-June at p. 51."

In **TURKSON VRS MANKOADZE FISHERIES 1991 1 GLR 430 H1** it was held that:
"If a body which was not properly constituted exercised a jurisdiction which was properly the duty of a properly constituted body, it could not be said that that improperly constituted body properly adjudicated on the matter..... Accordingly, his dismissal was unlawful."

In **BILSON VS. APALOO 1981 GLRD 5 at H1** the Supreme Court held:
"Contra Per Adade JSC. The language we are called upon to interprete is in article 121(2) of the Constitution, 1979. "The Court of Appeal shall be duly constituted by any three Justices thereof..." (The emphasis is mine.) And we are being invited to say that "any three Justices" means "more than three Justices." I would decline this invitation... I am forced to the conclusion that "any three Justices" means exactly what it says: Three justices and no more... Article 121(1) gives the total membership of the court generally: article 121(1) gives the total membership of the court generally: article 121(2) gives the membership of the same court "at work." Naturally, the general membership is larger than the working group. Although each of the members is qualified to sit, all of them cannot sit at the same

time, and pretend to be the court contemplated under article 121(2). **REPUBLIC VS. WESTERN NZIMA TRADITIONAL COUNCIL EX PARTE NANA KPANI ACKAH III 1973 2 GLR 107** cited.

Contra per Taylor JSC (i) "duly constituted by any three Justices" in relation to the Court of Appeal ... means the court is properly a Court of Appeal when it is made up of more justices or less justices, it may very well be the Court of Appeal, but it is not a properly made up one: it is not a duly constituted one... It is my view that a Court of Appeal sitting with more than three justices thereof is a court unknown to the Constitution, 1979, and it is therefore not a lawful court within the contemplation of the Constitution.

(ii) The concepts of "minimum quorum" and "maximum quorum:" are an aberration. They are impossible concepts and contradictions in terms. A quorum as any standard English dictionary will show is a "minimum number of persons necessary for transaction of business in any body": see CHAMBERS TWENTIETH CENTURY DICTIONARY (1964 ed). There is therefore no such thing ... as a "minimum quorum" or "maximum quorum."

From the above, this Honourable Court has a duty to ensure that the Applicant is not **"punished without just cause"**. The capricious and unjust conduct of the Disciplinary Committee of the General Legal Council ought to be halted and thwarted by this Honourable Court to avoid a constitutional tragedy of the worst kind. Please see: **QUAYSON VS. ATTORNEY GENERAL 1981 GLRD 22** at H2.

THE NINE CHARGES LEVELLED AGAINST APPLICANT BY THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

Counts 1 to 5 of the charges (Exhibit E) are relative to the Legal Profession (Professional Conduct and Etiquette) Rules, 1969 (LI 613). These rules have been revoked by the Legal Profession (Professional Conduct and Etiquette) Rules, 2020 (LI 2423). Rule 103 of L.I. 2423 which is titled "Revocation" states as follows: "The (Professional Conduct and Etiquette) Rules, 1969 (LI 613) is revoked."

This means that Rule 103 of LI 2423 therefore, carries its own revocation of the LI 613. In that regard, those charges are null and void.

It is constitutionally-insufferable for the said Counts 1 -5 to have been preferred

against the Applicant because the effect of revocation is as if the revoked enactment never existed. Please see **Halsbury's Laws of England 4th Edition Reissue, Vol. 44 (1) paragraph 1296** which states:
"MEANING OF 'REPEAL'. To repeal an act is to cause it to cease to be a part of the corpus juris or body of law. To repeal an enactment contained in an Act is to cause it to cease to be in law a part of the Act containing it. The general principle is that, except as to transactions past and closed, an Act or enactment which is repealed is to be treated thereafter as if it had never existed. However, the operation of the principle is subject to any savings made, expressly or by implication, by the repealing enactment, and in most cases it is subject also to the general statutory provisions as to the effects of repeal."

The charges also sin against the presumption against retroactivity of laws.
COUNTS 6, 7, 8 AND 9.

A communication is privileged if it is made bona fide by a person in the conduct of his own affairs in matters where his own interest or that of the recipient of the publication is concerned. As Lord Campbell enunciated with typical lucidity in **HARRISON VS. BUSH 1856 5 El. & Bl. 344; 119 E.R. 509**:
"A communication made bona fide upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty, although it contains criminatory matter..."

If further authority were required, we would respectfully refer to the opinion of Erle C.J. in **WHITELEY VS. ADAMS 1863 15 C.B. (N.S.) 392; 9 L.T. 483; 143 E.R. 838.** There the learned judge said:
"...if the circumstances bring the judge to the opinion that the communication was made in the discharge of some social or moral duty, or on the ground of an interest in the party making or receiving it, then, if the words pass in the honest belief on the part of the person writing or uttering them, he is bound to hold that the action fails."

Blackburn J. in **DAVIES VS. SNEAD 1870 L.R. 5 Q.B. 608; 39 L.J. Q.B. 202; 23 L.T. 126**, where the learned judged held that:
"...where a person is so situated that it becomes right in the interest of society that he should tell to a third person certain facts, then if he bona fide and without malice does tell them it is a privileged communication."

The resounding clarity of the above statements of the law is beyond doubt. In applying the above to the instant case, it is worthy of note that the communication upon which the charge are premised was a communication responding to allegations made by the Petitioner. The information was disclosed in furtherance of a legal obligation thrust upon the Applicant owing to the allegations in the complaint of the Petitioner. On this aspect of the matter, the following passage from the response of the Applicant (Exhibit B) is instructive:

"At the end of July 2020, the Petitioner informed me that friends of his who were highly connected politically had taken him to see the Chief Justice who had agreed to help him win his case on condition that he drops my goodself as the Lawyer handling the case for him and engage Akoto Ampaw Esq in my stead."

The significance of this passage is self-evident. The Applicant is only responding and stating facts as were communicated to him by the Petitioner. Nowhere in the response does the Applicant claim to believe in the truth or otherwise of the statement made to him by the Petitioner especially so when the Applicant had in the same response said at paragraph 14:
"In the light of the above, it is incredulous that such a monstrous allegation would be made by the Petitioner against me and I look forward to setting the facts straight so the august Committee can determine the falsity of the allegation which I believe is contrived to tarnish my reputation against the backdrop that the Petitioner told me after his said discussion with the Chief Justice, that he gets the distinct impression that the Chief Justice has a deep-seated dislike and prejudice against me."

From the above, it is plain that the Applicant did not in any way believe in the statement that the Petitioner made to the Applicant relative to the person of the Chief Justice. The response of the Applicant is only a reaction to statements made in the petition and matters the Petitioner relayed to him which is outside the scope of his representation as things by the Petitioner concerning and touching on the personality of the Chief Justice which the Applicant did not reasonably believe to be true. There is nothing in the response of the Applicant remotely suggesting a belief in the allegations made by the Petitioner. The response by the Applicant cannot attract any legal sanctions.

It is manifest that the Applicant was not reckless and did not peddle falshood but merely repeated what he had been told by the Petitioner. It is also abundantly clear

that the Applicant could not have assessed the truthfulness of what he was told because he was not present at the time of the alleged meeting between the Petitioner and the Chief Justice.

The information is indispensably-necessary to be disclosed to enable the lawyer establish his defence to the complaint.

In Chapter 4 of his book **LEGAL ETHICS, THIRD EDITION, KENT D. KAUFFMAN** states that:
"Self-preservation is an innate response to danger, and when lawyers are the targets of allegations, they are allowed to reveal client information, including confidential information, in order to defend themselves against such allegations. The Model Rules allow a lawyer to: reveal information the lawyer believes necessary to establish a claim or defence on behalf of the lawyer in a controversy between the lawyer and the client; establish a defence to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved; can respond to allegations in any proceeding concerning the lawyer's representation of the client, MR 1.6(b)(5).

LI 2423 which is the procedural regulations of the Respondent reinforces this position in Rule 19(2)(e) where it is stated that:
"Despite subrule (1) a lawyer may reveal information relating to the representation of a client where the lawyer reasonably believes that the disclosure is necessary to establish a claim or defence on behalf of the lawyer;

(i) in a controversy between the lawyer and the client
(ii) in respect of a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved or
(iii) to respond to allegations in any proceeding concerning the lawyers representation of a client."

In respect of the nine charges levied against the Applicant, it is manifestly clear that the General Legal Council is Complainant, Accuser and Adjudicator. This is because the Disciplinary Committee of the General Legal Council has substituted their own charges in place of the original complaint, proof of which is lacking. Prosecution has distinctly, unmistakably and patently become **PERSECUTION.** There is a clear intention to "**get at**" the Applicant. The circumstances are similar to **THE REPUBLIC VS. INSPECTOR GENERAL OF POLICE, EX PARTE WOOD 1975 1 GLR 127 @ 128:**
"...(2) the further proceedings against the applicant were vexatious and amounted

to persecution. The correspondence on record suggested that the disciplinary authorities had already formed an opinion adverse to the applicant and that somebody somewhere wanted to **"get at"** the applicant...."

On account of the above the court held in H2 that:
"On the grounds of natural justice, an order of prohibition would go to the I.G.P. prohibiting him and those through whom he had been acting from continuing with the proposed proceedings. The facts and especially the correspondence on record and the conduct behind them, were tantamount to persecution. The disciplinary authorities had already formed an opinion against the applicant and could not bring or appear to bring an impartial judgment to bear on the question involved in the proposed proceedings. **R. VS. KENT POLICE AUTHORITY; EX PARTE GODDEN 1971 2 Q.B. 6222 CA** applied."

In respect of the Nine Charges contained in Exhibit 'E', the Applicant has not been served any complaint much more given a hearing in line with mandatory rule of the Respondent. This undoubtedly is a breach of the rules of natural justice. Case law support for this proposition is **REPUBLIC VS. INSPECTOR GENERAL OF POLICE EX PARTE WOOD 1975 1 GLR 127 at 128 H2,** quoted ante.

REPEALED LEGISLATION
As indicated, five of the Nine Charges of misconduct laid against the Applicant are brought under the revoked LI 613. Respectable judicial dicta explains the effect, consequence and significance of repealed legislation.

My Lord,
LI 2423 states in very clear terms in Rule 103 that:
"Revocation
103. The Legal Profession (Professional Conduct and Etiquette) Rules, 1969 (L.I. 613) is revoked."

LI 2423 came into force on the 6th of October, 2020.

"The Ninth Edition of BLACK'S LAW DICTIONARY edited by Bryan A. Garner defines revocation at page 1435 as "annulment, cancellation, or reversal usually of an act or power...."

The Fourth Edition (Reissue) of Halsbury's Laws of England, Vol. 44 (1) at paragraph 1296 gives the meaning of "repeal". It says "to repeal an Act is to cause

it to cease to be a part of the corpus juris or body of law. To repeal an enactment contained in an Act is to cause it to cease to be in law a part of the Act containing it.

The general principle is that, except as to transactions past and closed, an Act or enactment which is repealed is to be treated thereafter as if it had never existed. ..."

In the light of the above, Counts 1-5 which are laid under LI 613 are all nullities. Count 6 is nebulous, speculative, incapable of assessment and does not disclose a known legal charge or infraction. DOTSE JSC in **AMOSA (NO. 1) VS. KORBOE (NO.1) 2015-2016 2 SCGLR 1516 @ 1532** delivered himself thus:
"It must be noted here that, criminal liabilities have to be well laid out because of constitutional provisions to that effect. Reference to article 19(11) of the Constitution 1992, which provides as follows:
"19(11) No person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed in a written law."

Count 7 is repetitive, imprecise and does not disclose a known legal charge or infraction of the law.

Count 8 is unknown to the offences under the law and outside the scope and ambit of the Disciplinary Committee of the General Legal Council and purports to criminalise an honest, faithful and accurate response. It indirectly suggests that the Applicant should have been untruthful to the Committee which would be in breach of his duty to be honest and infringe Rule 35 of LI 2423 which states:
"A lawyer shall not knowingly make a false statement of fact or law to a court or tribunal or fail to correct a false statement of material fact or law previously made to the courts or tribunal by the lawyer."

Count 9 is fundamentally-flawed speculative and mischievously-crafted to present a totally misleading picture or impression.

Having regard to the complaint dated 1st March, 2021, a copy of which is annexed as Exhibit 'A', the entire Nine Counts levied against the Appllicant are unlawful and illegal because they do not relate, even tangentially or fleetingly, to the complaint over which the Disciplinary Committee of the General Legal Council had jurisdiction which is that the Complainant claims to have given USD

$100,000.00 to the Applicant to use same as **"ways and means (gymnastics)"** but which sum was not used for the purpose by the Applicant judging from his body language.

One cannot ignore the undeniable fact that the mission which the Complainant claim to have entrusted the Applicant is unlawful, illegal and contrary to public policy.

AMPOFO VS. FIORINI 1981 GLRD 80 H3 decides that:
"In the instant case, since the contract was executory for at least two years, the performance of the plaintiff's remaining part was likely to be influenced by his expected private financial gains. The contract was consequently rendered illegal and unenforceable. **SCHANDORF VS. ZEINI 1976 2 GLR 418, CA and KESSIE VS. CHARMANT 1973 2 GLR 194** applied."

There being no evidence of any such money having been given the Applicant by the Complainant who when asked three (3) times at the hearing of the Disciplinary Committee of the General Legal Council on 15th July, 2021 why he gave the said amount to the Applicant and for what purpose, could not indicate any reason. His Solicitor present at the hearing could also not give any reason for the payment of the said amount although the complaint which is Exhibit 'A' in the instant proceedings clearly indicates the alleged purpose for the alleged payment. When a party's testimony is so pathetically at variance with his written evidence which initiated the proceedings in the first place, recourse cannot be had to matters which are not the subject of any complaint and are indeed not in contention between the parties over which the Disciplinary Committee of the General Legal Council had no jurisdiction because their jurisdiction had not been invoked in respect of them.

It is abundantly manifest that the Complainant did not commence the proceedings to demand the receipt of a payment of legal fees. It is also not controverted that the entire basis for the charges are extraneous to the complaint lodged. Thus whilst the Disciplinary Committee of the General Legal Council may have general jurisdiction over an alleged erring lawyer, it strayed grievously into areas which were not before it thus falling irremediably foul of the principle established in **ANISMINIC VS. FOREIGN COMPENSATION COMMISSION** as endorsed with approval by the Supreme Court per Hayfron Benjamin JSC in **REPUBLIC VS. HIGH COURT, ACCRA, EX PARTE EASTWOOD 1994-95 2 GBR 557.**

WHERE TRIBUNAL AFTER LAWFULLY ENTERING UPON THE ENQUIRY REFUSES TO CONSIDER SOMETHING IT IS REQUIRED TO TAKE INTO ACCOUNT IT IS STILL ACTING WITHOUT JURISDICTION

The Supreme Court in **REPUBLIC VS HIGH COURT, KUMASI EX PARTE ACKAAH 1994-95 1 GBR 470 @ 475** holds that:
"In **ANISMINIC VS FOREIGN COMPENSATION COMMISSION 1962 2 AC 147, HL at page 171** Lord Reid observed that it was not only where a tribunal acts without jurisdiction that its decision is a nullity, but also where, for example, after lawfully entering, upon the enquiry, it refuses to consider something it was required to take into account. The latter is precisely what the judge did in this case, and on this ground, therefore, we would grant the order prayed for in this application and remit the motion for stay of execution to the High Court in Kumasi for hearing before another judge. This is, however, without prejudice to any application that may be made to the judge of the High Court or to the Chief Justice for a transfer of the appeal to a different venue."

My Lord,
It is not open to the Respondent to argue that the Charge Sheet (Exhibit 'E') is not fundamentally-flawed and a nullity because not all the charges are laid under the repealed LI 613. This line of reasoning is completely misconceived because as held by Kpegah JA (as he then was) in **OTOO VS DUAH 1991 2 GLR 247 at 248**, there is no symbiosis in law by which an illegal process could by association with a legal one, transform itself from illegality to legality. In the words of His Lordship:
".....In declaring the appeal against the interlocutory decision out of time, the necessary legal implication is that the notice of appeal is void. The fact that there is contained in the same notice of appeal an appeal which could be said to be competent is irrelevant. The latter appeal cannot have any resuscitating effect on the said notice of appeal. In law there is nothing like a symbiosis whereby an illegal process can become legal by its association with a legal one."

In **DARKWA VS. THE REPUBLIC 1981 GLRD 17 H1, H2**
H1. A committee of inquiry, like a commission of inquiry, was a fact-finding tribunal not a criminal trial. Its work implied the discovery of truth which ought to be balanced against the interest of the individual; it therefore had a duty to ascertain the truth before making a finding. Its nature partook of the exercise of judicial function, i.e. the taking of decisions and thus it had a duty to do what was

reasonable in the circumstances. Because of those considerations, a committee of inquiry had certain obligations. It had the obligation to be candid and fair, to observe the audi alteram partem rule and a bounden duty to observe the rules of natural justice. In its judicial connotation an "investigation or inquiry" embraced the expression "due inquiry" which presupposed that the person against whom an allegation was made should have been permitted to challenge the very allegations against him and to have had the right to call evidence to support his contentions, especially where (as in the instant case under paragraph 10 of E.I. 38 of 1979) the findings might result in a "prosecution, ... dismissal, removal, retirement, or reduction in rank." The adverse findings in the instant case would therefore be set aside because there was no record that the appellant had been given any opportunity to cross-examine in person those who had made the allegations against her, neither was any person called to substantiate any of the said allegations. Her reasonable explanations were also rejected without any reason. Dictum of Lord Simon L.C. in **GENERAL MEDICAL COUNCIL VS. SPACKMAN 1943 2 ALL ER 337 at p. 340, H.L.** cited."

H2. The basic procedure of commissions and committees of inquiry consisted of collecting evidence, taking statements from witnesses presenting their evidence, testing the accuracy of the evidence and finally finding the facts. In the instant case, the committee erred because the most important aspect of the basic procedure, i.e. the testing of the accuracy of witnesses was not done."

REPUBLIC VS. GHANA RAILWAY CORPPORATION EX PARTE APPIAH & ANOR 1981 GLRD 68 H2

"The core idea implicit in the natural justice principle of audi alteram partem was simply that a party ought to have reasonable notice of the case he has to meet and ought to be given the opportunity to make his statement in explanation of any question and to answer any arguments put forward against it...."

REPUBLIC VS. ATTORNEY GENERAL EX PARTE OWUSU 1982-83 GLRD 34 H3

"An audit inquiry was not a lis inter partes. In it documents were the accusers unless they be forged. A person making an audit inquiry was not under any duty to adopt a procedure analogous to a judicial procedure. He was not required to determine questions of law and facts and he did not exercise a limited or judicial discretion. But the SEC was not just an audit unit for the government. It had wide powers to make far-reaching recommendations which might have wide repercussions and even lead to judicial proceedings. They therefore had a duty to

act fairly although they were not a judicial or quasi-judicial body. Consequently, before they condemned or criticized a man, they should have given him a fair opportunity for correcting or contradicting what was said against him by giving him an outline of the charge...."

REPUBLIC VS. JUDICIAL COMMITTEE OF AHANTA TRADITIONAL COUNCIL EX PARTE BOSOMAKORA II 1982-83 GLRD 26 H3
"It was an elementary rule of natural justice that no man should be condemned unless he had been given prior notice of the allegation against him and a fair opportunity to be heard. Compliance with the rule required that a party liable to be directly affected by the outcome of a justiciable controversy should be given prior notice of the case against him and a fair opportunity to put his own case and to correct or contradict any allegation levelled against him by the party who brought the action...."

The principles of fairness and prior notice of charges enshrined in common law principles have now been elevated to the high pedestal of Constitutional right by reason of Article 19 of the 1992 Constitution, already referred to by Dotse JSC in the **AMOSA (NO. 1) VS. KORBOE (NO. 1)** case, supra.

Even if, assuming arguendo, that the Disciplinary Committee of the General Legal Council has a discretion in the matter, which is denied by reason of its own rules, common law principles and the 1992 Constitution, the Constitutional dictates of Article 296 impels the Committee to act with candour and fairness.

Article 296 of the 1992 Constitution reads:
296. " **EXERCISE OF DISCRETIONARY POWER**

Where in this Constitution or in any other law discretionary power is vested in any person or authority,

(a) that discretionary power shall be deemed to imply a duty to be fair and candid;

(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."

Another fundamental legal reason for the proceedings of 15th July, 2021 to be quashed is that the President of the panel of the Disciplinary Committee of the General Legal Council Justice Paul Baffoe Bonnie introduced an angle which was

not before the Committee by claiming that the Applicant sent a whatsapp message to Michael Anin Yeboah, son of the Chief Justice. Bizzarely, this extraneous evidence has been made the subject of **Count Nine** of the Nine Counts of misconduct levelled against the Applicant. It is submitted that it is impermissible, unlawful and unacceptable that the President of the Panel will have recourse to matters not before the Committee and in respect of which no allegation has been made. It cannot be said that the said President of the Panel was taking judicial notice of anything. This is a raw and undisguised use of information not forming part of documents (record) before the Committee and manifestly extraneous to the proceedings before the Committee.

The issue of judicial notice and the use of media reports and press releases as the basis for levelling a charge against a person arose in **KWAKYE VS ATTORNEY GENERAL 1981 GLR 944 at 995** where the legally-industrious and irrepressible Taylor JSC held that:

"Another invitation extended to us to take judicial notice of matters which ought to have been established by admissible evidence, will be firmly but politely rejected by me. Even though I recognize the utility of taking judicial notice where appropriate, the facts being so generally known within the territorial jurisdiction of the court or so capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, judicial notice should not be taken of facts which are subject to reasonable dispute: see section 9 of the Evidence Decree, 1975 NRCD 323. It would be wrong in the light of these controverted issues of trial, conviction and sentence, to take judicial notice of these very contested matters.

Much reliance has been placed – wrongly in my view – in this case on media reports and press releases. While the press releases and media reports are presumed to be authentic and are admissible, yet in law they do not prove the truth of their contents. As I understand it, the correct legal position is that the existence, or otherwise, of media reports is as much a fact as the state of a man's digestion; but when these media reports are resorted to in a trial for the purpose of proving the disputed facts of a trial or conviction or sentence of a person then they are hearsay and they carry no guarantee of their truth. Section 116 (c) of the Evidence Decree, 1975 NRCD 323 defines hearsay evidence as, "evidence of a statement, other than a statement made by a witness while testifying in the action at the trial, offered to prove the truth of the matter stated."

The dictum of the formidable legal eagle makes the conduct and behaviour of Justice Paul Baffoe Bonnie doubly unacceptable, revulsive to proper administration of justice and repugnant to any legally-minded person bent on ensuring rectitude and legality.

It is submitted that the Disciplinary Committee of the General Legal Council lost its jurisdiction the moment it took into consideration matters which ought not have taken into consideration and disregarded vital absence of evidence which it ought to have taken into consideration in immediately pronouncing the Applicant not liable to the unproven charge of having been sent by the complainant to pay a bribe to an unnamed judge(s) at an unnamed place and at unnamed time. In the words of Taylor JSC in **KWAKYE VS. ATTORNEY GENERAL**, supra, at page 1071, "where the defects are of substantive legal requirements, they cannot be considered as procedure prescribed by law".

The venerable Law Lord states at page 1068 of the said report that:
"I have no doubt, that the majority decision of this court is erroneous, if not per incuriam, since it conflicts with the unanimous decision of the same court dated 22 March 1981 in the same case, and because it creates injustice; I believe such a decision cannot survive the ravages of time. The injustice perpetrated in the name of the Constitution is indeed outrageous and if our Constitution and legal system has no remedy, then I agree with the view of Knight Bruce L.J. in **SLIM VS. CROUCHER 1860 1 De G.F. & J. 518 at p. 527** where he said: "A country whose administration of justice did not afford redress in a case of the present description would not be in a state of civilization."

At page 1069 the legal mandarin continued:
"But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our law is colour-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his colour when his civil rights as guaranteed by the supreme law of the land are involved ... We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically puts the brand of servitude and degradation upon a large class of our fellow-citizens, our equals before that law. The thin disguise of 'equal' accommodation for passengers in railroad coaches will not mislead any one, nor atone for this wrong this day done."

The importance of this particular point has been emphasized in **REPUBLIC VS. ADAMAH THOMPSON & ORS EX PARTE AHINAKWA II (NO.2) 2013-2014 2 SCGLR 1396 at 1402,** where the Supreme Court held that:
"That explains why each court must ensure that it has jurisdiction to entertain a particular matter, whether the point is raised by the parties or not. If the court realizes that it has no jurisdiction in the matter it must decline to hear it; no discretion arises... For the law is settled that jurisdiction is central, indeed, at the core of every court's power to adjudicate. Ignore that, and you will find a magistrate, for instance, hearing a case of interpretation of the Constitution. If a magistrate determines a question of constitutional interpretation, is a party affected to sit idly by because there must be an end to litigation? Ignore the question of jurisdiction, and there will be no need to set up different courts for every court will then be in a position to handle every matter. It is the same public policy which requires that every court must be confined to a certain type of jurisdiction to ensure sanity in the legal order and the hierarchy of courts."

It is submitted that the fundamental substantive and procedural matters raised herein cannot be cured by Order 81 of CI 47. This is because it has been held by the Supreme Court that the said order does not cure fundamental errors. Thus in **REPUBLIC VS HIGH COURT, ACCRA, EX PARTE SALLOUM & ORS 2011 1 SCGLR 574 at 577** the court held that:
"Order 81 could not be invoked to cure the fundamental error arising from the breach of the audi alteram partem rule. In re Kumi (Decd); Kumi v Nartey 2007-2008 1 SCGLR 623 at 632-633; and ***Republic v High Court, Accra; Ex Parte Allgate Co Ltd (Almagamated Bank Ltd Interested Party) 2007-2008 2 SCGLR 1041 at 1052*** *and 1054 cited.*

Indeed, procedural defects have been cured in various cases if the defects are not fundamental. If the defect is such that a party's rights have been seriously denied, as in this case, a court should not apply Order 81. Lack of service of hearing notice, for example, has always been seen as a fundamental defect: see ***CRAIG VS. KANSSEN 1943 KB 256, CA; and R VS. APPEAL COMMMITTEE OF COUNTY OF LONDON QUARTER SESSIONS, EX PARTE ROSSI 1956 1 ALL ER 670 CA.*** *Equally so, if a party is denied his right to be heard, as in this case, it should constitute a fundamental error for the proceedings to be declared a nullity."*

Francois J. (as he then was) in **REPUBLIC VS. VOLTA REGION CHIEFTAINCY COMMITTEE & ANOR EX PARTE ASOR II 1972 1 GLR**

273 at 275 H5 decides that:
"Prohibition lies to check the proceedings of an inferior tribunal where a claim which is not within its jurisdiction is framed under the colour of a cause of action which is within the jurisdiction. **R. VS. INDUSTRIAL INJURIES COMMISSIONERS; EX PARTE WARD** (supra) and R. **VS. ELECTRICITY COMMISSIONERS; EX PARTE LONDON ELECTRICITY JOINT COMMITTEE CO 1920, LTD.** (supra) cited."

It is instructive to note that the conduct of the President of the Disciplinary Committee of the General Legal Council is indicative of bias and a desire to irreparably damnify the Applicant. There is undeniable admission of a close affinity between the said President of the Committee and other justices of the Supreme Court having a direct personal interest in the case exemplified in the tribute written by the President of the Committee in memory of John Owusu Afriyie Esq @ Sir John. This disqualifies the President of the Committee to sit on the present case for it gives the distinct impression of a failure of justice and a compromised President even before the proceedings begin. **HAYFRON BENJAMIN JSC in REPUBLIC VS. HIGH COURT SEKONDI EX PARTE MENSAH & ORS 1994-95 2 GBR 491 @ 494** gives useful advice on what an adjudicator sensing a loss of confidence in his impartiality should do. In the words of the Distinguished and Eminent Justice:
"where a judge sensed that one or all parties to the litigation had lost confidence in the judge's impartiality the proper course for such a judge was to decline jurisdiction. Hopefully the trial judge would advise himself."

HAYFRON BENJAMIN JSC was speaking in circumstances incomparably lower in degree than the present circumstances where the President of the Committee has shown beyond any reasonable doubt that he is pursuing a predetermined agenda on behalf of his lifelong friend worthier to him than blood brothers

REPUBLIC VS. JUDICIAL COMMITTEE OF AHANTA TRADITIONAL COUNCIL EX PARTE BOSOMAKORA II 1982-83 GLRD 26 H4 decides that:
"The courts would not go far afield to discover whether in a particular case there was or has been actual bias. They had confined themselves to determining whether under any given circumstances a real likelihood of bias had been established against an adjudicator by drawing reasonable inferences from the circumstances of the case; such inferences being based on the reasonable apprehensions or

suspicions of a reasonable man fully conversant with the facts. A real likelihood of bias was therefore a question of fact and any court having supervisory jurisdiction could set aside a decision of an inferior tribunal against whom a real likelihood of bias had been established. In the instant case, it was clear on the evidence that all the other divisional chiefs of the ATC supported the paramount chief against the applicant and some personal animosity existed between them and him.

Consequently, the facts established a real likelihood of bias and prejudice against the judicial committee. The application for certiorari would therefore be granted. **R VS. RAND 1866 L.R. 1 Q.B. 230; ALLISON VS. GENERAL COUNCIL OF MEDICAL EDUCATION AND REGISTRATION 1894 1 Q.B. 750; R VS. QUEEN'S COUNTY JUSTICES 1908 1 L.R. 285 at p. 306; R VS. SUNDERLAND 1901 2 KB 357; R VS. BARNSLEY 1960 2 Q.B. 167 AT P. 187; ATTORNEY GENERAL VS. SALLAH**, Supreme Court, 17 April 1970, unreported; digested in 1970 C.C. 54 and **ADJAKU VS. GALENKU 1974 1 GLR 198** cited."

ILLEGALITY OF ALLEGED ACT CULMINATING IN COMPLAINT AGAINST APPLICANT BEFORE THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

The long-standing principle of law is that no man should benefit from his own wrong. APALOO CJ in **NDOLEY v IDDRISSU 1979 GLR 559 @ 565** held that;
"No man should be permitted to take advantage of his own wrong"

It was also held in **REPUBLIC v KUMASI TRADITIONAL COUNCIL EX-PARTE AGYEMAN II 1977 1 GLR 360 @ 365** that:
"A court of equity will not permit the defaulting official body to take advantage of their own negligent act or default; neither will it permit its orders to be stultified."

SCHANDORF VS ZEINI 1976 2 GLR 418 H1, H2 & H3

H1. The courts on the ground of public policy would decline to enforce a contract which on the face of it was perfectly legal but which the plaintiff at the time of making it intended to perform in an unlawful way. It did not matter that the defendant had the same or similar intent because potior est conditio defendentis. Dictum of Atkin L.J. in Anderson Ltd v. Daniel 1924 1 K.B. 138 at p. 149, C.A. considered.

H2. If the plaintiff in order to recover under a contract must rely upon his own illegal act, even though at the time of making the contract he had no intent to break the law and at the time of performance he did not know that what he was doing was illegal, the courts would not assist him. To be material and deprive the plaintiff of the court's assistance, the illegality must form the basis of the plaintiff's claim for relief. In other words the cause should be founded on the illegal act. Founding a case on illegality or immorality meant that without reliance on that illegality or immorality the plaintiff could not succeed in his action..... Dicta of Devlin L.J. (as he then was) in **ARCHBOLD'S (FREIGHTAGE) LTD VS. SPRANGLETT (S) LTD 1961 1 Q.B. 374 at p. 388; of Devlin J. (as he then was) in ST. JOHN SHIPPING CORPORATION VS. RANK (JOSEPH) 1957 1 Q.B. 267 at pp. 288 and 291**; of Parke B. in **SCARFE VS. MORGAN 1838 4 M. & W. 207 at p. 281; ALEXANDER VS. RAYSON 1936 1 K.B. 169 at p. 184, C.A.;** of Lindlely L.J. in **SCOTT VS. BROWN, DOERING, McNAB & CO 1892 2 Q.B. 724 at p. 729, C.A.;** of Lord Wright in **VITA FOOD PRODUCTS INC. VS. UNUS SHIPPING CO., LTD 1939 A.C. 277 at p. 293, P.C.** considered.

We have already alluded to the opinion of Dotse JSC in **AMOSA (NO. 1) VS. KORBOE (NO. 1) 2015-2016 2 SCGLR 1516 @ 1532** but it bears repeating that: "And where the balance is between inconvenience or even pecuniary harm to a party on the one hand as opposed to the condonation of law breaking on the other, as appears to be the case here, the courts should not lend their assistance to the breaking of the law."

We respectfully invite Your Lordship to quash the proceedings of the Disciplinary Committee of the General Legal Council of 15th July, 2021, and 29th July, 2021, as they contain clear errors on the face of the record in addition to a multitude of legal and procedural improprieties.

It is the clear duty of this court to intervene in the present circumstances when indispensable legal perquisites have been turned on their head threatening a looming legal disaster and constitutional pantomime of enormous proportions. The Disciplinary Committee of the General Legal Council ought to be prohibited from embarking on the circuitous path of error which is anathema to the law.

The Supreme Court in **REPUBLIC VS. HIGH COURT, ACCRA, EX PARTE CHRAJ 2003-2004 SCGLR 312 H5**:

"Prohibition would lie to prevent a court from exceeding its jurisdiction or reaching a decision which could be quashed subsequently by certiorari...."

In relation to the third relief sought by the Applicant, which is, "An order compelling the Respondent to perform its statutory duty in line with mandatory rules prescribed in LI 2424", we rely on the dictum of Anin Yeboah JSC (as he then was) in **AMOSA (NO. 1) VS. KORBOE (NO. 1) 2015-2015 2 SCGLR 1516 @ 1541** where he delivered himself thus:
"Before I proceed to offer my reasons in support, I wish to point out without any inhibitions whatsoever that the legal profession, and the practice of law in Ghana for that matter, are regulated by statutes. The common law does not regulate legal practice and the legal profession in this country. Any decision that should be given in this case, in my respectful opinion, should centre on the interpretation of the relevant statutory provisions regulating the profession and its practice in this country.

In my respectful view, the Legal Profession Act, 1960 (Act 32), and the Legal Profession (Professional Conduct and Etiquette) Rules, 1969 (LI 613), and other amendments, if any, should attract the attention of this court in resolving the crucial issue before us, not the several foreign cases cited to assist us, which do not bind us."

We end with the memorable and indelible words of that bulwark of the law and originator of many sound legal principles which have with stood the test of time and the vagaries of legal uncertainty, **Apaloo CJ** in **HANSEN VS ANKRAH 1987-88 1 GLR 639 at 659,** where the learned and erudite Law Lord delivered himself thus:
"We have a constitutional authority to refuse to be bound by a precedent which injures the innocent, benefits the guilty and puts a premium on blatant breach of fiduciary duty. To do otherwise, would be an exhibition of judicial inertia wholly indefensible in our day and age."

Respectfully submitted.

DATED AT KUMASI THIS 30TH DAY OF JULY, 2021.

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THE REGISTRAR
HIGH COURT
GENERAL JURISDICTION
ACCRA.

AND TO THE RESPONDENT HEREIN:
THE DISCIPLINARY COMMITTEE
GENERAL LEGAL COUNCIL
2ND FLOOR, GHANA SCHOOL OF LAW,
MAKOLA, ACCRA.