

GAMES IN PARLIAMENT – THE SPEAKER AND THE MINORITY’S MOTION OF CENSURE: BY MARTIN A. B. K. AMIDU

INTRODUCTION

Mr. Alban Sumana Kingsford Bagbin needs to be told to stop talking down on Ghanaians as though he is a village chief and we, his subjects. No humble, learned, erudite, and experienced person will ever seek to silence his critics in a constitutional democracy by telling them that: “In all humility, please note that there is deep thought in whatever I do. Don't underrate my knowledge, skills, experience, and expertise in Parliamentary practice and procedure.” It is for the public or one’s professional peer group, to determine one’s level of knowledge, skills, experience, and expertise and not for one to subjectively assert them and trumpet his competences to the world.

Ghana counts more learned, erudite, and respected citizens who have by choice not contested to be members of Parliament, have been and are profoundly knowledgeable in parliamentary practice and procedure than Mr. Bagbin is or can ever be. This country has had the fortune within the Fourth Republic of seeing learned, erudite, highly respected, and self-effacing Speakers of Parliament who had not served even one day as a Members of Parliament. Try as he may, Mr. Bagbin cannot measure up to the eminent, respected, and self-effacing Justice D. F. Annan, the first Speaker of the Fourth Republic for the 1st and 2nd Parliaments even though he is not known to have ever been elected to any Parliament in Ghana. The eminent, respected and equally self-effacing Mrs. Justice Joyce Bamford Addo was another competent Speaker of Parliament in spite of the fact that she was never an elected Member of Parliament. Both Mr. Justice Annan and Mrs. Justice Bamford Addo exhibited humility and accommodation to criticism from citizens and members of parliament as Speakers of Parliament and never gloated about their abilities.

Coming down to persons who have been nominated from Parliament to be Speakers of Parliament Mr. Doe Adjaho who entered parliament on the same day as Mr. Bagbin was nominated as the Speaker of Parliament for the 6th Parliament under the Fourth Republic and performed more creditably without boasting about knowledge and expertise in Parliamentary practice and procedure. I also never heard the Speaker of Parliament for the 7th Parliament who was also nominated from amongst members of parliament gloat over his deep thinking, knowledge, and expertise in parliamentary practice. The difference between previous Speakers and Mr. Bagbin is that his predecessors were umpires while he has consistently exhibited the qualities of a transactional member of parliament forgetting that he was elevated to the Speakership of Parliament of the 8th Parliament after his retirement as a Member of Parliament.

The conduct of Mr. Bagbin in the processes leading up to the passage of the 2022 Budget Statement and subsequent Appropriation Act, 2022 and the current motion of censure filed by the minority caucus of Parliament against the Minister for Finance, Ken Ofori-Atta vindicate the assertion that Mr. Bagbin behaves more as a transactional Member of Parliament than the Speaker of Parliament as an umpire.

MINORITY’S MOTION OF CENSURE

Mr. Bagbin on 25 October 2022 admitted a motion of censure filed by the Minority over the objection of the Majority Deputy Leader and explained to the whole world that the motion will mature for debate on 10 November 2022 and that the Minister of Finance will have the

opportunity during the debate to defend himself. On that occasion he told the House that: “And I had to deeply consider some of these issues that you have raised and came to the conclusion that the motion was properly drafted.”

The Speaker took the view, on the occasion, that the concerned Minister only needed to be told of the grounds of the motion and “I think exactly that is what has been done by the sponsors of the motion. And so, I rightfully admitted it.” The Speaker further explained that he had consulted with and discussed the motion of censure with the Majority and Minority Leaders before he admitted it and submitted it to the Clerk’s office. His decision to admit the motion of censure was therefore a considered decision. The Speaker said additionally that when one reads the Constitution properly, and then the Standing Orders of the House, one would see that no error had been made. He took the view that the publication of the notice in the Order Paper was a notice to the world including a notice to the Minister concerned. When a motion was filed, it was also transmitted to the concerned Minister.

The Minister against whom the motion of censure had been filed, according to the Speaker, needed to have sufficient information with regard to the allegations that had been made against him, so that he could prepare adequately, and during the debate he would come and put up his defence. Mr. Speaker said further that the law talked about the grounds for motions for censure and the the concerned minister needs to be told the grounds for that motion which had been done in that case.

The Speaker contended that the notice had been given for seven sitting days of Parliament, stipulating that:

“Then after that 14-days from the receipt of the motion by the Speaker...and so that is what we are going by. The Minister definitely, since it is a notice to the public would have sufficient basis to prepare his defence and the Minister would be given the opportunity to submit his defence during the debate.”

The Speaker concluded by stating that at the end of the day, the law was clear as to the support that such a motion should get to constitute a censure - a two-thirds majority vote of MPs was needed to censure a Minister of State.

MANDATORY CONSTITUTIONAL DEBATE ON THE MOTION OF CENSURE

On 10 November 2022 when the motion came on to be moved and debated, Mr. Bagbin suddenly and inexplicable made a volte face and referred the motion of censure to an ad hoc committee of Parliament. This time round Mr. Bagbin is pleading his “... knowledge, skills, experience, and expertise in Parliamentary practice and procedure” to silence his critics.

The Speaker in response to criticism over this volte face posted a statement on his Facebook in which he contended that his decision to refer the motion of censure to the committee was grounded in logic and law. The Speakers ex post facto rationalization of his volte face decision were that:

“The Constitution clearly enjoins Parliament to give an opportunity to a Minister to be heard in defence. The Constitution and the Standing Orders permit the Minister to engage a counsel to lead him in his defence.

On the floor of Parliament during plenary sessions or debates the Counsel cannot be heard

because he is not a Member as defined by the Constitution but a stranger. As a stranger he is not allowed by the rules of practice and procedure of Parliament to enter the floor and lead the Minister.

Where and how is the counsel then to lead the Minister in his defence? This can only be at the level of a committee of Parliament.”

In the Speaker’s view, the constitution empowers him in his capacity to make the decision of referring the matter to the committee.

THE EXAMINATION AND ANALYSIS

When it suited Mr. Bagbin’s transactional nature, on 25 October 2022 he pleaded that: “And I had to deeply consider some of these issues that you have raised and came to the conclusion that the motion was properly drafted.” He had considered the Constitution, the Standing Order of Parliament, and the Majority and Minority Leaders, and determined that: “Then after that 14-days from the receipt of the motion by the Speaker... The Minister definitely, since it is a notice to the public would have sufficient basis to prepare his defence and the Minister would be given the opportunity to submit his defence during the debate.” Citizens and Members of Parliament expected that the motion of censure would be moved and the debate commenced on the floor of the House on 10 November 2022 in accordance with the Speakers earlier own logic and understanding of the constitution and law.

Consequently when on 10 November 2022 the Speaker made the Volt face and referred the motion to an ad hoc committee the public and dissatisfied Members of Parliament had every right as citizens of Ghana to exercise their fundamental right to free speech to criticize the double standards exhibited by the same Speaker. That is the essence of the concept of marketplace of ideas in a democracy. It did not warrant any patronage from the Speaker.

The motion of censure against the Minister for Finance was filed pursuant to Article 82 of the 1992 Constitution which is clear and unambiguous in its language and spirit. Article 82(3) mandatorily requires that: “The motion shall be debated in Parliament within fourteen days after the receipt by the Speaker of the notice for the motion”. The Speaker upon the clear language of article 82(3) has no power to postpone the period within which the motion of censure shall be debated in Parliament. Then Article 82(4) also provides in clear and unambiguous terms that: “(4) A Minister of State in respect of whom a vote of censure is debated under clause (3) of this article is entitled, during the debate, to be heard in his defence.” Within the clear words of the constitution, therefore, the forum at which the Minister of State is entitled to be heard in his defence is in Parliament during the debate within fourteen days after the receipt by the Speaker of the notice of the motion.

The Speaker’s conduct on 25 October 2022 in overruling the Deputy Majority Leader’s objection to the motion of censure is consistent with the letter and spirit of the Constitution. The Standing Orders of Parliament cannot overrule the clear provisions of the Constitution. The Speak failed or refused to point to an article in the Constitution which gives a Minister subject to a motion of censure the right to be represented by a lawyer of his choice at any stage of the process because there is none. Intelligent citizens have a right to challenge his axioms.

Article 69 of the Constitution deals exclusively with the removal of the President and the Vice-President from office. It is only in the case of the removal of the President that Article

69 (2) requires “a notice in writing signed by not less than one-third of all members of Parliament and stating the conduct or physical or mental capacity of the President be investigated on any of the grounds specified in clause (1) of the article.” The notice required by clause (2) is mandatorily to be “accompanied by a statement in writing setting out in detail the facts, supported by the necessary documents, on which it is claimed that the conduct or the physical or mental capacity of the President be investigated for purposes of his removal from office.” It should be clear to any casual reader without any experience or expertise in parliamentary practice and procedure that the constitution mandates an investigation in cases of notices for the removal of the President or Vice President on any grounds. This is not the case under Article 82 dealing with Vote of Censure of a Minister of State.

It is also only in the case of the removal of the President from Office that clause 7 of Article 69 mandatorily requires that; “(7) the President shall be entitled during the proceedings of the tribunal or the medical board to be heard in his defence by himself or a lawyer or other expert or person as the case may be, of his own choice.” Parliament is also mandatorily required, “within fourteen days after the date of the findings of the tribunal or medical board, move a resolution whether or not the President shall be removed from office.” There is no requirement for the President to be heard in his defence during the debate in Parliament to remove him from office because of the prior investigation by the tribunal or board mandated by the Constitution at which he had the right of representation by a lawyer, expert, or other person, as the case may be.

The Speaker was, therefore, right to have upheld the motion of censure and overruled the objection by the Deputy Majority Leader who sought to conflate the provisions of Article 69 with those of Article 82 of the 1992 Constitution by virtue of Order 106 (1) which stipulates that:

“106(1) The House may pass a resolution to remove the President, the Vice President, Mr. Speak and Deputy Speakers and a vote of censure on a Minister of State. The House may consider such motion and come to a decision or refer it to a Committee on a motion made by any Member.”

The Speaker was right in his ruling on 25 October 2022 because the clear words of Article 82 of the Constitution could not be amended by the provisions of the Standing Orders of Parliament. Secondly, when one reads Order 106 (2) which substantively deals with the removal of the President or Vice President, it specifically enshrined the right of the President to counsel or any expert when it states that: “(f) during prior proceeding in a Committee appointed in that behalf the Parliament shall be entitled to be heard in his defence either by himself, by counsel or by an expert as the case may be;”. This is consistent with Article 69 (7) of the Constitution.

When one reads Order 107 (2) which deals exclusively and substantively with the removal of the Speaker or Deputy Speaker from office, it specifically enshrined the right of the Speaker or Deputy Speaker to counsel or any expert when it states that: “© prior proceedings shall be taken in a Committee appointed in that behalf. The Speaker or the Deputy Speaker shall be heard in his defence either by himself or a representative.” The reason for this provision is that Article 95(2) which deals with the removal from office of a Speaker or Deputy Speaker just states that he vacates his office – “(d) if he is removed by a resolution of Parliament supported by the votes of not less than three-quarters of all the members of Parliament” without prescribing the procedure.

But Order 108 which also deals exclusively and substantively with only a vote of censure of a Minister of State makes no reference to any committee or a right to be heard in his defence either by counsel or any expert or a representative. It states simply and clearly in Order 108 that: “(c) during the proceeding on the motion the Minister shall be entitled to be heard in his defence.” This is consistent with Article 82 of the 1992 Constitution on motions of censure or vote of censure of a Minister of State.

Consequently when the Speaker on 10 November 2022 suddenly and without any reasonable explanation requested for the motion of censure to be moved for him to refer it to an ad hoc committee of Parliament, patriotic citizens were entitled to question the motives for the Speaker’s volte face after his earlier deep consideration and reasoning upon which he overruled the Deputy Majority Leader’s objection after he had “had to deeply consider some of these issues that you have raised and came to the conclusion that the motion was properly drafted.” There was also no explanation by the Speaker for his authority to violate the mandatory constitutional requirement that “the motion of censure to be debated within fourteen days of its receipt of the notice of motion” and the minister “in respect of whom a vote of censure is debated to be entitled, during the debate, to be heard in his defence.”

It is pertinent and imperative to ask at this stage of our examination and analysis the question, what a motion of censure is, and how different it is from a resolution to mandatorily remove the President, and Speaker of Parliament from office. A motion of censure has been described in the following terms: “Censure motions are a type of motion that seek to criticise the behaviour of the Government, in relation to a single minister, in relation to a specific Government policy, or to express explicitly no confidence in the Government.” Censure motions are political processes as distinct from an investigatory or a judicial adversarial adjudication process of finding guilty or culpability in accordance with due process of law. Article 82 of the 1992 Constitution followed the common law parliamentary tradition of motions of censure where the grounds of the motion as they affect a single minister are debated in parliament and the minister being heard in his defence on the floor of the House.

This explains the further reason why one cannot conflate the processes under Article 69 for the removal of the President or Vice-President with Article 82 of the Constitution on vote of censure of a Minister of State. Article 69(13) states that: “The President shall cease to hold office as President on the date Parliament decides that he be removed from office”. Under Article 82 (5) the Minister against whom a vote of censure is passed unless he resigns his office, may have his appointment revoked by the President. Because a ministerial vote of censure is a purely political act, the constitution does not injunct the Minister to resign or the President to revoke his appointment. Indeed the President may refuse to accept the Minister’s resignation letter without any constitutional consequences.

Citizens are entitled to question the contradictory decisions of the Speaker made within fourteen days of each other, particularly when the Speaker’s decision of 10 November 2022 sought to conflate the provisions of Article 69 with Article 82 of the Constitution and to pick and choose reasons based on political expediency, instead of logic and law. The Speaker had no constitutional authority to have transposed the provisions of Article 69 making specific provisions for the removal of the President into Article 82 specifically dealing with the procedure for a vote of censure of a Minister of State. The Speaker’s so called knowledge or expertise in parliamentary procedure is no defence to a patently contradictory interpretation as though he was an ancient chancellor of the ancient court of equity whose decision changed with the chancellor’s foot.

As citizens of Ghana we are entitled to make meaning from the conduct of public officers who are appointed to serve citizens impartially as an umpire, and to protect the national interest without fear or favour, affection or ill-will. The conduct of the Speaker during the hearing of the 2022 Budget Statement, in particular the manner in which he returned from Dubai in March 2022 after a meeting with the President there the same month to preside over the passage of the E-Levy into law on Tuesday 29 March 2022 gives justification for citizens to perceive the Speaker, rightly or wrongly, as being transactional by nature instead of acting as a trusted umpire.

In communication theory the sender of a message, verbal or non-verbal or both, is responsible for the meaning significant others make from his transmitted message. In making meaning out of those transmitted messages, significant others are entitled to bring to bear on those messages their bank of knowledge and experience of the sender of the message. The Speaker transmitted to citizens messages by his ruling on the Deputy Majority Leader's objection to the motion of censure on 25 October 2022. The same Speaker has transmitted contradictory messages on the day of the mandatory constitutional debate of the motion of censure which was to have taken place on 10 November 2022. The fourteen days mandated by Article 82 of the 1992 Constitution for the debate on the vote of censure has long past by reason of the Speaker's ruling on 10 November 2022. Constitutionally there is no motion of censure before Parliament for any debate based on the original notice of motion file on 25 October 2022 in accordance with Article 82 of the 1992 Constitution.

The spectacle of the television show and entertainment to divert the public's attention from its economic suffering that followed the Speaker's unconstitutional subterfuge of referring the debate on the vote of censure to investigation by an ad hoc committee cannot ratify his illogical and unlawful decision or ruling. The report of the Speaker's ad hoc committee is inconsistent with and in contravention of the provisions of Article 82 of the Constitution and Order 108 of the Standing Orders of Parliament. Unlike Article 69 dealing with the removal of the President or Vice President from office which states that: "(10) Parliament shall, within fourteen days after the date of the findings of the tribunal or medical board, move a resolution whether or not the President shall be removed from office", Article 82 mandates that: "(3) The motion shall be debated in Parliament within fourteen days after the receipt by the Speaker of the notice of the motion." The Speaker was not given any discretion under Article 82 of the 1992 Constitution or the specific provision of Order 108 of the Standing Orders of Parliament to assume the power to refer the motion of censure after it was moved and seconded for the debate within the fourteen days after its receipt by the Speaker to any ad hoc committee.

The Speaker unconstitutionally set up an ad hoc committee to investigate the grounds of the motion of censure and to report to Parliament as though the President or Vice-President was being removed from office under Article 69 (5) and (7) of the Constitution. The Minister of Finance has already appeared in a public spectacle of entertainment showed on television before the ad hoc committee of parliament with lawyers to defend himself. We are now left to see whether the Speaker is going to give the Minister for Finance a second bite at the cherry when the report is tabled on the floor of Parliament for debate when even Article 69 (10) to (12) do not give the President or Vice President the right to be heard in their defence after the findings of the tribunal set up by the Chief Justice to investigate the grounds of the removal from office.

OBSERVATIONS

Pursuant to the motion of censure filed by Alhaji Muntaka Mubarak, the Chief Whip of the minority caucus, the Minister For Finance had notice of the motion and was constitutionally bound to appear in Parliament on 10 November 2022 for the debate on the censure motion and vote of censure. The Minister for Finance, Ken Ofori-Atta, never appeared in Parliament on 10 November 2022. He is reputed to have been abroad on that day, instead of respecting the Constitution and laws of Ghana by his presence in Parliament. The Speaker knew that the subject of the motion of censure was absent from Parliament in spite of the mandatory injunction of Article 82 of the Constitution but glossed over the Minister's absence and proceeded to have the motion of censure moved and seconded. The Speaker then followed this with his unconstitutional referral of same to an unconstitutional ad hoc committee of Parliament for investigation.

Was the Speaker prevailed upon by the Government to make the second contradictory ruling he made on 10 November 2022 and what was the consideration for the volte face? Tongues are wagging in that direction from within the minority caucus in Parliament when the Government is bent on pushing an austerity budget down the throats of citizens who are already burdened with suffering and betrayal by their elected Government.

In such circumstances a Speaker with a transactional leadership style whose medical condition is opaquely held in confidence by this Government, poses a danger to the concept of the Speaker as impartial and fair umpire in Parliament. Without transparent knowledge by the public about the Speaker's medical condition which cannot be treated in Ghana, the Speaker may himself be under silent in camera threats of a motion for his removal from office on medical grounds which may affect his impartiality as an umpire. The late eminent Speaker of Parliament, Mr. Justice D. F. Annan prevented such a situation when he developed a malignant abdominal condition necessitating surgery in the United Kingdom by making it a matter of public knowledge before it manifested in his appearance later. He lived for several long years thereafter and used to joke about his surgery and the dos and don'ts imposed on him as a result even long after he ceased to be the Speaker of Parliament. That was a display of probity, transparency, and accountability in governance which Mr. Bagbin needs to emulate as a true son of the June 4 and 31 December Revolutions who wishes to avoid unfavourable public perceptions or speculations about his conduct as Speaker under the 8th Parliament of the Fourth Republican Constitution.

CONCLUSIONS

The conduct of the Speaker during the hearing of the 2022 Budget Statement, in particular the manner in which he returned from Dubai after a meeting with the President there in March 2022 to preside over the passage of the E-Levy gives justification for citizens to perceive the Speaker rightly or wrongly as being transactional by nature instead of acting as a trusted umpire. In communication theory the sender of a verbal or non-verbal message or both is responsible for the meaning significant others make from his message with their bank of knowledge accumulated over time about the transmitter of the message.

The Speaker transmitted to citizens messages by his ruling on the Deputy Majority Leader's objection to the motion of censure on 25 October 2022. The same Speaker has transmitted contradictory messages on the day of the mandatory constitutional debate of the motion of censure which was to have taken place on 10 November 2022. The fourteen days mandated

by Article 82 of the 1992 Constitution for the debate on the vote of censure has long past by reason of the Speaker's ruling on 10 November 2022. Constitutionally, therefore, there is no motion of censure before Parliament for any debate based on the original notice of motion filed on 25 October 2022.

By the subterfuge adopted by the Speaker in unconstitutionally conflating the provisions of Article 69 with Article 82 of the 1992 Constitution, picking and choosing according to the illogicalities of his whims and caprices, he succeeded in dragging the debate on the vote of censure into the presentation of the 2023 Budget Statement and the debate on the motion for the approval of the budget statement. This is a typical *modus operandi* of transactional leadership and not of impartial umpires. Citizens have a right to assume, in the absence of any cogent and credible explanation supported by the Constitution that the Speaker is repeating the *modus operandi* with which he handled the 2022 Budget Statement with bombastic rulings only to pull wool over our eyes but eventually presided over the passage of the E-Levy after feeding on the public purse in Dubai treating himself at public expense without any medical board having been constituted which recommended his treatment abroad as required by law. That puts the Speaker in the debt of, and in vulnerability to the Government which affects his impartiality as an umpire.

Citizens' experience with how the Speaker prevaricated in his handling of the 2022 Budget Statement is precedent for patriotic citizens to be alert and to question whatever transactional leadership traits becomes apparent in the manner the Speaker appears to handle the motion of censure and in particular the processes enjoined under Article 82 of the Constitution for the vote of censure as examined and analyzed hereinbefore. The foregoing examination and analysis of the contradictory conduct of the Speaker in his rulings on 25 October 2022 and 10 November 2022 has demonstrated the need for patriotic citizens to remain ever vigilant in a split parliament in which the Speaker exhibits traits of being transactional and arrogates to himself powers and authorities not conferred upon him by the Constitution and/or Standing Orders of Parliament.

The occurrence of the events in relation to the motion of censure which has been examined and analyzed shows that the Speaker acted unconstitutionally by moving the debate and vote of censure from 10 November 2022 into the period for the presentation, debate, and approval of the 2023 Budget Statement. This conduct of the Speaker underscores the urgency with which patriotic citizens must be ever watchful of every step and pronouncement by the Speaker of Parliament. This is the first Speaker of Parliament under the Fourth Republican Constitution who thinks his words on the Constitution and the procedure and practice of Parliament is gospel and so infallible that citizens must swallow them line, hook, and sinker as a matter of faith. I agree with the Speaker that the minority motion will eventually fail, but the processes towards that failure must be fair and transparent. It must not be orchestrated.

The Speaker needs to come out with cogent and credible arguments and reasons for changing positions on the debate for the vote of censure than playing god and asking reasonable citizens to take his supposed personal deep thinking as binding authority on the objective and considered reasoning of his fellow citizens. It is of the utmost importance for all patriots not to allow what happened during the 2022 Budget season last year, to repeat itself on how the motion of censure has been handled by the Speaker so far, and how he may handle the 2023 Budget process during this period of economic hardships. Ghana First!

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