

JUDGEMENT DEBT COMMISSION'S STATEMENT ON GNPC DRILL SHIP SCANDAL

One of the companies the Corporation entered into a contract with was Societe-Generale, (hereinafter referred to as SG), which is a French commodities bank. The transaction involved derivatives or hedging as it is simply called. This contract was executed somewhere in October 1996.

As it is sometimes the case in business transactions, things did not sail smoothly as expected. This later culminated in a legal tussle between the parties in a case titled; Societe-Generale v Ghana National Petroleum Corporation (GNPC).

2.7.1 FACTS OF THE CASE

Somewhere in 1999, a dispute arose between the Corporation and SG over certain payments SG expected the Corporation to make to it for services it had rendered. The disagreements that ensued between the parties over the said payments compelled SG to commence legal action against the Corporation in a London High Court for an alleged indebtedness of the Corporation to it. The amount SG was claiming in the action was in the region of US\$40 million.

The Corporation denied the claim and made a counter-claim against SG through its external lawyers Bindman and Partners of UK. The counter-claim was based on the fact that SG had provided negligent advice to the Corporation with regard to the strategy it recommended for the Corporation to hedge its anticipated production of oil and gas from the Tano Fields in the Western corridor of the country's coastline leading to the losses the Corporation suffered thereby.

The case dragged on until the country had a political change in January 2001. All this while, there were subtle attempts to have the matter resolved amicably between the two parties but all to no avail, due to the disagreement over the actual amount to settle on. The then CEO of the Corporation Mr. Tsatsu Tsikata who led the Corporation to enter into the contract in question left the Corporation getting to the close of the year 2000.

On assuming office in January 2001, the government of President J. A. Kuffour appointed an Ag. Managing Director (CEO) in the person of Dr. Ofori-Quaah to steer the affairs of the Corporation until a substantive CEO was appointed. The government, through the Minister of Energy, then constituted a three-member committee to investigate and come out with a report on how best to restructure the Corporation for it to focus on what it termed its 'core business'. This committee was formed in March 2001.

The government again, through the Attorney-General, wrote to the external solicitors of the Corporation (i.e. Bindman and Partners, UK) dispensing with their services in the case pending before the London Court between S.G. and GNPC. The position of the Government was that the Attorney-General of Ghana would assume responsibility for the conduct of the case then pending in the London court.

The government, through the Energy Ministry and working through particularly the then Deputy Minister of Energy in the person of Mr. K. T. Hammond, resumed settlement talks with officials of SG both in Ghana and abroad. They however failed miserably to make any presentation in the London High Court where the case was pending, about the attempts at settlement, having dispensed with the services of GNPC's lawyers in the case.

Around the same time, the Corporation had an application pending before the London High Court requesting SG to disclose certain information which the Corporation claimed SG had concealed from the Court. The Corporation held the strongest view that the disclosure of the information concealed by SG would help the Court to determine the dispute before it fairly.

(a) Failure of the Attorney-General to attend court after taking over case from Lawyers of GNPC

On the appointed date for the determination of the Corporation's application, the Attorney-General who had taken over the conduct of the case from Bindman and Partners, failed to attend

court. He again failed to draw the court's attention to the fact that GNPC was on a settlement table with SG, notwithstanding the pendency of the matter before the court. In sum, the Attorney-General failed to make any appearance at all in the London High Court after he had written to GNPC's external solicitors dispensing with their services as lawyers for GNPC in the case.

(b)Entry of Default Judgment against GNPC on failure of A-G to attend court

Since the London High Court was oblivious of what was happening outside the confines of the four walls of the Court, SG either clandestinely or surreptitiously prayed it, in the absence of the Corporation, to dismiss GNPC's application and enter ex-parte judgment in its favour. SG did this without informing the Court about the settlement talks then going on between it and the Corporation.

The Court granted SG's prayer leading to an entry of judgment against the Corporation in the total sum of US\$47 million including costs in the absence of the Corporation and its new lawyers; i.e. the Attorney-General of Ghana. This was on 6th June 2001.

This ex-parte judgment was entered in favour of SG against GNPC at a time SG had expressed agreement with the government to accept US\$14 million as final settlement of the impasse instead of the US\$10 million suggested by the government settlement team somewhere in May 2001.

When the government heard of the entry of judgment against the Corporation in the sum of US\$47 million, His Excellency the President Mr. J. A. Kuffour, quickly dispatched the Deputy Energy Minister Mr. K. T. Hammond who was in the thick of affairs, to Paris and London to meet officials of SG as a sole negotiator for and on behalf of the Government of Ghana. The aim was to have the matter already determined by the London High Court resolved amicably by the

acceptance of the US\$14 million which SG had already expressed interest in accepting, instead of the US\$47 million decreed by the Court.

In his own words when he appeared before this Commission, Hon Mr. K. T. Hammond who at the time was a Member of Parliament (MP) and a Deputy Minister of Energy said; SG told him it was too late for them to accept the US\$14 million since the Court had already granted them a total sum of US\$47 million as judgment debt.

His efforts, as he himself boasted before the Commission, yielded results as SG finally agreed to reduce the amount from US\$47 million to US\$19.5 million. According to him, he was able to do this with the assistance of a firm of solicitors that goes by the name 'Constant and Constant' that he contracted in the UK to assist him with the negotiations.

(c) Sale of Drillship 'Discoverer 511'

At the time the litigation was going on, one of the Corporation's marine assets which was a Drillship by name 'Discoverer 511' had been arrested and docked in the waters of Oman following an application to that effect by the plaintiff in the case; i.e. SG. The Drillship had been hired to perform some drilling assignments in India and was then in the waters of Oman.

After the agreement between SG and the then Deputy Minister and sole negotiator Mr. K. T. Hammond to vary the judgment-debt from US\$47 million to US\$19.5 million, it was further decided that the Drillship Discoverer 511 be sold so that the proceeds could be used to offset the agreed judgment debt of US\$19.5 million.

This Commission was told that it was the Cabinet headed by the then President His Excellency (Mr.) J. A. Kuffour that decided to sell the drillship to pay the Corporation's indebtedness. To make the sale possible, the then Acting M.D of the Corporation Dr. Ofori Quaah was invited to the Attorney-General's Office in Ghana to sign a Power of Attorney for and on behalf of the

Corporation. This was meant to empower the Deputy Minister of Energy Mr. K. T. Hammond who was then in London, to sell the Drillship 'Discoverer 511' and to use part of the proceeds to pay the debt owed SG.

With the legal assistance of 'Constant and Constant', which appeared to be the agent of the Government of Ghana in the sale of the ship, 'Discoverer 511' was sold for US\$24 million to a Norwegian Firm by name Frontier Drilling ASA. Out of the proceeds of US\$24 million, US\$19.5 million was paid directly to SG by the purchasers, leaving a balance of US\$4.5 million.

(d)How the balance of US\$4.5 million was utilized after the payment of GNPC's indebtedness to SG

As to how the balance of US\$4.5 million was dealt with, the then Deputy Minister of Energy Mr. K. T. Hammond told the Commission that the Solicitors who represented Ghana in the negotiations; i.e. 'Constant and Constant', were given one million dollars (US\$1, 000,000) out of which they were to take one hundred thousand dollars (US\$100,000) for their services and then keep the balance of nine hundred thousand dollars (US\$900,000) to cater for the future debts of GNPC to other creditors. The remaining three million, five hundred thousand United States dollars (US\$3.5 million) was handed over to the then Ghana's High Commissioner to the United Kingdom Mr. Chris Kpodo who received it for and on behalf of the Government of Ghana.

(e)Evidence of Ambassador Chris Kpodo

This revelation compelled the Commission to invite Ambassador Chris Kpodo to appear before the Commission to testify on the issue. In his testimony, he contended that he was not a party to the negotiations and the payment of the US\$19.5 million to SG. According to him, he only received instructions from the Ministry of Finance in Accra to receive the cheque covering US\$3.5 million for and on-behalf of the Government of Ghana, which he did. Later the cheque was collected from him by the staff of the Controller and Accountant General's Department (CAGD)

to open a special account in London. As to how the said account was operated he was oblivious of that.

2.7.2 FINDINGS/OBSERVATIONS

The Commission at its public sittings invited as many as eleven (11) witnesses to testify before it on matters concerning the issue before it. These witnesses were; the CEO of the Corporation at the commencement of the Commission's sittings in the person of Nana Boakye Asafu-Adjei, a Chief State Attorney from the Attorney-General's office representing the Solicitor General and the former CEO of the Corporation during whose tenure the sale took place in the person of Dr. Ofori Quaah (who was subpoenaed from the United Kingdom). The others include the Chief Director of the Ministry of Energy Professor Thomas Mba Akabzaa, the Chief Manager, Banking Department of the Bank of Ghana Mr. Paul Mensah-Ashen and the Managing Director (MD) of Societe-Generale (SG) Mr. Gilbert Hie.

In addition to the above were the Minister of Energy at the time in question Hon. Mr. Albert Kan Dapaah, the then Deputy Minister of Energy and key personality in the whole affair Hon. Mr. K. T. Hammond, the Chief Accountant of GNPC Mr. Peter Kingsford Osei Sasu; the premier CEO of the Ghana National Petroleum Corporation (GNPC) Mr. Tsatsu Tsikata during whose tenure the Corporation came into contact with the plaintiff/judgment-creditor Societe-Generale (SG) and finally, Ghana's former High Commissioner to the United Kingdom Mr. Chris Kpodo. Also invited was the Acting Controller & Accountant General Mrs. Grace Adzroe.

The Commission's task in this case was to find out how the judgment debt of US\$47 million arose, how it was paid and whether there was anything untoward with regard to the accrual of the debt and its payment.

(a) How the Debt of US\$47 million arose

With regard to the first task above, the simplest thing to say is that the debt of US\$47 million arose as a result of the court action SG embarked on against GNPC in the London court. But the issue is not as simple as that, taking cognizance of the fact that the judgment was entered ex-parte and at a time the parties had almost reached an agreement on a lesser figure than what was finally paid.

Why did the Attorney-General's office fail to appear even once in the London High Court after it had dispensed with the services of the lawyers GNPC employed to conduct the case on its behalf?

From the Attorney-General's point of view as the records indicate, the case was not worth contesting so they concentrated on the settlement. This Commission cannot question that decision. The question, however, is; why did the Attorney-General, then representing GNPC, fail to inform the Court about the position the Government had taken on the case and the fact that they were in fruitful settlement talks with SG?

It is the strongest contention of this Commission that it was as a result of this failure to bring to the attention of the London High Court the settlement attempts that led to the entry of judgment ex-parte in the sum of US\$47 million against GNPC.

The true picture is that, GNPC had been contesting SG's claims since the Bank instituted its action in 1999. GNPC had put up a strong defence and counterclaim against SG accusing them of negligent advice leading to the losses GNPC suffered. It was as a result of this strong defence that SG proposed a settlement while the case was pending. It is sad that while SG had almost agreed on the sum of US\$14 million as full and final settlement of their claim at the time the default judgment was entered, the Government represented by the Ministry of Energy, which had wrongfully taken over the running of affairs at GNPC, failed to bring this fact to the notice of the London Court before the default judgment was entered against GNPC.

Mr. K.T. Hammond who was in the thick of affairs had this to say: “My Lord, ... just before the 15th of June 2001, my Minister informed me that there had been a cabinet decision that I should go to London to see to the resolution of this matter because on the 6th of June 2001, a judgment had been entered against GNPC in the matter of Societe Generale v GNPC. My Lord, as my Minister indicated, from day one GNPC matters had become government matters. Cabinet had decided on the matters that my Minister indicated so my Lord, I was dispatched.

My Lord, I also think partly because after ten (10) years practice at the Bar of England and Wales, my Minister felt confident that I could settle the judgment that had been entered; ‘you go and plead your case with those you owe and see what they could do about it’, he said. My Lord, so I left. I went to Paris back to London and back to Paris; to and fro.

My Lord, my Minister has already indicated that at that stage quite a lot of things he did not know about, which I also obviously did not know about came up. They (SG) made it clear in their discussions with me that, well whatever discussions that went on prior to my arrival in London and Paris were of absolutely no consequence at that moment because of the judgment they had obtained. So fourteen (14) million or twenty (20) whatever million is off; they were asking for forty-seven million dollars...So I pleaded with them my Lord and in the process they agreed that they would accept the nineteen point five (19.5) million that my Minister talked about...” {Emphasis mine}

(a) Failure to abide by the Provisions of Act 64

It was very clear from answers to questions the Commission asked Mr. K. T. Hammond that the President and his Cabinet and particularly the Minister of Energy and his Deputy, did not appreciate their respective roles under the provisions of Act 64 that established GNPC.

When Mr. Hammond was told by this Commission that GNPC was a legal entity and that they should not have interfered in its affairs as they did, this was what he said; “My Lord, I accept the fact that GNPC is a corporate personality and so they have their own responsibility. But my Lord, when it came to it, S.G. wrote to the then Government Minister of Finance and then copied the Minister of Energy. So it had from that time become Government issue”. The following dialogue then ensued between the Commissioner and Mr. Hammond:

“COMMISSIONER: So within that period, you assumed the position of the Board and Managing Director?

K. T. HAMMOND: Because my Lord, there was no Board of Directors at the time.

COMMISSIONER: Was it proper for you, with the help of Cabinet, to run GNPC as if you were the Board and M.D?

K. T. HAMMOND: No my Lord. That is not what happened. My Minister has demonstrated that there was no space at the time because GNPC was going through a restructuring process at the time...My understanding of this corporate structure is that when there is no Board the shareholders, which in some context are called the General Meeting, fill the gap. The shareholders in this context were the Government represented by the Ministry of Energy, my Lord. There is clear authority on the fact that when there is no M.D., the General Meeting which is the Shareholders, takes it up”.

Evidence before the Commission was so clear that the Acting Managing Director Dr. Ofori Quaah was not given room to operate as the M.D. He was coerced into signing a Power of Attorney prepared at the Attorney-General’s Office to empower Mr. K. T. Hammond to sell property belonging to the Corporation; i.e. the Drillship ‘Discoverer 511’. Dr. Ofori Quaah was emphatic about that.

The fact is that the Ghana National Petroleum Corporation Act, 1983 [Act 64] does not empower either the Minister of Energy or the Executive to interfere in the running or management of the Corporation as the President and his Cabinet did in this case. The general control of the

management, property, business and funds of the Corporation and any other affairs and concerns of the Corporation is the sole preserve of the Board of Directors of the Corporation. The Minister can only give guidelines and directives to the Board in case of a dispute between the Corporation and any other body as provided under Section 8 (2) (f) of the Act but not to directly take over the running of affairs of the Corporation.

The explanation by Hon. K.T. Hammond that they did what they did because there was no Board in place at the time was begging the question. At the time of this interference, there was a Managing Director in the person of Dr. Ofori Quaah. It was the President who appointed him as the Acting Managing Director. So if there was no Board in place, what the President should have done was to have appointed a new Board to take up the mantle but not to directly take over the duties of the Board and run the Corporation with his Cabinet as if they were the Board.

(b) Failure of A-G to appear in London Court cause of the ex-parte judgment debt

So clearly, the failure of the Attorney-General to make any appearance in the London Court after dispensing with the services of 'Bindman and Partners' who were the external lawyers of GNPC did not do the country any good. It was that failure that led to the entry of the ex-parte judgment against GNPC. Again, it was that failure that made it possible for SG to demand more than the fourteen million dollars (US\$14 million) that they had earlier on (before the entry of judgment) agreed to accept as final settlement of the suit.

This Commission holds the view that the payment of US\$19.5 million instead of the US\$14 million earlier on agreed, constituted financial loss to the Corporation and Ghana. The Commission thinks that governmental interference in the running of the affairs of the Corporation, contrary to the Act establishing the Corporation, accounted to a large extent for what happened.

(c)How the balance of US\$3.5 million was utilized

The Commission could not be properly briefed as to how the US\$3.5 million was disbursed. Both the Minister of Energy at the time and his deputy Messrs. Kan Dapaah and K. T. Hammond said they had nothing to do with its disbursement. They could also not tell who disbursed it and how.

When the Commission invited the Controller and Accountant General to brief it on the operation of the said account, the Controller and Accountant General through its treasury office in London, addressed a letter to the Ghana International Bank to assist it with information on the said account. The letter, which the Treasury Officer at the Ghana High Commission in London addressed to the Manager of the Ghana International Bank in London, was dated 5th November 2013.

It reads:

“Dear Sir/Madam,

ACCOUNT NUMBER 001191613

We would be very grateful if you could furnish the High Commission with the following details with respect to Account Number 001191613 opened at your bank:

1. The source of authority to open the account
2. The date the Account was opened
3. Copies of Bank Statements to date
4. Confirm whether the account is still operational
5. Confirm signatories to the account since inception.

It would be appreciated if we could get this information as soon as practicable.

Thank you,

THOMAS MBUN

TREASURY OFFICER

FOR THE HIGH COMMISSIONER”

The Management of the Ghana International Bank responded to the above request by forwarding four documents to the High Commission. These documents were:

1. A letter dated 25th July 2001 addressed to the Manager of the Ghana International Bank by one Mr. Emmanuel Bani who signed for the High Commissioner, requesting the Bank to open the said account. The account was to be named; "TREASURY OFFICER SPECIAL DOLLAR INVESTMENT ACCOUNT".
2. A letter dated 26th July 2001 from the Ghana International Bank to the Ghana High Commission informing the High Commission of the opening of the account as requested with Account Number 001191613.
3. A letter dated 12th December 2005 from the Ghana High Commission, London to the Manager, Ghana International Bank requesting the Bank to close the said account and other accounts into which part of the monies were transferred and,
4. A statement showing how the US\$3.5 million was disbursed.

The response indicated that only US\$1.657 million out of the total sum of US\$3.5 million was used to defray alleged debts owed by the Corporation (GNPC). A total sum of US\$169, 548.25 out of the amount was used to pay monthly salaries of staff not properly described, in the months of October 2003 and March 2004.

On 10th October 2003, an amount of US\$141, 361.29 was transferred from the account in which the money was held i.e. A/C No. 001191613 into another account number in the same London bank; i.e. A/C No. 001191605. As to how that transferred money was utilized remains a mystery up to date.

When these amounts are put together they total US\$1, 967,909.54. When this is deducted from the US\$3, 500,000.00 that was deposited in Account No. 001191613, the balance left is US\$1, 532,090.46. As to how this balance of US\$1, 532,090.46 was utilized or disbursed, the letter from the Ghana International Bank to the Ghana High Commission in London did not explain in the

Statement of Account attached. Meanwhile, all these accounts were closed on the strength of a letter from the Ghana High Commission in London to the Manager, Ghana International Bank, London dated 12th December 2005. The question therefore is; where is this balance?

So this was how money belonging to the Corporation which was alleged to be in a huge financial distress was utilized on the blind side of the management and Board of the Corporation, contrary to Act 64 that established the Corporation.

The Commission was at a loss as to why the balance of US\$4.5 million that was left after paying SG what the Corporation owed it was not paid into the accounts of the so-called distressed Corporation to be utilized for the benefit of the Corporation that was entitled to that sum.

This Commission is of the view that there was no justification for the opening of the London account into which US\$3.5 million was paid after deducting US\$1 million to 'Constant and Constant' for the opening of an escrow account, when the Corporation had an external account of its own into which the balance could have been paid.

Again, records before the Commission showed clearly that Government's own enquiry into GNPC affairs in 2001 identified the Drillship 'Discoverer 511' as a profitable asset. Why then was it identified to be sold when from the records, GNPC had vast assets which could be sold to defray the debt rather than choose an asset which was bringing in revenue, thus cutting off a vital source of funds? In short, why sell the hen that lays the golden eggs?

Furthermore, what this Commission found strange was the manner in which records on this matter disappeared from the Attorney-General's Department, GNPC's offices and offices of the Ministry of Energy. Witnesses who were invited from these offices told the Commission that they could not lay hands on documents on the matter from their various offices.

However, when Mr. K.T. Hammond appeared before the Commission to testify, he presented to the Commission a sealed envelope which he said contained relevant documents on the matter. When he was questioned on how he came by the sealed envelope containing the alleged relevant documents, he told the Commission that it was a Good Samaritan who placed it in his pigeon hole in Parliament to assist him present his case. He, however, could not tell the Commission who this Good Samaritan was.

The totality of these developments raises strong suspicions that the whole transaction involving the sale of the Drillship 'Discoverer 511' is shrouded in mystery.

2.7.3 RECOMMENDATIONS

This Commission recommends that the Minister of Finance and officials of the Controller and Accountant General's Department at the Ghana High Commission in London at the time in question (i.e. between 2001 and 2006), should be made to render proper accounts on how the US\$3.5 million that was lodged in the London Bank was disbursed since the money belonged to the Ghana National Petroleum Corporation (GNPC).

They should be made to explain what happened to the US\$141, 361.29 that was transferred into Account No. 001191605 and also what happened to the balance of US\$1, 532,090.46 that was left in Account No. 001191613 since all those accounts were closed on the strength of the letter dated 12th December 2005 referred to above. Again, they should be made to explain how the law firm Constant and Constant disbursed the US\$900, 000 that was paid into an escrow account in London.

The Commission also recommends that the Executive arm of Government should be slow in interfering in the running of State institutions that have independent legal capacities. Such interferences do not augur well for good governance as they prevent the State from holding such institutions accountable for their stewardship.

