IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA – AD 2019

WRIT TO INVOKE THE ORIGINAL JURISDICTION OF THE SUPREME COURT ARTICLES 2, 130(1)(a), 132 AND 181 OF THE 1992 CONSTITUTION: RULE 45 OF THE SUPREME COURT RULES 1996 (C. I. 16)

CIVIL MOTION NO. .....

J8/140/2019

BETWEEN:

MARTIN ALAMISI AMIDU
PLOT 355 NORTH LEGON RESIDENTIAL AREA **PLAINTIFF/APPLICANT**
ACCRA

AND

1. THE ATTORNEY-GENERAL
MINISTRY OF JUSTICE **1ST DEFENDANT/RESPONDENT**
MINISTERIES
ACCRA

2. WATERVILLE HOLDINGS (BVI) LIMITED
P. O. BOX 3444
ROAD TOWN **2nd DEFENDANT/RESPONDENT/**
TORTOLA **JUDGMENT DEBTOR**
BRITISH VIRGIN ISLANDS

3. ALFRED AGBESI WOYOME
HOUSE NO. 16B
6TH STREET TESANO – ACCRA

NOTICE OF MOTION FOR ORDERS AND DIRECTION TO THE 1ST DEFENDANT/RESPONDENT TO ENFORCE AND FOR THE 2ND DEFENDANT/RESPONDENT/JUDGMENT DEBTOR TO CARRY OUT AND OBEY THE ORDERS AND DIRECTIONS OF THIS COURT DATED 14TH JUNE 2013: ARTICLES 2 AND 129 (4) OF THE 1992 CONSTITUTION AND RULE 5 OF SUPREME COURT RULES, 1996 (C. I. 16)

TAKE NOTICE AND NOTICE IS HEREBY GIVEN, that this Honourable Court shall be moved by, Martin Alamisi Amidu, the Plaintiff/Applicant herein praying for an order

directed to the 1st Defendant/Respondent, the Attorney General, to enforce the refund of all the total Judgment Debt of €47, 365, 624. 00 (excluding interest thereon) and for the 2nd Defendant/Respondent/Judgment Debtor to obey and carry out the orders and direction of this Court contained in the judgment, orders, and directions of this Court made in favour of the Plaintiff/Applicant herein on behalf of the people of Ghana against the 2nd Defendant/Respondent/Judgment Debtor on 14th June 2013 pursuant to Articles 2 and 129 (4) of the 1992 Constitution after the conclusion of the International Chamber of Commerce Arbitration Case No. 20561/TO and the issuance of the Order for Termination of the said arbitration in favour of the Republic of Ghana on 30th April 2018 and for such further or other orders as to this Honourable Court shall seem meet.

COURT TO BE MOVED ON ..... the ..... 2019 at 9 O'clock in the forenoon or so soon thereafter as the Plaintiff may be heard.

DATED AT ACCRA THIS 6TH DAY OF SEPTEMBER 2019

MARTIN ALAMISI AMIDU
(PLAINTIFF/APPLICANT)

THE REGISTRAR
SUPREME COURT
ACCRA

AND FOR SERVICE ON:

(1) THE 1ST DEFENDANT/RESPONDNET, THE ATTORNEY GENERAL

(2) THE 2ND DEFENDANT/RESPONDNET/JUDGMENT DEBTOR PER ITS CONTROLLING DIRECTOR AND SHAREHOLDER ERNESTO TARICONE, THE CHAIRMAN OF THE TRASACCO GROUP, HOUSE No. 5 TRASACCO RESIDENCE, OFF ABURI ROAD, PANTANG, ACCRA.

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA – AD 2019

WRIT TO INVOKE THE ORIGINAL JURISDICTION OF THE SUPREME COURT ARTICLES 2, 130(1) (a), 132 AND 181 OF THE 1992 CONSTITUTION: RULE 45 OF THE SUPREME COURT RULES 1996 (C. I. 16)

CIVIL MOTION NO……..

BETWEEN:

MARTIN ALAMISI AMIDU
PLOT 355 NORTH LEGON RESIDENTIAL AREA **PLAINTIFF/APPLICANT**
ACCRA

AND

1. THE ATTORNEY-GENERAL
MINISTRY OF JUSTICE **1ST DEFENDANT/RESPONDENT**
MINISTERIES
ACCRA

2. WATERVILLE HOLDINGS (BVI) LIMITED
P. O. BOX 3444
ROAD TOWN **2nd DEFENDANT/RESPONDENT/**
TORTOLA **JUDGMENT DEBTOR**
BRITISH VIRGIN ISLANDS

3. ALFRED AGBESI WOYOME
HOUSE NO. 16B
6TH STREET TESANO – ACCRA

AFFIDAVIT OF THE PLAINTIFF/APPLICANT IN SUPPORT HEREIN

I, Martin Alamisi Amidu of Plot No. 355 North Legon Residential Area, Accra, make oath and say as follows:

1. I am the Plaintiff/Applicant and deponent herein and the matters I depose to are within my personal knowledge, information and belief.

2. I commenced the above action as the Plaintiff in the Supreme Court on 22nd June 2012 in suit number J1/15/2012 and subsequently amended same pursuant to an order of this Court made on 11th April 2013 in which I sought the following reliefs:

    1. "A declaration that the Agreement entitled "Contract for the Rehabilitation (Design, Construction, Fixtures, Fittings and Equipment) of a 40,000 Seating Capacity Baba Yara Sports Stadium in Kumasi, Ghana" entered into on 26th April 2006 between the Republic of Ghana and Waterville Holdings (BVI) Limited of P. O. Box 3444 Road Town, Tortola, British Virgin Islands is an international business or economic transaction under Article 181(5) of the 1992 Constitution that could only have become operative and binding on the Government of Ghana after being laid before and approved by Parliament.

    2. A declaration that the Agreement entitled "Contract for the Rehabilitation (Design, Construction, Fixtures, Fittings and Equipment) of a 40,000 Seating Capacity Ohene Djan Sports Stadium and the Upgrading of the El Wak Stadium in Accra, Ghana" entered into on 26th April 2006 between the Republic of Ghana and Waterville Holdings (BVI) Limited of P. O. Box 3444 Road Town, Tortola, British Virgin Islands is an international business or economic transaction under Article 181(5) of the 1992 Constitution that could only have become operative and binding on the Government of Ghana after being laid before and approved by Parliament.

    3. A declaration that the two Agreements each dated 26th April 2006 as stated in reliefs (1) and (2) herein not having being laid before and approved by Parliament pursuant to Article 181(5) of the 1992 Constitution is each inconsistent with and in contravention of the said Article 181(5) of the Constitution and consequently null, void and without operative effect whatsoever.

    4. A declaration that a bridge financing agreement arising between the Republic of Ghana and the 2nd Defendant, (Waterville Holding (BVI) Limited), pursuant to the two Agreements each dated 26th April 2006 is each a loan transaction within the meaning of Article 181 (3), (4) and (6) of the 1992 Constitution whose terms and conditions had to be further laid before Parliament and approved by a resolution of Parliament to be operative and binding on the Republic of Ghana.

    5. A declaration that the conduct of the 1st Defendant in paying sums of money in Euros to the 2nd Defendant in purported pursuance of claims by the 2nd Defendant arising out of the said two Agreements each dated 26th April 2006 as stated in reliefs (1) and (2) herein is inconsistent with and in contravention of the letter and spirit of the 1992 Constitution, particularly Article 181(5) thereof and is each accordingly null, void, and without effect whatsoever.

    6. A declaration that all transactions and claims by the 3rd Defendant a Ghanaian citizen with one Austro-Invest Management of CH-6302 ZUG Untermuhli 6, Switzerland, (a foreign registered and wholly owned company liquidated on 26th

July 2011) premised upon the said two Agreements between the Republic of Ghana and the 2nd Defendant, Waterville Holding s (BVI) Limited, constitute international business transactions within the meaning of Article 181(5) of the 1992 Constitution to be laid before and approved by Parliament to become operative and binding on the Republic of Ghana.

7. A declaration that the transaction or any purported transaction between the 2nd Defendant, Waterville Holdings (BVI) Limited, (a foreign registered and resident company), 3rd Defendant, a Ghanaian citizen , with Austro-Invest Management Limited (also a foreign registered and wholly owned company now liquidated), and the Government of Ghana to syndicate foreign loans and other financial assistance from foreign financial institutions and sources that financially encumbers the Republic of Ghana for the stadia projects, the subject matter of the two Agreements each dated 26th April 2006 aforementioned constitute an international business or economic transaction within the meaning of Article 181(5)of the 1992 Constitution for the purposes of the operability of the transaction.

8. A declaration that on a true and proper interpretation of Articles 181(3), (4), (5), and (6) and the spirit of the 1992 Constitution the Republic of Ghana cannot incur liability for any foreign or international loan or expenses incidental to such foreign or international loan transactions without Parliamentary approval of the transaction for it to be operative and binding on the Republic of Ghana.

9. A declaration that conduct of the 1st Defendant in paying or ordering the payment by the Republic of Ghana of claims raised by the 3rd Defendant with the said Austro-Invest premised upon a purported foreign or international financial engineering agreement arising out of the said aforementioned two Agreements of 26th April 2006 and/or any other international business Agreement with the Government of Ghana which were never laid before or approved by Parliament is inconsistent with and in contravention of the letter and spirit of the Constitution, particularly Articles 181(3), (4), (5), and (6) of the 1992 constitution thereof and are accordingly null, void and without effect whatsoever.

10. A declaration that the High Court which purported to and assumed jurisdiction in an action commenced by the 3rd Defendant (as Plaintiff) on 19th April 2010 in Suit No. RPC/152/10 against the 1st Defendant claiming damages for breach of contract in an international business transaction contrary to Article 181 of the 1992 Constitution and entered judgment in default of defencce against the 1st Defendant acted without jurisdiction: consequently those proceedings and others consequent thereupon of the said High Court are null, void, and without effect whatsoever.

11. A declaration that the conduct of the President of the Republic of Ghana in stating to the nation in an interview with Radio Gold on 23rd December 2011 that the two international business Agreements of 26th April 2006 and others incidental to it

created liabilities for the Republic of Ghana for which the Government of Ghana had to pay to the 2nd Defendant, and 3rd Defendant with the said Austro-Invest as judgment debts are inconsistent with and in contravention of Article 181 of the 1992 Constitution and undermine efforts to defend the Constitution.

12. A declaration that the conduct of the 2nd Defendant in making a claim for and securing payment through mediation on an alleged breach of contract of the said two Agreements between the 2nd Defendant, (a wholly owned foreign registered and resident company) and the Government of Ghana dated 26th April 2006 when the 2nd Defendant knew that the said two Agreements were international business or economic transaction with loan components that had not been laid before and approved by Parliament under article 181 of the 1992 Constitution to become operative and enforceable is inconsistent with and in contravention of the Constitution.

13. A declaration that the conduct of the 3rd Defendant jointly with Austro Invest Management Ltd (a foreign registered and resident company subsequently liquidated abroad on 26th July 2011) in making claims upon and including the issuance of a Writ of Summons and Statement of Claim in Suit No. RPC/152/10 dated 19th April 2010 against the Government of Ghana with the written support of the 2nd Defendant and receiving payments thereto premised upon alleged breaches of the said two Agreements dated 26th April 2006 between the 2nd Defendant and the Government of Ghana when the 3rd Defendant with the said Austro Invest Management Ltd, and the 2nd Defendant knew that the said two Agreements were international business or economic transactions which had not been laid before and approved by Parliament to become operative and enforceable is inconsistent with and in contravention of article 181 of the 1992 Constitution.

14. An order directed at the 2nd and 3rd Defendants to refund to the Republic of Ghana all sums of money paid to them severally or jointly upon or as a result of the unconstitutional conduct of the 1st Defendant in purported pursuance of the two inoperative Agreements dated 26th April 2006 or any other unconstitutional Agreement as having been made and received by them in violation of Article 181 of the Constitution.

15. And for such further orders or directions that this Honourable Court may deem appropriate to give full effect or to enable effect to be given to the spirit and letter of the Constitution in this matter generally and particularly Articles 2 and 181 of the Constitution."

3. I say that this Honourable Court delivered judgment in the action on 14th June 2013 in my favour against the 2nd Defendant/Respondent/Judgment Debtor herein reported in Amidu (No. 1) v Attorney-General, Waterville Holding (BVI) & Woyome (No. 2) [2013-2014] 1 SCGLR 112 and granted in the main relief (1), (2), (3), and (14) which were only in respect of the 2nd Defendant/Respondent/Judgment Debtor: Relief 4 was considered to

have been granted as it was deemed to be subsumed in reliefs (1), (2), and (3).

4. I also say that this Court in granting relief (14) of my claims against the 2nd Defendant/Respondent/Judgment Debtor "requiring it to refund to the Republic of Ghana all sums of money paid to it in connection with the two inoperative Agreements dated 26th April 2006 and the work done on the stadia" the total sum of all the Judgment Debt to be refunded by the 2nd Defendant/Respondent/Judgment Debtor came to the sum of €47,365,624.40 (excluding the accruing interests thereon) made up of the second sum of €25million ordered to be refunded as the award made and paid at the mediation in Ghana by the NDC Government (see pages 6 to 7 and pages 31-41 of this Court's judgment) and the first sum given to the 2nd Defendant/Respondent/Judgment Debtor by the previous NPP Government described by this Court at pages 4 to 5 of its judgment as follows: "….the Government of Ghana subsequently paid for all the works certified by BIC [Building Industries Consultants Ltd], totaling some €22,365,624.40. This could be problematic since it appears to have used a restitutionary route to bypass the legal consequences of an inchoate international business transaction to which the Government was a party, which had not been approved by Parliament in terms of article 185(5)." (A photocopy of Feature Article authored by the Plaintiff/Respondent herein on 3rd April 2015 and published in Modern Ghana titled: "Waterville's Judgment Debt To Be Refunded Is Euro 47,365,624.40" is annexed herewith and marked as "Exhibit MAA1".)

5. I was dissatisfied with part of the decision of the ordinary bench of this Court and made an application for review of those parts of the decision of the ordinary bench which refused my reliefs against the 1st Defendant/Respondent herein and the 3rd Defendant, Alfred Agbesi Woyome to this Court dated 12th July 2013.

6. In my review application to this Court this Court granted my reliefs (6), (7), (13 and (14) in so far as they related to the 3rd Defendant/Respondent therein and relief (9) which applied to the 1st Defendant/Respondent herein and therein on 29th July 2014 as being responsible for creating and paying the unconstitutional Judgment Debt reported in Amidu (No. 3) v Attorney-General, Waterville Holding (BVI) Ltd & Woyome (No. 2) [2013-2014] 1 SCGLR 606, particularly at page 654 thereof.

7. I say that this Court formally granted the 1st Defendant/Applicant the capacity to enforce the judgment debts and related matters in the original Amidu v Attorney General, Waterville & Woyome and its review decisions and related matters hereinbefore mentioned on 31st March 2015 after almost two years delay on the part of the 1st Defendant/Respondent's predecessor to ask for directions from this Court on execution of its directions and orders.

8. Consequent upon the decision of this Court dated 14th June 2013 against the 2nd Defendant/Respondent/Judgment Debtor herein and the orders and directions granting relief (14) "to the extent that the order is directed at the second defendant, requiring it to refund to the Republic of Ghana all sums of money paid to it in connection with the two inoperative agreements dated 26 April 2006 and the work done on the stadia" the 2nd Defendant/Respondent/Judgment Debtor instead instituted proceeding against the

Government of Ghana before the International Court of Arbitration (ICC) against the decision and order of this Court to refund €22 million having been emboldened by the then Government's feeble efforts to recover all the sums ordered and directed from, the 2nd Defendant/Respondent/Judgment Debtor.

9. The 2nd Defendant/Respondent/Judgment Debtor's arbitration against the Government of Ghana was conducted in ICC Arbitration Case No. 205611/TO in Waterville Holding (BVI) Limited (Claimant) –and – the Attorney General of the Republic of Ghana…(Respondent).

10. I say that to the best of my knowledge, information and belief the ICC Arbitration made a "Partial Award On Jurisdiction" dated 20 March 2017 and an "Order For Termination" dated 30 April 2018. (A photocopy of the said "Partial Award On Jurisdiction" is annexed herewith and marked as "Exhibit MAA2" and a photocopy of the said "Order For Termination" is also annexed herewith and marked as "Exhibit MAA3").

11. I also say that in the "Partial Award on Jurisdiction" dated 20 March 2017 the Arbitration Tribunal decided that:

> "…the Tribunal has decided that it has no jurisdiction to declare the Stadia Contracts or the Settlement Agreement valid and enforceable (RfA, paragraph 34.1) or to declare that the Respondent is not entitled to repayment of any sums it has paid under the Stadia Contracts and/or the Settlement Agreement (RfA, paragraph 34.1). This is because these issues fall within the exclusive jurisdiction of the Ghanaian Supreme Court as a matter of constitutional interpretation."

12. I say further that to the best of my knowledge, information and belief the Arbitration Tribunal in its "Order For Termination" dated 30 April 2018 stated inter alia as follows:

> "And by consent:
>
> (1) The Tribunal declares that the Arbitration Agreements in the Stadia Contracts remain valid and binding, as claimed at paragraph 34.2 of the Request for Arbitration, for the reason stated in the Partial Award.
> (2) The Tribunal declines jurisdiction in relation to the declaratory relief claimed at paragraph 34.1 and 34.3 of the Request for Arbitration, for the reasons stated in the Partial Award.
> (3) The Tribunal makes no award in relation to any relief claimed at paragraph 34.4 of the Claimant's Request for Arbitration, and in the Respondent's Counterclaim, any such claims having been withdrawn.
> (4) Each party shall bear its own costs of the arbitration proceedings.
> (5) Each party shall bear 50% of the costs of the Tribunal and the ICC.
> (6) The Tribunal declares these proceedings ended."

13. I contend that it is more than one full year since the Arbitration Tribunal brought the arbitration proceedings to an end in a manner favourable to the Republic of Ghana enjoining the 1st Defendant/Respondent, whose office was held responsible for creating

the unconstitutional Judgment Debt, to enforce the orders and directions given by this Honourable Court pursuant to Articles 2 and 130 of the 1992 Constitution in my favour as the Plaintiff on 14th June 2013 and for the 2nd Defendant/Respondent/Judgment Debtor herein to obey and carry out the orders and directions made against the 2nd Defendant/Respondent/Judgment Debtor by this Court on even date.

14. I say that the judgment debt occasioned by the judgment, orders and directions of this Court against the 2nd Defendant/Respondent/Judgment Debtor were unconstitutionally occasioned by the Third and Fourth Governments under the Fourth Republican 1992 Constitution when the Stadia Contracts were awarded and executed (in which the person who is now the 1st Defendant/Respondent served as a Deputy Attorney General and a Minister of State) and by the Governments of the Fifth and Sixth of the same Fourth Republic Constitution which purported to make additional unconstitutional payments on those contracts (in which the present Solicitor-General who was appointed on or around 12th December 2016 by the Sixth Government without the post being advertised also served) as the judgment of this Court dated 14th June 2013 clearly shows.

15. I maintain that the enthusiastic enforcement of the orders and directions of this Court in the later review decision of 29th July 2014 reported in Amidu (No. 3) v Attorney-General, Waterville Holding (BVI) Ltd & Woyome (No. 2) [2013-2014] 1 SCGLR 606 at page 654 thereof while the earlier orders and directions against a mere shell of a foreign company run by Ghanaians and foreign political elite resident in Ghana lie forgotten for more than one full year since 30 April 2018, demonstrates that without any orders and directions from this Court to the 1st Defendant/Respondent to enforce the decision, orders and directions of this Court against the 2nd Defendant/Respondent/Judgment Debtor herein, the labour and expenses exerted by me as the Plaintiff/Applicant who commenced this action to a successful decision by this Court for the people of Ghana would go in vain and be compromised by inaction on the part of the 1st Defendant/Respondent whose office created the unconstitutional Judgment Debt and the 2nd Defendant/Respondent/Judgment Debtor acting wittingly or unwittingly in tandem.

16. I say also that the 1st Defendant/Respondent has known, since the inception and registration in the British Virgin Islands of the 2nd Defendant/Respondent/Judgment Debtor as a limited liability company by one Mr. Kwabena Attefah Ankamah on behalf of the Ghanaian firm Ankomah Gunn & Co Solicitors, that the 2nd Defendant/Respondent/Judgment Debtor is a mere shell posing as foreign company with the real Directors, Shareholder, and Secretary totally controlling it all resident, owning assets, and transacting business on the 2nd Defendant/Respondent/Judgment Debtor's behalf in Ghana throughout the formation and transactions leading to the decision of this Court on 14th June 2014. (A photocopy of an offshore leaks database on the entity Waterville Holding (BVI) Limited from the International Consortium of Investigative Journalists is annexed herewith and marked Exhibit MAA4").

17. I say further that the 1st Defendant/Respondent has always known that during the establishment and registration of the 2nd Defendant/Respondent/Judgment Debtor as a shell limited liability company in the British Virgin Islands for the sole purpose of

undertaking the two inoperative Agreements dated 26th April 2006 or any other unconstitutional Agreements resulting in their receiving unapproved and to be refunded payments in violation of Article 181 of the Constitution in Ghana the 2nd Defendant/Respondent/Judgment Debtor registered the 2nd Defendant/Respondent/ Judgment Debtor company under the Companies Act, 1963 (Act 179) on 5th August 2005 with registration number EXT-992 as an external company with its registered office at Bungalow No. 10 Trasacco Yard off Aburi Road, Pantang, Accra.

18. I say also as deposed to in my paragraph 16 above that the 1st Defendant/Respondent has at all material times known that the Ghanaian resident sole shareholder and controlling Director of the 2nd Defendant/Respondent/Judgment Debtor shell company registered in the British Virgin Islands and in Ghana as an external company leading to the decision of this Court on 14th June 2013 is the prominent Ghanaian businessman Ernesto Taricone, the Chairman of the Trasacco Group of companies registered under the laws of Ghana which is into the Industry of Real Estates and Infrastructure and who also resides at Bungalow No. 10 Trasacco Yard off Aburi Road, Pantang, amongst several of his residential estates in Accra.

19. I say further that this Court has the power and authority, failing the 1st Defendant/Respondent's diligence or refusal (as the creator of the unconstitutional Judgment Debt in the first place) in enforcing the decision, orders and directions of this Court dated 14th June 2013, to now order and direct the 2nd Defendant/Respondent/Judgment Debtor and its Ghanaian controlling Director and Shareholder resident in Ghana at the time of the decision of this Court to carry out and obey forthwith the decision, orders and directions of this Court aforesaid on pain of this Court invoking Article 2(4) of the Constitution thereof or ordering the 1st Defendant/Respondent herein to enforce the said judgment on pain of being liable under Article 2 (3) and (4) of the 1992 Constitution.

20. I contend as the Plaintiff/Applicant herein that I am the only person with sufficient vested interest of having procured the decision, orders and directions of this Court contained in the judgment dated 14th June 2013 to be able to apply to this Court for such orders and directions under its general jurisdiction under Article 129(4) to enforce its orders and directions to curb the loot, create, and share syndrome which this Court determined had given rise to unconstitutional conduct and loss to the public purse and abuse of power on the part of the 1st Defendant/Respondent's office in the foregoing cases in which I as the Plaintiff/Applicant was the party who obtained and became the true Judgment Creditor as trustee of the people of the Republic of Ghana.

21. I say also that this Court can take judicial notice of the fact that even though I bring this application in my personal capacity as the Plaintiff/Applicant in the above case, I have since 23rd February 2018 been the Special Prosecutor of Ghana with the mandate to prevent, investigate, prosecute, and recover assets and manage proceeds of corruption and corruption-related offences and consequently I am also at the time of filing this application responsible for preventing the non-enforcement of the judgment of this Court dated 14th June 2013 which was actuated by an unconstitutional create, loot, and share

syndrome as lucidly and ably articulated in this Court's said judgment.

WHEREFORE I, the Plaintiff/Applicant, swear to this affidavit in support of this application for orders and directions to the 1st Defendant/Respondent to enforce and to the 2nd Defendant/Respondent/Judgment Debtor to carry out and obey the decision, orders and directions contained in its judgment dated 14th June 2013 by refunding the total sum of the Judgment Debt of €47,365,624.40, exclusive of the accruing interests thereon, as hereinbefore stated.

SWORN at Accra this ……day of……Sept……2019

……
DEPONENT

BEFORE ME

COMMISSIONER FOR OATHS

REGISTRAR
SUPREME COURT

EXHIBIT "MAA-1"

03.04.2015 | FEATURE ARTICLE (https://www.facebook.com/sharer.php?u=https://www.modernghana.com/news/609043/watervilles-judgment-debt-to-be-refunded-is-euro.html) (https://twitter.com/intent/tweet?text=https://www.modernghana.com/news/609043/watervilles-judgment-debt-to-be-refunded-is-euro.html) (https://www.linkedin.com/cws/share?url=https://www.modernghana.com/news/609043/watervilles-judgment-debt-to-be-refunded-is-euro.html) (https://web.whatsapp.com/send?text=Check%20this%20out%20on%20modernghana.com https://www.modernghana.com/news/609043/watervilles-judgment-debt-to-be-refunded-is-euro.html)

Waterville's Judgment Debt To Be Refunded Is Euro 47,365,624.40

By Martin A. B. K. Amidu (/author/MartinAmidu)

‹ (/news/609045/consolidating-democracy-in-africa-applauding-nige.html)

› (/news/609031/police-arrests-a-christian-man-for-growing-a-beard.html)

Filed on 9/9/19
at 2:30 pm/pm
Registrar
SUPREME COURT OF GHANA

A number of Ghanaians have called me to ask how much Waterville is to refund to the Republic of Ghana as a consequence of the decision and orders of the Supreme Court dated 14th June 2013. This is apparently because of late the media has carried the story that Waterville has taken the Government to international arbitration to challenge an order for the refund of €25 million made by the Supreme Court. No explanation appears to be coming from Government sources to indicate the total amount of refund to be made by Waterville is €47,365,624.40. I have therefore deemed it necessary to address this issue relating to the Waterville decision and order as the citizen public interest Plaintiff in this matter.

The Supreme Court formally granted the Attorney General capacity to enforce the judgments debts and related matters on 31st March 2015. This is after almost two years of delay on the part of the Government to ask for that direction from the Court. My views on the delay in making the application and

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BoG Blames Former Management For 'Rotten'

why I think it has the tendency to frustrate future citizen public interest plaintiff's is contained in my affidavit filed on 30th March 2015 to the Attorney General's motion for leave to enforce the decisions and order.

I was the only party to file an affidavit in answer to the Attorney General's motion for leave to enforce the judgments and orders in the case and the public has a right to know my views as the public interest citizen plaintiff. I will at least be sending a soft copy of the affidavit to the media as an attachment. The certified true copy of the directions given by the Supreme Court on 31st March 2015 was not available to me at the time of writing this but I will post a copy on my web site for public consumption as soon as I get a copy.

I pray that the delay in taking steps to enforce the judgments and orders in this case does not affect the ability of the Republic of Ghana to retrieve all sums involved with the accompanying interest.

My views and conclusions on the judgment debts are as they appear here under.

THE WATERVILLE CONTRACTS AND PAYMENTS
The Waterville contract and payments have two components or aspects.

The 1st Component of the Waterville Contract
The first component or aspect was the payment by the Government of Ghana of €22,365,624.40 as certified by Building Industry Consultants Ltd (BIC) to Waterville through the sub-contractors. See pages 4 to 5 of the Supreme Court judgment dated 14th June 2013. See particularly the finding of the Supreme Court on the last paragraph of page 5 which states that: "The value of the work previously undertaken by the 2nd defendant was duly confirmed by the consultants for the project, Building Industry Consultants Ltd (hereafter referred to as "BIC"). The Government of Ghana subsequently paid for all the work certified by BIC, totaling some €22,365,624.40. This payment was problematic since it appears to have used a restitutionary route to bypass the legal consequences of an inchoate international business transaction to which the Government was a party, which had not been approved by Parliament in terms of article 181(5)."

On page 37 of the judgment the Supreme Court after reviewing the case against the 2nd Defendant, Waterville, from pages 33 said at pages 37 in respect of this aspect of the case as follows: "This is an extraordinary account of the State's view of its liability to the 2nd Defendant. In our view, it was fundamentally erroneous in ignoring the effect of article 181(5) of the 1992 Constitution. From the analysis earlier made of the penumbra effect of article 181(5), we affirm that there is no liability of the State to 2nd defendant. The 2nd defendant is thus obliged to return all monies paid to it pursuant to the transaction....."

On page 33 to 34 the Supreme Court states that: "The Governments action in paying the 2nd defendant for the work it did prior to the conclusion of the terminated 26th April agreement was unconstitutional, according to the analysis set out above. According to the plaintiff's averment in his Statement of Case, verified by affidavit: (Court quotes paragraph 22 of the Statement of Case and continues on page 34)

Thus, the Supreme Court found as a fact that: "The Government of Ghana subsequently paid for all the work certified by BIC, totaling some €22,365,624.40" which was unconstitutional, and nobody can wish this away. It ought to be noted that at this stage there was no contract between the Government of Ghana and the sub-contractors through whom the Government arranged to pay the restitution to Waterville. They were sub-contractors to

Waterville and therefore if Waterville had no right to any restitution or re-imbursement, the sub-contractors would have no claim to make any deductions from the €22,365,624.40 paid to Waterville through them.

This explains why the Supreme Court stated as follows: "Relief 14 is granted to the extent that the order is directed at the 2nd defendant, requiring it to refund to the Republic of Ghana all sums of money paid to it in connection with the two inoperative Agreements dated 26th April 2006 and the work done on the stadia (emphasis supplied)." It is clear from the foregoing that to remain silent with this information to the public on this quantum of the judgment debt when Waterville goes to international arbitration is to curtail the reach of the Supreme Court decision and order in respect of the work done and paid to Waterville in the sum of €22,365,624.40.

The 2nd Component of the Waterville Contract
The second aspect of this contract apart from the certification of BIC and payment for the alleged work undertaken by the 2nd defendant, Waterville, and paid for by the NPP Government was the claim made by the 2nd defendant in the letter dated 9th Mach 2009 to NDC Government leading to mediation and payment of €25million to Waterville. See pages 6 to 7; and pages 33 to 41.

The total amount to be refunded by Waterville in accordance with the decision of the Supreme Court that: "Relief 14 is granted to the extent that the order is directed at the 2nd defendant, requiring it to refund to the Republic of Ghana all sums of money paid to it in connection with the two inoperative Agreements dated 26th April 2006 and the work done on the stadia.": is restitution paid for the work done on the stadia as certified by BIC and paid for €22,365,624.40 and mediated payment of €25million making a total refund of a payment of €47,365,624.40.

PAYMENT OF INTEREST ON THE SUMS TO BE REFUNDED BY WATERVILLE

The Supreme Court inadvertently did not direct the payment of interest to the Republic in the above cases but corrected this in the Isofoton case when it specifically ordered that: "3. Interest is to be paid on the sum adjudged above from date of its receipt by the 2nd defendant, in accordance with the Court (Award of Interest and Post judgment Interest) Rules 2005 (CI 52)." The Republic of Ghana is entitled to interest on the amounts paid to Waterville and the motion for leave to enforce the decision and orders of the Court shows that interest has to be claimed on the total amounts from date of receipt to date of payment.

CONCLUSION
No matter the insults and name calling by the Government and my own political party, the NDC, nothing will stop me from pursuing this GARGANTUAN constitutional rape on the people of Ghana to its logical conclusion as long as I have life in me. Putting Ghana First instead of Governments is the only salvation for this our dear Republic.

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA – AD 2015

CIVIL MOTION NO: J8/41/2015

BETWEEN:

MARTIN ALAMISI AMIDU
PLOT 355 NORTH LEGON RESIDENTIAL AREA PLAINTIFF/RESPONDENT
ACCRA

Waterville and therefore if Waterville had no right to any restitution or re-imbursement, the sub-contractors would have no claim to make any deductions from the €22,365,624.40 paid to Waterville through them.

This explains why the Supreme Court stated as follows: "Relief 14 is granted to the extent that the order is directed at the 2nd defendant, requiring it to refund to the Republic of Ghana all sums of money paid to it in connection with the two inoperative Agreements dated 26th April 2006 and the work done on the stadia (emphasis supplied)." It is clear from the foregoing that to remain silent with this information to the public on this quantum of the judgment debt when Waterville goes to international arbitration is to curtail the reach of the Supreme Court decision and order in respect of the work done and paid to Waterville in the sum of €22,365,624.40.

The 2nd Component of the Waterville Contract
The second aspect of this contract apart from the certification of BIC and payment for the alleged work undertaken by the 2nd defendant, Waterville, and paid for by the NPP Government was the claim made by the 2nd defendant in the letter dated 9th Mach 2009 to NDC Government leading to mediation and payment of €25million to Waterville. See pages 6 to 7; and pages 33 to 41.

The total amount to be refunded by Waterville in accordance with the decision of the Supreme Court that: "Relief 14 is granted to the extent that the order is directed at the 2nd defendant, requiring it to refund to the Republic of Ghana all sums of money paid to it in connection with the two inoperative Agreements dated 26th April 2006 and the work done on the stadia.": is restitution paid for the work done on the stadia as certified by BIC and paid for €22,365,624.40 and mediated payment of €25million making a total refund of a payment of €47,365,624.40.

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IN THE SUPERIOR COURT OF JUDICATURE
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BETWEEN:

MARTIN ALAMISI AMIDU
PLOT 355 NORTH LEGON RESIDENTIAL AREA PLAINTIFF/RESPONDENT
ACCRA

AND

1. THE ATTORNEY-GENERAL
MINISTRY OF JUSTICE 1ST DEFENDANT/APPLICANT
MINISTRIES
ACCRA

2. WATERVILLE HOLDINGS (BVI) LIMITED
P. O. BOX 3444
ROAD TOWN 2nd DEFENDANT/RESPONDENT
TORTOLA
BRITISH VIRGIN ISLANDS

3. ALFRED AGBESI WOYOME
HOUSE NO. 16B 3rd DEFENDANT/RESPONDENT
6TH STREET TESANO – ACCRA
AFFIDAVIT OF MARTIN ALAMISI AMIDU (THE INTERESTED PARTY/PLAINTIFF) HEREIN

I, Martin Alamisi Amidu of 355 North Legon Residential Area Legon, Accra make oath and say as follows:

1. I am the deponent and the Interested Party to the application by the Attorney General (the nominal 1st Defendant in the substantive action and review application herein) for leave to enforce judgments and orders of this Court dated 14th June 2013 and 29th July 2014 respectively.

2. I have been served with the Attorney General's application filed on 23rd January 2015 and the accompanying affidavit including two supplementary affidavits filed on 31st January 2015 and 18th March 2015.

3. Pursuant to this Court's ruling on my review application dated 29th July 2014 the Attorney General purported to file an entry of judgment in this Court on 15th August 2014 in purported pursuance of the judgment and order of the Court and Article 2(1) and (2) of the 1992 Constitution which related only to the 3rd Defendant/Respondent/Judgment Debtor: No entry of judgment in respect of the 2nd Defendant/Respondent/Judgment Debtor, Waterville Holding (BVI) Ltd has even been filed in this Court after this Court's decision of 14th June 2013.

4. The 3rd Defendant/Respondent/Judgment Debtor applied to this Court on 26th October 2014 to set aside the entry of judgment by the Attorney General (the nominal 1st Defendant/Respondent/Judgment Creditor in the case).

5. On 27th October 2014 I filed an affidavit in support of the setting aside of the entry of judgment by the Attorney General on the grounds that it unconstitutionally undermined the decision of the Supreme Court dated 29th July 2014. (A photocopy of my said affidavit is annexed herewith and marked Exhibit "MAA1" for ease of reference).

6. When the application to set aside came on for hearing on 28th October 2014 the 3rd Defendant/Respondent/Judgment Debtor apparently realizing the futility of his grounds of application sought leave to withdraw same: this Court struck out the patently offending entry of judgment in the interest of substantial justice while allowing the 3rd Defendant/Respondent/Judgment Debtor to withdraw his application.

7. The incumbent Attorney General and her office throughout the hearing and conclusion of the substantive action and review application has been a nominal Defendant on behalf of the Government of Ghana by virtue of Articles 58 and 88 of the 1992 Constitution and the binding subsisting interpretative decisions of this Court.

8. I believe that by the structure, design and scheme of the 1992 Constitution, particularly Articles 2, 58, 88 and 130 of the Constitution, the Attorney General (now the Judgment Creditor on behalf of the Republic of Ghana) is vested with the Constitutional mandate of entering judgment and orders, and taking steps to enforce same after this Court has made decisions and orders at the behest of a citizen in the public interest against or in favour of the Government which she represents in a nominal capacity such as in this action.

9. I further believe that the structure, design and scheme of the 1992 Constitution enjoins the Attorney General/Judgment Creditor for the Republic in this case to enter judgment and take steps to enforce declarations and orders made by this Court against the Government of Ghana even if the declarations and orders are against an act or conduct of the incumbent Attorney General, which is not the case in this matter.

10. I am convinced that the Attorney General or even the President of Ghana against whom this Court makes declarations and/or orders at the behest of a citizen in the public interest is enjoined by the doctrine of necessity and in the spirit of Articles 58 and 88 of the 1992 Constitution to take steps to ensure compliance with and enforcement of the decisions and orders.

11. In the premises I also believe that by the Constitutional scheme the Attorney General/Judgment Creditor in this case does not need this Court to grant her leave to perform her Constitutional duty under Articles 58 and 88 of the Constitution to enter judgment and to take steps to enforce decisions of this Court or any other Court when a citizen in the public interest obtains judgment on behalf of and in favour of the Republic of Ghana which it is her lot to ensure are loyally, faithfully, and dutifully executed for the benefit of the Republic of Ghana.

12. I believe further that but for the Constitution specifically apportioning the primary responsibility to the Attorney General as the Judgment Creditor of the Republic for purposes of taking steps to enforce and execute all judgment debts owed to the Republic, I, as the citizen, public interest Plaintiff should, perhaps, have been the proper person seeking leave of this Court to take steps to enforce the judgments and orders for the refund of the Judgment Debts to the Republic and not the Attorney General.

13. The Attorney General has stated in paragraph 7 of her supplementary affidavit filed on 31st January 2015 that this Court ruled on 5th November 2014 that even though the Supreme Court Rules, 1996 (C. I. 16) did not provide the means of enforcing the Court's judgment or order, this Court has such power by virtue of Article 129(4) of the 1992 Constitution.

14. In spite of this Court's ruling clearly stating that it has power to enforce its own judgments and/or orders the Attorney General never entered judgment in this Court in terms of the declarations and order made by the Court on 14th June 2013 or apply for directions under Rule 5 of the Supreme Court Rules, 1996 (C. I. 16) as to how to proceed in this matter until 23rd January 2015 when she filed this application not for directions but for leave to enforce the judgment or orders, her Constitutional duties notwithstanding.

15. I believe that the Attorney General and her office have been indolent in taking almost two years to approach this Court not for prescription of the practice and procedure under Rule 5 of the Supreme Court Rules, 1996 (C. I. 16) but for leave for the Attorney General to enter and to take steps to enforce the judgment and orders of this Court in respect of the 2nd Defendant/Respondent/Judgment Debtor, Waterville, given on 14th June 2013.

16. I believe further that the Attorney General and her office have also been indolent in taking almost eight months to even apply to this Court for leave to take steps to enforce the review decision dated 29th July 2014.

17. I am of the belief that the Attorney General is also deliberately, knowingly, and in contempt of the orders of this Court concealing other payments made by the Government of Ghana to the Defendants/Respondents/ Judgment Debtors pursuant to the two inoperative Agreements dated 26th April 2006 by suppressing the facts from this Court: for example, a Writ and Statement of Claim filed on 2nd March 2010 by the 3r Defendant/Respondent/Judgment Debtor shows that he had earlier been paid the sum of GH₵110,500.24 on 8th February 2010 through another action and was again seeking interest on same from the High Court (A scanned photocopy of the Writ and Statement of Claim of 2nd March 2010 is annexed herewith and marked Exhibit "MAA2" for ease of reference).

18. I am also of the firm belief that the Attorney General on behalf of the Government of Ghana has refused or failed to act timeously and properly to secure the judgment debt of the cumulative amount of Forty Seven Million, Three Hundred and Sixty Five Thousand, Six Hundred and Twenty-Four Euros and Forty Cents (€47,365,624.40 – made up of €22,365,624.40 as certified by BIC, and €25 million mediation payment) through processes such as applying for absconding warrant or other orders against the Local Manager of the 2nd Defendant/Respondent/Judgment Debtor preventing him from leaving the jurisdiction of this Court or to give security for the payment of the Judgment Debt as the 2nd Defendant/Judgment Debtor is an off-shore foreign registered limited liability company and can disappear without trace.

19. The consequence of the foregoing is the ingenious attempt by the Local Manager of the 2nd Defendant/Respondent/Judgment Debtor to contend that he has ceased to represent the company after the judgment and orders of this Court: see the further supplementary affidavit filed by the Attorney General on 18th March 2015 in this application.

20. I believe that at least since 30th January 2015 the Attorney General should have taken steps to ensure the availability of the local representative of the 2nd Defendant/Respondent/Judgment Debtor at all times in Ghana as a guarantee for the payment of the Judgment Debt while this Court hears this application: this does not appear to have been done, or intended.

21. I am of the firm believe that the Attorney General is abusing the process of this Court by bringing this application long after the decision and orders of this Court for leave to enforce them and thus closing the stables after the horses might have fled and thereby trying to shift any blame for her refusal or failure to take steps to ensure enforcement and execution against the 2nd Defendant/Respondent/Judgment Debtor timeously onto the Courts should this off-shore foreign company latter be untraceable for levying execution.

22. I also believe that in spite of the fact that these judgment debts were occasioned by the indolence of the Government of Ghana in not complying with Article 181 (5) of the 1992 Constitution, the Attorney General, a quasi-judicial officer has a responsibility to act independently and impartially on behalf of the Republic of Ghana (as distinct from the Government of Ghana which appointed

her) in accordance with the taught traditions of law respecting the office of the Attorney General to take steps to have had the judgment and orders of this Court enforced long ago.

23. In view of the time lapse between the decision and/or orders of this Court in this matter it is my belief and prayer that the interest of substantial justice in accordance with the letter and spirit of the Constitution will be served should this Court on the basis of the further supplementary affidavit filed on 18th March 2015 by the Attorney General in these proceedings for leave to enforce the judgment and orders, order an absconding warrant or other restraining order to issue against the Local Manager of the 2nd Defendant/Respondent/Judgment Debtor to prevent him from leaving the jurisdiction of this Court or give sufficient security for the refund of the payments thereof until the final execution of the judgment and/or orders of this Court.

24. I believe that an order or orders restraining the Local Manager of the 2nd Defendant/Respondent/Judgment Debtor from leaving the jurisdiction until the conclusion of the process of execution or to give sufficient security to pay the Judgment Debt together with the accompanying interest will prevent the similar situation in which the original 3rd Defendant (Austro-Invest per Ray Smith) in the substantive action in anticipation of a possible court suit within the jurisdiction of this Court liquidated that foreign company in Zug, Switzerland on 26th July 2011 while on 17th November 2011 the same Ray Smith instructed Lithur, Brew & Co, (in which the incumbent Attorney General was a senior partner), who commenced Suit No. AC 96/2012 in the High Court, Automated/Fast Track Division for the recovery of his portion of the monies paid to the 3rd Defendant/Respondent/Judgment Debtor (then the 4th Defendant in the substantive suit): "in connection with, arising from or relating to Suit No PC 152/2010 titled Alfred Agbesi Woyome v Attorney General,...". (A photocopy of the attestation and of the translated copy of the Commercial register of the canton Zug, by Dr. J. D. Umpley, and an application by Lithur, Brew & Co on behalf of the said Ray Smith for Preservation and/or Interlocutory Injunction filed on 8th December 2011 is each annexed herewith and marked Exhibits "MAA3" and "MAA4" respectively for ease of reference: Motion No J1/2/2013 for prescription of practice and procedure filed on 16th October 2012 and dealt with by this Court in the substantive action contains all exhibits on this matter).

25. The letter and spirit of Article 2 of the Constitution will be rendered nugatory should successful actions thereunder be unenforceable because parties have absconded from the jurisdiction or disposed of their properties and bank accounts after this Court's judgment and orders: there would be no incentive for citizens, such as I, to go to the trouble, expense and pain of vindicating and defending the 1992 Constitution.

26. The trouble, enormous expenses, energy, verbal attacks, and insults I have gone through in asserting the citizen's constitutional right under Article 2 of the 1992 Constitution in the public interest would have been needless and a sham should the whole orders or any part thereof of this Court to the Judgment Debtors to refund the respective sums of money owed the Republic, and the consequential interest that follows as a matter of cause and now in accordance with the Court (Award of Interest and Post Judgment Interest) Rules, 2005 (C. I. 52) go unenforced.

27. The involvement of the Government of Ghana in the creation and distribution of the unconstitutional payments entailed in this action and the fact that Austro-Invest represented by Ray Smith (a client of the law firm of which the Attorney General was a senior partner) was a joint beneficiary with the 3rd

her) in accordance with the taught traditions of law respecting the office of the Attorney General to take steps to have had the judgment and orders of this Court enforced long ago.

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27. The involvement of the Government of Ghana in the creation and distribution of the unconstitutional payments entailed in this action and the fact that Austro-Invest represented by Ray Smith (a client of the law firm of which the Attorney General was a senior partner) was a joint beneficiary with the 3rd

Defendant/Respondent/Judgment Debtor has the tendency to create the unavoidable perception that those responsible for taking steps for the enforcement of the decisions and orders in this matter are unable to do so impartially due to conflict of interest in spite of the doctrine of necessity which requires otherwise.(A photocopy of letter making public allegations of conflict of interest by the 3rd Defendant/Respondent/Judgment Debtor against the Attorney General and her public admissions of having been a lawyer for Ray Smith of Austro-Invest in her firm of Lithur, Brew & Co are annexed herewith and marked Exhibits "MAA5" and "MAA6" for ease of reference).

28. I believe that taking steps to enforce the judgment and/or orders in this application is not a Constitutional matter for which I should not be entitled to compensation for my time, resources, and other cost for the trouble of being dragged through post judgment applications by the Attorney General who pays no fees or expenses for actions brought by or against her office in any Court in Ghana.

WHEREFORE I swear to this affidavit as an Interested Party, and the Plaintiff in the substantive action and review application.

SWORN AT ACCRA THIS .....

DAY OF MARCH 2015 DEPONENT
BEFORE ME
COMMISSIONER OF OATHS

THE REGISTRAR
SUPREME COURT
ACCRA

AND FOR SERVICE ON:

1. THE ATTORNEY GENERAL, ATTORNEY GENERAL'S DEPARTMENT, MINISTRIES, ACCRA.

2. 2ND DEFENDANT/RESPONDENT PER ITS LOCAL MANAGER, ANDRE MARIA ORLANDI, BUNGALOW NO. 10 TRASSACO YARD, OFF ABURI ROAD, PANTANG, ACCRA.

3. 3RD DEFENDANT/RESPONDENT ALFRED AGBESI WOYOME, HOUSE NO. 16B, 6TH STREET TESANO, ACCRA

EXHIBIT "MAA2"

INTERNATIONAL CHAMBER OF COMMERCE
INTERNATIONAL COURT OF ARBITRATION
ICC ARBITRATION CASE NO. 20561/TO

In the arbitration proceeding between

WATERVILLE HOLDINGS (BVI) LIMITED
Claimant

-and-

THE ATTORNEY GENERAL OF THE REPUBLIC OF GHANA, MINISTRY OF JUSTICE, ACCRA, REPUBLIC OF GHANA
Respondent

PARTIAL AWARD ON JURISDICTION

Members of the Tribunal
Professor Douglas Jones AO, Co-Arbitrator
Mr J Brian Casey, Co-Arbitrator
Dr Michael Moser, President

Date
20 March 2017

TABLE OF CONTENTS

I. BRIEF OVERVIEW OF THE CASE

1. This arbitration involves a dispute between Waterville Holdings (BVI) Limited (**Waterville** or **Claimant**) and the Attorney General of the Republic of Ghana, Ministry of Justice, Accra, Republic of Ghana (**Ghana** or **Respondent**) under the terms of (1) a Contract for the Rehabilitation of the Ohene Djan Sports Stadium and the El Wak Stadium in Accra, Republic of Ghana, dated 26 April 2006, signed by the Claimant and the Republic of Ghana (represented by the Ministry of Education and Sports and the Ministry of Finance and Economic Planning) (**Ohene Djan and El Wak Contract**), and (2) a Contract for the Rehabilitation of the Baba Yara Sports Stadium in Kumasi, Republic of Ghana, dated 26 April 2006, signed by the Claimant and the Republic of Ghana (represented by the Ministry of Education and Sports and the Ministry of Finance and Economic Planning) (**Baba Yara Contract**) (together, **Stadia Contracts**).

2. By the terms of the Stadia Contracts, which are governed by Ghanaian law, the Claimant undertook works at the Ohene Djan Sports Stadium, the El Wak Stadium, and the Baba Yara Stadium (collectively, the **Stadia**). The contract price under the Stadia Contracts was EUR 39,925,597.69. On 1 August 2006, the Respondent repudiated the Stadia Contracts. The independently certified value of the works completed at the Stadia by the Claimant was EUR 21,569,946.71. Following a mediation, the Respondent agreed to pay the Claimant EUR 25,000,000, as set out in a settlement agreement dated 13 October 2010 (**Settlement Agreement**).

3. On 22 June 2012, Mr Martin Alamisi Amidu, a former Attorney General of Ghana, applied to the Ghanaian Supreme Court (**Supreme Court**) for a declaration that the sums paid by the Respondent to the Claimant pursuant to the Stadia Contracts and the Settlement Agreement were unlawfully paid in violation of Article 181(5) of the 1992 Constitution of the Republic of Ghana (**1992 Constitution**).

4. On 14 June 2013, the Supreme Court held that the Stadia Contracts and Settlement Agreement were null and void. The Supreme Court ordered the Claimant to refund all payments made by the Respondent. On 29 July 2013, Ghana's Attorney General commenced proceedings against the Claimant in

the Ghanaian High Court claiming repayment of EUR 47,365,624.40 from the Claimant.

5. On 10 October 2014, the Claimant commenced this arbitration. The Parties subsequently agreed to address as a preliminary issue whether the Arbitral Tribunal has jurisdiction to decide the subject claims.

6. The Respondent seeks an award dismissing all of the Claimant's claims on the ground that the Tribunal lacks jurisdiction. The Respondent contends that the Ghanaian courts have jurisdiction over the Respondent's claim that it is entitled to repayment of sums paid to the Claimant pursuant to the Stadia Contracts and Settlement Agreement in the amount of EUR 47,365,624.40.

7. The Claimant contends that the Respondent is not entitled to any repayment nor is the Respondent entitled to pursue claims against the Claimant other than by arbitration pursuant to the arbitration clauses freely entered into by the Parties in the Stadia Contracts. The Claimant also contends that the Respondent has only paid the Claimant EUR 36,935,706.55.

II. THE ARBITRAL PROCEEDINGS

A. The Parties and their legal representatives

8. The Claimant in this arbitration is Waterville Holdings (BVI) Limited, a corporation existing under the laws of British Virgin Islands. The Claimant's address and contact details are as follows:

Waterville Holdings (BVI) Limited
PO Box 3444 Road Town
Tortola
British Virgin Islands

9. The Claimant is represented in this arbitration by its duly authorized attorneys, whose contact details are as follows:

Hogan Lovells International LLP
50 Holborn Viaduct
London EC1A 2FG
United Kingdom

Attn: Mr John Gerszt
Ms Anne Foster

Tel: +44 20 7296 2000
Fax: +44 20 7296 2001

Email: john.gerszt@hoganlovells.com
anne.foster@hoganlovells.com

10. The Respondent in this arbitration is The Attorney General of the Republic of Ghana, Ministry of Justice, Accra, Republic of Ghana. The Respondent's address and contact details are as follows:

Attn: Mrs Marietta Brew Appiah-Opong
Attorney General & Minister for Justice
Ministry of Justice & Attorney General's Department
Republic of Ghana
PO Box M60
Accra, Ghana

Tel: +233 302 665051
Fax: +233 302 667609
Email: agyeiwaab@yahoo.com; marietta.opong@mojagd.gov.gh

With copies to:

Mrs Helen Ziwu, Ag. Solicitor General
Email: awoziwu@yahoo.com

Mrs Dorothy Afryie-Ansah, Chief State Attorney
Email: amaago_10@yahoo.com

11. The Respondent is represented in this arbitration by its duly authorized attorneys, whose contact details are as follows:

Kuenyehia & Nutsukpui
Legal Practitioners & Notaries
No. 35, Labone Crescent
Labone
Ghana

Attn: Mr Benson Nutsukpui, Esq.

Tel: +233 302 762213
Fax: +233 302 762214
Email: benson@knnlaw,com

Dorsey & Whitney LLP
600 Anton Boulevard, Suite 2000
Costa Mesa
California 962626
U.S.A

Attn: Mr Juan C. Basombrio, Esq.

Tel: +1 714 800 1405
Fax: +1 714 800 1499
Email: basombrio.juan@dorsey.com

12. The Claimant and the Respondent will be referred to in this Award collectively as the "**Parties**".

B. The arbitration agreement and applicable law

13. The Parties' arbitration agreement (**Arbitration Agreement**) is found at Clause 16.1 of the Stadia Contracts, which provides for a so-called "stepped" or "tiered" alternative dispute resolution process as follows:

> 16.1 All disputes arising out of or in connection with the present Contract shall in the first place be settled by negotiations. If the Parties fail to reach a settlement by negotiations, they shall refer the dispute to some competent person or body for mediation. The dispute shall be finally settled under the Rules of Arbitration and Conciliation of the International Chamber of Commerce (ICC) by one or several arbitrators appointed in accordance with the Rules.

14. In accordance with Clause 16.2 of the Stadia Contracts, the seat of the arbitration is London, United Kingdom.

15. In accordance with Clause 16.3 of the Stadia Contracts, the language of the arbitration is English.

16. Clause 15 of the Stadia Contracts provides that the Contracts "shall be governed by and construed in accordance with the laws of Ghana".

17. The Claimant maintains that the governing law of the arbitration agreements contained in Clause 16.1 of the Stadia Contracts (**Arbitration Agreements**) is English law. This is denied by the Respondent, who maintains that the governing law of the Arbitration Agreements is Ghanaian law.

C. Applicable procedural rules

18. Subject to any mandatory provisions of English law relating to an international arbitration with a seat in London, United Kingdom, the procedure to be followed will be governed by the ICC Rules and where these Rules are silent, as may be determined by the Arbitral Tribunal in their discretion having taken account of the views of the Parties.

19. The IBA Rules on the Taking of Evidence in International Commercial Arbitration, adopted on 29 May 2010 were used as guidelines during the arbitration to the extent considered appropriate by the Tribunal in the exercise of its overall procedural discretion.

D. The Tribunal

20. Further to the decision of the ICC International Court of Arbitration (**ICC Court**), the Arbitral Tribunal consists of a panel of three arbitrators.

21. Pursuant to Article 13(2) of the ICC Rules:

(a) On 5 May 2015, the Secretary General of the ICC Court confirmed the Claimant's nomination of Professor Douglas Jones as co-arbitrator.

(b) On 5 May 2015, the Secretary General of the ICC Court confirmed the Respondent's nomination of Mr J. Brian Casey as co-arbitrator.

(c) On 23 June 2015, the Secretary General of the ICC Court confirmed the joint nomination by the co-arbitrators of Dr Michael Moser as the President of the Arbitral Tribunal.

22. The relevant contact details of the members of the Tribunal are as follows:

Professor Douglas Jones AO
Atkin Chambers
1 Atkin Building
Gray's Inn
London WC1R 5AT
United Kingdom

Mr J. Brian Casey
Bay Street Chambers
161 Bay Street, Suite 2700
M5J 2S1 Toronto
Ontario
Canada

Dr Michael Moser
Level 9, Central Building
1-3 Pedder Street
Central, Hong Kong SAR, China

E. Procedural history

23. The Tribunal sees no need to recapitulate the entirety of the correspondence with counsel for the Parties over the course of these proceedings. All procedural orders have been reduced to writing and no useful purpose would be served by reproducing or summarising them in this section of the Award. The key procedural events in the course of this arbitration are set out below.

24. The Claimant filed its Request for Arbitration on 15 October 2014 (**Request**).

25. On 18 December 2014, the Respondent submitted its Answer to the Request and Counterclaim (**Answer**).

26. On 6 March 2015, the Claimant filed its Reply to the Counterclaims.

27. The Tribunal was fully constituted when the appointment of the President was confirmed by the Secretary General of the ICC Court on 23 June 2015.

28. On 18 August 2015, the Tribunal convened a case management conference with the Parties to discuss the Terms of Reference and the Procedural Timetable.

29. On 2 October 2015, the Parties and the Tribunal signed the Terms of Reference.

30. On 24 September 2016, the Tribunal issued Procedural Order No. 1 setting out the Procedural Timetable for the determination of preliminary issues.

31. On 20 November 2015, the Respondent filed its Submission Regarding Preliminary Issues.

32. On 20 November 2015, the Claimant filed its Submissions on the Proposed Terms of the Preliminary Issues, attaching the Claimant's proposed/draft list of Preliminary Issues and the Respondent's proposed/draft list of Preliminary Issues.

33. On 15 December 2015, the Tribunal held a teleconference concerning the Preliminary Issue, which the Parties agreed shall be framed in the following terms: "Whether the Arbitral Tribunal has jurisdiction to decide the subject claims".

34. On 16 December 2015, the Tribunal issued Procedural Order No. 2 amending the Procedural Timetable for determination of the preliminary issue.

35. On 25 April 2016, the Respondent filed its Memorial on Jurisdiction. The Memorial was accompanied by a witness statement of Yaw Osafo-Maafo, a former Minsiter for Finance and Economic Planning and a former Minister for Education and Sports of the Republic of Ghana.

36. On 29 July 2016, the Claimant filed its Memorial on Jurisdiction.

37. On 22 August 2016, the Respondent filed its Reply Memorial on Jurisdiction.

38. On 13 September 2016, the Claimant filed its Rejoinder Memorial on Jurisdiction.

39. On 14 and 15 September 2016, a hearing was held in London to hear oral submissions from the Parties on the Preliminary Issue.

40. The following persons were present at the hearing:

(a) The Tribunal (Dr Michael Moser, Professor Doug Jones, Mr J. Brian Casey).

(b) Dr Moser's Administrative Assistant (Mr Paul Barker)

(c) On behalf of the Claimant:

(i) Ms Rachel Ansell QC and Ms Kate Livesey from 4 Pump Court; and

(ii) Ms Rowena Evans, Mr John Gerstz, Ms Anne Littlewood, Ms Thethe Mochitele, Mr Ben Thomas, and Ms Cathy Yuen, from Hogan Lovells.

(d) On behalf of the Respondent:

(i) Mr Juan Basombrio and Mr Paul Sung, from Dorsey & Whitney;

(ii) Mr Benson Nutsukpui, Kuenyehia & Nutsukpui[1]; and

(iii) Ms Dorothy Afriyie-Ansah, Chief State Attorney, Republic of Ghana.

41. At the hearing, counsel for the Respondent objected that the Claimant had not set forth a *prima case* on jurisdiction because the Claimant had not submitted proof in the form of witness statements.[2] It was agreed by the Respondent that the Tribunal has the discretion to decide the admissibility and relevance of factual evidence or contentions submitted in the proceeding.[3]

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1 Mr Nutsukpi is listed as counsel of record, but he did not introduce himself on the transcript at the commencement of the hearing.
2 Transcript, Day 1, 93:5-93:21.
3 Transcript, Day 1, 95:15-95:18.

42. On 27 February 2017, the Tribunal declared the proceedings closed with respect to the matters to be decided in this award.

III. FACTUAL BACKGROUND

A. Overview

43. The Tribunal will begin by summarising the uncontentious factual background which led to the commencement of this arbitration.

B. The Stadia Contracts

44. In July 2004, Ghana won the right to host the 2008 African Cup of Nations (CAN 2008) football tournament. The government of Ghana (**Government** or **Ghana**) decided that it needed to renovate three football stadia.

45. On 26 April 2006, the Claimant and the Respondent entered into the two Stadia Contracts for the rehabilitation of the stadia.

46. Clause 5 (Contract Price) of the Stadia Contracts provides that the Contract Price was EUR 39,925,597.69. Pursuant to Clause 8 (Time for Completion), the works were to be performed within 21 months of the date of the handing over of the site.

47. Clause 17 is entitled "Effectiveness of the Contract" and provides:

> 17.1 This contract shall become effective at the date of the fulfillment of all the following conditions:
>
> 17.1.1 Signing of the Contract by all Parties
>
> - Signing of the Loan Agreement relating to the Contract by the Minister for Finance and Economic Planning.
> - Rendering of a Legal Opinion by the Ministry of Finance and Approval of the Contract by the Cabinet and Parliament of the Republic of Ghana.
>
> 17.1.2 Confirmation by the bank holding the Escrow Account to the Contractor that the Escrow Account is established and credited with the total amount of the Contract Price according to Clause 5.
>
> 17.1.3 Effectiveness of the tripartite agreement to be concluded as per Clause 6.
>
> 17.1.4 Receipt by the Contractor of the advance payment referred to in Clause 6.1.
>
> 17.1.5 Receipt of the necessary approvals from Multilateral Investment Guarantee Agency (MIGA), Ex-Im Bank, USA and Lender.

C. Repudiation of the Stadia Contracts

48. On 1 August 2006, the Government (by its then Attorney-General & Minister of Justice, Joe Ghartley MP) sent a letter to the Claimant repudiating the Stadia Contracts. The letter stated that the Stadia Contracts had not become effective pursuant to Clause 17, which required *inter alia* that the Claimant obtain funding for the works.

49. The Claimant agreed to the termination of the Stadia Contracts and the Government agreed to pay the Claimant for verified work done prior to the Government's purported termination of the Stadia Contracts.

50. On 23 August 2006, Building Industry Consultants Limited (**BIC**), who had been appointed by the Government, certified that as at that date the Claimant had completed works with a value of EUR 21,569,946.71.

51. The Claimant contends that the Government paid (via the Claimant's subcontractors) only EUR 11,935,706.55 of the sum certified by BIC.

D. The Settlement Agreement

52. The Claimant sought to recover the outstanding sum of EUR 9,634,240.16 from the Respondent, in addition to damages for loss of profit caused and/or occasioned by the wrongful termination of the Stadia Contracts totaling EUR 13,426,261.28, legal fees in the sum of EUR 1,200,000 and general damages for breach of contract in the sum of EUR 20,000,000.

53. Pursuant to the "stepped" dispute resolution mechanism set out in the Arbitration Agreements, the Parties mediated their dispute.

54. On 13 October 2010, the Parties entered into the Settlement Agreement, pursuant to which the Respondent agreed to pay the Claimant EUR 25 million in settlement of the Claimant's claims for work done prior to the Government's cancellation of the contract, damages for wrongful termination and interest.

55. Clause 1 (Release and Discharge) of the Settlement Agreement provides:

> In consideration of Respondent's agreement to make the payments called for herein, the Claimant completely release and forever discharge Respondent [] of and from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation which the Claimant now has, or which may hereinafter

> accrue or otherwise be acquired by Claimant, on account of, or in any way growing out of the Contracts.

56. Pursuant to Clause 2 (Consideration), the sum of EUR 25 million was paid to the Claimant in full.

57. Clause 4 (Entire Agreement and Successors in Interest) provides:

> This Agreement contains the entire agreement, between the Claimant and the Respondent with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the permitted successors in title or assigns.

58. Pursuant to Clause 5 (Governing Law), the Settlement Agreement is governed by the laws of Ghana.

E. The *Amidu* Case in the Ghanaian Supreme Court

59. On 22 June 2012, the Honourable Martin Amidu, a former Attorney General of Ghana who was a third party and stranger to the Stadia Contracts, acting in his capacity as a private citizen, commenced a "public interest action" in the Supreme Court to recover the sums paid by the Respondent to the Claimant under the Stadia Contracts and the Settlement Agreement, which Mr Amidu alleged were unconstitutional and void pursuant to Article 181 of the 1992 Constitution. Mr Amidu also sought an order that Waterville refund all money paid under the Stadia Contracts or the Settlement Agreement.

60. The Claimant and the Respondent were co-defendants in *Amidu*: the Government was the first defendant; Waterville was the second defendant.

61. Mr Amidu invoked the original jurisdiction of the Supreme Court under Article 130(1) of the 1992 Constitution, which provides:

> Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in
>
> (a) all matters relating to the enforcement or interpretation of this Constitution; and
>
> (b) all matters arising as to whether an enactment was made in excess of the powers conferred on parliament or any other authority or person by law or under this Constitution.

62. Original jurisdiction is also vested in the Supreme Court pursuant to Article 2 of the 1992 Constitution, which provides:

> (1) A person who alleges that

(a) an enactment or anything contain in or done under the authority of that or any other enactment, or

(b) any act or omission of any person, is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.

(2) The Supreme Court shall for the purposes of a declaration under clause 1 of this article make such orders and give such directions as it may consider appropriate for giving effect or enabling effect to be given to the declaration so made.

63. Mr Amidu's claim was based on Article 181(5) of the 1992 Constitution, which requires an "international business or economic transaction" to which the Government of Ghana is a party must be approved by parliament. In full, Article 181 provides:

(1) Parliament may, by a resolution supported by the votes of a majority of all the members of Parliament, authorise the Govemment to enter into an agreement for the granting of a loan out of any public fund or public account.

(2) An agreement entered into under clause (1) of this article shall be laid before Parliament and shall not come into operation unless it is approved by a resolution of Parliament.

(3) No loan shall be raised by the Govemment on behalf of itself or any other public institution or authority otherwise than by or under the authority of an Act of Parliament.

(4) An Act of Parliament enacted in accordance with clause (3) of this article shall provide-

(a) that the terms and conditions of a loan shall be laid before Parliament and shall not come into operation unless they have been approved by a resolution of Parliament; and

(b) that any moneys received in respect of that loan shall be paid into the Consolidated Fund and form part of that Fund or into some other public fund of Ghana either existing or created for the purposes of the loan.

(5) This article shall, with the necessary modifications by Parliament, apply to an international business or economic transaction to which the Govemment is a party as it applies to a loan ... "

64. In particular, Mr Amidu sought:[4]

a. Declarations that:

i. The Stadia Contracts were "international business or economic transaction[s] under Article 181(5) of the 1992 Constitution that could only have become operative and binding on the Government of Ghana after being laid before and approved by Parliament";

[4] *Amidu (No 1) v Attorney General, Waterville Holdings (BVI) & Woyome (No 1)* [RL005], pp.130-134.

ii. The Stadia Contracts "not having been laid before and approved by Parliament pursuant to Article 181(5) of the 1992 Constitution is each inconsistent with and in contravention of the said Article 181(5) of the Constitution and consequently null, void and without operative effect whatsoever";

iii. The conduct of Waterville in receiving payments from the Government premised upon alleged breaches of the Stadia Contracts when Waterville knew the Stadia Contracts were international business or economic transactions which had not been approved by Parliament is "inconsistent with and in contravention of article 181 of the 1992 Constitution"; and

b. An order that Waterville "refund to the Republic of Ghana all sums of money paid...upon or as a result of the unconstitutional conduct of the Government in purported pursuance of the two inoperative [Stadia Contracts] or any other unconstitutional Agreement as having been made and received by them in violation of Article 181 of the Constitution".

65. The Claimant challenged Mr Amidu's standing to bring the claim but did not seek a stay of proceeding pending arbitration because, the Claimant contends, Mr Amidu was not a party to the Stadia Contracts or any arbitration agreement with the Claimant.

66. The Claimant argued before the Supreme Court *inter alia* that Mr Amidu, a private citizen, had no capacity to bring the claim,[5] and that Waterville's claim to payment from Ghana was based on work done, i.e. based on *quantum meruit* and not pursuant to the Stadia Contracts.[6]

67. On 14 June 2013, the Supreme Court issued its judgment. The Supreme Court:

(a) Held that it had jurisdiction under Article 130 of the 1992 Constitution;[7]

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5 *Amidu*, p.152.
6 *Amidu*, p.151.
7 Amidu, pp. 137,

(b) Decided that the Stadia Contracts and Settlement Agreement were null, void and inoperative because they were not approved by parliament and therefore violated Article 181(5) of the 1992 Constitution;[8]

(c) Held that there is a penumbra effect of Article 181(5) such that non-compliance with this constitutional provision bars restitutionary rights under the common law;[9]

(d) Decided the Claimant's restitutionary (*quantum meruit*) claim against the Government was invalid because a contract which breaches Article 181(5) of the 1992 Constitution is null and void and creates no rights, and "[i]t should not be legitimate to evade this nullity by the grant of a restitutionary remedy";[10]

(e) Pursuant to Article 2(2) of the 1992 Constitution, made a consequential order compelling the Claimant to refund "all monies" paid by Ghana in connection with the Stadia Contracts and the work done on the stadia.[11]

68. In particular, the Supreme Court stated that, as a result of the "penumbra effect" of Article 181(5) of the 1992 Constitution:

> [T]here is no liability of the State to the second defendant [Waterville]. The second defendant Waterville...is thus obliged to return all monies paid to it pursuant to the transaction. The settlement, pursuant to which the monies were paid, was founded on an unconstitutional act and should be treated as null and void. It is obvious that the [Stadia Contracts] never became operative and even if they had become effective they would have been null and void if not approved by Parliament. Equally, any restitutionary claims intended to achieve results similar to those contemplated by the provisions in the inoperative [Stadia Contracts] would be invalid. The Supreme Court has jurisdiction under article 2(2) of the 1992 Constitution to make a consequential order compelling the second defendant to refund all monies paid to it in relation to the work that it did on the stadia.[12]

69. The Supreme Court also stated:

> Although one accepts the cogency of the argument that there is need to avoid unjust enrichment to the State through its receipt of benefits it has not paid for, there is the higher order countervailing argument that the enforcement of the Constitution should not be undermined by allowing the State and its partners an avenue or opportunity for doing directly what it is constitutionally prohibited

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8 *Amidu*, pp.144, 146.
9 *Amidu*, pp.141, 144.
10 *Amidu*, pp.144, 152.
11 *Amidu*, pp.150, 159.
12 *Amidu*, p.150.

from doing directly. The supremacy of the Constitution in the hierarchy of legal norms in the legal system has to be preserved and jealously guarded.[13]

F. Ghana's enforcement proceedings against Waterville

70. On 29 July 2013, the Respondent commenced a High Court action against the Claimant seeking, by Amended Statement of Claim dated 30 July 2013, repayment of EUR 47,365,624.40 from the Claimant. (As described above, the Claimant contends the Government had only paid the Claimant the sum of EUR 33,980,522.28.)

71. The Claimant contested the jurisdiction of the High Court by: (i) filing an "Entry of Conditional Appearance" dated 19 August 2013; and (ii) on 16 October 2013, applying for a stay of proceedings pending arbitration pursuant to the Arbitration Agreements.

72. On 6 November 2013, the High Court rejected the Claimant's application. The High Court held:

> [T]he contracts [Waterville] is relying on in seeking for a referral to arbitration do not exist. They have been declared null and void as not having been approved by Parliament. The requirement for arbitration is not separate and separable from the main contract as Defense Counsel has contended but essentially part and parcel of it. If the contracts are declared null and void, so are the provisions in it relating to arbitration.
>
> Moreover, the argument that this suit arises out of the annulled contracts falls flat on its face. Once the highest court of the land has pronounced on them and held them to be null and void, it is not open to any other court to determine them valid and accord either party the benefits of any of the said contracts' provisions.
>
> [...]
>
> Accordingly, [Waterville] cannot rely on the arbitration clauses in those contracts.

73. On 20 January 2014, the Court of Appeal dismissed the Claimant's appeal.

74. On 10 October 2014, the Claimant commenced this arbitration. The Claimant seeks an Award:

> 34.1. declaring that the Stadia Contracts and the Settlement Agreement are valid and enforceable; and/or
>
> 34.2. declaring that the Arbitration Agreements are valid and binding;

[13] *Amidu*, pp.144-145.

34.3. declaring that the Republic of Ghana and/or the Government and/or the Attorney General is/are not entitled to repayment of and/or to recover from the Claimant the sum of €33,980,522.28 or any other sum (as the Tribunal may determine) which has been paid to the Claimant in relation to and/or in connection with the Stadia Contracts and/or the Settlement Agreement and/or for the Stadia Works which were completed by the Claimant;

34.4. declaring that the Republic of Ghana and/or the Government and/or the Attorney General is/are bound not to pursue the claims made by it/them in Ghanaian High Court with the Writ No. RPC/279/2013 and/or or any other claims for the repayment of the sums it/they have paid to the Claimant in relation to and/or in connection with the Stadia Contracts and/or the Settlement Agreement and/or for the Stadia Works which were completed by the Claimant otherwise than by arbitration pursuant to the Arbitration Agreements (in London and pursuant to the ICC Rules);

34.5. ordering the Republic of Ghana and/or the Government and/or the Attorney General to pay the Claimant's costs in connection with this arbitration including, but not limited to, any costs paid by the Claimant to the ICC, any administrative charges, the fees and/or expenses of the arbitrators, experts, consultants, witnesses and legal counsel; and

34.6. granting the Claimant any further or other relief the Tribunal shall deem appropriate.[14]

75. The Supreme Court subsequently ruled that it may enforce its own judgments. The Respondent therefore discontinued the High Court action and commenced enforcement proceedings in the Supreme Court.[15]

76. The Respondent asserts that it has unsuccessfully attempted to serve enforcement proceedings on the Claimant.[16]

IV. ISSUES FOR DETERMINATION

77. The key issue for determination by the Tribunal in this Partial Award, as framed by the Parties, is: "Whether the Arbitral Tribunal has jurisdiction to decide the subject claims."

78. The "subject claims" are contained in the Claimant's requests for relief set out at paragraph 74 above. These are, principally, requests for declarations by the Tribunal that:

(a) the Stadia Contracts and the Settlement Agreement are valid and enforceable;

[14] Request for Arbitration, 34.
[15] Witness Statement of Yaw Osafo-Maafo, 24.
[16] Witness Statement of Yaw Osafo-Maafo, 25.

(b) the Arbitration Agreements are valid and binding;

(c) the Respondent is not entitled to repayment of sums paid to the Claimant in relation to the Stadia Contracts and/or the Settlement Agreement; and

(d) the Respondent is bound to to pursue claims for repayment of any sums paid to the Claimant in relation to the Stadia Contracts and/or the Settlement Agreement by arbitration in London pursuant to the ICC Rules.

79. In their written and oral submissions, the Parties have raised a number of additional and subsidiary issues for consideration by the Tribunal in determining whether it has jurisdiction to decide the "subject claims". These include the following: (i) the governing law of the Arbitration Agreements; (ii) separability; (iii) arbitrability; (iv) whether the right to arbitrate has been extinguished by the Settlement Agreement; (v) whether the right to arbitrate has been waived; (vi) whether the claims are *res judicata*; and (vii) whether any award would be enforceable under the New York Convention.

80. The Tribunal will deal with so many of the above issues as it considers necessary and appropriate to reach its determination on the main issue before it. For the avoidance of doubt, even if not specifically mentioned in the summary of the Parties' submissions in the following sections of this Partial Award, all of the Parties' submissions and arguments have been carefully considered by the Tribunal in reaching its decisions.

V. ISSUE 1: ARE THE ARBITRATION AGREEMENTS VALID AND BINDING?

A. Overview

81. It is axiomatic that in order for the Tribunal to have jurisdiction there must be a valid arbitration agreement between the Parties. In deciding whether the Arbitration Agreements are valid and binding, the Tribunal will consider a number of the issues raised by the Parties.

B. Respondent's submissions

(1) Governing law of the Arbitration agreements

82. The Respondent submits that the law governing the Arbitration Agreements is Ghanaian law because: (a) the Stadia Contracts are governed by Ghanaian law; (b) the Parties dealt with each other in Ghana in relation to works to be performed in Ghana; and (c) the Stadia Contracts do not identify any other law that governs the Arbitration Agreements.

83. To the extent English law applies to the choice of law question, the Respondent contends that the Claimant has failed to articulate the exceptional circumstances that could displace the presumption that "the applicable law of an arbitration agreement is the same as the law governing the contract of which it forms part" (*Svenska Petroleum Exploration AB v. Lithuania* [RL038]).

(2) Separability

84. The Respondent contends that, the Stadia Contracts having been declared void by the Supreme Court in *Amidu*, as a matter of Ghanian law so too must be the Arbitration Agreements contained therein. The Respondent further contends that the Arbitration Agreements are not severable from the Stadia Contracts by virtue of Article 181 of the 1992 Constitution governing international contracts. The Respondent contends that Article 181 prevails over the general rule of severability under section 3 of Ghana's Alternative Dispute Resolution Act 2010 (**2010 ADR Act**). The Respondent relies on *Attorney General v. Balkan Energy Ghana Ltd & Others*, in which the Supreme Court held that the arbitration clause in an Article 181 contract did not constitute an international business transaction under Article 181(5). The Supreme Court stated:

> This is because applying the interpretation of article 181(5) arrived at above, it is clear that the international arbitration provision cannot, in and of itself, constitute an international business or economic transaction. However, international commercial arbitration is not by itself an autonomous transaction commercial in nature which pertains to or impacts on the wealth and resources of the country. An international commercial arbitration draws its life from the transaction whose dispute-resolution it deals with. We therefore have difficultly in conceiving of it as a transaction separate and independent from the transaction that has generated the dispute it is required to resolve.[17]

[17] RL006, at 1037.

(3) Additional arguments raised by Respondent attacking the validity of the Arbitration Agreements

85. First, the Respondent contends that the Arbitration Agreements are ineffective because they were superseded by the Settlement Agreement, which gave effect to a mediation between the Parties and expressly releases all prior obligations in the Stadia Contracts. The Respondent contends this release includes the obligation to arbitrate. The Respondent further contends that the Settlement Agreement furnishes no basis for the Tribunal's jurisdiction because it does not contain an arbitration clause.

86. Second, the Respondent contends that the Claimant waived its right to arbitrate by: (1) participating fully in the proceedings before the Ghana Supreme Court through a final judgment on the merits; (2) failing to request that the Supreme Court stay proceedings in favour of arbitration; and (3) failing to file a request for arbitration with the ICC prior to entry of the Supreme Court judgment. The Respondent relies *inter alia* on section 6(1) of the 2010 ADR Act, which provides that:

> Where there is an arbitration agreement and a party commences action in a court, the other party may on entering appearance, and on notice to the party who commenced the action in court, apply to the court to refer the action or a part of the action to which the arbitration agreement relates, to arbitration.

C. Claimant's submissions

(1) Governing law of the Arbitration agreements

87. The Claimant contends that the law governing the Arbitration Agreements should be determined by a three-stage enquiry into: (1) express choice; (2) implied choice; and (3) the system of law with which the arbitration agreement has the closest and most real connection, which is likely to be the law of the seat (*Sulamerica Cia Nacional de Seguros SA v Enesa Engenharia SA* [CL018]; Dicey & Morris, Rule 64(1) [CL024]).

88. In the absence of an express choice of law that should govern the Arbitration Agreements, the Claimant concludes that the applicable law is English law, which as the law of the seat is the law most closely connected to the Arbitration Agreements.

(2) Separability

89. The Claimant contends that the Arbitration Agreements are separate and distinct from the Stadia Contracts and are capable of subsisting irrespective of the validity of the Stadia Contract of which it forms part. The Claimant contends that the Respondent has failed to demonstrate why the doctrine of separability must "yield to the constitutional order" of Ghana.[18] The Claimant's starting point is that English law applies to the separability issue. However, the Claimant submits that the result is the same if Ghanaian law applies. The Claimant relies *inter alia* on:

(a) Section 7 of the Arbitration Act 1996, which provides:

> Unless otherwise agreed by the parties, an arbitration agreement which forms or was intended to form part of another agreement (whether or not in writing) shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective, and it shall for that purpose be treated as a distinct agreement.

(b) Section 3(1) of the 2010 ADR Act, which is almost identical to section 7 of the Arbitration Act 1997, and provides:

> Unless otherwise agreed by the parties, an arbitration agreement which forms or is intended to form part of another agreement shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid or did not come into existence or has become ineffective and it shall for that purpose be treated as a distinct agreement.

(c) Article 6(9) of the ICC Rules, which provides:

> Unless otherwise agreed, the arbitral tribunal shall not cease to have jurisdiction by reason of any allegation that the contract is non-existent or null and void, provided that the arbitral tribunal upholds the validity of the arbitration agreement. The arbitral tribunal shall continue to have jurisdiction to determine the parties' respective rights and to decide their claims and pleas even though the contract itself may be non-existent or null and void.

(3) Additional arguments raised by Respondent attacking the validity of the Arbitration Agreements

90. First, the Claimant contends that the Arbitration Agreements remain valid and binding notwithstanding the Settlement Agreement. The Claimant submits that

[18] Reply, 121.

it stands by the Settlement Agreement and is not seeking to resurrect settled claims in this arbitration. Rather, the Claimant contends, the present dispute concerns the Claimant's entitlement to retain the settlement monies, and other sums paid pursuant to the Stadia Contracts, which the Respondent is seeking repayment of through the Ghana courts. The Claimant relies *inter alia* on the presumption in favour of "one-stop adjudication" under English law. The Claimant cites *Monde Petroleum SA v Westernzagros Limited* [RL035] [CL022], in which the English Commercial Court held that:

> A termination or settlement agreement which contains no new dispute resolution clause is unlikely to be treated as a direct impeachment of an arbitration clause in an earlier agreement, in the absence of clear language, because it is directed merely at a challenge to the continued substantive rights under the matrix agreement, not the separate arbitration agreement within it.

91. Second, the Claimant contends that its participation in the *Amidu* proceedings cannot amount to a waiver because *inter alia* Mr Amidu is not a party to the Stadia Contracts and there was no dispute between the Parties capable of being stayed since the only matters in issue before the Supreme Court were the constitutional reliefs claimed by Mr Amidu.

D. Tribunal's decision

(1) Governing law of the Arbitration agreements

92. Having carefully considered the submissions of both Parties, the Tribunal has concluded that the law governing the Arbitration Agreements is the law of Ghana.

93. Given that the seat of the arbitration is London, the Tribunal applies English conflict of laws rules to identify the law governing the Arbitration Agreements. Under English law, the governing law of an arbitration agreement is determined by the three-stage test enunciated in *Sulamerica Cia Nacional de Seguros SA v Enesa Engenharia SA* [CL018], pursuant to which the Tribunal shall have regard to: (1) the parties' express choice; (2) the implied choice of the parties as gleaned from their intentions at the time they entered into their contract; and (3) the system of law with which the arbitration agreement has the closest and most real connection, which is usually the law of the seat.

94. In this case, it is common ground that no express choice of law to govern the Arbitration Agreements is found in the Stadia Contracts. The Tribunal therefore

proceeds to decide whether the Parties impliedly chose the governing law of the Stadia Contracts (Ghanian law) or the law of the seat of the arbitration (English law) to govern the Arbitration Agreements.

95. As the the High Court held in *Sulamerica*:

> [I]n principle the proper law of an arbitration agreement which itself forms part of a substantive contract may differ from that of the contract as a whole, but it is probably fair to start from the assumption that, in the absence of any indication to the contrary, the parties intended the whole of their relationship to be governed by the same system of law.[19]

96. In short, where the arbitration agreement forms part of the main contract, as is the case here, it is reasonable to assume that the Parties intended their entire relationship to be governed by "the same system of law". If they had intended otherwise, they could have easily provided so. Accordingly, the presumption will only be overcome where there has been an "indication to the contrary".

97. In this instance, no evidence has been presented of any such "indication to the contrary". In the Tribunal's view, while the choice of the seat is one of the factors to be considered, this is insufficient by itself to overcome the presumption.

98. In conclusion, while the arbitration proceedings are subject to the English Arbitration Act 1996 as the law of the seat (to the extent the provisions are mandatory), the law governing the Arbitration Agreements is the law of Ghana. This means that such matters as the validity and enforceability of the Arbitration Agreements, including whether a particular dispute is arbitrable, will fall to be determined by the relevant provisions of Ghanian law.

(2) Separability

99. The Tribunal has decided that the law governing the Arbitration Agreements is Ghanaian law. Therefore, the question of whether the agreements are separable from the main contracts is to be decided by reference to the law of Ghana.

100. The Tribunal accepts the Claimant's submissions on separability under Ghanaian law. In all significant respects Ghanian law reflects English law on this issue. The doctrine of separability is recognised both at Ghanaian common

[19] *Sulamerica* [CL018], para 11.

law and under section 3 of the 2010 ADR Act (which is almost identical to section 7 of the Arbitration Act 1996).

101. By contrast, the two Supreme Court authorities relied on by the Respondent do not demonstrate that the doctrine of separability must "yield to the constitutional order". The Supreme Court in *Amidu* did not consider the question of the separability of the Arbitration Agreements. Nor does the *Amidu* judgment support the Respondent's assertion that the Government representatives lacked authority to bind Ghana to the Arbitration Agreements. In *Balkan Energy*, the Supreme Court also did not consider whether there is an exception to the separability doctrine in respect of arbitration agreements contained within Article 181 contracts. Rather, the Supreme Court held that arbitration agreements do not constitute international business transactions for the purposes of Article 181(5).[20]

102. Accordingly, the Tribunal concludes that the Arbitration Agreements are separable under the law of Ghana.

(3) Additional arguments raised by Respondent attacking the validity of the Arbitration Agreements

103. The Tribunal decides that the Claimant's right to commence this arbitration has not been extinguished by operation of the Settlement Agreement. The Settlement Agreement did not revoke the Arbitration Agreements. The disputes which are the subject of the Claimant's claims in this arbitration "arise out of or in connection with" the Stadia Agreements. There is no bar against commencing more than one dispute settlement procedure under the Arbitraition Agreements.

104. Having considered both Parties' submissions on the waiver issue, the Tribunal has concluded that the Claimant did not waive its right to arbitrate by participating in the Ghanian Supreme Court proceedings. In the Tribunal's view, the Claimant's participation in the Supreme Court proceedings does not evince an intention to forego its arbitration rights. The Supreme Court proceedings were not commenced by a party to the Arbitration Agreements and concerned issues that fall within the exclusive jurisdiction of the Supreme Court (as discussed under the following section of this Award). It follows that there

[20] *Balkan Energy* [RL006], pp.1036-1037.

was no basis for the Claimant to attempt to arbitrate that dispute under the Arbitration Agreements. Moreover, the power of the Ghanaian courts to refer parties to arbitration under section 6(1) of the Ghanaian 2010 ADR Act applies only where (i) a party to an arbitration agreement commences litigation against a counterparty to that arbitration agreement and (ii) the court action or part thereof relates to the arbitration agreement. The Supreme Court proceedings could not therefore have been stayed as it was a public interest suit brought by a non-party to the Arbitration Agreements. Accordingly, there were no grounds for the Claimant to invite the Ghanian Supreme Court to stay the proceedings in favour of arbitration.

105. In conclusion, the Tribunal finds that, subject to the limitations discussed in the following section of this Award, the the Arbitration Agreements are valid, binding and separable under the laws of Ghana and are not extinguished by the alleged invalidity of the Stadia Contracts or the Settlement Agreement.

VI. ISSUE 2: ARE THE CLAIMANT'S CLAIMS ARBITRABLE?

A. Overview

106. Having decided that the Arbitration Agreements are valid and binding, the next question for the Tribunal is whether as a matter of Ghanaian law the "subject claims" advanced by the Claimant are capable of being decided by the Tribunal in this arbitration.

B. Respondent's submissions

107. The Respondent submits that the Claimant is "improperly asking this Tribunal to act like an appellate court and review the final judgment of Ghana's highest court".[21] The Respondent contends that the Claimant's requests for relief would require the Tribunal to (1) interpret the 1992 Constitution and (2) grant relief that conflicts with a judgment of the Ghana Supreme Court and concerns matters in relation to the national or public interest of Ghana. The Respondent submits that the Tribunal has no jurisdiction to do so because these issues are not arbitrable under applicable Ghanaian law. The Respondent relies *inter alia* on:

[21] Respondent's Memorial on Jurisdiction, 58.

(a) Article 130(1)(a) of the 1992 Constitution, which provides that "the Supreme Court shall have exclusive original jurisdiction in all matters relating to the enforcement or interpretation of this Constitution".

(b) Section 1(c) of the 2010 ADR Act, which provides that "the enforcement and interpretation of the Constitution" is not arbitrable.

(c) Section 1(a) of the 2010 ADR Act, which provides that matters relating to "the national or public interest" are not arbitrable issues.

C. Claimant's submissions

108. The Claimant contends that this a civil (private) dispute about payment obligations between two parties to a contract and as such is arbitrable. The Claimant submits that the question of arbitrability should be determined in accordance with English law, which is the *lex arbitri* and, the Claimant contends, the law governing the Arbitration Agreements. If Ghanaian law applies, however, the Claimant contends that section 1(a) of the 2010 ADR Act is consistent with section 1(b) of the English Arbitration Act 1996 in providing only a limited public interest exception to arbitration, which is not applicable in this case. The Claimant further contends that none of the relief it seeks relates to the "enforcement and interpretation of the Constitution" for the purposes of section 1(c) of the 2010 ADR Act.

D. Tribunal's decision

109. The Tribunal has considered with care the submissions advanced by both Parties on this issue.

110. In the Tribunal's view, it is beyond doubt that the Supreme Court of Ghana is vested with exclusive jurisdiction to deal with constitutional or "public interest" matters. Such matters, therefore, would be beyond the jurisdiction of this Tribunal. Other aspects of the Parties' disputes which do not involve an issue of interpretation of the Ghanian Constitution would be arbitrable.

111. Addressing each of the main heads of Claimant's request for relief in turn:

(a) *RfA, paragraph 34.1 – Declaration that the Stadia Contracts and the Settlement Agreement are valid and enforceable.*

112. The Tribunal has no jurisdiction to declare the Stadia Contracts or the Settlement Agreement valid and enforceable because this question has been decided by the Supreme Court and is within that court's exclusive jurisdiction.

(b) *RfA, paragraph 34.2 – Declaration that the Arbitration Agreements are valid and binding.*

113. The Tribunal decides that, to the extent there are matters not within the exclusive jurisdiction of the Supreme Court, the Arbitration Agreements remain valid and binding.

(c) *RfA, paragraph 34.3 – Declaration that the Respondent is not entitled to repayment of the sums paid to the Claimant.*

114. The Supreme Court had jurisdiction under Article 2 of the 1992 Constitution to make the order compelling Waterville to refund "all monies" paid to Ghana. The question is whether or not this issue falls within the Supreme Court's exclusive jurisdiction. The Tribunal finds that it does. The Supreme Court denied Waterville's *quantum meruit* claim in order to give effect to the "penumbra effect" of Article 181 of the 1992 Constitution. This was a task of constitutional interpretation within the Supreme Court's exclusive jurisdiction.[22] The Tribunal therefore concludes that it has no jurisdiction to declare that the Respondent is not entitled to repayment of any sums it has paid under the Stadia Contracts and/or the Settlement Agreement.

115. The Tribunal does, however, have jurisdiction in respect of the Parties' dispute over quantum. There is no reason why the question of the amount to be repaid should not be arbitrated: this is a live issue between the Parties and is not one within the Supreme Court's exclusive jurisdiction.

(d) *RfA, paragraph 34.4 – Declaration that the Respondent is bound to pursue claims against the Claimant only by arbitration pursuant to the Arbitration Agreements.*

116. In the Tribunal's view, the Claimant's request for relief under paragraph 34.4 of the RfA has not been sufficiently briefed. The Tribunal grants the Parties leave to brief this issue further at the merits phase.

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[22] *Amidu*, p.137.

VII. ISSUE 3: ARE THE CLAIMANT'S CLAIMS *RES JUDICATA?*

A. Overview

117. This issue concerns the Respondent's contention that the Claimant's claims in this arbitration are *res judicata* following the Supreme Court's decision in *Amidu*. The Respondent contends that a finding of *res judicata* would mean there is no "dispute" between the Parties, thereby depriving the Tribunal of jurisdiction.

B. Respondent's submissions

118. The Respondent submits that the Claimant's claims are *res judicata* because a court of competent jurisdiction, the Ghana Supreme Court, has already adjudicated the same issues and there is the requisite identity of parties (Waterville and Ghana were adverse to each other in the litigation, as demonstrated by the Supreme Court's order that Waterville repay Ghana). The Respondent relies on principles of Ghanaian law, which the Respondent contends are consistent with English law.

119. The Respondent contends that the Respondent's attempt to enforce the Supreme Court judgment against the Claimant does not create a new dispute. The Respondent further contends that the Claimant's disagreement with the Supreme Court's judgment and repayment order in *Amidu* does not give rise to a new dispute.

120. The Respondent also rejects the Claimant's contention that the *Amidu* judgment is a "penal" decision that therefore cannot have *res judicata* effect.

C. Claimant's submissions

121. The Claimant submits that the issues in dispute are not *res judicata*. The Claimant contends that the Supreme Court does not have jurisdiction to resolve the private law commercial dispute between the Parties. The Claimant also contends that there is no identity of parties or subject-matter; the *Amidu* proceeding was a public interest case brought by a stranger to the Stadia Contracts in which the Parties were co-defendants. The Claimant relies on English law principles of *res judicata*, which it says are materially the same as those applied at Ghanaian common law.

122. The Claimant further submits that there is a new dispute over matters "arising out of or in connection with" the Stadia Contracts. In particular, the Claimant contends that there is a dispute as to: (i) whether the Respondent paid the Claimant the sum of EUR 36,935,706.55, as the Claimant contends, or EUR 47,365,624.40, as the Respondent contends; (ii) whether or not the Respondent is entitled to repayment; and (iii) whether the Respondent must pursue its claim in arbitration or in the Ghanaian courts. The Claimant submits that the dispute arose when the Respondent, in breach of the Arbitration Agreements, sought to enforce the *Amidu* judgment against the Claimant in the Ghanaian High Court.

123. The Claimant also contends that the Supreme Court's repayment order was in the nature of a penal or public order purportedly made to enforce the 1992 Constitution. The Claimant submits that, under English law (which the Claimant contends is materially the same as Ghanaian law), a foreign decision enforcing a penal or other public law cannot support a finding of *res judicata*.

D. Tribunal's decision

124. As set out in Section VI above, the Tribunal has decided that it has no jurisdiction to declare the Stadia Contracts or the Settlement Agreement valid and enforceable (RfA, paragraph 34.1) or to declare that the Respondent is not entitled to repayment of any sums it has been paid under the Stadia Contracts and/or the Settlement Agreement (RfA, paragraph 34.1). This is because these issues fall within the exclusive jurisdiction of the Ghanaian Supreme Court as matters of constitutional interpretation.

125. The Tribunal has decided, however, that it does have jurisdiction to deal with that part of the Claimant's claim at paragraph 34.3 of the RfA that concerns the Parties' dispute over quantum.

126. The question that remains is whether the dispute over quantum is *res judicata*. The Parties have made extensive submissions on this issue. The Tribunal notes that as a general matter pleas as to *res judicata* would normally be raised as a defence and not go to jurisdiction.

127. The Tribunal considers that the Claimant may have an arguable defence to the Respondent's *res judicata* claim. The issue is therefore not ripe for determination as a preliminary issue because it cannot be resolved without

considering the relevant factual matrix (and expert evidence, if necessary). Accordingly, the Tribunal considers that it would be premature to make any determination on this issue before a full hearing of the evidence.

128. The Tribunal therefore decides that, to the extent it remains relevant in light of the Tribunal's other determinations, the question of whether the dispute over quantum at paragraph 34.2 of the RfA is *res judicata* should be deferred to the merits phase.

VIII. ISSUE 4: OTHER ISSUES

A. Overview

129. Finally, the Parties made submissions concerning potential challenges that could be made to resist the enforcement of any merits award rendered in this arbitration, and the consequences of such hypothetical risks in terms of the Tribunal's jurisdiction. This issue can be dealt with briefly.

B. Respondent's submissions

130. The Respondent submits that if the Tribunal were to issue an award on the merits in favour of the Claimant, it would not be recognized and enforced under the New York Convention. The Respondent relies on Articles V(1)(a), V(2)(a) and V(2)(b) of the New York Convention. The Respondent also relies on *BCB Holdings Ltd. v. Attorney General of Belize* [RL051], in which the Caribbean Court of Justice refused to enforce an LCIA award against the government of Belize under the New York Convention on the grounds that a former prime minister of Belize had entered into the underlying contracts without parliamentary approval.

C. Claimant's submissions

131. The Claimant denies that any merits award rendered in this arbitration would be unenforceable under the New York Convention. Moreover, the Claimant submits that it is inappropriate to second-guess the enforceability of the substantive award at the jurisdiction phase before the Parties have set out their case on the merits of the dispute. The Claimant contends that it bears the risk that a local court may not enforce any merits award; such risk is not a valid reason for the Tribunal to decline jurisdiction.

D. Tribunal's decision

132. The question of whether or not any award would be enforceable is not an issue which falls to be determined by this Tribunal.

IX. COSTS

133. At the hearing, the Parties agreed that costs shall be reserved pending final determination of the reference to arbitration.[23]

X. DISPOSITIVE PART

134. Having considered all of the evidence and submissions placed before it, and for the reasons set out above, the Tribunal hereby **FINALLY DECIDES** and **DETERMINES** as follows:

(a) The Arbitration Agreements are valid and binding under the applicable law, being the law of Ghana (RfA, 34.2).

(b) The Tribunal has no jurisdiction to decide on the validity of the Stadia Contracts or Settlement Agreement as these involve issues of Ghanaian constitutional law and public policy which are not arbitrable under the law to which the Arbitration Agreements are subject (RfA, 34.1).

(c) The Tribunal has no jurisdiction to decide whether the Respondent is entitled or not to repayment of the sum paid to the Claimant, except as regards the quantum of the payments in issue (RfA, 34.3).

(d) The Tribunal makes no finding in respect of the Claimant's request for a declaration that the Respondent is bound not to pursue claims against the Claimant otherwise than by arbitration pursuant to the Arbitration Agreements (RfA, 34.4).

(e) All other outstanding issues in the arbitration will be dealt with in a future award.

[23] Transcript, Day 2, 67:16-68:1.

Made in London, England on this 20th day of March 2017.

Professor Douglas Jones AO

J. Brian Casey

Dr Michael Moser

EXHIBIT "MAA3"

INTERNATIONAL CHAMBER OF COMMERCE

INTERNATIONAL COURT OF ARBITRATION

ICC ARBITRATION CASE NO. 20561/TO

In the arbitration proceeding between

WATERVILLE HOLDINGS (BVI) LIMITED

Claimant

-and-

THE ATTORNEY GENERAL OF THE REPUBLIC OF GHANA, MINISTRY OF JUSTICE, ACCRA, REPUBLIC OF GHANA

Respondent

ORDER FOR TERMINATION

Members of the Tribunal

Professor Douglas Jones AO, Co-Arbitrator

Mr J Brian Casey, Co-Arbitrator

Dr Michael Moser, President

Date

30 April 2018

ORDER FOR TERMINATION

Further to the Partial Award on Jurisdiction dated 20 March 2017;

Upon the Tribunal having declined jurisdiction in the Partial Award in relation to the declaratory relief claimed in paragraphs 34.1 and 34.3 of the Request for Arbitration;

Upon the Tribunal having granted in the Partial Award the relief claimed at paragraph 34.2 of the Request for Arbitration;

Upon the Claimant electing not to pursue its claim for relief at paragraph 34.4 of the Request for Arbitration;

Upon the Respondent having withdrawn the Counterclaim by letter to the Tribunal dated 13 March 2018;

And by consent:

(1) The Tribunal declares that the Arbitration Agreements in the Stadia Contracts remain valid and binding, as claimed at paragraph 34.2 of the Request for Arbitration, for the reasons stated in the Partial Award.

(2) The Tribunal declines jurisdiction in relation to the declaratory relief claimed at paragraphs 34.1 and 34.3 of the Request for Arbitration, for the reasons stated in the Partial Award.

(3) The Tribunal makes no award in relation to any relief claimed at paragraph 34.4 of the Claimant's Request for Arbitration and in the Respondent's Counterclaim, any such claims having been withdrawn.

(4) Each party shall bear its own costs of the arbitration proceedings.

(5) Each party shall bear 50% of the costs of the Tribunal and the ICC.

(6) The Tribunal declares these proceedings ended.

This Order is dated 30 April 2018 and is signed in counterpart by each member of the Arbitral Tribunal below.

Professor Douglas Jones AO

J. Brian Casey

Dr Michael Moser

ORDER FOR TERMINATION

Further to the Partial Award on Jurisdiction dated 20 March 2017;

Upon the Tribunal having declined jurisdiction in the Partial Award in relation to the declaratory relief claimed in paragraphs 34.1 and 34.3 of the Request for Arbitration;

Upon the Tribunal having granted in the Partial Award the relief claimed at paragraph 34.2 of the Request for Arbitration;

Upon the Claimant electing not to pursue its claim for relief at paragraph 34.4 of the Request for Arbitration;

Upon the Respondent having withdrawn the Counterclaim by letter to the Tribunal dated 13 March 2018;

And by consent:

(1) The Tribunal declares that the Arbitration Agreements in the Stadia Contracts remain valid and binding, as claimed at paragraph 34.2 of the Request for Arbitration, for the reasons stated in the Partial Award.

(2) The Tribunal declines jurisdiction in relation to the declaratory relief claimed at paragraphs 34.1 and 34.3 of the Request for Arbitration, for the reasons stated in the Partial Award.

(3) The Tribunal makes no award in relation to any relief claimed at paragraph 34.4 of the Claimant's Request for Arbitration and in the Respondent's Counterclaim, any such claims having been withdrawn.

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Professor Douglas Jones AO

J. Brian Casey

Dr Michael Moser

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(5) Each party shall bear 50% of the costs of the Tribunal and the ICC.

(6) The Tribunal declares these proceedings ended.

This Order is dated 30 April 2018 and is signed in counterpart by each member of the Arbitral Tribunal below.

Professor Douglas Jones AO

J. Brian Casey

Dr Michael Moser

EXHIBIT "MAA4"

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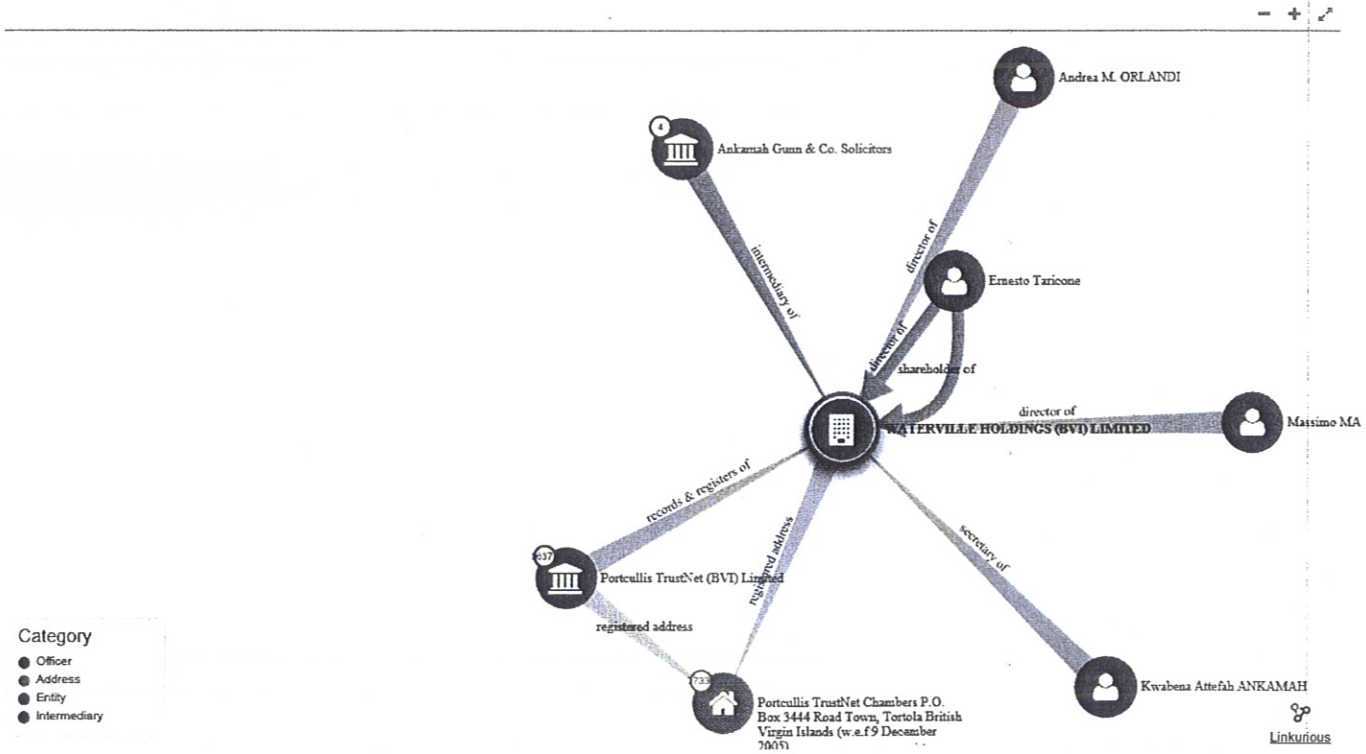

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