

19th OCTOBER, 2016

TO:

The Chairperson

Electoral Commission

Head Office

Eighth Avenue, Ridge

Opposite Ridge Hospital

P. O. Box M214

Accra, Ghana

Attn: Chairperson/Returning Officer for Public Presidential Election 2016

Dear Madam,

RE: REJECTION OF NOMINATION AS PRESIDENTIAL CANDIDATE

1. We act as solicitors for the People's National Convention (PNC) and its Presidential Candidate for the 2016 general elections, Dr. Edward Nasigre Mahama ('Our Clients') and write upon their instructions.
2. Our Clients have instructed us to humbly bring the following matters to your urgent attention, and given the closeness of your actions to the date of the Presidential Elections, to demand, on their behalf, that remedial action be taken on them forthwith, and in any event not later than forty-eight (48) hours from the time of receipt of this letter.
3. The PNC is a registered political party under the laws of the Republic of Ghana, a member of the Inter Party Advisory Committee (IPAC), and has since 1992, gone through all requisite processes, including the filling and filing of nomination forms, and contested ALL Presidential elections organised by the Electoral Commission (EC) of Ghana.
4. Dr. Edward Nasigre Mahama ran for President of Ghana in 1996, 2000, 2004, and 2008, each time filling and filing nomination forms with the EC, which forms were always accepted by the EC, save for any corrections mandated by the EC.
5. Dr. Edward Nasigre Mahama (our client) was duly elected the Presidential candidate of the PNC in line with its Constitution on the 12th of December 2015, at the party's annual delegates congress in Wa.

6. On the 13th of September 2016, the EC opened Presidential nominations for all Political parties and set the 30th of September 2016, for the close of nominations.

7. The PNC duly picked up their Presidential nomination forms on the 14th of September 2016, and proceeded to process the thousands (1000's) of pages of documentation necessary to completely fill up hundreds of forms.

8. Further, the EC's Administrative Instruction or Directive to all Political Parties and Independent Presidential candidates through IPAC was that, completed Presidential nomination forms could ONLY be presented on either the 29th or 30th of September 2016, and no sooner than these stipulated dates.

9. On Friday the 30th of September 2016, at about 14:00 hours GMT, and within the "stipulated nomination period" and the "stipulated submission period", our clients personally submitted their completed Presidential nomination forms to the Chairperson of the EC, who by law is the returning officer for Presidential elections.

10. The Chairperson of the EC personally accepted our clients' completed Presidential nomination forms and duly acknowledged receipt of same by undersigning to the completed forms. The Chairperson of the EC then called on Dr. Edward Nasigre Mahama to append his signature on the submitted forms with two attesting witnesses, and this was done.

11. By letter dated the 10th of October 2016, captioned, 'REJECTION OF NOMINATION AS PRESIDENTIAL CANDIDATE', the EC purported to reject the nomination forms of our clients on the basis of "irregularities", which in the view of the EC "constitute a substantial breach of the rules", and implying that our Client, Dr. Edward Nasigre Mahama, did not have "the requisite number of subscribers required under Regulation 7(2) (b) of CI 94 to support [his] nomination."

12. The said "irregularities" which "constitute a substantial breach of the rules" and "necessitating the rejection of [our Client's] nomination forms" are that two subscribers to the nomination forms of our client also subscribed to the nomination forms of another presidential candidate; and also that some subscribers did not or wrongly thumbprinted, signed or marked the said forms.

13. In complete, definitive, effective, and effectual answer to the first reason for the rejection of the nomination forms of our Client, we attach to this letter, certified true copies of Statutory Declarations by the two persons named in your letter to our Client as having subscribed to the nomination forms of another presidential candidate, denying completely and on oath that they did so.

14. The Statutory Declarations state unequivocally that they subscribed to the nomination forms of our Client, and only our Client, for the 2016 presidential elections. Although they may have subscribed to the nomination forms of another presidential candidate of their party, the PNC, for previous elections, they subscribed to the nomination forms of ONLY Dr. Edward Nasigre Mahama, as PNC Presidential Candidate for the 2016 general elections.

15. The original copies of the said Statutory Declarations, hereto attached, are available upon submission of this letter to be sighted by you or your representative, and they are both signed and thumbprinted by the Declarants so as to be easily verifiable through the testing of the thumbprint mark against their actual physical and natural thumbs.

16. Further, our Clients will like for us to indicate to you that, under the laws, rules, regulations and practices surrounding presidential elections, they have no way of determining or preventing the unauthorised use by other candidates of the particulars of persons who subscribe to the nomination forms of our Client, for the simple reason that they have no control, custody or access to the nomination forms of other candidates.

17. Since our clients have neither custody nor access to the nomination forms of other candidates, the job of leveraging any misrepresentations or errors in them, bringing them to the attention of the those concerned, requiring that they be rectified, or taking other appropriate action, respectfully, rests with you within the meaning of Regulation 9 of C.I. 94 and cannot, by any stretch of the imagination, be offloaded by you to our Clients.

18. An aspect of this first ground for the rejection of the forms of our Client, is that the signatures of the two subscribers in issue are differently represented on the forms of our client and on the forms of another candidate. We are instructed to inform you that our Client can only speak to the authenticity of the signatures on his form and not the forms of others. The marks and signatures on our Client's forms are the only authentic marks and signatures of the two persons, and no other. Our clients maintain that the two individuals whose signatures are in issue are known members of the PNC who have remained loyal and committed to the party. In the case of Abaako Issifu, he joined the PNC in 1992 and is a card bearing member whose loyalty has remained unshaken over the years. Abudu Ayuba on the other hand, joined the PNC in 2012 and his loyalty has equally been unwavering. The National Executive Committee of the PNC made it clear to all would be subscribers in the various Districts to desist from double subscription or endorsement of Presidential candidates. As already noted, our clients do not have in

their custody, the completed forms of other Presidential candidates and cannot be reasonably expected to know about or to speak to the alleged disparities in signatures on their forms and some other forms belonging to other presidential candidates. If the EC had drawn the attention of our Clients to this fact, and provided them the opportunity to explain or remedy it before the purported rejection of their forms, they would have produced the above evidence in full answer to the concern.

19. Having fully answered what we consider to be the main ground for the rejection of the nomination forms of our Client, we proceed to answer the less significant ground of absence of, or errors in, thumb-printing, signing or marking the nomination forms.

20. We admit, after thoroughly examining the hundreds of pages of the nomination forms, that a few minor errors exist in them. One Yaw Gyasi in the Gomoa West District may have failed to sign on page 16 of one of the forms, and on page 24, one Ntow Twumasi in the Ga West District may have failed to append his signature on one of the forms and on page 28, Issah Isaka in the Ashaiman District appeared not to have signed to one of the forms. HOWEVER, on the said pages 16, 24 and 28 of the returned forms, the subscribers provided their names, residential addresses and particulars of their voter identification cards - authentic and traceable criteria that may be used to verify the authenticity of their subscriptions to our client's forms.

21. The presidential nomination forms are voluminous and are required to be completed in quadruplicate. It is, therefore, possible to have the identified subscribers commit honest mistakes, for example, in not signing to the fourth form after signing to three. This is a mere error which is amenable to correction in a matter of minutes. All the EC had to do was to notify our clients of this oversight and for them to have same corrected. This in our view does not constitute a "substantial breach of the rules" so as to necessitate the rejection of the nomination forms of our Client, and with it the choice and hope of several thousands of Ghanaians.

22. Farmers, market women, engineers, doctors, lawyers, legal drafters, courts of law, all make mistakes, because *errare humanum est*. It is for this reason that Wills, signed and sealed and deposited in the High Court may be corrected after a person dies. It is for this reason that judges may correct their judgments after they are delivered.

23. The EC and Parliament know the above basic principle of human life and therefore provided for it in the Public Elections Regulations, 2016 (C.I. 94) and in its Regulation 9. Regulation 9 makes it mandatory for the EC to provide an opportunity to our clients to make amendments or alterations to their completed forms when errors of this nature are detected. The EC, acting contrary to C.I. 94, neglected to

provide our Clients with an opportunity to correct the said errors and cannot now disqualify our client on the basis of those minor errors it did not give our Clients the opportunity to correct.

24. It is important to note that, aside breaching the clear provisions of the law in this matter, the EC went outside its convention and practices. It has always been the practice since 1992, for the EC Chair as returning officer for presidential elections, to go through the completed forms with the presidential candidates and afford them the opportunity to have same rectified prior to any possible disqualification. For example, during the last presidential elections in 2012, the then EC Chair, Dr. Afari Gyan, went through the completed presidential nomination forms with the national executive and presidential candidate of the PNC and duly pointed out errors to them, affording them the opportunity to have same rectified. The unwarranted abrogation of a practice and convention, that finds further grounding in legislation, is illegal and completely unacceptable.

25. A part of the second and last ground for the rejection of the nomination forms of our Client relates to the character of the marks that were placed on the nomination forms by subscribers. Our Constitution and administrative practice require that the EC would publish very basic guidelines as to how to complete the presidential nomination forms. Administratively, this would have set the ground rules for all candidates, including our clients. The apparent lack of very basic accompanying instructions for the completion of the forms meant that mistakes would be made. This is evident from the rejection of the forms of the vast majority of presidential candidates. It is completely unfair to reject the nomination forms of our client based on the neglect of duty by the EC. If the EC had indicated, for example, what a "mark" means, beforehand, many would have resisted the intuitive Ghanaian inclination to believe that a "mark" for "yes" means a tick, and an "x" means "no". Our Clients believe that over 99.9% of Ghanaians, including many subscribers to the nomination of our client who are illiterate, do not even know that such a thing as a "Black's Law Dictionary" exists and cannot be expected to make a "mark" in accordance with the description of a "mark" in that dictionary, as required, ex post facto, by the EC. In the absence of clear instructions, it is our considered view that a tick by some of the subscribers ought to pass the litmus test of what constitutes a valid subscription to the nomination forms. Indeed, a blank space, accompanied by the details of a subscriber who is confused as to what a "mark" is, and in the absence of any clear instructions from the EC, ought to satisfy that test.

26. Flowing from the above; given the nearness of the presidential elections; the irreparable political and other damage your letter of 10th October 2016, has caused our Clients; and the current and continuing disruption of the presidential campaign agenda of our Clients; we request that you revoke your letter of 10th October 2016, forthwith, and in any event not later than 48 hours after receipt of this letter, and to hold the nomination forms of Dr. Edward Nasigre Mahama duly submitted to you on the 30th of September 2016, as sufficient for the purposes of the 2016 presidential elections.

27. Additionally, and in the event that the EC insists that the minor errors in the nomination forms of our Client are enough to bar the candidature of our client, we would require access to the nomination forms of all the other candidates in order to point out similar minor errors that should have equally disqualified them if the EC was acting within the remit of Articles 17, 23, 33, 55, and 296 of the 1992 Constitution.

28. If after 48 hours of receipt of this letter you fail to commit, unequivocally, to meeting the above demands, we shall proceed and resort to other lawful processes or avenues to vindicate our client's rights without further recourse to you.

29. It is the considered view of our Clients that the erosion of the Constitutional Rights, Human Rights, Political Rights, Legal Rights, Right to Administrative Due Process, and the compromise of our multiparty democratic dispensation by the purported rejection of the nomination forms of our client, is not to be done lightly and on the basis of dubious facts and a far less than optimal interpretation of the law.

30. Finally, in the event that any notice is required by any law or rule of practice for the institution of any legal proceedings against you, this letter shall constitute such notice.

Yours in the Service of Mother Ghana,

Dr. Raymond Akongburo ATUGUBA

(SOLICITOR'S LICENCE NO. GAR 13053/16)

ATUGUBA & ASSOCIATES

(Lawyers & Notaries)

CC:

1. The Chairman

Peoples National Convention (PNC)

PNC Headquarters

Abavana Junction

Kotobabi - Accra

2. Dr. Edward Nasigre Mahama

House No. 4

Mansour Road

Paraku Estate

Dome - Accra

3. Mr. Emmanuel Anyidoho

House No. PE 11

Paraku Estate

Dome - Accra