

IN THE THIRD SESSION OF THE SECOND PARLIAMENT  
OF THE FOURTH REPUBLIC

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APPOINTMENTS COMMITTEE

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TWENTY-FIRST REPORT ON MINISTERIAL NOMINATIONS

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Mr. Speaker,

On 3<sup>rd</sup> February 1999 you referred the nomination of Dr. Tony Aidoo by the President for the position of Deputy Minister of Defence, to the Appointments Committee to investigate and report to the House.

The Committee could not immediately proceed with the public hearing of the proceedings on the said candidate because of a request made by the Hon. Minority Leader that the Chairman of the Appointments Committee should cause a subpoena duces tecum to issue, directed at the Registrar of the University of Cape Coast to produce for the consideration of the Committee the record of service of Dr. Tony Aidoo who is a former lecturer of the said University. In the opinion of the Hon. Minority Leader this record of service would be relevant and germane to a proper examination of the nominee. He did not assign any other reasons for the request apart from his

contention that he was entitled to the records as of right and that the Chairman had a duty to order its production.

This being an unprecedented request, your Committee had to sit in camera to consider the merit of the Hon. Minority Leader's application. At the sitting, attention was drawn to the procedure that the Appointments Committee had adopted to govern the public hearing of Presidential nominees and in particular paragraphs 3, 4 and 5 of the said procedure which I shall proceed to quote in extenso:

3. "List of nominees to be examined in a public hearing is put up as a News Bulletin inviting the general public to submit in writing any information in respect of any of the nominees to the Appointments Committee".
4. "Chairman of the Committee reviews all objections excluding obnoxious objections"
5. "Committee then meets in camera to review the objections considered by the Chairman to be worth examining".

Reference was also made to Standing Order 155 which reads as follows:

"For the purposes of effectively performing its functions, each Committee shall have all such powers, rights and privileges as are vested in the High Court of Justice or a Justice of the High Court at a trial in respect of:-

- a. enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise.
- b. compelling production of documents and
- c. the issue of a commission or request to examine witnesses abroad.

On the basis of these provisions, the Minority group contended that it was within the authority of the Committee to issue subpoena to obtain Dr. Aidoo's service records.

The Majority group argued that the right to request for subpoena to issue was not absolute and that any applicant had a duty to raise justification for the application.

It was hotly contested that since at the High Court an application for the production of documents may not necessarily attract the requirement of such application being justified in specific terms, the Appointments Committee which has the same powers as the High Court should dispense with any justification for the present request. It is the view of the Majority that whereas in the High Court the issuance of a subpoena is an administrative process at the registry where the intervention of the Judge is sought, such a request must be justified.

It is worth noting that in equating the authority of the Appointments Committee to that of the High Court, the

Standing Orders probably did reflect on the fact that there was a structural difference between the Committee and the High Court and that wholesale application of High Court procedures by the Committee may sometimes complicate the work of the Committee. Accordingly, Order 200 (1) of the Standing Orders provide that in Committees, the Standing Orders of the House shall be observed so far as may be applicable. (emphasis supplied).

But what are the structural differences?

1. The High Court is presided over by a single Judge who has no interest in matters that come before him apart from his duty to ensure that justice is done.
2. The Appointments Committee is made up of not more than 25 Members of Parliament whose composition according to Order 154 shall as much as possible reflect the different shades of opinion in Parliament. There are literally 25 Judges who at times carry their prejudice into the public domain.
3. On account of its composition, a Committee decision to commit a witness for perjury could have serious consequences especially when opinion is drawn along Party lines.

4. The High Court Judge has no such inhibition.
5. Again, although Committees are vested with the powers, rights and privileges of the High Court in respect of those issues mentioned in Article 103 (6) of the Constitution, the approval process should not be equated to a trial at the High Court.

For the afore-mentioned reasons, it would be almost preposterous to argue that since the Appointments Committee by Order 155 has the powers, rights and privileges of the High Court, these should apply to the Committee without reservation and that a subpoena duces tecum must issue as a matter of course, upon application.

The Appointments Committee by majority rejected this argument and affirmed the need for requests to be supported by justiciable grounds. The Hon Minority Leader's contention that whether "good, bad or indifferent, the public service records of Dr. Tony Aidoo ..... is very relevant" was rejected since such a proposition could open the doors for fishing for evidence, a process your Committee frowns upon. It is to be noted further that the Appointments Committee has always relied on the Curriculum Vitae of nominees as evidence of "service record". If any nominee's service in any particular

department is called to question, a prima facie case ought to be made for the consideration of the Committee.

It was further argued that upon a proper interpretation of the rules of procedure of the Committee, the objections contemplated by paragraph 4 did not cover issues that Honourable Members of the Committee would raise by themselves and that they related only to objections from the general public.


Paragraph 4 of the Committee's rules of procedure require that the Chairman of the Committee shall review ALL OBJECTIONS excluding obnoxious objections. One of the principles that ought to guide our understanding of the said rules is the need for such construction as would give effect to not only the letter but the spirit of the rule. It is also important that the Appointments Committee should not stultify itself by making rules which can be detoured by other legitimate means.

If for instance the objections contemplated by rule 4 are those coming from the general public only, it means that any objection from a Member of the Committee will not be the subject of review by the Chairman of the Committee. And therein lies the stultification. In order to avoid the scrutiny of the Chairman any member of the public who has an objection against a nominee will simply channel it through a Member of


the Committee, a situation which will immediately robs the objection of its public source.

In order to give effect not only to the letter but also to the spirit behind procedural rule 4, the Committee by majority decided that ALL OBJECTIONS means all objections, including objections to the nomination, coming from Members of the Committee.

It is important to note that at the public hearing, the Committee did not receive any formal objection from either the public or any Honourable Member. Dr. Tony Aidoo in the opinion of a majority of the membership of the Committee acquitted himself creditably. By a majority decision of 12 in favour, 1 against and 2 abstentions, your Committee recommends the nomination of Dr. Tony Aidoo for parliamentary approval.



HON KENNETH DZIRASAH  
FIRST DEPUTY SPEAKER AND  
CHAIRMAN OF THE APPOINTMENTS  
COMMITTEE



AMY FORSON (MS)  
CLERK TO THE COMMITTEE

15<sup>TH</sup> MARCH 1999