COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE
GHANA
COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (CHRAJ)

CASE NO: CHRAJ/HQ 27/2022

IN THE MATTER OF THE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE ACT, 1993 (ACT 456)

AND

IN THE MATTER OF A COMPLAINT OF PROCUREMENT BREACHES AND ABUSE OF OFFICE BY A PUBLIC OFFICER

BETWEEN

SACUT AMENGA-ETEGO — **COMPLAINANT**

AND

PAUL ADOM OTCHERE
BOARD CHAIRMAN
GHANA AIRPORTS COMPANY LIMITED — **RESPONDENT**

DECISION

1.0 INTRODUCTION AND RELIEFS SOUGHT

This is the decision of the Commission in the case intituled above. By a complaint lodged in this Commission on 31 January 2022, the Complainant herein alleged procurement breaches and abuse of office against the Respondent/Board Chairman of the Ghana Airports Company (GACL) in the procurement of Christmas Tree

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www.chraj.gov.gh

decorations for the Company in 2021. The Complainant prays substantially for the following reliefs:

1. A declaration that the Respondent has breached several provisions of the Public Procurement Law, the Public Financial Management Law and principles of corporate governance in the procurement of Christmas Tree decorations in December 2021;
2. An order directed at the Ghana Airports Company Ltd (GACL) to surcharge the Respondent for the amounts involved in the procurement breaches and to recommend his removal as Board Chairman; and
3. A reference by the Commission to the appropriate authorities of its investigations and recommendation for the prosecution of the Respondent.

2.0 BACKGROUND

The Ghana Airports Company Limited (GACL) has been decorating its airports with Christmas Trees and Lightings during Christmas festivities each year. In December 2021, the GACL decorated the Kotoka International Airport, Terminals 2 and 3 with some Christmas Trees and Lightings. Subsequent to this, some media reports alleged that the Respondent had requested potential vendors interested in supplying Christmas Trees and Lightings to the GACL to issue their invoices in the Respondent's name. It was also alleged that the GACL had spent about One Hundred and Eighteen Thousand Ghana Cedis (GH₵118,000.00) of the taxpayers' money on the said Christmas Trees and Lightings.

It is against the backdrop of these reports that the Complainant lodged the instant complaint against the Respondent, containing a number of allegations per letter entitled: **PETITION TO THE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (CHRAJ) ON CHRISTMAS TREE PROCUREMENT BREACHES BY BOARD CHAIRMAN OF GHANA AIRPORT COMPANY: MR PAUL ADOM OTCHERE**

3.0 THE ALLEGATIONS

A summary of the allegations made by the Complainant is as follows:

(i) Mr. Paul Adom Otchere is the Board Chairman of GACL, a company owned by the citizens of Ghana;

(ii) Mr. Paul Adom Otchere is a host of a Television Programme on Metro TV called 'Good Evening Ghana;

(iii) Mr. Paul Adom Otchere on the 07 January 2022 edition of the 'Good Evening Ghana' programme stated that, he, in his capacity as the Board Chairman of the GACL used public funds in procuring Christmas Trees for the GACL;

(iv) Mr. Paul Adom Otchere stated that he invited two (2) vendors to submit quotations for the Christmas decorations;

(v) Mr. Paul Adom Otchere received quotations amounting to One Hundred and Eighteen Thousand Cedis (GH₵118,000.00) from the two (2) vendors;

(vi) Mr. Paul Adom Otchere breached Section 43 (1) of the Public Procurement Act, 2003 (Act 663) as amended by inviting only two (2) vendors for the procurement of the Christmas Trees in December 2021;

(vii) The total value for the procurement of the Christmas Trees, that is One Hundred and Eighteen Thousand Cedis (GH₵118,000.00) is above the threshold according to the 5th schedule of the Public Procurement Act, 2003, (Act 663) as amended;

(viii) The transaction ought to have gone through the National Competitive Tendering procedures because it is above the threshold of One Hundred Thousand Ghana Cedis (GH₵100,000.00) which includes advertising in newspapers;

(ix) The transaction was split in order to avoid being above the One Hundred Thousand Ghana Cedis (GH₵100,000.00) threshold contrary to Section 21 (6) of the Public Procurement Act, 2003, (Act 663) as amended;

(x) Mr. Paul Adom Otchere directly involved himself in the procurement of the Christmas Trees as a Board Chairman which is an abuse of office;

(xi) The statement by Mr. Paul Adom Otchere that the Ghana Airports Company received a donation of Fifty Thousand Ghana Cedis (GH₵50,000.00) towards the purchase of the Christmas Trees and for that reason the actual cost of the Christmas Trees is Seventy-Eight Thousand Ghana Cedis (GH₵78,000.00) is not correct in view of the Public Financial Management Act, 2016 (Act 921); and

(xii) Mr. Paul Adom Otchere has breached the principles of corporate governance because the Chief Executive Officer runs the day-to-day activities of the company including procurement whilst the Board Chairman runs the Board.

The petition is reproduced in extenso as follows:

Davies Arcade
18th Lane
Osu Accra
Ghana

January 31st 2022

Petition to The Commission on Human Rights & Administrative Justice (CHRAJ) on Christmas Tree Procurement Breaches by Board Chairman of Ghana Airport Company; Mr. Paul Adom Otchere

I am a Ghanaian citizen seeking justice for the people of Ghana on how their funds (public funds) were misused in the case of the procurement of Christmas trees by the board chairman of the Ghana Airport Company Limited. As a good citizen of the Republic of Ghana and striving to be a better citizen, I am of the firm belief that the proper use of public funds and the right conduct by public office holders are key in our quest to building a prosperous nation.

I also hold this to be a self-evident truth, that insisting that public officers live by the rules set out to safeguard public funds, and ensuring fairness in accessing public resources, is the only way to make Ghana a better place for us all, it is in the spirit that I submit this petition to the Commission on Human Rights and Administrative Justice.

Mr. Paul Adom Otchere is the board chairman of the Ghana Airport Company, a company owned by citizens of Ghana, of which I am a proud member. Mr. Paul Adom Otchere is also the host of a television program on Metro TV called 'Good Evening Ghana'. On the January 7, 2022, edition of the program, he made certain revelations about he, in his capacity as the board chairman of the Ghana Airport Company had used public funds in procuring Christmas trees for the Ghana Airport Company.

According to his own narration on the Good Evening Ghana television program, he invited two vendors to submit quotations for the Christmas decorations and the two vendors submitted quotations amounting to a total of (GHS 84,000 + GHS 34,000) GHS 118,000.00.

This narrative reveals several breaches of the public procurement laws, principles of corporate governance, and abuse of the public office on the part of Mr. Paul Adom Otchere.

Firstly, Mr. Adom Otchere said he invited two vendors to submit bids for the procurement of the Christmas trees in December 2021. Section 43 sub section 1 of the law mandates that a minimum of three quotations are invited. The law reads, "The procurement entity shall request quotations from as many suppliers or contractors as practical, but shall compare quotations from AT LEAST 3 different sources…"

Secondly, the total value of the decorations according to him is GHS 84,000 + GHs 34,000 = GHS 118,000.00. This is above the threshold for requesting for the quotations directly from vendors. According to the 5th Schedule of the Public Procurement Act, ACT 663 as

amended, the transaction ought to have gone through the National Competitive Tendering (NCT) procedures, which includes advertising in newspapers.

Thirdly, the transaction was split in order to stay within the GHS 100,000.00 threshold for the price quotation, that is (84,000 + GH 34,000= 118,000.00). Section 21 sub section 6 of the law says "A procurement entity shall not divide a procurement order to avoid the application of the procedure for the public procurement in this ACT".

Fourthly, by directly involving himself in procurement of the Christmas trees, Mr. Paul Adom Otchere has abused the powers of his office and breached one of the cardinal principles of corporate governance, that of separation of the roles of the chairman of the board and the chief executive officer. The chief executive officer runs the day to day affairs of the company, including procurement, whiles the board chairman runs the board.

Mr. Adom Otchere on a later edition of the Good Evening Ghana Show counter argued that there is a donation component to the transaction, amounting to GHS 50,000.00; and therefore the actual value of public funds spent was GHS 78,366.

This position is not correct. This is because amounts donated in the name of public institutions are public funds. The Public Financial Management Act, 2016, ACT 921, clarifies this. The interpretation of section (102) reads, "Public resources means public revenue including acquired through DONATION, bequest, borrowing, movable and fixed asset, deposit, receivables and right".

It is clear that the law regards donations to public institutions as public money and therefore it cannot be treated differently from other public resources.

Also, the Public Procurement Act, Act 663 as amended defines the scope of applications of the ACT. Section 14 of the Public Procurement Act reads, "This Act applies to (a) the procurement of goods, works and services, Financed in whole or in part from public funds…"

Given that the donation of GHS 50,000.00 was public funds, the rules of the Public Procurement Act and the Public Financial Management Act applies to the funds. The transaction, amounting GHS 118,000.00 ought to have gone the National Competitive Tendering Procedures.

By inviting two vendors to submit quotations for the decorations, by not following the National Competitive Procedures, by his splitting the transactions into two to avoid the GHS 100,000.00 price quotations thresholds, and by meddling in the procurement process, Mr. Paul Adom Otchere has caused multiple injuries to the Public Procurement Act, ACT 663 and the Public Financial Management Act, and also breached principles of corporate governance.

Reliefs sought from CHRAJ By Petitioner

This petitioner therefore seeks the following reliefs.

A declaration that Mr. Paul Adom Otchere, board chairman of the Ghana Airport Company, has breached several provisions of the public procurement law, the public

financial administration law and the principles of corporate governance in the case of the procurement of Christmas trees for the Ghana Airport Company in December 2022.

An order for the Ghana Airport Company Limited to surcharge the perpetrator of the breaches, Mr. Paul Adom Otchere for the amounts involved in the breaches and recommend his removal as board chairman of the company.

A referral of this case, by CHRAJ, to the appropriate prosecutorial authorities and recommend prosecution of Mr. Paul Adom Otchere.

PETITIONER

Sacut Amenga-Etego
Journalist,
18th Lane
Davies Arcade
Osu, Accra
Ghana
0205927770

The Complainant attached to his petition, a document containing communications allegedly made on a Webpage on the January 7. The title "Good Evening Ghana Offi" (sic) is on the Search Column of the page. There is a picture of a person under the Search Column. By the picture is the expression "Good Evening Ghana Official". The picture appears to be that of the Respondent. Each communication apart from the preamble is preceded by the word "FACT". Apparently, this communication was culled from the Webpage of Good Evening Ghana, a programme allegedly being hosted on Metropolitan Television (Metro TV) by the Respondent.

4.0 THE RESPONDENT'S POSITION

In accordance with Reg. 3 (1) (a) of the **COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (INVESTIGATIONS PROCEDURE) REGULATIONS, 2010 (C.I 67)**, the Commission transmitted a copy of the Complaint with its annexures for comments by the Respondent.

The Respondent initially failed to provide the Commission with his comments despite a reminder to him to do so prompting the Commission to issue a Subpoena on the Respondent requiring his attendance before the Commission and the production of the following documents to assist the Commission in its investigations:

1. **Copy of advertisements requesting for bids in respect of the supply of Christmas Trees to the Ghana Airports Company in 2021;**

2. **All Entity Tender Committee Minutes and Reports on contracts awarded for the supply of Christmas Trees to the Ghana Airport Company Ltd in 2021;**
3. **Copies of Bids submitted by Jandel Limited, and Favors and Arts Ltd for the supply of Christmas Trees to the Ghana Airport Company Ltd in 2021;**
4. **Agreement between Ghana Airports Company Limited and DDP Outdoor Ltd which Trees through discount and sponsorship from DDP; and**
5. **All other documents relating to the purchase and supply of Christmas Trees in 2021 to the Ghana Airports Company Ltd.**

In compliance with the subpoena, the Respondent appeared before the Commission on the 30 June 2022 where he stated that the process at the GACL resulting in the Christmas Trees and Lighting decorations in 2021 did not lend itself to the Procurement Act. That the GACL rented the Christmas decorations in 2021 and did not procure same as alleged by the Complainant. He submitted a letter from the Ministry of Transport with Ref. No, SP/60/349/01 dated 10 June 2022 to back his claim. The said letter signed by one Theresa Kokui Fiador, Designated RTI Officer for the Minister is in response to letter from one Redeemer Buatsi for information and is captioned **RE: REQUEST FOR INFORMATION UNDER ARTICLE 21 (1) (F) OF THE 1992 CONSTITUTION OF GHANA AND SECTION 18 OF THE RIGHT TO INFORMATION ACT, (ACT 989).**

The Respondent also submitted to the Commission, a copy of a Cheque No. 0162190012010006345 from Societe Générale Bank, Accra Main in the name of DDP Outdoor Limited dated 16 December 2021 with a face value of Forty-Six Thousand, Two Hundred and Fifty Ghana Cedis (GH₵46,250.00) in favour of Favors and Arts Company. He indicated that this was the copy of the cheque that was given to the GACL from DDP Outdoor Limited as sponsorship.

In the circumstances, the Respondent did not make available to the Commission any of the documents subpoenaed by it.

On 18 October 2022, four (4) months after appearing before the Commission, the Respondent submitted his comments on the petition to the Commission in which he repeated, in essence, the position taken by him during his appearance before the Commission. While admitting that he used the word "procure on the show", he indicated that the word "procure" as used by him did not mean "procure" as

contemplated by the Act. That the word procure does not mean the technical word referred to in the Act. He added that acquisition of property and rental are two (2) different things. He indicated also that the Petitioner should have exhausted domestic remedies. He therefore referred to section 13 of the **Commission on Human Rights and Administrative Justice Act, 1993(Act 456)** which empowers the Commission to refrain from investigating where there is administrative remedy. He concluded by praying the Commission to explain to the Petitioner and the public the non-applicability of the procurement law to the process and the absence of any breach of the law. We have decided to quote in extenso the full comments of the Respondent as below:

PAUL ADOM OTCHERE
Branrepublicghana@gmail.com
Metro Television
Dr. Isser Street-Accra

Re: PETITION TO THE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE ON THE CHRISTMAS TREE PROCUREMENT BREAHCES BY BOARD CHAIRMAN, PAUL ADOM OTCHERE

The above topic is referred.

This is a response to the petition as titled above concerning the acquisition of the Christmas inspirations for the Ghana Airport Company Limited.

The petitioner avers that the respondent, to wit, Mr. Paul Adom Otchere has violated the Public Procurement Act, 2003 (Act 663) and as such, suggested sanctions including prosecution against him.

Consequently, the response to the petition showeth as follows;

The Specific Act of Procuring

It would seem that the petition in question evinces the understanding on the part of the petitioner that the words used on the show, to wit, procuring makes itself amenable to the Public Procurement Act, 2003 (Act 663). **The word procured used during the show did not mean procure as contemplated in the Act**.

It is admitted that the word 'procure' is not defined in the Act. Consequently, recourse has to be made to other jurisdictions and secondary sources to ascertain its meaning. In the USA, specifically, in 41 U.S. Code …. 111, the term is defined to

include in all stages of the process of acquiring property or services, beginning with the process for determining a need for property or services and ending with a contract completion and closeout.

It would seem therefore, that the definition means to acquire property. **Acquisition of property and rental of property are two different things.**

As has been explained by the company and by a letter from the minister of transport (already rendered), the entire process to obtain Christmas inspirations for the airport was obtained as a rental as has always been and therefore the process of procuring in that context does not lend itself to the public procurement laws. **This is as a result of the fact that even though the word 'procure' was used on the show, it does not mean the technical word which is referred to in the Act.** Hence the petitioner did not make correct reference to the facts **by confusing procure as used on the show in its simple term with procure in its technical sense which is what is alluded to in the Act.**

Exhaustion of Internal Remedies

The acts of 'procuring' are acts of the company and not the chairman of the company. Consequently, it behoves on the petitioner to ensure that the right respondents are brought in issue. **That notwithstanding, if it is the position of the petitioners that there was still malfeasance concerning the said transaction, then the appropriate remedy was to use internal mechanisms of the company to settle the said issue.** There is no such indication in the petition that such internal mechanisms have been resorted to. The **petitioner ought to have made use of the various mechanisms corporate structures afforded**, which included filling a complaint against the said respondent. This principle as has been hallowed by the courts in cases such as **Boyefio v NTHC Properties** 1997-98 1 GLR 768; **Republic v High Court, Koforidua, Ex Parte: Asare (Baba Jamal & Others Interest Parties)** 2009 SCGLR 460; and **Gaisie Zwennes Hughes & Co v Loders Crocklaan** BV 2012 SCGLR 363.

The rationale behind the **said duty to exhaust internal remedies has been to ensure that the judiciary and quasi-judicial bodies are not burdened with disputes that may be resolved internally.** If these internal methods are not used, then their existence proves nugatory, and all the work that may have been put into bringing them into existence goes to waste. This rule also exists to ensure that such disputes that end up before bodies like CHRAJ are ones that are bona fide and not disputes used to settle personal scores, or to court public attention which some may ride on to achieve their moments of fame.

In **Section 13 of the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456),** it is provided that where there is an administrative remedy for a complaint the commission may refrain from investigating the matter. The petitioner thus, did not allude to any fact that shows that he resorted to the use of internal remedies to help salvage the situation. He did not indicate whether he had expressed his grievances through the chain of command of the company, neither did he indicate whether he had informed the shareholders to call for an external audit in order to determine a breach of Finance Management laws or Procurement laws. **Rather, he submitted this petition in haste based on views expressed on a television show as the basis for the commencement of this investigation.**

Consequently, if the petitioner has the company at heart, then it will be in the interest of the same company, to file a complaint and utilize internal mechanisms the company has afforded him.

Conclusion

In the circumstance, I wish to thank CHRAJ for its interest in the matter and will be relying on CHRAJ to explain to the petitioner and the general public that the process did not have anything to do with the Public Procurement Law and thus no procurement breaches can be found under a process that does not come under the law of procurement (emphasis supplied).

It would appear prima facie that the Respondent is challenging the jurisdiction of the Commission to handle this complaint since the Complainant has not exhausted domestic remedies, and the authority for this is section 13 of the **Commission on Human Rights and Administrative Justice Act, 1993(Act 456).** Unfortunately, the Respondent did not exhibit consistency in this approach. This is because in concluding his comments, the Respondent requested the Commission to

> **"explain to the petitioner and the general public that the process did not have anything to do with the Public Procurement Law and thus no procurement breaches can be found under a process that does not come under the law of procurement".**

In the Commission's respectful view, such a prayer could only be addressed after investigations. For on what information or evidence is the Commission going to rely on, to enable it to explain to the public that the acquisition of Christmas trees and lightings had nothing to with the procurement law and accordingly had no procurement breaches. This prayer by the Respondent obviously obviates any compelling reason to discuss the merits to the objection against jurisdiction based on the non-exhaustion of domestic remedies; for the law is clear that you cannot approbate and reprobate.

5.0 MANDATE

The Ghana Airports Company Limited (GACL) is a state-owned company with responsibility for developing, maintaining, planning and managing airports in Ghana. It was registered in 2006 and presently manages airports such as Kotoka International Airport, Wa Airport, Tamale Airport, Sunyani Airport, Ho Airport, Kumasi Airport and other airstrips in Ghana. It was established as a result of the decoupling of the existing Ghana Civil Aviation Authority(GCAA) which was in line with current trends in the aviation industry. The Authority has a Board of Directors appointed by government.

On the 23 November 2021, a new Board of Directors with the Respondent as Chairman was inaugurated by the Deputy Minister of Transport to govern the Company following their nomination by His Excellency, the President of the Republic per letter signed by the Chief of Staff Ref. No.OP/COS/07 of 30 August 2021.

In **Dr Dominic Akuritinga Ayine** v **The Attorney-General (J1 5 of 2018) [2020] GHASC 21**, the Supreme Court defined a "public officer" as follows:

> **Reading the Constitution as a whole, we are convinced that the framers contemplated a situation where all persons appointed to serve the nation in one capacity or the other and paid out of public funds charged on the consolidated fund are deemed to be public officers holding public office. Some of these public office holders are engaged in various work within the public services while others function as administrative, political or legal office holders.**

In virtue of his appointment by the President of the Republic, it can be said that the Respondent is a public officer. The beef of the Complainant is that the Respondent engaged in procurement breaches and abuse of office in the procurement of Christmas trees and lightnings by the Ghana Airport Company in 2021. Are these allegations susceptible to investigations by the Commission?

It is trite learning that public procurement breaches are a specie of corruption. Corruption in public procurement sometimes manifests as bribery, rent-seeking, contractor-client payoffs, kick-backs etc. Indeed, corruption can occur through violations of procurement rules or through legitimate deviations from the rules (see article by Soreide,T **"Corruption in Public Procurement, Causes, Consequences and Cures"**, Chr. Michelben Institute, Bergen, accessed @ gsdrc,.org/documents.library on 26 April 2023).

Thus, allegations of public procurement breaches invariably also amount to corruption.

The power of the Commission to investigate public officers for acts of corruption and abuse of office is provided under Article 218(a) of the 1992 Constitution. Besides this, the Commission also has the mandate to investigate all instances of alleged and suspected corruption and the misappropriation of public moneys by officials under Article 218(e). These provisions are quoted below:

> **218.The functions of the Commission shall be defined and prescribed by Act of Parliament and shall include the duty**
>
> **(a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;**

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> **(a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;**

(e) to investigate all instances of alleged or suspected corruption and the misappropriation of public moneys by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigations;

These provisions are restated in section 7(1)(a) and (f) of the **Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)** which provides as follows:

Section 7. **Functions of the Commission**

In accordance with article 218 of the Constitution, the functions of the Commission are,

(a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of a person by a public officer in the exercise of official duties;

(f) to investigate instances of alleged or suspected corruption, and the misappropriation of public moneys by an official and to take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from that investigation;

Clearly, from the above, the Commission has the mandate to investigate the allegations of procurement breaches and abuse of power lodged by the Complainant.

5.0 ISSUES FOR DETERMINATION

There is no dispute that in December 2021, the Ghana Airports Company caused the Kotoka International Airport to be decorated with Christmas Trees and Lightings christened as "Christmas inspirations". However, whereas the Complainant alleges that the Respondent abused his office and committed *inter alia* procurement breaches, the Respondent states that the decorations were rented and thus the process did not lend itself to the Procurement Act. The Respondent as noted supra, relied on a letter from the Ministry of Transport to back his assertions. It is also important to note that the Respondent in his written comments on the petition failed to address specific allegations relating to the role that he played in the said procurement or renting of Christmas inspirations such as statements made by him on his use of public funds to procure Christmas trees, his invitation of two (2) vendors to submit quotations, his receipt of quotations amounting to GHS118,000.00 and the splitting

of the transaction into two(2) to avoid being above GHS100,000.00. To the extent that these allegations were not addressed by the Respondent, they remain in issue.

Accordingly, the issues for determination are as follows:

1. Whether the Respondent stated on Good Evening Ghana programme that he used public funds to procure Christmas Trees.
2. Whether the Respondent stated that he invited two (2) vendors to submit quotations.
3. Whether the Respondent received quotations amounting to GHS118,000.00.
4. Whether the transaction was split into two (2) to avoid being above GHS100,000.00
5. Whether the process of renting of Christmas Trees by the Ghana Airports Company amounts to procurement and thus amenable to the provisions of the Procurement Act, 2016(Act 663) as amended.
6. Whether the Respondent acted in breach of Act 663 as amended.
7. Whether the Respondent abused his office as Board Chairman of the Ghana Airports Company Ltd.
8. Whether the Respondent breached the Public Financial Management Act 2016 (Act 921) and principles of corporate governance.
9. Whether the Complainant is entitled to the reliefs claimed.

6.0 METHODOLOGY

In conducting this investigation, the Commission engaged in the following:

1. Consideration and evaluation of copies of the following documents:
   (a) 'Good Evening Ghana' Official webpage dated 7 January(sic).
   (b) A video clip of the 7 January 2022 Edition of the 'Good Evening Ghana' programme on Metro TV.
   (c) Letter from the Ministry of Transport (with an attachment) dated 10 June 2022.
   (d) Cheque No. 01621900120100063345 from Societe Generale Bank, Accra Main Branch.
   (e) Letter from Ghana Airports Company dated 30 August 2021 and signed by its former Managing Director, Yaw Kwakwa and addressed to the Managing Director, Guaranty Trust Bank Ghana.

(f) Letter from Ghana Airports Company dated 30 August 2021 and signed by its former Managing Director, Yaw Kwakwa and addressed to the Managing Director, Stanbic Bank.

(g) Letter from Ghana Airports Company dated 30 August 2021 and signed by its former Managing Director, Yaw Kwakwa and addressed to the Managing Director, Republic Bank Bank (Ghana).

(h) Letter from Ghana Airports Company dated 30 August 2021 and signed by its former Managing Director, Yaw Kwakwa and addressed to the Managing Director, Consolidated Bank Ghana.

(i) Letter from Ghana Airports Company dated 30 August 2021 and signed by its former Managing Director, Yaw Kwakwa and addressed to the Managing Director, Zenith Bank (Ghana) Limited.

(j) Letter from Ghana Airports Company dated 30 August 2021 and signed by its former Managing Director, Yaw Kwakwa and addressed to the Managing Director, Access Bank Ghana.

(k) Letter from Ghana Airports Company dated 30 August 2021 and signed by its former Managing Director, Yaw Kwakwa and addressed to the Managing Director, Ecobank Ghana Ltd.

(l) Letter from Ghana Airports Company dated 30 August 2021 and signed by its former Managing Director, Yaw Kwakwa and addressed to the Managing Director, Omnibsic Ghana Ltd.

(m) Letter from Ecobank dated 9 November 2021 and signed by its Managing Director, Daniel Sackey and addressed to the Managing Director, Ghana Airports Company Ltd Ghana.

(n)Memorandum from Head, Corporate Communications & PR of the GACL to the Managing Director and dated 14 December 2021, attached to which are copies of the following documents:

(i) Invoice from Favors and Arts dated 14 December 2021 addressed to Ghana Airport Company, Accra and Mr. Paul Adom Otchere, the Respondent herein,

(ii) Pro Forma Invoice dated 14 December 2021. The name Jandel appears on the Invoice and the Client is Ghana Airports Company Ltd,

(iii)Cheque/Payment Advice No. 51493 dated 16 December 2021 from Ghana Airports Ltd in favour of Jandel, and

(iv) Photograph of Christmas Tree and Lightings.

2. Interviews with the following persons:
   (a) Gordon A. Wiru – Director, Legal of GACL,
   (b) Rev. Dr. John Okwesie Arthur – Group Executive, Finance of GACL,
   (c) Mr. Emmanuel Fianko – Group Executive, Procurement of GACL,
   (d) Ms. Adjoa Boatemaa Sono – Head, Corporate Communication and Public Relations of GACL,
   (e) Mr. Paul Adom Otchere (Respondent),
   (f) Madam Afia Amoro - CEO of Jandel Company Limited, and
   (g) the Complainant.

7.0 SUMMARY OF EVIDENCE

7.1 THE DOCUMENTS

(a) 'Good Evening Ghana' Official webpage dated 7 January(sic). This document has the picture of someone who appears to be the Respondent. The document contains communications by the person apparently in reaction to social media post on the Christmas trees and lightings dubbed "Christmas inspirations". In what may appear to be a preamble, it is stated as follows:

> **Dear folks, my attention has been drawn to a social media post (herein attached) grossly misrepresenting facts about Christmas inspirations that were mounted at the Kotoka International Airport.**

The person then states what he describes as "the facts". A background of the mounting of Christmas inspirations is given. It is stated that total expenditure of 2021 is the lowest since 2016. It is stated that **"two separate suppliers were invited to submit bids. The bids were discussed, and discounts obtained.** (We are grateful to Jandel Limited and Favors and Arts)."

It is stated that the beautiful Christmas trees standing at Terminal 2 and 3 cost GHS34,000.00 provided by Jandel limited. It is also stated as a fact that the other inspirations were provided by Favors and Arts at a total cost of GHS84,000.00 out of which GHS50,000.00 was obtained via sponsorship. The author then responds to an allegation and states as follows:

> **It is ridiculous for anyone to say that the invoices from these two reputable companies were issued in the name of the Board Chairman,**

that just means that the author of such spurious allegations has insufficient acquaintance with corporate workings.

The author states that "The GACL has a fully operational corporate affairs department that is able to attend to all public enquiries" and then assures the public of the commitment to support the Hon. Minister of Transport to achieve the President's vision for the airport. We have marked this document as Exhibit SAE.

(b) Video clip of the 7 January 2022 Edition of the 'Good Evening Ghana' programme on Metro TV. This audio-visual contains a presentation made by the Respondent on the said date and it is entitled- WHETHER OR NOT THERE WAS PRUDENT USE OF COMPANY'S RESOURCE.

The Respondent first refers to a statement made on Facebook and states as follows:

> **So, we are here to do what you were expecting us to do and what we told you that we're going to do those of you on Facebook. We told you that we're going to give a proper graphic explanation of the statement that we put out regarding all the brouhaha at the airport. Thank you very much for your time.**

He indicated that the presentation is "an editorial testimony". He then states the rationale of the presentation in the following words:

> **What we want to do is to tell you what happened and we are confident that the question behind me will be answered positively. Now, what is the question for, for what we're going to do over the next 5 minutes? We think that it's a fundamental question that we have to answer because when you occupy certain positions, whether it's part time or it's full time.**

He states that the presentation is meant to address the issue relating to the prudency in the use of the GACL's resources:

> **So, the question we believe that people want to the question we should be answering is whether or not there was prudent use of the company's resources and which company we are talking about. We know the company we are talking about, whether or not there was prudent use of the company resources and we're going to show that we're going to show the interventions that were made in the same story that you already know by the time we are finished.**

He refers to an Invoice issued in the joint names of the Company and the Respondent and indicated that questions have been raised on it and proceeded to offer an explanation:

> **From the company, a certain invoice bearing my name as an attention to the company and to me. And there's a lot of concern about that. Even genuine people have called us to ask what? What is that about? We're gonna explain to you. So what happened was that because of the COVID situation, this process about creating Christmas inspirations at an International Airport.**

He again referred to the need for prudent expenditure and assured viewers that they will be satisfied that there was prudent expenditure at the end of the presentation:

> **...we were interested at the leadership to be sure that prudent spending was done and by the time I finished the story, you will see that we were successful in ensuring that spending was prudent. We talked about spending less this year than was spent five years ago. In 2016, we will show you that we will show you that.**

He then displayed the invoice on the screen and explained to viewers what is meant by an Invoice. He also referred to questions being raised on why the Invoice was issued in his name and stated as follows:

> **This is just an invoice, it's not. It doesn't mean anything. OK, so people asked the question why was your name on the invoice? OK, the name was on the invoice because I requested that I needed to see the**

He also indicated that the invoice was needed because of the need to make an intervention:

> **The reason why the invoice was on was so that we can make an intervention. OK, so now let's go and see what intervention we made. What intervention did we want to make? We wanted to make an intervention so that.**

He compared expenditures between Christmas inspiration in 2016 and 2021 and stated that:

> **So, what they did in 2016 was not wrong. We are trying to show that we came in at the top level to make an intervention so that the question can**

be answered in the affirmative that the company's resources was prudently expended on this Christmas inspiration.

He said that in 2016, an amount of GHS126,000.00 was spent on one Terminal whilst in 2021, the amount spent was GHS128, 366 on two terminals at the Airport adding that the last amount was not taken solely from the company's finances and explained that sponsorship was secured from a company called DPP through the involvement of leadership:

Because the leadership was involved, we decided that, well, let us see whether we can get some sponsorship for this. Let's see whether we can get some sponsorship for this. So guess what we called Ghanaian companies, Ghanian advertising companies and one of them, DPP, came up and said that, yes, we'll help you to pay for.

He added that the sponsorship package from DPP to GACL was GHS50,000 which was paid directly to the company that supplied the inspirations and therefore GACL only spent GHS78,366.00:

That they will support us with 50,000 cedis for the purpose of creating the inspirations at Christmas. So where what then is the total cost, the total cost is then 128, three, six, 6 minus, 50,000 and that brings us to 78,366. That is the amount of money that was spent in 20.

DPP came up and said we will help you. We'll give you 50,000. So they offered us 50,000 cities and the 50,000 cedis was paid directly from the DPP to one of the suppliers. The checks are there. You can have a look at it. It's there. You can go to the airport and demand that they will give it to you. So 50,000 cedis mine.

He revisited concerns raised on the Invoice and added why the intervention made was not contrary to good corporate governance, he stated:

And so when Christmas inspirations came up, the principle having already been established, we went in to say that let us let us see the invoice. Let's have a look at the invoice. Send me the invoice. Let me have a look at it. Let's see whether there are other ways in which we can do it. Let's see whether we can talk to the companies to bring their spending down. So the purpose of that intervention far away from violating the rules of corporate governance.

He again stressed on the role that he played in relation to the Invoice. He stated as follows:

> **And the reason why I needed to see, I wanted to see the invoice was so that we can make an intervention to reduce the company's expenditure when we set out to do that, we didn't know that we will do better than five years ago, but eventually by God's grace, we did.**

He referred to a statement made by Churchill, ex-Prime Minister of Britain on Adolf Hilter and posited as follows:

> **About Hitler, Churchill said to the English people, the British people, he said Hitler will do his worst, but we will do our best. Let me repeat that, Churchill said. Hitler will do his worst, but we will do our best.**

Concluding, he reiterated that the amount spent was GHS78,366 and not GHS118,000.00 contrary to a publication on the graphic on line. We have marked this audio-visual as Exhibit "CHRAJ A".

Since the foundation of the instant complaint is partly based on this audio-visual, we have decided to reproduce the full transcript of it below:

TRANSCRIPT OF PRESENTATION BY RESPONDENT ON GOOD EVENING GHANA

So, we are here to do what you were expecting us to do and what we told you that we're going to do those of you on Facebook. We told you that we're going to give a proper graphic explanation of the statement that we put out regarding all the brouhaha at the airport. Thank you very much for your time. And how are you going to call this? We call letter Paula dormitory in his own doc. And we're going to give a testimony.

00:00:20 Speaker 1

So, this is a testimony, editorial, or editorial testimony after that, hopefully everyone will understand what happens. So here is the editorial montage.

00:00:33 Speaker 1

Welcome back to the show. OK. So I'm sure that you have heard news items and all of that tonight. What we want to do is to tell you what happened and we are confident that the question behind me will be answered positively. Now, what is the question for, for what we're going to do over the next 5 minutes? We think that it's a fundamental question that we have to answer because when you occupy certain positions, whether it's part time or it's full time.

00:00:55 Speaker 1

So long, that's the position of the state. Everyone has an obligation to show this.

00:01:00 Speaker 1

So, the question we believe that people want to the question we should be answering is whether or not there was prudent use of the company's resources and which company we are talking about. We know the company we are talking about, whether or not there was prudent use of the company resources and we're going to show that we're going to show the interventions that were made in the same story that you already know by the time we are finished.

00:01:21 Speaker 1

You have all the facts and as we already said, the Public Affairs Department is competent and they can check the facts. One thing we have to start with is this so-called invoice matter. There is on the social media. I think there was a leakage.

00:01:32 Speaker 1

From the company, a certain invoice bearing my name as an attention to the company and to me. And there's a lot of concern about that. Even genuine people have called us to ask what? What is that about? We're gonna explain to you. So what happened was that because of the COVID situation, this this process about creating Christmas inspirations at an International Airport.

00:01:53 Speaker 1

And the same for every airport in the world. Every year. It's done every year in Ghana, has been done even before Terminal 3, when there was only Terminal 2. Inspirations are created at Christmas, so the principal.

00:02:02 Speaker 1

Is there as soon as this principal arrived for the purpose of this period, we were interested at the leadership to be sure that prudent spending was done and by the time I finished the story, you will see that we were successful in ensuring that spending was prudent. We talked about spending less this year than was spent five years ago. In 2016, we will show you that we will show you that.

00:02:22 Speaker 1

Not so because we are doing a comparative analysis, but we show you that so that we know that when we said we intervene to occasion a better spending for the.

00:02:31 Speaker 1

Process it was true and it was useful because we ended up spending less than we spent five years ago. So every year we do it. But this 2021 spending was less than five years ago. So what are we talking about here? Let's begin with the point about the invoice. So this is the

invoice that has gone round and that people are concerned about is by a company called favors and art. I think that by now we all understand.

00:02:52 Speaker 1

Invoice is not a bill. An invoice is an intention of a company to do something for us, so I can send an invoice to Metro TV. Say I can build you a studio for 10,000 cities. If you see that invoice, LinkedIn the newspapers, it doesn't mean that Metro TV have bought the studio from me. It's just an invoice beyond the invoice and other things. So this is the explanation that.

00:03:12 Speaker 1

This is just an invoice and I'm happy to report that this invoice was not we didn't obey this invoice. We didn't use this invoice. I'm going to show you how and why we didn't use the invoice and people have gone around and talked about the cost on this invoice being the cost of the inspiration.

00:03:28 Speaker 1

That is totally wrong. Only a person who does not understand the invoice, or who has forgotten what it is will make that conclusion all of us. And I'm sure we all understand what an invoice is. As I said, invoice is just an intention invoice from a company is given to another company. That this is what we want to do for you. Whether the company will accept the invoice or not is another.

00:03:47 Speaker 1

Matter. So this is.

00:03:48 Speaker 1

This is just an invoice, it's not. It doesn't mean anything. OK, so people asked the question why was your name on the invoice? OK, the name was on the invoice because I requested that I needed to see the.

00:03:57 Speaker 1

Invoices that their potential suppliers are sending to the company so that we can intervene by bringing down the cost, because if we don't see the invoice, all we know is that the company will pay the money, we will not be able to intervene. So let me have a look at the invoice was the the the question that we asked so that we can intervene in reducing the price. So are we able to do that?

00:04:18 Speaker 1

First of all, let's make the point that this invoice was not accepted. Why would we say so? Because this invoice is the one that has a Christmas Tree, 4 of it for 84,000. And so people are banding around that a Christmas tree was bought for 84,000. That's not true.

00:04:32 Speaker 1

We put out a statement that the Christmas tree was bought for 34,000. In fact, City Online did the story, but that's OK people did other stories, but that so this invoice was not used. The reason why the invoice was on was so that we can make an intervention. OK, so now let's go and see what intervention we made. What intervention did we want to make? We wanted to make an intervention so that.

00:04:52 Speaker 1

There will be prudent use of the company's resources and we are confident that the company's resources was better and prudently used because of the intervention from the leadership.

00:05:01 Speaker 1

Level, OK so.

00:05:02 Speaker 1

Let's move on.

00:05:03 Speaker 1

OK, so the invoice has been explained, so this is just an invoice. We didn't use it. We didn't buy it, we didn't. We we went with favours and as we didn't buy their Christmas tree at 84,000, we didn't. So this invoice was not used. So people who put out the invoice that says that just just ignore it. The invoice was never used. OK, so let's move to this. This is the comparison we are talking about.

00:05:22 Speaker 1

So this was 2016 figures. OK. So in 2016, they spent them on Christmas inspirations was 126,000 and that this was at 1 terminal.

00:05:33 Speaker 1

This was just one terminal in 2016, and 2016 is significant because we understand that some of the people who are raising concerns about it are are animated by politics and they are animated. Therefore, by the political positions they take and that is why we go to 2016, which was a different political arrangement. We all know that December 2016, the NDC had lost the election by the NDC authority.

00:05:53 Speaker 1

Still run in the airport and this is what happened.

00:05:56 Speaker 1

The Christmas inspirations 126,000 cities were spent five years ago. Please remember that is five years ago when they spent 126,000. You can calculate those of you are good at

financial engineer. You can calculate the rate of inflation and then see if we were spending even the same rate, how much would have been today. But the actual figures.

00:06:16 Speaker 1

Actual terms, this was 126,000 spent in 2016 and they spent it on one terminal because at that time the airport had one main terminal Terminal 2.

00:06:26 Speaker 1

So this spending is on one Terminal 22 this is 2016, 126,000 spent on one terminal. We are not saying that they did anything wrong in 2016. We believe that the principle that every International Airport, that's Christmas inspirations at the festive season, it's a correct principle. Some people may think it's wrong, but by and large it's accepted. Every airport must do that.

00:06:47 Speaker 1

So, what they did in 2016 was not wrong. We are trying to show that we came in at the at the at the top level to make an intervention so that the question can be answered in the affirmative that the company's resources was prudently expended on this Christmas inspiration. So please follow me.

00:07:02 Speaker 1

Finished soon, 126,000 cities were spent on one terminal in 2016. Let's move on. OK, so this is now 2021.

00:07:11 Speaker 1

128,366 is a total amount of money that was spent on 2 terminals. Terminal 2 and Terminal 3, because now in 2021 Terminal 3 has arrived. So we have terminal two since 2018. Also Terminal 2 and Terminal 3. In 2021, Terminal 2 and terminal.

00:07:31 Speaker 1

Three spent 180, one 128,366. We have not finished the.

00:07:37 Speaker 1

So when this came up, this is the critical part of the intervention. We decided that the company and I have to take you back to the system where we right here that this money was totally paid by the company. This 126 was paid out of the company's office, all of it five years ago was paid out to the company's office for one terminal. OK, let's move on.

00:07:56 Speaker 1

Now this one is set 2021. This was paid for two terminals we have not yet said whether is a company's resources or not, and that's the other intervention. So when we arrived at this position.

00:08:06 Speaker 1

Because the leadership was involved, we decided that, well, let us see whether we can get some sponsorship for this. Let's see whether we can get some sponsorship for this. So guess what we called Ghanaian companies, Ghanian advertising companies and one of them, DPP, came up and said that, yes, we'll help you to pay for.

00:08:21 Speaker 1

Some of your.

00:08:22 Speaker 1

Christmas inspirations. That's that has not happened in a very long time, but that happened.

00:08:26 Speaker 1

Fine, because we wanted to be able to spend prudently. So by the time I finished, you know, the actual figure of what was spent on Terminal 1, Terminal 2 for Christmas trees and all the other inspirations, some people ask the question that what does it mean to say Christmas inspirations? We have not taken them off. You can go to the airport and see it is Sunday layers light all those things that make the airport beautiful to give us internationalization.

00:08:47 Speaker 1

That we need at the festive season, that's what we call inspiration. Some people have asked the question, what is inspiration? That that's what inspiration is. 3 is 3. Inspiration constitutes many other fixes including light. So. So that's that's that's the point to 128,366 pence on 2 terminals. Terminal 2 and Terminal 3. We came in and said that.

00:09:06 Speaker 1

We called in the advertisers and spoke to them and said that we you need you need to help us. So they said they would pay us some money. We asked for some money we discussed and they came to a certain amount of money and they told their management that amount of money was 50,000 cities. So the 2021 spending had a sponsorship package. Cash is not 50,000.

00:09:27 Speaker 1

In equipment in cash that the DPP decided to support us because of the representation we've made to them.

00:09:33 Speaker 1

That they will support us with 50,000 CDs for the purpose of creating the inspirations at Christmas. So where what then is the total cost, the total cost is then 128, three, six, 6 -, 50,000 and that brings us to 78,366. That is the amount of money that was spent in 20.

00:09:50 Speaker 1

21 compared to 2016.

00:09:53 Speaker 1

Five years ago, this and this is 210.

00:09:55 Speaker 1

Channels. That was one terminal. This is 2 terminals. That was one terminal, so viewers and those of you on Facebook. This is the figure of the total spending is not what has been bandied around. I've seen a graphic online story says 118 was spent. It's not correct. This is what is correct. And this is correct. When you do the.

00:10:12 Speaker 1

Math when you.

00:10:13 Speaker 1

You do the total cost, which was 128.

00:10:15 Speaker 1

Minus the sponsorship that we gained for the.

00:10:19 Speaker 1

Because we didn't want the company to spend all that money.

00:10:21 Speaker 1

We wanted to.

00:10:22 Speaker 1

Insist that there should be prudent resources of prudent management of the company's resources in whatever small situation, because it's a company that has great potential, but because of COVID this a company that is that is, that is doing that is having some a lot of difficulties. The company is going through a lot of difficulties because of COVID.

00:10:38 Speaker 1

And everybody knows that airports are the biggest hits, transportation and all of that are some of.

00:10:43 Speaker 1

Biggest hit from the COVID and our airport is just recovering before Omnicon came in. All of those circumstances, we decided that there has to be a way in which company spending other season can be done prudently. So we looked at the numbers, look at the figures and say why don't we also find advertising. The advertisers also were cashed up. They were because COVID has affected them.

00:11:03 Speaker 1

DPP came up and said we will help you. We'll give you 50,000. So they offered us 50,000 cities and the 50,000 series was paid directly from the DPP to one of the suppliers. The checks are there. You can have a look at it. It's there. You can go to the airport and demand that they will give it to you. So 50,000 cities mine.(WHAT DPP AS SPONSOR DID)

00:11:20 Speaker 1

As this came up to 78,000, so this was what was spent in 2021, five years after the NDC's last spending the NDC's last spending was in 2016, and that spending was this figure 126, and was spent on one Terminal 1.

00:11:41 Speaker 1

You know, cost this, this one. We don't think it's wrong. We're not saying it's excessive. We're just giving you the facts. We're showing you that we we came and we had clear instructions from our bosses that look, this is what you need to do. Go to the airport and make sure that spending is managed because we are in COVID. Once we rise up after COVID we can continue to spend the way we spend. But for now be careful about.

00:12:03 Speaker 1

And so when Christmas inspirations came up, the principle having already been established, we went in to say that let us let us see the invoice. Let's have a look at the invoice. Send me the invoice. Let me have a look at it. Let's see whether there are other ways in which we can do it. Let's see whether we can talk to the companies to bring their spending down. So the purpose of that intervention far away from violating the rules of corporate governance.

00:12:23 Speaker 1

Was to make an intervention towards reducing the expenditure of the company and I'd like to say that again, the intervention of looking at invoices and having invoices.

00:12:32 Speaker 1

And to me and to look at it and and have a direction with the company, far from violating corporate governance was so that there would be prudent management of the companies resources in a difficult time and that we were able to achieve by and large because the figures showed that we're able to achieve that. We didn't know when we set out that we'll be able to achieve a figure.

00:12:52 Speaker 1

More than five years ago, all we were interested in was look at this year's figure and bring it down as much as we can. If we can't bring it down as much as we want, we will try and find sponsorship for it.

00:13:01 Speaker 1

And we were able to do both. We were able to bring down the figure. So in this hundred and in the 78,000 CD's that were spent, we got Terminal 2, Terminal 3 and the loans all inspired by Christmas inspirations and 78,000 because we were able to raise 50,000 advertisements. This is our story.

00:13:22 Speaker 1

Not more, not less. This is our story. But you know, in, in, in now public life, people who occupy public positions, whether you're a part-time board chairman or whether you're full time. We understand that there's a great obligation to the general public. There's there's a higher obligation to the general public than it used to be. And that is why I've taken the time to put out these.

00:13:40 Speaker 1

Figures there. So people who?

00:13:42 Speaker 1

Want to know the facts and people who are interested in looking at it will see that this is what happened. This is the story. So let me just wrap it up quickly now and and go to this one.

00:13:53 Speaker 1

So we talked about prudent resources. I've discussed the invoice, I've mentioned that invoices and invoice. It doesn't. It's not a, it's not a receipt. So invoice is just an intention. This invoice did not stand because we did not accept aspects of the invoice. So we had to to use the company for something else other than the three. So when you see 84,000 on the invoice and you think that.

00:14:13 Speaker 1

Paid 84,000 we we didn't the total payment that we made was 78,000 as you now know and some people also looked at the invoice and I heard the.

00:14:21 Speaker 1

Said that the invoice was issued in my name, so I asked the company to pay me 84,000 that I will supply the Christmas tree. Far from that, since then the company has reported that journalists have been calling them and they have told them the truth. Somehow, when some of them are told the truth, they don't publish it, but they just hear it. So they've called the company. The company has told them the truth. There was even rumor that the company is not registered and registered.

00:14:43 Speaker 1

But that's not true. It's they are very registered. They have been working for big banks in Ghana for a very long time. Somehow they have been told that. But people didn't want to publish it. But that's OK we also will publish.

00:14:54 Speaker 1

The truth you see.

00:14:55 Speaker 1

So in Commonwealth how we used to say that truth stands, so this is just an invoice, it's not, it's not a bill. And the reason why I needed to see, I wanted to see the invoice was so that we can make an intervention to reduce the company's expenditure when we set out to do that, we didn't know that we will do better than five years ago, but eventually by God's grace, we did.

00:15:15 Speaker 1

And so the invoice aside, this is the fact of 2016 spending. This is the fact of 2021 spending. This is the fact of the sponsorship that was achieved. Therefore in the final.

00:15:28 Speaker 1

Analysis 970-8000 is what was paid for there. This has never happened in the history of the airport for a very long time. We are confident that we did the right thing and we are happy that those of you are watching have seen it a lot of what I've said was already in the information that we put out, but we have been compelled to do this because there are still people who don't understand it and so this is our story.

00:15:49 Speaker 1

This is our song. I like to end with the quotation from Sir Winston Churchill, and you can check it up.

00:15:55 Speaker 1

You see it, Churchill told the British people in the height of the Second World War. And everybody was afraid of Hitler. Adolf Hitler, the German fur who was the President of the Nazi Party and the President of Germany. Everybody was afraid of him. He was conquering the world. He tried to conquer England and he failed. That became his Waterloo, and he lost the Second World War.

00:16:15 Speaker 1

About Hitler, Churchill said to the English people, the British people, he said Hitler will do his worst, but we will do our best. Let me repeat that, Churchill said. Hitler will do his worst, but we will do our best.

00:16:32 Speaker 1

And the best is always better than the worst. So thank you very much for watching. This is the story. This is the song. There's nothing to hide. We are. We are confident that everything that we are doing will be transparent. We are excited. That is a great time. We believe that the the all airports in Ghana must be an important symbol for the President.

00:16:52 Speaker 1

Development agenda we are focused on that to pay our dues, do our best, leave our name and leave our mark and other people will continue because we are taking over from other people and Ghana will be the greater for it. This is the story 78,000.

00:17:06 Speaker 1

Bloggers online. Remember the story is this 78,000 is what was spent, not what the graphic online talk 118. What anybody is talking about, this is the correct figure. 78,000 is what was spent. Thank you very much. Here is the montage again. This is our story. This is our song. As for our friend.

00:17:26 Speaker 1

We will talk to about him after the montage if we have time. Thank you. This is our story.

(c)Letter from the Ministry of Transport (with an attachment) dated 10 June 2022.

This letter with Ref. No. SP 160/34910 is dated 10 June 2022. It has the heading: **RE: REQUEST FOR INFORMATION UNDER ARTICLE 21(1)(F) OF THE 1992 CONSTITUTION OF GHANA AND SECTION 18 OF GTHE RIGHT TO INFORMATION ACT (ACT 989).** It is signed by Theresa Kokui Fiador, Designated RTI Officer for the Minister for Transport and it is addressed to one Redeemer Buatsi with Tel. No.054371629 pursuant to a written request from the latter. Paragraphs 2, 3,4 and 5 of this letter are reproduced as follows:

> **Please be informed that, the Christmas decorations for 2021 was rented and not procured by the GACL. Hence, there was no procurement nor bidding process for the award of contract.**
>
> **GACL rented Christmas decorations for the 2021 Christmas Season from two companies to decorate the airport terminals.**
>
> **With specific regards to 2021, per the arrangements, the rented Christmas Decorations will have to be returned to the owners.**
>
> **For emphasis, we wish to reiterate that the Christmas Decorations in question were rented and paid by a sponsor. Therefore, no contract was awarded by GACL for the purpose.**

We have marked this letter as Exhibit PA.

The request from the said Redeemer Buatsi was per letter addressed to the Information Officer of the Ministry of Transport dated 3 June 2022. Relevant parts of this letter are as follows:

> **Request for Information under Article 21(1)(f) of the 1992 Constitution of Ghana and section 18 of the Right to information Act,2019,(Act 989).**
>
> I write to request for information through the information officer of the Ministry of Transport. In the absence of such a designated officer, I direct this request to the Minister.
>
> My request is in exercise of my right under Article 21(1)(f) of the 1992 Constitution of Ghana and Section 18 of the Right to Information Act 2019(Act 989) and in line with my work as a journalist. The following are the specific pieces of information I write to request:
>
> 1. **The names of the companies that participated in the bidding for the Christmas tree procurement and decorations project.**
> 2. **Copies of the contracts awarded to the Companies that executed the contracts (procurement of Christmas Trees and Decorations)**
> 3. **Why did Ghana Airports Company Limited split the contracts between two companies? Could Jandell not have provided both services of providing Christmas Trees and Decorations**
> 4. **Why was the Board of Ghana Airports Company Limited involved in the procurement process?**
> 5. **The number of new Christmas trees procured for last year's (2021) Christmas celebrations?**
> 6. **Did the contractor take the Christmas trees away after the Christmas celebrations or did the Ghana Airports Company retain them?**
> 7. **Annual budget breakdown and scope of work for Christmas tree procurement and decorations for the years 2016, 2017, 2018, 2019, 2020, and 2021**
> 8. **Actual amount spent on the procurement of Christmas trees and decorations for the years 2016, 2017, 2018, 2019, 2020, and 2021?**
> 9. **Why does the Ghana Airport Company Limited have to buy new Christmas trees every year?**

This letter is marked as Exhibit PA1.

(d) Cheque No. 0162190012010006345 from Societe Generale Ghana Bank, Accra Main Branch is in the name of DDP Outdoor Limited dated 16 December 2021 with a face value of Forty-Six Thousand, Two Hundred and Fifty Ghana Cedis (GH₵46,250.00) in favour of Favors and Arts Company. This cheque is marked as Exhibit PA2.

(e) Letter from Ghana Airports Company dated 30 August 2021 and signed by its former Managing Director, Yaw Kwakwa and addressed to Managing Director, Guaranty Trust Bank Ghana.

This letter is entitled **ADVERTISEMENT OPPORTUNITY** and it in essence a request for sponsorship by the GACL to the Bank for Christmas decorations at the Kotoka International Airport. The last three (3) paragraphs of page 2 of this letter specifies the period of the sponsorship and the benefits to the sponsor. They state as follows:

> **Period for Christmas Decoration**
>
> **The sponsor will have a maximum of 6 weeks (from December 1, 2021 to January 10, 2022) within which to exhibit and project the brand at KIA.**
>
> **Benefits**
>
> - **Opportunity to use Christmas decoration as a decoy to create brand awareness and promote your brand**
> - **Opportunity taps into the minds of receptive and excited passengers who feel a sense of excitement while at the airport.**
> - **Advertising your brand at the airport reaches key influential decision makers who may be new to the terrain and may want to know more about the brand**
> - **The ambience within the terminal allows for easy noticeability of the brand.**
>
> **We are committed to availing ourselves at the earliest opportunity to further discuss the opportunity and fashion the best way forward.**

This Letter is marked as Exhibit GACL.

Letters with the same content as Exhibit GACL were also addressed to the Managing Directors of seven (7) other Banks to wit: Stanbic, Republic, Consolidated, Zenith, Access, Ecobank and Omnibsic Banks. We have marked these letters as Exhibits GACL1, GACL2, GACL3, GACL4, GACL5, GACL6 and GACL7 respectively.

(f) Letter from Ecobank dated 9 November 2021 and signed by its Managing Director, Daniel Sackey and addressed to the Managing Director, Ghana Airports Company Ltd Ghana. This letter is an acceptance of the offer made by the GACL per its letter dated 30 August 2021. We have marked this letter as Exhibit GACL8.

(g) Memorandum from Head, Corporate Communications & PR of GACL to the Managing Director and dated 14 December 2021.In this Memo the author advised as follows:

> I advise that for the year 2021, a number of options including sponsorship have been explored to support expenditure related to Christmas decoration. DDP, an advertising concessionaire at the airport has offered GACL a sponsorship amount of fifty thousand cedis (GHS50,000.00).
>
> **Two vendors have subsequently been contacted to submit invoices for decorating selected locations at the airport.** The decorative material will be rented from the respective vendors due(sic) the fragile nature of the decorations and the unavailability of storage at the airport.
>
> Please find below the total cost to be incurred in decorating portions of Terminal 2 & 3.
>
> **Favors and Arts**
> 4 Christmas Chandeliers with lights — GHS90,500
> (Two arrival and two at departures)
> **Jandel**
> 4m Christmas tree at arrival hall
> Lights 120 White outdoor and multicolour
> 240WW outdoor lights
> Decoration of lawn from Terminal 3 to roundabout
> Terminal 2 Departures and arrival — GHS38,775
> **GHS129,275**
>
> Invoices are attached for ease of reference.
>
> Submitted for your kind approval.
>
> ADWOA B. SONO
> (emphasis supplied).

We have marked the Memorandum as Exhibit GACL 9.

This Memorandum as indicated, attached the following documents:

(i) Invoice from Favors and Arts dated 14 December 2021 billed in the name of Ghana Airport Company, Accra and Mr. Paul Adom Otchere. The items covered and the accompanying prices are as follows- Christmas Chandelier with lights- GHS84,000.00; Transportation/Scaffold-GHS3,500.00; Assembling/Disassembling-GHS3000. The total as indicated in the Invoice is **GHS90,500.00.** This is marked as Exhibit GACL9 (1).

(ii) Pro Forma Invoice dated 14 December 2021. The name Jandel appears on the Invoice and the Client is Ghana Airports Company Ltd. The description

of items to be supplied is as follows: LIGHT UP 2021 Terminal 3 arrival Hall (decorated Christmas tree with lights)-GHS10,000.00; Lighting décor on the trees around the Lawn- GHS15,000.00; Decoration of existing trees-GHS5,000.00. The Total is **GHC38,775.00.** We have marked this as Exhibit GACL 9(2).

(iii)Cheque/Payment Advice No. 51493 dated 16 December 2021 from Ghana Airports Ltd in favour of Jandel. The Payment Details are stated as follows: PAYMENT FOR INSTALLATION OF CHRISTMAS TREE AT ARRIVAL HALL AND DECORATION OF LAWN FROM TERMINAL 3 TO ROUNDABOUT 13 DEPARTURES AND ARRIVAL(JANDEL). The Cheque is valued at **GHS35,866.87.** We have marked this as Exhibit GACL 9(3).

(iv) Photograph of Christmas Tree and Lightings. We have marked this as Exhibit GACL 9(4).

7.2 THE INTERVIEWS

(a) **GORDON A. WIRU** is the Director, Legal at GACL. Mr. Wiru stated that he was representing Mrs. Pamela Djamson-Tettey, the Managing Director of GACL who had been invited by the Commission to assist in investigations. He made available to the Commission a letter Ref. No: GACL/LSD/CHRAJ/08/2022 dated 05 August 2022 and signed by the Managing Director indicating that she had delegated the following officers at the GACL to represent her: 1.Rev. Dr. John Okwesie Arthur – Group Executive, Finance 2. Mr. Emmanuel Fianko – Group Executive, Procurement and 3. Miss. Adjoa Boatemaa Sono – Head, Corporate Communications and Public Relations. Her reason was that the events and subject matter of investigation by the Commission occurred long before she assumed office as the Managing Director by reason of which she does not possess the requisite knowledge and/or information on the issue to assist in the Commission's investigations.

(b) **REV. DR. JOHN OKWESIE ARTHUR** is the Group Executive in-charge of Finance. He was interviewed by the Commission on 10 August 2022 in the presence of Mr. Gordon A. Wiru – Director, Legal at GACL. Rev. Dr. Arthur stated that he joined the GACL in 2002. He stated that in 2021, the Head of Corporate Affairs of GACL wrote to the then Managing Director, Mr. Yaw Kwakwa for approval to solicit for funds from financial institutions for the GACL 2021 Christmas Trees decorations. He said that following the approval, the Head of Corporate Affairs sent

out letters to ten (10) financial institutions, but it was only Ecobank which responded. He further stated that Ecobank later withdrew its promise to assist GACL at the very last minute. According to him, GACL rented the Christmas Trees from Jandel Limited but that he has no information on how Jandel Limited was selected. He further stated that GACL paid a net amount of GH₵35,866.38 (which is GH₵38,775.00 less withholding tax) to Jandel Limited for the renting of the Christmas Trees. Rev. Dr. Arthur stated that DDP, an advertising company pledged to support GACL in the Christmas Trees decorations in 2021. He said that DDP wrote a cheque of GH₵50,000.00 in the name of Favors and Arts Limited as its sponsorship for 2021 Christmas Trees. Rev. Dr. Arthur stated that the payment to Favors and Arts was in respect of the lightings that was used to decorate the Christmas Trees. He stated that the cheque from DDP was paid directly by DDP to Favors and Arts Limited.

(c) **MR. EMMANUEL FIANKO** is the Group Executive in-charge of Procurement at GACL. He was interviewed by the Commission on 10 August 2022 in the presence of Mr. Gordon A. Wiru – Director, Legal of GACL. According to him, he was appointed in 2018. Mr. Fianko stated that he only heard the names of Favors and Arts Limited and Jandel Limited this year, i.e 2022. He stated that since he joined GACL in 2018, Christmas Trees decorations each year have been on rental basis; hence the procurement unit of GACL has not been part or assigned any duties in relation to same. Mr. Fianko said that it is the corporate affairs department that has been handling the Christmas Trees decorations. He further stated that, there has not been any procurement of Christmas Trees and Lightings by GACL for the following years - 2018, 2019, 2020 and 2021.

(d) **MISS. ADJOA BOATEMAA SONO** is the Head, Corporate Communication and Public Relations of GACL. She was also interviewed by the Commission on 10 August 2022 in the presence of Mr. Gordon A. Wiru – Director, Legal of the GACL. According to her, she was appointed sometime in 1997. Miss Sono stated that she sought approval from the then Managing Director, Mr. Yaw Kwakwa to solicit for funds towards the 2021 Christmas Trees decorations from some financial institutions. She said with the approval from the then Managing Director of GACL, Mr. Yaw Kwakwa she sent out ten (10) letters requesting for financial assistance from financial institutions as that had been the practice in GACL each year for the decoration of the airports. She stated that only Ecobank Ghana Limited responded favourably by letter dated 09 November 2021. She stated that Ecobank Ghana Limited in its letter indicated its intention to use an approved vendor (Messrs Jandel

Limited) to provide the Christmas decorations at the airport. According to her, a few days to the agreed start date, Ecobank Ghana Limited in a telephone discussion withdrew its intended sponsorship without any reason. Miss Sono said GACL therefore settled for the rental of Christmas decorations on 29 November 2021. She said GACL meanwhile had initiated fresh discussions with potential sponsors after the withdrawal by Ecobank Ghana Limited. That DDP Outdoor responded favourably. According to Miss Sono, DDP confirmed a sponsorship support of GH₵50,000.00 by a letter dated 10 December 2021. She said GACL also kept engagement with Ecobank's approved vendor (Jandel) because of its willingness to scale down the cost to fit into the limited funding raised through sponsorship by GACL. Miss Sono stated that, Jandel provided the following to GACL:

(a) Rental of one (1) four feet Christmas Tree decorated with ornaments and mounted it at Terminal 3 Arrival Hall;
(b) Lighting off lawn areas around; and
(c) Decoration of four (4) Christmas Trees with ornaments at Terminal 2 Arrival and Departure Hall.

She further stated that, a second décor company (Favors and Arts) was also approached to complement Jandel's works with a unique décor offering by renting the following items to GACL:

(a) Three (3) chandeliers at Terminal 3 Departures and Meeters and Greeters; and
(b) Christmas Lights and décor along metallic railings at Meeters and Greeters.

Miss Sono concluded by stating that, the Christmas decorations for 2021 were rented and have since been duly retrieved by the owners after the display period. She made available to the Commission copies of eight (8) letters sent out to financial institutions for sponsorship and the response from Ecobank Ghana Limited to back her claims. These letters as stated supra have been marked as Exhibits GACL, GACL1, GACL2, GACL3, GACL4, GACL5, GACL6 and GACL7 respectively.

Miss Adjoa Boatema Sono appeared for the second time before the Commission pursuant to letter Ref. No. CHRAJ/27/2022/294 dated 27 March 2023 following the Commission's interview with one Afi Amoro, the CEO of Jandel Company Limited on 20 February 2023.

Miss. Sono stated that the GACL invited Jandel Company Limited to make a power point presentation through a phone call and not by any letter. She further stated that Madam Afi Amoro was on admission at the hospital during the whole period of the

Christmas Trees decorations at the airports in 2021. Miss Sono stated that, it was the CEO's daughter one Dela who came to GACL premises to make the power point presentation. She also stated that, one Sumila, Deputy to the CEO of Jandel was the one who did all the Christmas Trees decorations at the airports in 2021 on behalf of the company. She stated that it was this same Sumila who presented the Company's Pro Forma Invoice to GACL and took the cheque of GH₵35,866.87 being the cost of Christmas Trees decoration. Miss Sono made available to the Commission, copies of the said Pro Forma Invoice (Exhibit GACL 9(2) and the cheque from GACL with a face value of GH₵35,866.87 made payable to Jandel (Exhibit GACL9(3).

(e) **MR PAUL ADOM OTCHERE(Respondent)** is the Board Chairman of GACL. He was interviewed by the Commission on 15 September 2022. He stated that the Video clip of the 07 January 2022 edition of the 'Good Evening Ghana' program on Metro TV mentioned by the Complainant (Exhibit CHRAJ A) does not contain information or any suggestion that the GACL Christmas Trees decoration was done through procurement. Respondent stated that during the said program on Metro TV he tried to explain to his viewers that 'an invoice' indicates an intention and not necessarily an action taken. He further stated that the said Invoice which was attention the 'Board Chairman' was for him as the Board Chairman of GACL to know the cost of the Christmas Trees decorations and find any possible intervention to bring down the cost. Mr. Otchere also said that the WhatsApp chats which the Complainant attached to his complaint to the Commission is from the 'Good Evening Ghana' official WhatsApp page. He however stated that there is nothing in the chats to suggest that the 2021 Christmas Trees decorations by GACL were procured, nor is there any information indicating that he is directly involved in the day to day running of GACL as alleged by the Complainant. According to Mr. Otchere, whatever he may have said on the 'Good Evening Ghana' program on Metro TV is for the 'TV Show' and not as the statements that he had made to the Parliamentary Select Committee on Transport and the Commission where he was under oath. Asked why he thought there is a distinction between the Statements made on TV Show and his testimony to the Parliamentary Select Committee and the Commission, he stated in response that whatever he said under oath is under oath and cannot be taken as what he had said on the TV Show. He denied the claim by the Complainant that he had breached the principles of corporate governance by inviting two vendors to bid for the GACL 2021 Christmas Trees decorations. Mr. Otchere stated that he happened to sit in a meeting with the then Managing Director

of GACL, Mr. Yaw Kwakwa where a discussion on the 2021 Christmas Trees decorations took place. Mr. Otchere stated that he did not organize the said meeting.

(f) **Madam Afia Amoro** is the Manageress/Chief Executive Officer of Jandel Company Limited. She appeared before the Commission in the company of her Lawyer pursuant to a summons dated 07 February 2023 where she gave evidence under oath. According to her, the Head of Corporate Affairs of GACL invited her by letter to make a power point presentation on how her company can decorate the airports. Madam Amoro stated that after making the presentation she received another letter asking her to undertake the decorations at the airports. Madam Amoro further stated that, the cost for the decorations was GH₵34,000.00 after negotiations and deduction of withholding tax by GACL. Asked whether the letter which granted her the approval to undertake the decorations indicated whether the decorations were rented or an outright sale or were procured by GACL, she stated that it will be disingenuous on her part to say anything without referring to that letter. The Commission therefore requested her to make available to it the two (2) letters written to her by GACL in relation to the decorations whereupon she promised to submit same but till date has failed and or refused to do so contending through her lawyer that she cannot find the letters. An invitation from the Commission to her to speak to these letters has not also been honored.

8.0 ANALYSIS OF THE ISSUES IN THE LIGHT OF THE EVIDENCE AND APPLICABLE LAW

ISSUE 1: **Whether the Respondent stated on Good Evening Ghana programme that he used public funds to procure Christmas Trees.**

It is the Complainant's case that the Respondent stated on the 7 January 2022 edition of the "Good Evening Ghana" programme that he used public funds in procuring Christmas trees. In his comments, the Respondent failed to either admit or deny this allegation. We have closely viewed the Video Clip on the Good Evening Ghana programme, Exhibit CHRAJ A and have not found any specific statement of this made by the Respondent. Many of the statements made by the Respondent in Exhibit CHRAJ A appeared to have been made for and on behalf of the GACL relating to the acquisition of Christmas inspirations, their cost thereof and the rationale for the decisions taken by the GACL. However, in considerable parts of Exhibit CHRAJ A, the Respondent appears not to distance himself from actions taken by the Company. Indeed, the Commission gets the impression that the Respondent was an active participant/player in decisions relating to the acquisition of the Christmas

inspirations as seen in the use of the first person plural pronoun "we". For instance, on the expenditure on the inspirations, Respondent made such statements as:

> **"We were successful in ensuring that spending was prudent",**
>
> **"we paid 78,000"**
>
> **"... the question we believe that people want to the question we should be answering is whether or not there was prudent use of the company's resources and which company we are talking about. We know the company we are talking about, whether or not there was prudent use of the company resources and we're going to show that we're going to show the interventions that were made in the same story"**
>
> **"We put out a statement that the Christmas tree was bought for 34,000. In fact, City Online did the story, but that's OK people did other stories, but that so this invoice was not used"**

In some isolated instances, the Respondent was unequivocal about the active role that he played in the acquisition of the Christmas inspirations. For instance, on the reasons for the appearance of his name on the Invoice emanating from Favors and Arts, Exhibit GACL 9(1), the Respondent states as follows:

> **This is just an invoice, it's not. It doesn't mean anything. OK, so people asked the question why was your name on the invoice? OK, the name was on the invoice because I requested that I needed to see the**

During his interview with the Commission, Respondent stated that the Invoice was "attention him" to enable him to know the cost of the Christmas decorations and find any possible intervention to bring down the cost.

It was based on this invoice that Favours and Arts was paid the amount of GHS34,000.00 out of funds from GACL with an amount of GHS50,000.00 being in cheque by DPP.

It was also based on an invoice Exhibit GACL 9(2) that Jandel was paid the amount of GHS35,866.87 by Cheque by GACL.

In Exhibit SAE, the Copy of the extract from the "Good Evening Ghana Official webpage" dated 7 January and identified by the Respondent, the latter is recorded as stating that:

> **FACT: Two separate suppliers were invited to submit bids. The bids were discussed, and discounts obtained. (We are grateful to Jandel Limited and Favors and Arts)**

FACT: The beautiful Christmas tree standing at Terminal 3 and 3 others altogether cost GHC34,000, which was graciously provided by Jandel Limited at a heavy discount. (We thank Jandel Limited).

FACT: The other inspirations were provided by Favors and Arts for a total cost of GHC84000 out of which GHC50,000 was obtained via sponsorship.

These statements emanating from the Respondent are enough to cause any reasonable mind including the Complainant to make inferences that the Respondent used public funds either by himself or with others to procure Christmas trees. In his comments to the Commission, the Respondent admitted that he used the word "procure" on the show albeit adding that the word was used in its ordinary and not technical sense as contemplated by the Public Procurement Act 2016(Act 663) as amended. The implications of this admission would be discussed shortly but suffice it to note that as no other "show" apart from Exhibit CHRAJ A came to the attention of the Commission in the course of investigations, it is obvious that reference was being made to Exhibit CHRAJ A. This corroborates our view that the Respondent in collusion with others used public funds to acquire Christmas trees.

ISSUE 2: Whether the Respondent stated that he invited two (2) vendors to submit quotations.

The discussion on issue 1 sufficiently addresses this issue in view of statements made by Respondent in Exhibit SAE to the effect that two separate suppliers were invited to submit bids, Jandel Limited and Favors and Arts. Although, the Respondent never indicated that he solely invited these vendors, the cumulative use of the plural pronoun "we", suggests highly that he was a party to this invitation. Moreover, an Invoice Exhibit GACL9 (1), was issued in the Joint names of the Respondent and the Company. The Commission finds untenable the explanation by the Respondent that his name appeared on the Invoice because he asked for it. It is rather that it was issued in his name because the issuer/bidder, Favours and Arts was not oblivious of the influential role that the Respondent as Board Chairman could play in the award of a contract for the supply of Christmas inspirations to the GACL.

ISSUE 3: Whether the Respondent received quotations amounting to GHS118,000.00.

We have not uncovered any evidence indicating that the Respondent received quotations amounting to GHS118,000.00. The Cambridge Dictionary defines the

word "quotation" as "the price that a person or company says they will charge to do a piece of work". This price could be included in a bill of quantities or invoice.

Our investigations do reveal that an Invoice with the value of GHS90,000.00 from Favors and Arts (Exhibit GACL9(1) was issued in the name of the Ghana Airports Company and the Respondent. The Respondent in his own words indicated that he requested for this Invoice because he wanted to make an intervention to ensure cost reduction in the Christmas decorations. Another Invoice from Jandel Company (Exhibit GACL9(2) also issued, but this time solely in the name GACL, was valued at **GHS38,775.00.** The Respondent did not indicate that he received this invoice although in Exhibit SAE, the extract from the official webpage of Good Evening Ghana, he made statements suggesting that he had knowledge of Exhibit GACL 9(2). This is what he stated:

> **Two separate suppliers were invited to submit bids. The bids were discussed and discounts obtained. (We are grateful to Jandel Limited and Favors and Arts).**

The Cambridge Dictionary defines a bid as an offer of a particular amount of money that is for something that is for sale. A bid is also an offer to do a job for a particular price. In the view of Merriam-Webster, a bid is a statement of what one will give or take for something especially an offer for a price. In substance therefore, a bid and an Invoice are the same. Accordingly, a bid is also a quotation. The question to ask is whether the amounts in these quotations aggregate GHS118,000.00, assuming for the sake of argument that the Respondent received quotations from these suppliers? The answer is obviously in the negative because a summation of GHS90.000.00 and GHS38,775.00 is **GHS128,775.00** and not **GHS118,000.00** In the result, the Commission finds untenable the allegation against the Respondent that he received quotations valued at GHS118,000.00

ISSUE 4: Whether the transaction was split into two (2) to avoid being above GHS100,000.00

It is the Complainant's case that the total value of the Christmas trees being GHS118,000.00 is above the threshold, in terms, if Commission understood him, of the capacity/threshold allowable to the management of the GACL under Act 663 as amended. And that the transaction was split to avoid being above the GHS100,000.00.

Now the word split means to break or cause to break forcibly into parts especially into halves or along the grain. A split transaction is the act of splitting or dividing a single and full amount of payment in two or more simultaneous transactions in order to avoid per transaction limits (see https://www.gvsu.edu accessed on 8 October 2023).

Although, the Commission has already found that the total value of the Christmas trees is above the figure of GHS118,000 being proffered by the Complainant, we have found it prudent to determine whether there was any splitting of the actual value of the Christmas decorations. But to do so, there is the need first, to determine whether the acquisition of Christmas inspirations whether by renting or otherwise by the Ghana Airports Company amounts to procurement and thus amenable to the provisions of the Procurement Act, 2016(Act 663) as amended.

The pith of Complainant's case is that the Respondent procured Christmas trees and lightings using public funds and, in the process, breached the public Procurement Act 2003(Act 663) as amended. The Respondent denied this allegation when he appeared before the Commission first, on 30 June 2022 and second on the 15 September 2022, indicating that the process at the GACL resulting in the Christmas trees and lightning decorations in 2021 did not lend itself to the Procurement Act and that the GACL did not procure the inspirations but rented them. He relied on Exhibit PA, the letter from the Ministry of Transport, to support this claim. The Respondent's views were corroborated by officials of the GACL to wit: Miss Adjoa Boatemaa Sono, Head, Corporate Communication and Public Relations, Rev. Dr. John Okwesie Arthur, Group Executive in-charge of Finance and Mr. Emmanuel Fianko, the Group Executive in Charge of Procurement.

However, in his comments on the complaint submitted to the Commission on the 18 October 2022 i.e almost a month after his last appearance before the Commission, the Respondent indicated that he used the word "procure" on the "show". We have already found that the "show" in reference is the "Good Evening Ghana Programme" on Metro TV i.e Exhibit SAE where the Respondent addressed issues relating to the 2021 Christmas inspirations at the GACL. The word procure could only have been used in relation to goods or services in this case the Christmas inspirations. The Respondent nonetheless was quick to add that the word "procure" used did not mean "procure" as contemplated in Act 663 nor in its technical sense. After relying on what according to him, is the meaning of the word in USA, he stated in part:

It would seem therefore that the definition means to acquire property. Acquisition of property and rental of property are two different things.

As has been explained by the company and by a letter from the minister of transport (already rendered), the entire process to obtain Christmas inspirations for the airport was obtained as rental as has always been and therefore the process of procuring in that context does not lend itself to the public procurement laws. This is as a result of the fact that even though the word procure was used on the show, it does mean the technical word which is referred to in the Act.

In its ordinary or natural meaning, the word procure means "to obtain something, especially sômething that is difficult to get"(see the Longman Dictionary of Contemporary English). In Merriam-Webster, it is stated that "procure" a transitive verb means "to get possession of something, to obtain something by particular care and effort" (See merriam-webster.com accessed on 3 October 2023). That being the case, the use of procure in the context of the instant case could only mean that the Christmas decorations were obtained by the GACL. Is this ordinary meaning different from its usage under Act 663?

It is trite learning that "procurement" is the noun form of "procure". Act 663 as amended does not define the word "procurement" or "procure".

Since Act 663 does not define the word "procurement", it is the considered view of the Commission that resort to other jurisdictions will be useful in construing it.

In Tanzania, the word "procurement" is defined under the Public Procurement Act, 2011 as amended in 2016 to mean

> **buying, purchasing, renting, leasing or otherwise acquiring any goods, works or services by a procuring entity and includes all functions that pertain to the obtaining of any goods, works or services, including a description of requirements, selection and invitation of tenderers, preparation, award and management of contracts** (emphasis supplied).

In Kenya, Section 2 (the Interpretation Section) of the Public Procurement and Asset Disposal Act, No.33 of 2015[Rev.2022] defines procurement to mean:

the acquisition by purchase, rental, lease, hire purchase, license, tenancy, franchise, or by any other contractual means of any type of works, assets, services or goods including livestock or any combination and includes advisory, planning and processing in the supply chain system (emphasis supplied).

In Zambia, Section 2 of the **Public Procurement Act,2020[No.8 of 2020]** defines procurement to mean

> **Acquisition by purchase, rental, lease, hire purchase, license, tenancy, franchise or any combination thereof.**

In Nigeria, Public procurement is defined under Section 60, the Interpretation Section of the Public Procurement Act, 2007 to mean **"the acquisition by any means of goods, works, or services by the government".**

The word "acquisition" has been defined as **"simply the process of obtaining property, equipment or vehicles needed for the smooth operation of a business. There are various methods of acquiring assets including leasing, renting and outright buying"(see https://blog.rayda.co accessed on 5 October 2023).**

According to https://www.lawinsider.com/dictionary **Procurement** means

> **buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. The term also includes all activities that pertain to obtaining any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, as well as the disposition of any Protest.**

So that the authorities are legion that "procurement," includes "renting". The Commission therefore disagrees with the Respondent that acquisition of property and rental of property are two (2) different things. This is because whether used in its technical sense or ordinary sense, renting is a specie of procurement.

It is trite learning that Act 663 applies to the Ghana Airports Company which as noted supra is a state-owned company. Being a state-owned company funded with public funds, the GACL is mandated to respect the provisions of Act 663.

Section 14(1) of Act 663, states as follows:

Scope of application

14.(1) This Act applies to

(a) the procurement of goods, works and services financed in whole or in part from public funds except where the Minister decides that it is in the national interest to use a different procedure.

In the case of **Republic v. Bonnie and Others** (Suit No. CR/904/2017) [2020] Eric Kyei Baffour J (as he then was) held as follows:

It is therefore my view that one would have to relate section 92(1) quoted by prosecution to section 14(1) to distil the import of the charges levelled in relation to procurement. That what prosecution claim was bought by the named accused persons was bought by the funds of the Republic and the item that was bought was within the definition of goods, being specifically equipment and was within the scope of the items of goods whose procedure for purchase must conform to the form in Act 663.

It is therefore the Commission's considered view that the provisions of Act 663 as amended ought to have been followed in the rental of the Christmas inspirations. The Commission finds that the renting by the GACL of Christmas inspirations since 2018 to 2021 without recourse to Act 663 (see the evidence of Emmanuel Fianko, Group Executive in Charge of Procurement) is in breach of the Public Procurement Act,2003(Act 663) as amended.

Having found so, the question remains whether the transaction was split to avoid being above the GHS100,000.00 threshold?

Under the Second Schedule of the Public Procurement (Amendment) Act,2016 (Act 914), the approving authority for procurement of goods and services above GHS100,000.00 but below GHS1,000,000.00 for Ministries, Departments and Agencies is the Entity Tender Committee. The total value of Christmas decorations for 2021 was GHS128,366.00. Out of this, DPP paid an amount GHS50,000.00 directly to Favours and Arts under inexplicable circumstances without passing through the GACL which had requested for the sponsorship. Since the amount of GHS50,000.00 was paid by DPP on behalf of GACL, the Commission considers that that money belonged to GACL as the beneficiary. That being the case, the amount of GHS50,000.00 was public money within the ambit of the Public Financial

Management Act, 2016 (Act 921) which under section 102 defines public money to **"include tax revenue, non tax revenue, grants and other receipts".**

Indeed, before the receipt of the GHS50,000.00 the GACL knew or ought to have known that the decorations were within the approval limits of only the Entity Tender Committee ie above GHS100,000.00 threshold.

Section 21(5) of Act 663 states that:

> **(5) A procurement entity shall not divide a procurement order into parts or lower the value of a procurement order to avoid the application of the procedures for public procurement in this Act**

As noted supra, two suppliers were involved in this transaction-Jandel Ltd and Favors and Arts. They were invited to submit invoices. Prior to the invitation, there was no advertisement of the project indicating the total cost of the inspirations. There is no evidence indicating that none of these companies could supply the entire inspirations. Per Exhibits GACL9(1) and Exhibit GACL 9(2), Jandel and Favors and Arts supplied invoices valued respectively GHS38,775.00 and GHS90,000.00, well above the GHS100,000.00 threshold. Both Invoices interestingly bore the same date i.e 14 December 2021. The Cheque of GHS50,000.00 from DPP to Favors and Arts was dated 16 December 2021. That being the case Act 663 ought to been respected. The failure to abide by the provisions of the Act supports the Complainant's assertion that the transaction was split to avoid the provisions of Act 663.

ISSUE 6: Whether the Respondent acted in breach of Act 663 as amended.

The Complainant's case as understood by the Commission is that the Respondent committed three (3) procurement breaches:

1. he invited two (2) vendors instead of at least three (3) to submit bids for Christmas trees contrary to section 43(1) of Act 663;
2. the transaction did not go through National Competitive Tendering as ought to have been the case since the value of the decorations were above the GHS100,000.00; and
3. the transaction was split in order for it to stay within the GHS100,000.00 threshold contrary to section 21(5) of Act 663.

We have already found that save for indicating in Exhibit SAE that two (2) suppliers were invited, we have not found any statement made by the Respondent that the invitation of these suppliers were done at his behest. We have not also found any

evidence indicating that the Respondent invited any vendors. For that reason, we fail to see how the Respondent could have breached section 43(1) of Act 663. However, we did observe that the fact that one Invoice was issued jointly in the names of the GACL and the Respondent highly suggests that the Respondent was an active participant in the procurement of the Christmas inspirations. As the Chairman of the Governing Board, it was not the duty of the Respondent to demand for invoices nor make interventions at the level of management in procurement matters at the GACL. This is because the duties of Board Chairman as would soon be demonstrated does not include interventions in procurement. In this regard, the Respondent could be said to have breached the Act. As for the splitting of the transaction and the failure to allow same go through the National Competitive Tendering, the least said about these allegations the better. We have no evidence indicating that it is the Respondent that caused the said split. Since it is not his duty to engage in procurement, we are unable to see how the Respondent could be held liable for the failure of GACL to make this transaction go through National Competitive Tendering.

7.Whether the Respondent abused his office as Board Chairman of the Ghana Airports Company Ltd.

8.Whether the Respondent breached the Public Financial Management Act 2016 (Act 921) and principles of corporate governance.

Issue 8 like issue 6 above is actually an element of issue 7 in the sense that the breach of law and policy by a public officer amounts to an abuse of office. However, issue 6 was discussed separately because in the main, the plaint of the complainant relates to procurement.

The case of the Complainant is that by directly involving himself in procurement of the Christmas trees, the Respondent abused the powers of his office and breached the cardinal principles of corporate governance, that of the separation of roles of the Chairman of the Board and the Chief Executive Officer. For the Chief Executive officer runs the day to day affairs of the company including procurement whiles the Board Chairman runs the Board.

The duties/responsibilities of a Board Chairman of a state-owned enterprise qua the GACL are provided under Section 4.2 of the **Corporate Governance Manual for Governing Boards/Councils of the Ghana Public Services, 2015,** then in force at the time of events that triggered this complaint. These are as follows:

a. determination of the agenda, venue and date of Board/Council meetings in consultation with the Chief Executive and the Secretary;
b. convening Board/Council meetings;
c. presiding over the meetings of the Board/Council and ensuring smooth functioning of the Board/Council in line with good corporate governance;
d. providing overall leadership to the Board/Council without limiting the principle of collective responsibility;
e. acting as the main link between the Board/Council and the Sector Ministry or National Development Planning Commission and also between the Board/Council and the Chief Executive Officer;
f. leading the Board/Council in the determination of the organisation's strategy and in monitoring the achievement of its goals;
g. ensuring that Board/Council committees are properly established and composed with clearly defined terms of reference;
h. projecting a positive image of the organization; and
i. leading in evaluation and monitoring the compliance with organization policies and governance processes.

Those of the Chief Executive officer are as follows:

(a) day to day administration of the corporate entity;
(b) providing strategic leadership for the management of the organization;
(c) providing leadership in achieving goals and objectives;
d) developing operational plans and budgets for Board's/Council's approval;
(e) monitoring activities of the organization to ensure that targets are met;
(f) safeguarding assets of the organization;
(g) maintaining a positive and ethical work climate;
(h) providing the Board/Council with timely, relevant and accurate information for purpose of decision making;
(i) implementing Board/Council decisions promptly;
(j) acting as the chief disciplinary officer of the organization; and
(k) ensuring that management staff are informed ofBoard/Council decisions affecting their departments;

It is quite clear that the Board Chairman of a state owned company has no locus in procurement matters from a reading of the provisions stated supra. The specific allegations brought against the Respondent related to the invitation of suppliers, the splitting of the transaction and the failure to pass this transaction through National Competitive Tendering. As noted supra our investigations did not support these allegations against the Respondent except to posit that the narrative given by the Respondent in Exhibit CHRAJ A and Exhibit SAE suggests that the Respondent was an active participant in the procurement process of the impugned Christmas inspirations. This related to Exhibit GACL 9(1) which was issued in the joint names of the Respondent (i.e his personal name) and the GACL. In explaining the rationale for the issuance of Exhibit GACL9(1) in his personal name, the Respondent indicated unequivocally in Exhibit CHRAJ A that it was done so because **"he requested for"** the Invoice to make an intervention to ensure price reduction. Hear him:

> **And so when Christmas inspirations came up, the principle having already been established, we went in to say that let us let us see the invoice. Let's have a look at the invoice. Send me the invoice. Let me have a look at it. Let's see whether there are other ways in which we can do it. Let's see whether we can talk to the companies to bring their spending down. So the purpose of that intervention far away from violating the rules of corporate governance** (emphasis supplied).
>
> **And the reason why I needed to see, I wanted to see the invoice was so that we can make an intervention to reduce the company's expenditure when we set out to do that, we didn't know that we will do better than five years ago, but eventually by God's grace, we did** (emphasis supplied).

The powers exercisable by Respondent as Board Chairman pertain mainly to Board meetings. The Respondent did not indicate that he requested for this receipt at a meeting of the Board and the Commission's investigations did not reveal that it was requested at a Board meeting nor was the request at the behest of the Board. The request for Exhibit GACL9(1) by the Respondent, a form of interference in the management functions was therefore *ultra vires* his functions and therefore contrary to corporate governance.

Apart from this Exhibits CHRAJ A and Exhibit SAE contained communications made by the Respondent/Board Chairman on social media and a Television Station. Although the Respondent did not indicate the capacity in which he was engaged in those communications, it is abundantly clear that at the time material that he

authored these communications, he was still the Board Chairman of the GACL. It is quite clear that the Respondent was engaged in public relations for the GACL.Is that what the Chairman of a Board should do?

In Exhibit SAE, the Respondent underscored the role of the Corporate Affairs Department in attending to public enquiries in respect of matters relating to the GACL. In the Commission's considered view, the Respondent knew that it was not his responsibility to communicate in the media, whether print or electronic on matters relating to procurement issues at the GACL. This is because any miscommunication had the potential effect of casting him in bad light and creating an unnecessary conflict between his role as a communicator/presenter on Metro TV and that of his position as Board Chairman. Thus, for instance when the Respondent appeared before the Commission on the 15 September 2022, he struggled to draw a distinction between statements made by him in the media and the evidence given Commission under oath. Accordingly, the communications made by the Respondents were not in accordance with his role as a Board Chairman and therefore contrary to corporate governance.

In respect of the alleged breach of Public Financial Management Act,2016(Act 921), apart from alleging that the GHS50,000.00 from DPP was treated differently from other public resources, the Complainant did not indicate in what way the Respondent was responsible for this breach. For that reason, the Commission is unable to determine the merits of this allegation.

9.0 SUMMARY OF KEY FINDINGS

1. The Respondent did not state on the 7 January 2022 edition of the "Good Evening Ghana" programme on Metro TV that he used public funds to procure Christmas inspirations.

2. The Respondent did not state that he invited two (2) vendors to submit quotations.

3. The Respondent did not invite suppliers to submit quotations.

4. The Respondent did not receive quotations amounting to GHS118,000.00.

5. The Respondent partly interfered in the procurement of Christmas inspirations by the GACL in 2021 by making demands for Invoices.

6. The interference by the Respondent in the procurement of Christmas inspirations by the Management of GACL in 2021 amounted to abuse of office.

7. The Respondent communicated in the media on matters relating to the procurement of the Christmas inspirations by the GACL.

8. The interference of the Respondent in the procurement of Christmas trees by the GACL and communications by him were contrary to the principles of corporate governance.
9. The GACL has over the years from 2018 to date been renting Christmas inspirations without recourse to the Procurement Act, 2003(Act 663) as amended.

10. The Christmas inspirations for 2021 were valued at GHS128,000.00 and not GHS118,000 as alleged by the Respondent.

11. The transaction was split into two (2) contrary to the provisions of Act 663 as amended.

ISSUE 9: Whether the Complainant is entitled to the reliefs claimed.

In resolving this issue, there is the need to turn attention to the statutory duty imposed on the Commission following the conduct of its investigations.

Section 18 of the Commission on Human Rights and Administrative Justice, 1993(Act 456) provides as follows:

18. Procedure after investigation

(1) Where after making an investigation under this Act, the Commission is of the view that the decision, recommendation, act or omission that was the subject matter of the investigation

(a) amounts to a breach of any of the fundamental rights and freedoms provided in the Constitution, or

(b) appears to have been contrary to law, or

(c) was unreasonable, unjust, oppressive, discriminatory or was in accordance with a rule of law or a provision of an Act or

practice that is unreasonable, unjust, oppressive, or discriminatory, or

(d) was based wholly or partly on a mistake of law or fact, or

(e) was based on irrelevant grounds or made for an improper purpose, or

(f) was given in exercise of a discretionary power and reasons should have been given for the decisions

the Commission shall report its decision and the reasons for it to the appropriate person, Minister, department or authority concerned and shall make the recommendation that it thinks fit.

Section 18 is clear and needs no interpretation. A resolution of this issue would turn partly on whether the Respondent's conduct appears contrary to law.

As noted supra, the Complainant claimed the following reliefs:

1. A declaration that the Respondent has breached several provisions of the public procurement law, the public financial administration law and the principles of corporate governance in the procurement of Christmas Trees in December 2021;
2. An order directed at the Ghana Airports Company Ltd(GACL) to surcharge the Respondent for the amounts involved in the procurement breaches and to recommend his removal as Board Chairman; and
3. A reference by the Commission to the appropriate authorities of its investigations and recommendation for the prosecution of the Respondent.

In respect of relief 1, our investigations did not reveal that the Respondent breached several provisions of Act 663 as amended. The procurement of the Christmas inspirations was done by the management albeit with some active participation by the Respondent in the sense that he requested for an Invoice from one of the suppliers, Favors and Arts. This invoice was issued in the joint names of the Respondent and the GACL. As the provisions of Act 663 do not require that invoices be submitted in the personal names of Board Chairmen of state-owned enterprises, we agree that this was a breach of Act 663 *albeit* minor. Apart from this, we did not

find that the Respondent breached other provisions of Act 663 as amended. We also find that the Respondent breached some but not several provisions of corporate governance in some roles that he played in the procurement of the inspirations and his appearance via media on matters relating to the procurement. The net effect of this is that the Commission partly grants relief 1.

In respect of relief 2, our investigations did not reveal that the Respondent benefitted in any way from the breaches that occasioned the procurement of the Christmas inspirations. Accordingly, there is no justification making a surcharge order directed at him and recommending his removal as Board Chairman.

Our investigations have also not revealed any facts pointing to any criminal offence committed by the Respondent. For that reason, we are unable to refer him to any authority for further investigations. We do not find any merit in recommending him for prosecution by the Attorney-General. In effect, we are unable to grant relief 3.

10. 0 OBSERVATIONS

However, as found supra, we are constrained to observe that the conduct of the Respondent in requesting for invoices and his appearances in the media in respect of matters involving the GACL of which he is the Board Chairman does not augur well for good corporate governance. We recommend that the Respondent should restrain himself from interfering in the work of management and restrict himself purely to his prescribed functions as Board Chairman.

In addition to this, the GACL Airports Company has over the years considered rental of Christmas trees as being outside procurement flowing from the evidence of officials of the Company that appeared before the Commission. For that reason, management has not been applying the provisions of Act 663 as amended. We think that this is an anomaly and ought to cease forthwith.

We have noted that the failure to define procurement under the Act may have accounted for this. We recommend that the Public Procurement Authority should take steps to have Act 663 further amended to define "procurement" as pertaining in other countries with similar legislation.

11.0 DECISION

Accordingly, the Commission decides as follows:

1. The GACL should henceforth apply the provisions of the Public Procurement Act, 2003(Act 663) as amended in the renting of Christmas inspirations and all renting situations it may engage in.
2. The Respondent should desist henceforth from commenting on procurement issues in the GACL in the media either in his personal capacity or as Board Chairman so long as he remains on the Board of thc GACL.
3. The Respondent should desist from interfering in the day-to-day administration of the GACL and leave same to management.
4. The Public Procurement Authority should take steps to cause the amendment of Act 663 to clearly include an interpretation of the terminology "procurement".

DATED AT THE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (CHRAJ), OLD PARLIAMENT HOUSE ATTA MILLS HIGH STREET, ACCRA THIS……30th DAY OF OCTOBER 2023.

JOSEPH WHITTAL
COMMISSIONER

COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE
GHANA

COMMISSION ON
HUMAN RIGHTS AND
ADMINISTRATIVE JUSTICE
(CHRAJ)

CHRAJ/27/2022/499

31ST OCTOBER, 2023

SACUT AMENGA-ETEGO

18TH LANE, DAVIES ARCADE

OSU, ACCRA

0205927770

Dear Sir,

SACUT AMENGA-ETEGO AND PAUL ADOM OTCHERE

Please find enclosed the Decision of the Commission in the above-mentioned complaint.

Yours faithfully,

DANIEL AFETSI

PRINCIPAL REGISTRAR

For: Commissioner