

Killing me softly: How Ministry of Foreign Affairs’ “authentication” directive is sending the “*omnia praesumuntur*” rule to an early grave.

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Introduction

The study and practice of law affords no dull moments; there is always something new, exciting, interesting, outrageous or simply bizarre to engage one’s thoughts. Those of us who were in law practice in the late 1990s and early 2000s will recall a particular “Notice” posted on the Notice Boards of the High Courts (then at the High Court Building close to GCB Bank and the 28th February Roads Courts [otherwise known as ‘Cocoa Affairs’ Courts]). The notice was reportedly issued by a number of foreign European Embassies/High Commissions in Ghana. The notice contained a veritable list of lawyers by full name and it basically informed the whole world that, any documents signed or notarized by any of the listed lawyers were not acceptable to the said foreign missions. Holy cow!

It was a clear case of foreign missions in Ghana, a sovereign country, brazenly posting such a defamatory notice about some members of the Bar at the Court House and walking away freely. Surprisingly, those notices were on the Notice Boards for weeks until they either faded or were ripped off by some incensed elements. The question that kept budging most people was; ‘who authorized this notice to be put on the Notice Board’ but alas, the question remained largely rhetorical.

The new authentication requirements imposed by Ministry of Foreign Affairs and Regional Integration.

Thankfully, for twenty years or so, we never had the displeasure of seeing another such notice till recently when one similar notice was openly posted at the filing counter for Attestations at the Supreme Court Building. This time, the notice was issued by our own Ministry of Foreign and Regional Integration (hereafter simply called “Ministry of Foreign Affairs”) in a letter dated 3rd November, 2020 and the salient parts are set out in full as follows:

*“In an effort to address the incidence of forgery of documents in recent times, it is recommended that all documents such as **Marriage, Divorce, Birth, Death and School Certificates as well as Driver’s License** are authenticated by the issuing authorities prior to their submission to the Judicial Service for legalisation and onward transmission to this Ministry for attestation. Pursuant to the aforesaid, this Ministry would decline the attestation of any document which has not been authenticated by the Issuing Authority effective 15th November, 2020.”*

(Emphasis mine)

The letter was addressed to the Judicial Secretary, the Registrar of Companies, the Registrar of Births & Deaths and the Chief Executive Officer of the Driver & Vehicle Licensing Authority. Indeed, effective 15th November, 2020, the Judicial Service posted a copy of the letter in the Attestations filing counter window in the Supreme Court Building, Accra and thus, started turning away members of the public who had sent their duly notarized or certified documents for the Judicial Secretary's attestation.

Why the new requirement for authentication of official documents is unlawful.

The law presumes that all official acts have been regularly performed. This means that once an official performs an action, it is presumed to have been done as it should be. This principle of law is what is known in Latin as "**omnia preasumuntur rite esse acta**". This principle has been stated in our law on Evidence.¹ Therefore, an official document issued by a government institution, department or agency is presumed to be regular and must be accepted as such unless the contrary is proved.

Thus, the Ministry of Foreign Affairs' decision to reject any official document that has been regularly obtained but without a further "authentication" by the official who issued the document is unlawful. The Ministry of Foreign Affairs' letter under reference clearly offends against the established position of the law and ought to be withdrawn forthwith.

The only institution that has authority to formulate laws or change the provisions in the existing laws in Ghana is Parliament. No government ministry, department or agency can arrogate unto itself any law- making or law-changing powers. The Ministry of Foreign Affairs cannot change the laws of Ghana by the stroke of its director's pen under the guise of making a recommendation.

At any rate, if forgery of official documents is the Ministry's headache, forgery is a crime that is known under our criminal laws and adequate punishment is provided for the same². The Ministry and whosoever else is perplexed by the alleged incidence of forged documents must resort to the criminal laws of Ghana to deal with the perpetrators of such criminal acts. Their remedy lies at the courts. They should not overburden citizens with the nightmare of sacrificing money, time and personal comfort to "authenticate" official documents they have already endured the perennial bureaucracy to obtain. We do not have to create another layer to feed the bureaucracy. An example will suffice to show how burdensome and needless this directive is:

You completed University of Ghana three years ago and you are working/living in Bolgatanga. You have gained admission to do your Masters' Degree abroad and you

¹ Section 37 of the Evidence Act, 1975 (NRCD 323)

² Sections 158 – 171 of the Criminal Offences Act, 1960 (Act 29). A person who forges a judicial or official document commits a second degree felony and if convicted, could be imprisoned for up to 25 years.

need to attach a notarized and attested copy of your certificate from Legon. Ordinarily, you will just have to make a copy of the original and send both to the notary public who will confirm that she/he has seen the original and certify the copy for you to send for attestation at Judicial Service and Ministry of Foreign Affairs and then forward it to the University abroad. Now, because of the directive by Ministry of Foreign Affairs, you have to take your certificate to University of Ghana for the Registrar to authenticate it before you even send it to the notary public to begin the process. Definitely, you may have to travel to Accra yourself and go and look for the Registrar to certify that your certificate is authentic!

The same scenario applies whether the document is a school certificate, birth certificate, death certificate, divorce certificate or driver's license.

It bears stating that the Ministry of Foreign Affairs appears to have misapprehended its duty of attestation of documents. The Ministry's duty is to attest that the person who signed as Judicial Secretary is the Judicial Secretary (or her Deputy, as the case may be). It is the same way that the Judicial Secretary's duty is to attest that the notary public (or commissioner for oaths, as the case may be) whose signature appears on the document is a notary public or commissioner for oaths duly appointed as such. It is not the Ministry's duty to assure the genuineness of documents presented to it for attestation.

If any person, institution or foreign mission suspects that any official document presented to them by any person has been forged or it is otherwise inauthentic, it is that person, institution or foreign mission's responsibility to verify the authenticity of the document from the issuing institution or authority. They cannot abdicate their responsibility in that regard by putting such needless hardship on the whole citizenry to "authenticate" their regularly obtained official documents before attestation.

Conclusion

The Ministry of Foreign Affairs' decision to reject all official documents presented for attestation without a further act of authentication by the issuing official is unlawful and must be withdrawn forthwith. It sins against the presumption of regularity of all official actions and documents. It has only introduced another burdensome layer in the already existing debilitating bureaucracy in officialdom and added extra cost in terms of time and money in attesting official documents. If the aim is to prevent forgery, then that is way off the mark because if unscrupulous persons can procure forged documents, they can surely procure forged authenticated documents too. The remedy for anyone who doubts the authenticity of any official document is to seek the authentication by itself by directly contacting the issuing authority or institution.

