

70 INDIGO STREET,
GAUSU EXT,
OBUASI MUNICIPALITY.

Tel: 024 091 7066
020 483 8735

20th January 2025

AG. CHIEF EXECUTIVE OFFICER
OBUASI MUNICIPAL ASSEMBLY
OBUASI

AG. ATTORNEY GENERAL
MINISTRIES
ACCRA

NOTICE OF CIVIL ACTION

In accordance with Section 10 of the State Proceedings Act, 1998 (Act 555)

The under-listed persons serve this notice of civil action on you in accordance with the State Proceedings Act, 1998 (Act 555).

1. Dauda Tahiru, Assembly Member, Gausu East Electoral Area
2. Kwaku Kwarteng, Obuasi West MP and Assembly Member (ex-officio).

Causes of Action:

At the Second Ordinary Meeting of the First Session of the Eighth Obuasi Municipal Assembly held on the 12th of September 2024, “Briefing of BOT Projects” was put on the agenda. Under this agendum, the management of the Assembly informed the meeting that the Assembly has signed the following public private partnership (PPP) agreements with the indicated private companies:

- (i) Agreement between Obuasi Municipal Assembly and Fodavca Company Limited for the construction of a U-Shaped Three Storey Commercial Facility consisting of 43 Lockable stores, 12 seater W/C at Obuasi.

- (ii) Agreement between Obuasi Municipal Assembly and Uncle Frank Electricals and Construction Works for construction of a Three Storey Commercial Facility consisting of 85 Lockable stores at Obuasi.
- (iii) Agreement between Obuasi Municipal Assembly and Salifu Ali Contract Works Limited for the construction of a Three Storey Mixed-Use Facility consisting of 25 Lockable stores and 100 Rooms at Obuasi.

The signing of all the three agreements and the consequential agreements are all unlawful because they violate the Public Private Partnership Act, 2020 (Act 1039) and the Standing Orders of the Obuasi Municipal Assembly as follows:

- a. Section 36 of Act 1039 requires that a contracting authority (in this case, the Obuasi Municipal Assembly) that seeks to undertake a PPP project shall submit a project concept note and pre-feasibility study report to the Public Private Partnership Office (PPP Office) at the Ministry of Finance for review and approval. This important requirement of law has not been complied with for all three PPP projects.
- b. Further, section 37 of Act 1039 requires that upon the approval of the project concept note and pre-feasibility study report by the PPP Office, a contracting authority shall undertake feasibility studies of every PPP project and submit the feasibility study report to the PPP Office for approval and for the “Seal of Quality” by the Minister for Finance. Under section 37(11), a local government authority is permitted by law to proceed to procure a private company to do the project only after the feasibility study report has been approved by the PPP Office and the “Seal of Quality” by the Minister for Finance has been granted. This important requirement of law has also been violated for all three PPP projects.
- c. And then, after securing the approval of the recommendations in the feasibility study report by the PPP Office and the grant of the Seal of Quality by the Minister for Finance, section 16 of Act 1039 requires that the General Assembly of the local government authority shall approve the PPP project in accordance with the standing orders of the Assembly. Now, Order 20 of the Standing Orders of the Assembly requires that a motion to approve a PPP project shall involve the referral of the subject matter to the relevant sub-committee of the General Assembly, which sub-committee shall then consider the subject-matter and report to the

General Assembly. It is this report that shall form the basis for considering the motion to approve or disapprove the project by the General Assembly. The General Assembly may sidestep this requirement for referral to a sub-committee only by a decision to that effect supported by at least two-thirds of members. Here again, the procedure for approval by the Obuasi Municipal General Assembly was violated. Indeed, save an oral brief by the management's consultant on the three PPP projects, neither the project agreements nor any document on any of these three projects has been laid before the Obuasi Municipal General Assembly for consideration.

Despite these gross violations of both Act 1039 and the General Assembly's Standing Orders, it has come to our notice that Salifu Ali Contract Works Limited has moved to site to begin the construction of a Three Storey Mixed-Use Facility consisting of 25 Lockable stores and 100 Rooms at Obuasi.

It is our contention that the unlawful agreements as signed between the Municipal Assembly and the said private companies are heavily and badly skewed against the Municipality and in favour of the private companies. The shortcomings of the agreements would have been addressed had the management of the Obuasi Municipal Assembly followed the approval processes prescribed in law.

Following the approval processes prescribed in law would have allowed the PPP Office to vet the feasibility study report (including the financial terms of the project) and corrected any unfairness against the municipality and the state. Following the approval processes prescribed in law would also have allowed the General Assembly to vet the agreements and addressed the unfairness against the municipality and the state,

It is to seek remedies against these gross violations of Act 1039 and the Standing Orders of the Obuasi Municipal General Assembly, and to protect the interest of the municipality and the state in these projects that we serve this notice of civil action.

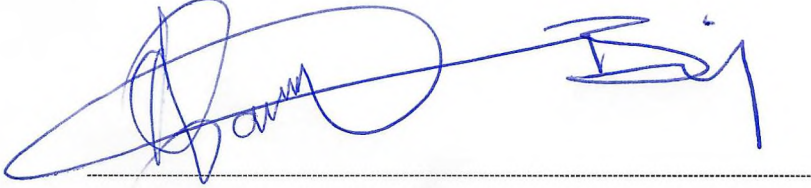
Reliefs:

Accordingly, we will seek the following reliefs:

1. A declaration that the three PPP agreements mentioned above are irredeemably unlawful, and therefore null and void.

2. An order for the management of the Assembly to desist from signing any PPP agreement that has not passed all the approvals as required by law and the Standing Orders of the General Assembly.
3. Any other orders that the courts may deem necessary.

Thank you.



Dauda Tahiru, Assembly Member, Gausu East Electoral Area.



Kwaku Kwarteng,
Obuasi West Member of Parliament and Assembly Member (ex-officio).

CC: Fodavca Company Limited.

Uncle Frank Electricals and Construction Works.

Salifu Ali Contract Works Limited.