



## ROLIHLAHLA AFRICA LAW JOURNAL

# NOLLE PROSEQUI IN GHANA: NAVIGATING THE TENSION BETWEEN JUSTICE AND PROSECUTORIAL DISCRETION

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# NOLLE PROSEQUI IN GHANA: NAVIGATING THE TENSION BETWEEN JUSTICE AND PROSECUTORIAL DISCRETION

MICHAEL AGBOZO<sup>1</sup>

## ABSTRACT

This article delves into the complex and contentious issue of Nolle Prosequi in Ghana, where the Attorney General's discretion to discontinue criminal proceedings raises concerns about justice, accountability, and the rule of law. The article examines the legal framework governing Nolle Prosequi, including the Constitution and relevant statutes, and analyzes the tensions between the need for prosecutorial discretion and the imperative to ensure justice and accountability. The article identifies the challenges and controversies surrounding Nolle Prosequi in Ghana, including the potential for abuse of discretion, the impact on accused person(s) and their families, and the effects on the administration of justice. The findings highlight the need for a more nuanced and transparent approach to Nolle Prosequi, one that balances the competing interests of justice, discretion, and accountability.

***Key Words: Nolle Prosequi, Prosecution, discretion***

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## 1.0 INTRODUCTION

Crimes are an inherent and unfortunate aspect of human society, stemming from the complexities and imperfections that are inherent to human nature. The biblical narrative of Adam and Eve's disobedience in the Garden of Eden, which led to the fall of man<sup>2</sup>, serves as a poignant reminder of the frailties and weaknesses that have plagued humanity since the dawn of time. The imperfections that arose from this primal transgression have been perpetuated throughout history, manifesting in various forms of deviance, misconduct, and criminal behavior. As a result, crimes have become an unfortunate yet inevitable consequence of human fallibility, underscoring the need for effective laws, social structures, and moral frameworks to mitigate their occurrence and promote a safer, more just, and equitable society.

The office of the Attorney General, established under **Article 88 of the 1992 Constitution**, serves as a cornerstone of Ghana's justice system, vested with the authority to prosecute all civil and criminal matters<sup>3</sup>. This mandate empowers the Attorney General to play a pivotal role in preventing crimes, maintaining law and order, and upholding the principles of justice and fairness. As the chief legal advisor to the government, the Attorney General is responsible for reviewing cases investigated by the police and other law enforcement agencies, and making informed decisions on whether to prosecute or not.

The concept of justice is a cornerstone of any democratic society, and in Ghana, the judiciary plays a vital role in its administration. The office of the Attorney General, which doubles as the Minister of Justice, is a pivotal component of this system, responsible for the initiation and conduct of all criminal matters and defense of the state in civil matters. The Attorney General's discretion of *Nolle Prosequi*, a Latin phrase that translates to "***not to prosecute***",<sup>4</sup> allows them to either pursue or terminate a suit, as well as withdraw a matter from court. However, this discretion has raised concerns about the

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<sup>2</sup> Genesis 3:1-7

<sup>3</sup>Article 88(3)(4) of the 1992 constitution, *The Attorney-General shall be responsible for the initiation and conduct of all prosecutions of criminal offences. All offences prosecuted in the name of the Republic of Ghana shall be at the suit of the Attorney-General or any other person authorized by him in accordance with any law.*

<sup>4</sup> Black's law dictionary 9th Edition



potential for political interference, abuse of power, and the lack of accountability, leaving many to wonder whether the Nolle Prosequi concept is a necessary tool for justice or a recipe for disaster and partiality in criminal justice.

In recent years, a disturbing trend has emerged, where new governments have consistently terminated cases against their party members, which were initiated by the previous government. This phenomenon has become so prevalent that it has led to widespread criticism and accusations of political manipulation. Cases such as the **Republic v NPP Delta Force Members**<sup>5</sup>, The

**Republic v Aisha Haung**<sup>6</sup>, are just a few examples of this practice, where the Attorney General has exercised its discretion to terminate prosecutions, often without providing clear reasons or justification. The recent general elections in 2024 has seen a similar pattern, with the new government dropping prosecutions against their party members, including high-profile cases like **Republic v Opuni, Republic v Samuel Ofori Ampofo & Kwaku Boahen, Republic v Dr. Ernest Thompson & three others, Republic v Collins Dauda & others**<sup>7</sup>. This has raised serious questions about the fairness and balance of justice in Ghana's jurisdiction, and whether the Nolle Prosequi concept is being used as a tool for political expediency rather than a means of upholding the rule of law.

The Nolle Prosequi principle, while intended to provide the Attorney General with flexibility in the administration of justice, has created a conundrum in Ghana's jurisprudence. On one hand, it allows the Attorney General to exercise discretion in the pursuit of justice, considering the unique circumstances of each case. On the other hand, it has led to concerns about the lack of transparency and accountability, as well as the potential for political interference and abuse of power. As a public

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<sup>5</sup>Citi FM Online, 'AG drops charges against 8 Delta Force court raiders' (Citi FM Online, 17 May 2017) <https://citifmonline.com/2017/05/ag-drops-charges-against-8-delta-force-court-raiders/> accessed [24/7/2025]

<sup>6</sup>GhanaWeb, 'Aisha Huang-Owusu Bempah, Delta Force & 4 times government filed Nolle Prosequi in high-profile cases' (GhanaWeb, date unknown) <https://mobile.ghanaweb.com/GhanaHomePage/NewsArchive/Aisha-Huang-Owusu-Bempah-Delta-Force-4-times-government-filed-nolle-prosequi-in-high-profile-cases-1797968> accessed 7 February 2025.

<sup>7</sup>MyJoyOnline, 'Saglemi Housing Project case: A-G withdraws charges against Collins Dauda, 4 others' (MyJoyOnline, 7 February 2025) <https://www.myjoyonline.com/saglemi-housing-project-case-a-g-withdraws-charges-against-collins-dauda-4-others/> accessed 7 February 2025.



office holder, the Attorney General is accountable to the people of Ghana and is funded by state coffers, making it essential to ensure that their actions are consistent with the spirit of the law and the principles of justice.

By examining the challenges and usefulness of this concept, the writer hopes to shed light on the need for greater transparency and accountability in the exercise of the Attorney General's discretion, and to contribute to the ongoing debate about the role of the Attorney General in upholding justice and fairness in Ghana. We will also explore potential solutions to the problems posed by the Nolle Prosequi concept, including the need for clearer guidelines and protocols, greater oversight and accountability, and a more nuanced understanding of the complex interplay between politics, law, and justice in Ghana.

Ultimately, the Nolle Prosequi concept raises fundamental questions about the nature of justice, accountability, and the rule of law in Ghana. **Is the Attorney General's discretion to terminate prosecutions a necessary tool for justice, or a threat to the integrity of the judicial system?** Can the Nolle Prosequi concept be reformed or modified to ensure greater transparency and accountability, or is it a relic of a bygone era that should be abolished altogether? As we navigate the complexities of this principle, we must remain mindful of the enduring importance of justice, fairness, and the rule of law in Ghana, and the need for a judicial system that is transparent, accountable, and responsive to the needs of all citizens.

## **2.0 THE PROSECUTORIAL DISCRETION OF NOLLE PROSEQUI AND WITHDRAWAL**

The Office of the Attorney General possesses broad prosecutorial discretion in ensuring that justice is served. This discretion is exercised in the decision to either prosecute or terminate prosecutions. The power to terminate prosecutions, also known as Nolle Prosequi, is a widely accepted practice in many jurisdictions.

In Zimbabwe, for example, the National Prosecuting Authority is granted the mandate to initiate criminal proceedings and the discretion to discontinue same under **Section 12(1) (c) and (d) of the**



**National Prosecuting Authority Act of Zimbabwe**<sup>8</sup>. Similarly, in Ghana, the Attorney General has been conferred with the power to discontinue a criminal trial at any stage, as stipulated in **Section 54 of the Criminal Procedure Act 1960 (Act 30)**.<sup>9</sup>This section is to the effect that the Attorney General may inform the court of their intention to discontinue a trial, either orally or in writing, without being required to provide a reason for doing so.

Furthermore, in preliminary proceedings before the District Court in murder cases, the Attorney General may enter a Nolle Prosequi, regardless of whether the accused has been committed for trial or not. Upon entry of the Nolle Prosequi, the accused person is immediately discharged, and if they are on remand, they are released.<sup>10</sup> . The Attorney General has the sole authority to enter Nolle Prosequi, and it is not subject to inquiry or review<sup>11</sup>.

In contrast, withdrawal refers to the act of withdrawing from the prosecution of a case, either by the prosecutor or on the instructions of the Attorney General. Withdrawal can be made at any time before an order of committal is made or judgment is pronounced<sup>12</sup>. However, unlike Nolle Prosequi, withdrawal requires the consent of the court if it is not done by the Attorney General. The key differences between Nolle Prosequi and withdrawal are significant, with Nolle Prosequi being a more powerful tool that can be entered at any stage of the proceedings, and withdrawal being subject to the consent of the court and only able to lead to acquittal after the prosecution closes its case.

The implications of Nolle Prosequi and withdrawal are far-reaching. A discharge resulting from Nolle Prosequi or withdrawal before the close of the prosecution's case does not bar subsequent proceedings against the accused on the same facts. However, if the withdrawal is made after the prosecution has closed its case, the accused is acquitted, and the plea of "**autrefois acquit**" (previously acquitted) will

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<sup>8</sup> National Prosecuting Authority Act (chapter 7:20), commenced on 2 January, 2015

<sup>9</sup>*In criminal case, and at any stage of a criminal case before verdict or judgment, and in the case of preliminary proceedings before the District court, whether the accused has or has not been committed for trial, the Attorney General may enter a Nolle Prosequi, by stating in court or informing the court in writing that the Republic does not intend to continue the proceedings. see Section 54 of Act 30*

<sup>10</sup> Ibid, section 54(2)(a)

<sup>11</sup> Republic v Abrokwa [1989] 1 GLR 385

<sup>12</sup> Section 59 of the Criminal Procedure Act 1960 (Act 30)

be available to them<sup>13</sup>. This means that the accused cannot be tried again for the same offense based on the same facts.

In conclusion, Nolle Prosequi and withdrawal are two important concepts in criminal proceedings that highlight the discretion vested in the Attorney General. Understanding the nuances of these two concepts is crucial in ensuring that justice is served and that the rights of the accused are protected. As we continue to navigate the complexities of the criminal justice system, it is essential that we appreciate the significance of Nolle Prosequi and withdrawal in upholding the rule of law. The Attorney General's power of discretion, as exercised through Nolle Prosequi and withdrawal, plays a critical role in ensuring that justice is served, and it is essential that this power is exercised judiciously and in accordance with the law.<sup>14</sup>

The power of the Attorney General to enter Nolle Prosequi is a significant one, and it is interesting to note that it is not subject to judicial review<sup>15</sup>. This means that the Attorney General has a lot of discretion in deciding whether or not to pursue a case, and this decision cannot be questioned by the courts. The case of **Republic v Abrokwa**<sup>16</sup> endorsed this principle, and it was later affirmed by the Court of Appeal in **Republic v Adu Tutu Gyamfi**.<sup>17</sup>

The decision in **Republic v Adu Kwabena**<sup>18</sup> suggests that a Nolle Prosequi needs to be signed by the Attorney General or someone authorized by them in writing, otherwise it's null and void. This seems to be a contradictory view looking at the holding in **Abrokwa** and **Adu Kwabena** which were all decided by the High court, but the Court of Appeal's decision in **Adu Tutu Gyamfi** has settled the matter by affirming the decision in the **Republic v Abrokwa** as the correct statement of law that,

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<sup>13</sup>No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted, shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for the offence, except on the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal. See. Article 19(7) of the 1992 constitution

<sup>14</sup> See: Article 296 of the 1992 Constitution

<sup>15</sup> Republic v Abrokwa [1989] 1 GLR 385

<sup>16</sup> [1989] 1 GLR 385

<sup>17</sup> 2010 DLCA 3165

<sup>18</sup> [1971] GLR 323

Nolle Prosequi when exercised by a state attorney, is presumed to be regular and it was not open to the judiciary to subject it to enquiry.

### 3.0 THE IMPACT OF PROSECUTORIAL DISCRETION ON ACCUSED PERSONS

The effect of a Nolle Prosequi is that it immediately discontinues a case when entered or filed. It can be done at any time before judgement. And its legal effect is to immediately discharge the accused person without the prosecution giving reasons to the court. This does not serve as a bar to subsequent prosecution. Meaning the state may at any time decide to re-prosecute the matter.

With withdrawal, whether the accused person will be discharged or acquitted will depend at the stage at which the withdrawal was entered. If the withdrawal is entered before the prosecution closes their case, the accused person shall be discharged. But if the withdrawal is entered after the prosecution closes their case, the accused person shall be acquitted. And being discharged with the effect of withdrawal does not serve as a bar to subsequent prosecution<sup>19</sup>.

The law states that the accused person “**shall**” meaning once the Nolle Prosequi is entered the accused person does not have an option to proceed with trial in order to prove his innocence.

During the trial, the accused person and family may have incurred some expenses and resources, of which the same will be in vain upon the entering of Nolle Prosequi because the matter has not come to a final end. Will it not be in the best interest of justice for the accused person to be entitled to compensation after the entry of Nolle Prosequi?

### 4.0 BALANCING JUSTICE AND DISCRETION

The pursuit of justice is the cornerstone of any legal system, and the concept of fair trial is essential in ensuring that justice is served. In Ghana, the 1992 Constitution and the Criminal Procedure Act 1960 (Act 30) govern the conduct of criminal trials and proceedings, enshrining fundamental rights such as the right to a fair hearing, representation by a lawyer, and the presumption of innocence until proven guilty.

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<sup>19</sup> Section 59(4) of the Criminal Procedure Act 1960 (Act 30)

Nolle Prosequi, is a discretionary power and is thus governed by **Article 296 of the 1992 Constitution**, which mandates that discretionary powers be exercised fairly, candidly, and in accordance with due process of law.

The English case of **Associated Provincial House Limited v. Wednesbury Limited**<sup>20</sup> has established the principle of reasonableness as the benchmark for the exercise of discretionary power. In essence, the exercise of discretionary power is only deemed valid and lawful if it is reasonable.

However, when discretionary powers are exercised arbitrarily or capriciously, it can disrupt the smooth administration of justice. Therefore, it is imperative that discretionary powers conferred by the Constitution or any enactment be exercised in accordance with the law.

### ***Can there be a balance between justice and discretion?***

The answer is unequivocally in the affirmative. **Article 296 of the 1992 Constitution** provides guidance on the exercise of discretionary powers, mandating that it is exercised in accordance with the law and due process. In the context of Nolle Prosequi, this means that the discretionary power to discontinue a suit must be exercised reasonably, fairly, and candidly. Any exercise of this power that overrides due process of law is unconstitutional and the same shall be invalid.

The critical question, therefore, is whether the Nolle Prosequi discretionary powers exercised in Ghana's criminal jurisprudence have been in accordance with the law and thus just?

The writer answers in the negative and makes a case that the refusal to give reasons upon entering Nolle Prosequi is contrary to law, justice and reasonableness.

### ***4.1 The refusal to give reason or basis for exercising such a power creates and gives the Attorney General an unfair undue advantage over the accused person.***

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<sup>20</sup> (1948) 1 KB 223

Hayfron-Benjamin J, in the case of the **Peoples Popular Party v Attorney General**<sup>21</sup> was of the considered opinion that reasons should be given when discretionary powers are exercised.

In this case<sup>22</sup>, the applicants, who were a registered political party under N.L.C.D. 345, were refused a permit by the police to hold protest marches with respect to important political issues, even though a permit had been given to another group to protest against one of the political issues. The police did not assign any reasons for the refusal. The applicants sought a court order to compel the police to issue them a permit, submitting that their right and liberty of association, movement and assembly as provided in the Constitution, 1969, had been infringed. The respondent denied any such constitutional infringement and submitted that the police acted properly within the powers accorded them in Act 165 and articles 23 and 24 of the Constitution.

The court, speaking through Hayfron- Benjamin J, noted,

*“the discretionary power vested in a police officer by Act 58 as amended by Act 165 must be exercised in a fair and candid manner. **When the police refuse to grant a permit, they must assign reasons** and if they fail to do so the court can inquire into the grounds and reasons for the police action”. (Emphasis added)*

Similarly, in looking at discretionary power conferred on the police, the police have been given powers to arrest a person on reasonable grounds of suspicion of the person committing a crime.<sup>23</sup> With this discretionary power conferred to the police by statute, the constitution requires that the police shall give reasons to any person arrested, detained or restricted for his arrest<sup>24</sup>.

Giving a reason in the exercise of a discretionary power is not strange to our constitution, hence reasons for entering Nolle Prosequi must be given to balance instances where the Attorney General at any time of the proceedings can discontinue the case which will serve as an undue advantage against

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<sup>21</sup> [1971] 1 GLR 138-152

<sup>22</sup> Ibid

<sup>23</sup> *A police officer may arrest without warrant a person whom the police officer suspects on reasonable grounds.* See. Section 10(2) of the criminal procedure Act 1960 (Act 30)

<sup>24</sup> *A person who is arrested, restricted or detained shall be informed immediately, in a language that he understands, of the reasons for his arrest, restriction or detention and of his right to a lawyer of his choice.* See. Article 14(2) of the 1992 constitution

the accused person. Assigning reasons may equally assist successive governments on the next action to take in the near future on the matter, since the Attorney General has the power to re-prosecute the case at any time. This, in a way, will ensure a smooth continuation of justice at the office of the Attorney General.

***4.2 Also, to balance discretion and justice, Nolle Prosequi must be with the leave of the court.***

To ensure a good balance between justice and discretion with respect to Nolle Prosequi, a leave must be sought from the court after the reason is given. The reasons that are to be given by the Attorney General must be examined by the court on whether it is reasonable, fair and candid. This must be amenable to the court jurisdiction because **Article 296 of the Constitution** that regulates the exercise of discretionary powers is a provision if when violated by an act or omission will be subjected to a judicial review by the Supreme Court pursuant to **Article 1(2) and Article 2(1) of the 1992 constitution**, and that such powers must conform to the dictates of the Constitution.

In the case of *Awuni v West African Examination Council (WAEC)*<sup>25</sup>, an administrative board's discretionary powers were subjected to judicial review. Why is the Attorney General's act in the exercise of Nolle Prosequi exempted from judicial review? Such a wide discretionary power cannot be given to an Attorney General who is appointed by a Politician "the President" without subjecting the same to judicial review. It is more probable than not that the decision to enter Nolle Prosequi could be influenced by political considerations, rather than it being with legal justification. If administrative bodies or boards made up of two or more persons have their discretionary powers subjected to judicial review as seen in *Awuni v WAEC* (supra), it must be scary for the country to confer such a wide power in the Attorney General who is a single person.

By requiring the Attorney General to seek permission or leave from the court, it will ensure that the decision for the entry of Nolle Prosequi is based on the merits of the case, rather than political expediency.

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<sup>25</sup> [2003-2004] 1 SCGLR 471

## COMPARATIVE ANALYSIS (KENYA)

In Ghana, the law allows the Attorney General to enter Nolle Prosequi at any stage of the proceedings, without the need to give reasons. However, in Kenya, the Director of Public Prosecution (DPP) needs permission from the court to discontinue a prosecution, as stipulated in **Article 157(8) of the Kenya Constitution 2010**, it states that “*The Director of Public Prosecutions may not discontinue a prosecution without the permission of the court*”<sup>26</sup> This provision provides a level of accountability and transparency in the exercise of the Director of Public Prosecutions (DPP's) discretion.

In the Kenyan case of the *Republic v Kamotho & another*<sup>27</sup>, the accused persons had been jointly charged with the offence of murder. They pleaded not guilty. When the matter came up for pre-trial conference, the Director of Public Prosecutions entered Nolle Prosequi (unwilling to pursue) with the intention to have the charges against the accused persons withdrawn.

This Nolle Prosequi was opposed by the victims on the grounds that the DPP not given in writing reasons for entering Nolle Prosequi, that the Nolle Prosequi was entered into in bad faith, and that the Nolle Prosequi infringed upon the rights of the victims under the victim protection Act.

One of the issues for determination was whether the Director of Public Prosecution had the duty to inform the victims of an alleged crime of the reasons why they entered a Nolle Prosequi.

**DO Ogembo J**, speaking for the court ruled that:

*“the DPP was required to satisfy the court that the Nolle Prosequi sought to be entered was in public interest. In the interest of the administration of justice and was not an abuse of the process of the court. The Nolle Prosequi would fall and collapse where the DPP fails to satisfy the constitutional threshold”.*

With this, the Kenyan court requires the DPP to provide reasons and also seek the leave of the court, otherwise such a Nolle Prosequi entered shall fail and collapse. The requirement of leave providing

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<sup>26</sup> Ibid

<sup>27</sup> (Criminal case of 60 of 2019) [2022] KEHC 16055 (KLR) (crim) (6 December 2022)

reasons and seeking for leave from the court ensures accountability, since it is the state that funds the DPP. This is to enhance better democracy. Justice and discretion can be well managed under Nolle Prosequi if the Attorney General is required to seek leave from the court before the Nolle Prosequi can take effect.

#### ***4.3 Establishing a Prima facie case should serve as a bar to the entry of Nolle Prosequi.***

The establishment of a case to answer implies that the accused person bears the burden of raising a reasonable doubt in the case of the prosecution. At this juncture, the entry of a Nolle Prosequi should be precluded. Permitting the Attorney General to enter a Nolle Prosequi at any stage before judgment, including after the establishment of a prima facie case, suggests that the accused person's complicity is acknowledged, until rebutted by evidence yet the Attorney General unilaterally decides to discharge them.

This practice undermines the principles of justice and must be restricted to instances where a prima facie case has not been established. According to established legal precedent, if the prosecution fails to establish a prima facie case at the close of the prosecution's case, the accused person is entitled to acquittal<sup>28</sup>. It is therefore incongruous that an Attorney General can discharge an accused person via Nolle Prosequi after a prima facie case has been established, without providing reasons or justification.

#### **4.4 Longevity of Prosecution**

The entry of a Nolle Prosequi does not provide closure for the accused person, as it does not preclude subsequent prosecution. The prosecution retains the discretion to re-initiate proceedings at any time, leaving the accused person and their relatives in a state of uncertainty.

This lack of finality creates inefficiencies and waste of resources. Accused persons invest significant time, money, and emotional energy in defending themselves, only to face the prospect of re-prosecution. If a Nolle Prosequi is entered and the matter is subsequently re-prosecuted, the accused

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<sup>28</sup> Section 173 of the Criminal Procedure Act 1960 (Act 30)



person and their relatives are forced to incur additional expenses and endure further emotional distress.

This scenario is inherently unfair and undermines the principles of justice. It is essential to reconsider the current framework and explore alternatives that provide greater certainty and finality for accused persons, while also ensuring that justice is served.

#### ***4.5 There is no option to prove innocence***

The entry of a Nolle Prosequi triggers an automatic discharge of the accused person, without affording them the opportunity to elect whether to proceed with the trial to prove their innocence. This mandatory provision effectively strips the accused person of their right to clear their name and restore their reputation. In situations where a criminal charge has already caused reputational damage and social stigma, it is essential to provide the accused person with the option to continue with the prosecution. This would enable them to prove their innocence and vindicate their reputation. Denying them this opportunity creates an unfair imbalance, as the accused person is left with no recourse to redeem themselves.

To ensure a fair and just outcome, it is imperative to introduce a provision that allows the accused person to opt for continuation of the trial, despite the entry of a Nolle Prosequi. This would safeguard their right to a fair hearing and provide an opportunity for rehabilitation and restoration of their reputation.

#### **4.6 Accountability**

The Attorney General will be accountable to the people by way of assigning reasons to the entry of Nolle Prosequi. As the office of the Attorney General is publicly funded, it is imperative that it operates with transparency and accountability to the people. It is entirely reasonable to expect the Attorney General to provide reasons for discontinuing a prosecution and discharging an accused person.

As a public office, the Attorney General's decision-making processes should be open to scrutiny, ensuring that the interests of justice and the public are served. Providing reasons for the discharge of

an accused person would not only promote accountability but also foster trust in the criminal justice system. In the spirit of transparency and accountability, it is not unreasonable to expect the Attorney General to justify their decision to discontinue a prosecution, thereby ensuring that the public interest is protected and that justice is served.

#### 4.7 Mandatory Compensation

It is essential that the state provides mandatory compensation to the accused person when a Nolle Prosequi is entered. This measure would serve as a check on the state's discretion, limiting the arbitrary use of Nolle Prosequi and promoting a more judicious exercise of prosecutorial power.

By providing compensation, the state acknowledges the accused person's right to a fair trial and the potential harm caused by the prosecution's decision to discontinue the case. This approach would strike a balance between the state's interest in exercising prosecutorial discretion and the accused person's right to justice and compensation for unnecessary hardship.

#### 4.8 Regulations must be enacted to govern the extent of its exercise

In **Ransford France v Electoral commission & Attorney General**,<sup>29</sup> the Supreme Court of Ghana noted that it is not always the case that regulations must be enacted for the exercise of discretionary powers. Notwithstanding, at this instance, regulation is needed to guide the path of the Attorney General. This is because Nolle Prosequi may have influence on the liberty and the fundamental human rights of accused persons. In **Eugene Baffoe Bonnie v Republic**<sup>30</sup>, where the court reasoned that the accused person should be given reasonable time for defence and the prosecution must make available all relevant materials they may rely on as evidence in prosecuting the case of the accused person. This is a clear indication that our courts do not undermine the essence of the fundamental human rights of accused person (s).

### 5.0 CONCLUSION AND RECOMMENDATIONS

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<sup>29</sup> Ransford France v Electoral commission & Attorney General [2012] 1 SCGLR 705

<sup>30</sup> NO. J1/06/2018

The debate surrounding the use of Nolle Prosequi in Ghana has sparked intense discussion about the delicate balance between justice and discretion. As we ponder whether to adopt a similar approach to Kenya, where the Director of Public Prosecutions requires leave of the court to discontinue a prosecution, we must carefully consider our values and priorities as a society.

In Ghana, the Attorney General has the discretion to enter a Nolle Prosequi, discontinuing a prosecution at any stage before judgment. This power, although rooted in legal tradition, raises concerns about potential abuses and the need for checks and balances.

To address these concerns, it has been argued that the Attorney General should be required to assign reasons when entering a Nolle Prosequi, with leave granted by the court. This approach would provide a necessary check on the Attorney General's power, ensuring that the decision to discontinue a prosecution is not arbitrary.

Additional measures, such as submission of a case to answer being a bar to Nolle Prosequi, would help ensure certainty and put matters to rest. Furthermore, mandatory compensation and accountability mechanisms would provide a more robust framework for balancing justice and discretion. It is prudent to further seek for an amendment of section 54 and 59 of the criminal procedure Act 1960 (Act 30) to reflect the aforementioned arguments.

The Nolle Prosequi conundrum in Ghana requires careful consideration and a nuanced approach. By adopting a more transparent and accountable system, we can ensure that justice is served while maintaining the necessary checks and balances on discretion. Ultimately, it is up to us as a society to decide how to strike this delicate balance.