IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: DOTSE, JSC (PRESIDING)
PWAMANG, JSC
TORKORNOO (MRS.), JSC
HONYENUGA, JSC
PROF. MENSA-BONSU (MRS.), JSC

CHIEFTAINCY APPEAL
NO. J2/01/2020

11TH NOVEMBER, 2020

NANA AGYARE BOFOUR IV
CHIEF OF KOJO BOFOUR AND ADONTENHENE
OF YEJI TRADITIONAL AREA — PETITONER/APPELLANT/APPELLANT

VRS

1. JOSEPH ADADE ANSAH OF YEJI KUO
2. NANA KOFI AYEREKETE, NIFAHENE OF YEJI TRADITIONAL COUNCIL
3. NANA YAW KAGBRESE V
4. YEJI TRADITIONAL COUNCIL, YEJI

— RESPONDENTS/RESPONDENTS/ RESPONDENTS

JUDGMENT

DOTSE, JSC:-

On the 11th day of November 2020, this court by a unanimous decision, dismissed the appeal filed by the Petitioner/Appellant/Appellant, hereafter referred to as the Petitioner,

against the decision of the Judicial Committee of the National House of Chiefs dated 30th day of August 2018 which decision was in favour of the Respondents/Respondents/Respondents hereafter referred to as Respondents.

We now proffer reasons for our decision.

This case no doubt is a cause or matter affecting chieftaincy. It therefore takes its roots from the Constitution 1992. But how did this all evolve under the Constitution of 1992?

Report of the Committee of Experts, (Constitution) on Proposals for a Draft Constitution of Ghana which was presented to the P.N.D.C on 31st July 1991 states as follows in paragraphs 339, and 340 of the Report on page 156.

339. "It is worth recalling that Akufo-Addo Report recommended the integration of chieftaincy with the local government system

While the committee would not go so far as to recommend such a radical step, it would nevertheless draw attention to the following:-

1. *Chieftaincy constitutes a major resource that could be officially tapped in reinforcing the modern governmental structure.*
2. ***Having regard to the high intellectual and professional calibre that the institution of chieftaincy attracts these days, chiefs may now be regarded as a significant source of talent for the modern sector."***

*340. "The Committee accordingly recommends that (**1) the institution of chieftaincy be guaranteed in the Constitution, as in the previous constitutions,***

(2) appropriate steps be taken to ensure that the effective participation of chiefs in the local government system; and

(3) adequate resources be made available from stool land revenues to enable chiefs to play their legitimate role as leaders and catalysts in the development process." Emphasis

It was therefore pursuant to the above proposals that articles 270 to 277 provisions of the Constitution 1992 which guarantee and regulate the institution of chieftaincy have been provided. For example, article 270 (1) (2) and (3) of the Constitution 1992 provides as follows:-

270. "The Institution of Chieftaincy

(1) The institution of chieftaincy, ***together with its traditional councils established by customary law and usage, is hereby guaranteed.***

(2) Parliament shall have no power to enact any law which

(a) confers on any person or authority the right to accord or withdraw recognition to or from a chief for any purpose whatsoever, or

(b) in any way detracts or derogates from the honour and dignity of the institution of chieftaincy.

(3) Nothing in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, clause (1) or (2) of this article if the law makes provision for,

(a) the determination, in accordance with the appropriate customary law usage, by a traditional council, a Regional House of Chiefs or the National House of Chiefs or a Chieftaincy Committee of any of them, of the validity of the nomination, election, selection, installation or deposition of a person as a chief,

(b) a traditional council or a Regional House of Chiefs or the National House of Chiefs to establish and operate a procedure for the registration of chiefs and the public notification in the Gazette or otherwise of the status of persons as chiefs in Ghana." Emphasis

WHAT ARE THE RELEVANT FACTS IN ISSUE

On the 28th day of March 2013, the Petitioner herein filed a writ of summons against the Respondents claiming specifically the following reliefs:-

"Wherefore the petitioner seeks against the respondents herein

a. A declaration that the purported nomination, etc. of the 1st respondent by the other respondents is uncustomary, improper, illegal and therefore null and void.
b. An order of perpetual injunction restraining the 1st respondent herein from styling himself, holding himself out, purporting to act, as the chief of Kojo Bofour and Adontenhene of Yeji Traditional Area.
c. An order of perpetual injunction restraining the 2nd, 3rd and 4th respondents from styling, holding out, referring to, acknowledging the 1st respondent as the chief of Kojo Bofour and Adontenhene of Yeji Traditional Area.
d. Declaration that, the petitioner herein is the chief of Kojo Bofour and the Adontenhene of Yeji Traditional Area/Council.
e. Declaration that, the 1st respondent is not the chief of Kojo Bofour.
f. Declaration that, the purported nomination and recognition of the respondent by the other respondents as the chief of Kojo Bofour is wrongful, improper etc. in custom and same be declared as null and void
g. Declaration that, by custom, convention, tradition etc. the 3rd and 4th respondents are not the kingmakers of the Kojo Bofour stool and have no role to play with the selection, election, nomination, enstoolment etc. of the occupant to the Kojo Bofour Stool.
h. Declaration that, it is only the Kingmakers of the Kojo Bofour stool, who are eligible and clothed with capacity to nominate, select, enstool etc an occupant to the Kojo Bofour stool.
i. Further orders as the Honourable Judicial Committee may deem fit to make arising out of the pleadings." Emphasis supplied

In order to understand the legal arguments and the issues which call for determination in this chieftaincy appeal, it is perhaps appropriate to set out in extenso the nature of the Petitioner's pleadings as per the petition filed by him

"In the Judicial Committee
Brong Ahafo Regional House of Chiefs
Sunyani, Brong Ahafo Region

Nana Agyare Bofour IV Chief of - Petitioner

Kojo Bofour and Adontenhene of Yeji

Traditional Area

Vrs

1. Jospeh Adade Ansah of Yeji Kuo
2. Nana Kofe Ayerekete, Nifahene of Yeji - Respondents
   Traditional Area/Council
3. Nana Yaw KagbreseV Omanhene of
   Yeji Traditinal Area, Yeji
4. Yeji Traditional Council, Yeji

1. Full Name of Petitioner

   Nana Agyare Bofour IV Chief of Kojo Bofour

   And Adontenhene of Yeji Traditional Area/Council

2. Capacity of Petitioner

   Chief of Kojo Bofour and Adontenhene

   of Yeji Traditional Area/Council

3. Names and Addresses of Persons to be affected by this Petition

1. Joseph Adade Ansah of Yeji
2. Nana Kofe Ayerekete, Nifahene of Yeji Traditional Area
3. Nana Yaw KagbreseV Omanhene of Yeji Traditional Area, Yeji
4. Yeji Traditional Council, Yeji"

Wherefore, the Petitioner has reason and can prove that

1. The petitioner is a member of the royal family of the Bofour Gate of the Kojo Bofour stool.
2. The 1st respondent is a resident of Yeji Kuo.
3. The 2nd respondent is Nifahene of Yeji Traditional Area who has wrongfully been styling himself as the Stool Father of the Adonten Division of Yeji Traditional Area.
4. **The 3rd respondent is the Omanhene of Yeji Traditional Area and the President of the Yeji Traditional Area.**
5. The 4th respondent is the Traditional council of the Yeji Traditional Area
6. On 21st March 2010, the petitioner was nominated by the Obaapanin and was accepted by the Kingmakers of Kojo Bofour.
7. The Petitioner was installed as the chief of Kojo Bofour with the stool name Nana Agyare Bofour IV.

10. Even though the petitioner is the properly installed chief of Kojo Bofour and the Adontenhene of the Yeji Traditional Area, the **1st respondent has been wrongfully and purportedly nominated, styled and installed by the 2nd ,3rd and 4th respondents as the chief of Kojo Bofour and the Adontenhene of the Yeji Traditional Area.**

11. That the purported nomination and installation of the 1st respondent by the other respondents with the 3rd and 4th respondents playing a leading/major role was done surreptitiously and without the requisite knowledge, consent, concurrence, involvement, participation etc of the kingmakers of Kojo Bofour stool.

25. That the conduct of the respondents, more especially the 3rd and 4th respondents, who are required to be embodiment of custom is customarily foreign, odd and improper.

26. Ordinarily, the present petition ought to have been brought before the Judicial Committee of the Yeji Traditional Council which would conventionally be empanelled by the 3rd respondents in his capacity as the President of the Yeji Traditional Council

27. However, the respondents have demonstrated such high level of organized hatred, spite, malevolence, covetousness etc. against the petitioner that both prudence and law dictate that they or their agents or anyone working under their authority are unfit to sit as Judges on any petition initiated by the petitioner.

28. In fact, the respondents, particularly the 3rd and 4th respondents, have engaged the petitioner in numerous, albeit frivolous, suits and have manifested such uncontrollable and unfair weight of viciousness that it would just be contrary to all precepts of the rule of law and acceptable standards of procedure known in all civilized societies for them (respondents) to sit as Judges or appoint their cronies to sit as Judges in the present petition. This explains why the present petition is brought before Nananom and not before the Judicial Committee of the Yeji Traditional Council." Emphasis supplied.

From the above rendition of the facts as contained in the petition filed by the Petitioner herein against the Respondents, the following should be carefully noted:-

1. **Petitioner claims to have been installed as chief of Kojo Bofour and Adontenhene of Yeji Traditional Area.**
2. **The 1st Respondent has also been nominated, elected and installed as chief of Kojo Bofour and Adontenhene of Yeji Traditional Area, an act, the Petitioner is seriously disputing.**

3. **The 3rd Respondent is the Omanhene of the Yeji Traditional Area and the President of the Yeji Traditional Council.**
4. **As between the Petitioner and the 1st Respondent, there is a raging claim as to which of them is the legitimate occupant of the Kojo Bofour stool and Adontenhene of the Yeji Traditional Area.**
5. The Petitioner is aware of the fact that, the contest between him and the 1st Respondent herein as to which of them is the legitimate occupant of the Kojo Bofour Stool and Adotenhene of the Yeji Traditional Area ought to have been commenced before the Judicial Committee of the Yeji Traditional Council, (Reference paragraph 26 of the Petition referred to supra).
6. The Petitioner states boldly that because of organised hatred, spite, malevolence etc. by the 3rd Respondent, who is the President of the Yeji Traditional Council he does not feel comfortable for the said Respondent or anybody selected by him to sit over his case in judgment.
7. **Finally, it bears emphasis from the nature of the reliefs being claimed by the Petitioner against the Respondents that, it is a suit in respect of a Divisional or sub-divisional stool, whose pride of place according to relevant constitutional, statutory and subsidiary legislations is the Judicial Committee of the Yeji Traditional Council and not the Judicial Committee of the Brong Ahafo Regional House of Chiefs.**
8. The question which then begs for an answer is whether the Petitioner is within his rights when he has invoked the jurisdiction of the Judicial Committee of the Brong-Ahafo Regional House of Chiefs which is reserved for determination of disputes involving Paramount Chiefs. Reference *Articles 274 (3) (a) (b) (c) (d) (e) and (f) and 274 (4) of the Constitution 1992 and (National and Regional House of Chiefs) Procedure Rules 1972, C. I. 27.*

CASE OF THE RESPONDENTS

The Respondents substantially responded to the petition in all material particulars as follows:-

i. **That, it is a statutory duty of the 3rd Respondent to appoint members of the Judicial Committee of the Yeji Traditional Council and such a right cannot be taken away from the 3rd Respondent.**

ii. That the Petitioner subsequently filed a motion before the High Court Sunyani alleging bias against the 3rd Respondent in the appointment of members of the Judicial Committee of the Yeji Traditional Council.

iii. However, the High Court, Sunyani presided over by Beresford Acquah J, on 26/3/2013 dismissed the said application.

iv. The Respondents then raised a lethal and incisive legal argument as per paragraph 33 of their Defence as follows:-

"The 3rd Respondent contends that the petition in the Brong Ahafo Regional House of Chiefs by the Petitioner is improper and it should be dismissed because the Judicial Committee of the Brong-Ahafo Regional House of Chiefs has no jurisdiction to hear and determine this petition. Emphasis

In the memoranda of issues that was settled by the Judical Committee of the Brong-Ahafo Regional House of Chiefs, issue (c) which dealt with the resolution of the legal argument states as follows:-

"Whether or not the petition is before the proper forum."

The Respondents also filed a motion praying the Judicial Committee to dismiss the petition on the grounds that the Judicial Committee of the Brong Ahafo Regional House of Chief has no jurisdiction to hear and determine the present petition by the Petitioner. This was the application that was determined by the Judicial Committee.

RULING OF THE JUDICIAL COMMITTEE BRONG-AHAFO REGIONAL HOUSE OF CHIEFS DATED 27TH AUGUST 2013

In a unanimous decision by the Judicial Committee of the Brong Ahafo Regional House of Chiefs, dated 27th August 2013 the said Committee on the Respondents application to

dismiss the petition, **dealt with the preliminary legal objection on the issue of whether the Judicial Committee of the Brong Ahafo Regional House of Chiefs has jurisdiction to deal with the petition as filed before it.**

After exhaustive discussions and analysis of the arguments of learned counsel in respect of the preliminary legal submissions, the judicial Committee decided the issue in the following terms:-

> *"It is the opinion of Nananom that, these reliefs (d) and (e) are the root of the dispute and* ***since the decision of the Superior court bind this (sic) Committee, Nananom hold themselves bound by these and other decisions and hereby decline jurisdiction in this matter. Case consequently strike of (sic) and dismissed*****."** Emphasis

APPEAL BY RESPONDENT TO JUDICIAL COMMITTEE OF THE NATIONAL HOUSE OF CHIEFS

An appeal by the Petitioner against the Ruling of the Judicial Committee of the Brong Ahafo Regional House of Chiefs to the Judicial Committee of the National House of Chiefs was similarly unsuccessful and was dismissed. In its unanimous decision dated 30th August 2018, the Judicial Committee of the National House opined and held thus:-

> *"On account of the above, the Judicial Committee of the Brong Ahafo Regional House of Chiefs* ***rightly declined jurisdiction to hear and determine the Appellant's petition and hence dismissed same****. We therefore find nothing wrong with the Ruling of the Judicial Committee of the Brong Ahafo Regional House of Chiefs dated 27th August 2013 and we accordingly affirm same. For the foregoing reasons, this appeal fails and same is hereby dismissed."* Emphasis

FURTHER APPEAL BY PETITIONER WITH LEAVE TO THE SUPREME COURT

Having obtained leave from the Judicial Committee of the National House of Chiefs dated 25th April 2019, the Petitioner yet again filed another appeal against the decision of the

Judicial Committee of the National House of Chiefs on the 2nd day of May 2019, to the Supreme Court as per the following Notice and grounds of appeal.

"Notice of Appeal pursuant to the Grant of leave by the National House of Chiefs Judicial Committee on 24/04/2019

1. Please take notice that the Petitioner/Appellant/Appellant herein aggrieved and dissatisfied with the decision/ruling of the National House of Chiefs, Kumasi dated the 30th day of August 2018 doth hereby appeal to the Supreme Court, Accra on the grounds stated in paragraph 3 of this appeal, and will at the hearing of this appeal seek the reliefs set forth in paragraph 4 below and the person to be affected by this appeal is described in paragraph 5 below.
2. Part of the decision complained of
   a. The entire decision/judgment and all consequential orders of the National House of Chiefs, Kumasi dated the 30th day of August 2018
3. Grounds of Appeal
   a. The National House of Chiefs erred by holding that, the Brong Ahafo Regional House of Chiefs is not the proper forum to contest the petition.
   b. The National House of Chiefs erred when it failed to confirm jurisdiction on the Brong Ahafo Regional House of Chiefs.

   Particulars of error

1. Failing to appreciate the fact that, since the 3rd and 4th Respondents/Respondents/Respondents are parties, the Regional House of Chiefs, Brong Ahafo Region is the proper forum
   c. The National House of Chiefs failed to appreciate the case of the Appellant/Appellant/Appellant and thereby plunged into error.
   d. The Ruling of the Judicial Committee of the National is against the weight of evidence
   e. Cost awarded against the petitioner/Appellant/Appellant was excessive, harsh improper etc

f. Additional grounds of appeal shall be filed upon the receipt of the certified true copy of the ruling.

4. Relief being sought
   a. To reverse, set aside etc. the decision of the National House of Chiefs and all the consequential orders dated the 30th day of August 2018.
5. Persons being affected by the Appeal
   1. Joseph Adade Ansah of Yeji
   2. Nana Kofi Ayerekete, Nifahene of Yeji Traditional Area
   3. Nana Yaw Kabrese v Omanhene of Yeji Traditional Area, Yeji
   4. Yeji Traditional Council, Yeji" Emphasis

Application of the relevant constitutional, statutory and subsidiary legislations on the issues germane to this appeal as raised and argued in the statements of case of learned counsel for the parties herein.

At this stage, we deem it expedient to set out the following relevant statutory provisions as follows, The *Chieftaincy Act, 2008 (Act 759) Sections 26, 29 (1) & (2) & 76 and The Chieftaincy (Proceedings and Functions) Traditional Council Regulations, 1972 (L.I. 798) Regulations 1, 2, 3 &4.*

> ***26. "Original jurisdiction of Regional House of Chiefs***
> ***Subject to section 22 a Regional House has original jurisdiction in matters relating to a paramount stool or skin or the occupant of a paramount stool or skin including queenmothers to a paramount stool or skin.***
>
> *29. Jurisdiction of Traditional Councils*
>
> *(1) Subject to this Act, a Traditional Council has exclusive jurisdiction to hear and determine a cause or matter affecting chieftaincy which arises within its area, not being one to which the Asantehene or a paramount chief is a party.*

(2) The jurisdiction of a Traditional Council shall be exercised by a Judicial Committee comprising three or five members appointed by the Council from their members.

76. Interpretation

In this Act unless the context otherwise requires,

***"Asantehene"** means the occupant of the Golden Stool of Ashanti;*

***"cause or matter affecting chieftaincy"** means a cause, matter, question or dispute relating to any of the following*

(a) the nomination, election, selection or installation of a person as a chief or the claim of a person to be nominated, elected, selected or installed as a chief,

(b) the deposition or abdication of a chief,

(c) the right of a person to take part in the nomination, election, selection or installation of a person as a chief or in the deposition of a chief,

(d) the recovery or delivery of stool property in connection with the nomination, election, selection, installation, deposition or abdication of a chief, and

(e) the constitutional relations under customary law between chiefs;

***"deposition"** means destoolment or deskinment;*

"divisional chief" means a chief whose name for the time being appears as a Divisional Chief in the National Register of Chiefs,

***"Judicial Committee"** means a committee appointed under sections 25, 28 or 29 of this Act,*

***"Minister"** means the Minister responsible for Chieftaincy and Culture;*

***"National House"** means the National House of Chiefs,*

***"paramount chief"** means a person who has been nominated, elected or selected and installed as a paramount chief in accordance with customary law and usage,*

***"Regional House"** means the Regional House of Chiefs of the relevant region,*

"Register" *means the register of chiefs maintained by the National House under section 59; and*

"stool" *includes a skin.*

Chieftaincy (Proceedings and Functions) Traditional Councils Regulations, 1972 (L.I.798) – Regulations 1, 2, 3 and 4

"Regulation 1—Jurisdiction of the Traditional Council.

(1) A Traditional Council established under section 12 of the Chieftaincy Act, 1971 (Act 370) shall have jurisdiction to hear and determine any cause or matter affecting chieftaincy which arises within its area.

(2) The said jurisdiction shall not include any cause or matter to which the Asantehene or a Paramount Chief is a party.

Regulation 2—Judicial Committee of the Traditional Council.

The jurisdiction conferred on each Traditional Council by section 15 of the Chieftaincy Act and these regulations shall be exercised by a judicial committee.

Regulation 3—Composition of the Judicial Committee.

(1) A judicial committee shall be appointed by a Traditional Council and shall consist of five persons all of whom shall be members of that Council.

(2) A judicial committee shall elect one of their number as Chairman, who shall preside over the committee.

(3) A judicial committee shall be duly constituted for the despatch of its business by not less than three members thereof.

(4) The determination of any question before the judicial committee of a Traditional Council shall be by simple majority. Emphasis

PRELIMINARY ISSUES ARISING FROM LEARNED COUNSEL FOR PETITIONER'S STATEMENT OF CASE AND REPLY

Learned counsel for the petitioner, Nana Obiri Boahen, prefaced his submissions in the statement of case by reference to the case of ***Nana Yeboah-Kodie Asare II (Yonsohene & Benkumhene of Jamasi) and Another (No.I) vrs Addai Yonso Bedomase -Bretuo Abusuapanyin and others (No.I) [2015-2016] 2 SCGLR 1198***

Apart from the said quotation being a correct statement of the philosophical underpinnings of the administration of law, there is absolutely no nexus in the entire statement connecting anything of relevance in the instant appeal to the said statement.

Secondly, we also fail to understand the complaint of there being two judgment on the record thereby smacking of fraud and question marks.

We concede that there are two judgments, but it is quite certain that one was the record of the judgment as delivered and the other the detailed reasoning of the court. Indeed a close reading of the two records of the judgments will give no other impression and understanding. We completely fail to appreciate the relevance of the said submissions as they are not referable to any ground of appeal

GROUNDS A, B, C AND D

We have perused the statement of case filed by learned counsel for the petitioner and we are of the opinion that the submissions made therein are not referable to the said grounds of appeal and the substance of the case. Learned counsel for the petitioner just referred to quotations from various judgments without even acknowledging the principles of law involved and how they apply to the circumstances of the instant case. The crux of the case of the Petitioner is that, the Judicial Committee of the Brong-Ahafo Regional House of Chiefs is the convenient forum for the case because the 3rd Respondent who is the Omanhene of Yeji and President of the 4th Respondent Council, (Yeji Traditional

Council) are both parties to the suit and cannot therefore be arbiters in a suit in respect of which they are parties. This brings into focus the *"nemo judex in causa sua" (i.e. one cannot be Judge in his own cause)* principle of natural justice. That is the case of the Petitioner, period.

The reliance on cases like the following

1. ***Tamakloe & Partners v GIHOC Distilleries Co. Ltd. unreported decision of the Supreme Court, Suit No. J4/70/2018 dated 3rd July 2019.***
2. ***Akufo-Addo v Cathline [1992] 1 GLR 377***
3. ***Tuakwa v Bosom [2001-2002] SCGLR,6***
4. ***Gregory v Tandoh IV and Anr. [2010] SCGLR, 971 just to mention a few are not applicable to the grounds of appeal urged upon us.***

STATEMENT OF CASE OF LEARNED COUNSEL FOR THE RESPONDENTS

Learned counsel for the Respondents, Kwadwo Adu Bosompem in his brief but incisive statement of case stated that, a close look at the reliefs sought by the Petitioner at the Judicial Committee of the Brong Ahafo Regional House of Chiefs indicate quite clearly that the substance of the reliefs therein does not relate to the paramount stool, but rather to a Divisional stool. He submitted therefore that, the case should not have been commenced at the Judicial Committee of the Brong Ahafo Regional House of Chiefs but at the Judicial Committee of the relevant Traditional Council, and this is the Yeji Traditional council.

Learned counsel then referred to the relevant constitutional, as well as statutory provisions in the Constitution and *The Chieftaincy Act, 2008 Act 759* as well as the case of ***Ansu Agyei v Fimah [1993-1995] GBR 936, SC.***

ANALYSIS

Article 270 of the Constitution 1992 guarantees and preserves the institution of chieftaincy as established under customary law and usage and protects it from any control such as recognition of a chief by any organ of state or individual. It must therefore be emphasized that jurisdiction by its very nature is always conferred by either a

constitutional provision or by statute. Sometimes the Constitution provides the basic framework of the jurisdiction and statutory provisions and other subsidiary legislations amplify it by providing the general guidelines, scope and remit of each jurisdictional stipulation.

REGIONAL HOUSE OF CHIEFS

As referred to earlier, these are creations under article 274 (1) of the Constitution and have been established in each of the administrative regions of Ghana. Pursuant to article 274 (2) the membership of each Regional House of Chiefs is to be determined by law in Parliament. Article 274 (3) (a) to (f) deal with the functions and jurisdictions that have been conferred on the Regional Houses of Chiefs.

Under Article 274 (3) (c), the Regional House of Chiefs has appellate jurisdiction to hear appeals and determine same from the traditional councils within the region in respect of the nomination, election, selection, installation or deposition of a person as a chief.

ORIGINAL JURISDICTION

Pursuant to article 274 (3) (d) of the Constitution, a Regional House of Chiefs has original jurisdiction in all matters relating to a paramount stool or skin, or the occupant of the above and this includes queenmother to a paramount stool or skin.

The appellate and original jurisdiction conferred on the Regional House of Chiefs is to be exercised by a Judicial Committee of the said House, consisting of three chiefs from among their membership appointed by the House. See article 274 (4) of the Constitution.

TRADITIONAL COUNCILS

Section 29 (1) of the Chieftaincy Act, Act 759 has already been referred to supra. It is the above provision that enables a Judicial Committee of the appropriate Traditional Council to determine a dispute concerning a chief or queenmother, stool or skin below

the status of the Asantehene, a paramount queenmother, a paramount stool or a paramount skin.

By virtue of the decision of the High Court, Ho in the case of ***Republic v The President Buem Traditional Council; Ex-parte Isuku II [1991] 1 GLR 455***, it is the full membership of the Traditional Council that should appoint the members of the Judicial Committees. See also *Chieftaincy (Proceedings and Functions (Traditional Councils) Regulations, 1972 LI 798*. See Regulations 1 (1) and (2), 2, 3, (1) (2) (3) and (4) thereof.

Thus, it is the Judicial Committees of the Traditional Councils that exercise the original jurisdiction conferred on the said Traditional Councils under section 29 (1) of Act 759 already referred to supra.

It can therefore be concluded that, the effect of section 26 of Act 759 is that, when a cause or matter affecting chieftaincy relates to a paramount chief/stool or skin, such a matter should be commenced at first instance before the Judicial Committee of the Regional House.

Section 29 of the Chieftaincy Act, 759 also has the same effect when the dispute relates to any chief/stool, skin or queenmother of a subordinate stool to the Asantehene or Paramount stool, skin or queenmother. The effect is that such a dispute must of necessity be commenced before a Judicial Committee of the Traditional Council.

WHAT IS THE STATUS OF THE STOOL IN RESPECT OF WHICH THIS PETITION RELATES?

The Petitioner has stated his name, status and capacity as the Chief of Kojo Bofour and Adontenhene of Yeji Traditional Area. This clearly makes him a Divisional Chief. The Petitioner described the 1st Respondent as an ordinary resident of Yeji Kuo. He then described the 2nd Respondent, Nana Kofi Ayerekete, as the Nifahene of Yeji Traditional Area. He then states that the 3rd Respondent, Nana Yaw Kagbrese V, is the Omanhene of Yeji Traditional Area and President of the 4th Respondent Traditional Council.

It should however be noted that the mere inclusion of the 3rd Respondent (who is a paramount Chief of Yeji) by the Petitioner as a party in the suit does not automatically render the petition one that is cognisable before the Judicial Committee of the appropriate Regional House of Chiefs.

This is because it has been held in several cases that, in determining the jurisdiction of the appropriate Judicial Committee, what is to be considered and taken into consideration are the following:-

i. The reliefs (s) claimed
ii. The facts relied upon in proof of same
iii. The parties that occupy the stools or skins that are the subject of the dispute. *(If the stool is that of the Asantehene or a Paramount stool/skin, then the appropriate forum is the Judicial Committee of the Regional House, if the converse is the case, i.e. a Divisional stool/skin or any such lower stool/skin, then the appropriate forum is the Judicial Committee of the Traditional Council.*

In the instant case for example, it is the dispute concerning the Kojo Bofour stool that is in contention as regards the status of the Petitioner and that of the 1st Respondent as to which of them is the Adontenhene of the Yeji Traditional Area. The inclusion of the 3rd Respondent therein as a party does not and will not change the character and or status of the disputed Kojo Bofour stool into a paramountcy

For example, the Petitioner himself per paragraph 26 of the petition has pleaded that, *"ordinarily, the present petition ought to have been brought before the Judicial Committee of the Yeji Traditional Council which would conventionally be empanelled by the 3rd respondent in his capacity as the President of the Yeji Traditional Council."* Emphasis

Even though the contention that it is solely the 3rd Respondent who appoints the members of the Judicial Committee has been proven to be inaccurate, reference the Ex-parte Isuku case referred to supra, the substance of the reliefs claimed before the court indicate quite convincingly that the 3rd and 4th Respondents were merely added as parties to the petition to make it easy for the Petitioner to go to the forum of the Regional House of Chiefs.

For example, a clear reading of the reliefs (a) (b) (c) (d) (e) (f) (g) (h) and (i) indicate quite clearly that it is the purported **nomination, selection and installation of the 1st Respondent as the Chief of Kojo Bofour and Adontehene of Yeji Traditional Area that is the substance of all the relief combined therein.**

As fate would have it, the Petitioner was indeed candid when he laid bare in paragraphs 27 and 28 of the petition what appears to him to be the real basis for the commencement of the petition in the Regional House of Chiefs and not the Yeji Traditional Council.

According to the petitioner, because the 3rd and 4th Respondent hate him, prudence and law dictate that they or their agents or anyone working with them are unfit to sit as Judges on any petition initiated by him the petitioner. Has the Petitioner made sufficient case for such a conclusion? Is it lawful for parties to pick and choose their own fora on the flimsiest of grounds? It appears the petitioner is propounding his own legal principles on the requisite guidelines in commencing chieftaincy proceedings.

From our analysis of the pleadings which constitute the facts relied upon by the Petitioner, it bears sufficient emphasis and linkage that the only reason the 3rd and 4th respondents were added as parties was for the petitioner to try his luck on the lame excuse of breach of the rules of natural justice. There are absolutely no sound, real, imagined or putative reasons or basis upon which these contentions can be established. It should therefore be noted that, the addition of the 3rd and 4th Respondents to the originating suit before the Judicial Committee of the Brong Ahafo Regional House of Chiefs will not clothe the court with jurisdiction.

We also find that the Petitioner has not been candid with the judicial process and appears to have engaged in a fishing expedition. This is so because, from the pleadings, the petitioner indeed invoked the jurisdiction of the Judicial Committee of the Yeji Traditional Council, by filing a petition against the nomination, election and installation of the 1st Respondent as chief of Kojo Bofour.

The 3rd Respondent in exercise of his statutory and administrative powers and duties enabled the members of the Judicial Committee of the 4th Respondents (Traditional

Council) to be appointed and empanelled. Apprehensive of the members of the Judicial Committee so appointed, the Petitioner on 30/8/2011 filed a motion in the High Court Sunyani alleging that members of the Judicial Committee so appointed were likely to be biased against him in the case but the application was dismissed by Beresford Acquah J, on 26/3/2013. Thereafter, the Petitioner discontinued the chieftaincy petition which he initiated before the 4th Respondent Traditional Council.

This matter was admitted by the Petitioner, reference paragraph 14 of the Reply filed for and on his behalf.

Having therefore taken into consideration the antecedents of the case in totality, and the substance of the legal arguments vis-à-vis the constitutional and statutory provisions as well as the principles laid down in the following decided cases, this court is of the considered opinion that it is untenable for the petitioner to deny the jurisdiction of the Judicial Committee of a Traditional Council on the flimsy grounds that it is the President who empanels the members. Even if that were the case, which it is not, an examination of same reveals that they cannot be grounds for upholding a claim of *"nemo judex in causa sua"* where it is claimed that the adjudicator has an interest in the final outcome of the matter being a Judge in his own cause. ***(See Agyei-Twum v Attorney-General and Akwetey) [2005-2006] SCGLR 732.***

This is especially so, since the Petitioner's case against the panel on grounds of bias was dismissed by the High Court, Sunyani.

The cases we have reviewed are:-

1. ***Republic v Western Regional House of Chiefs, Ex-parte Aduhene [1994-95] GBR 903*** which held that, disputes involving the occupant of a divisional stool should not be heard by the regional house of chiefs since they do not involve paramount chiefs. In the above case, an action which was filed in the Western Regional House of Chiefs which involved the occupant of a divisional chief, to wit, the Ankobeahene of Sefwi-Wiawso was quashed by certiorari.

It should be noted that, in the Ex-parte Aduhene case referred to supra, the Supreme Court explained further that, in **determining the jurisdiction of the appropriate forum, the relief claimed and the facts relied upon to establish the case of the petitioner are the determining factors.**

S.A Brobbey in his invaluable book *"The Law of Chieftaincy in Ghana"* writes on the subject matter in the following terms at page 264

> ***"Another useful guide will be to examine the object of the relief or what the relief was aimed at achieving.*** *In that search, the question may be asked against which person or body and in what capacity may the judgment ultimately be given? It will also be useful to consider the object of enforcing the final order. A determination of the beneficiary of the order may provide another clue in arriving at the right decision on the forum." Emphasis*

Considering the above guidelines, and applying same to the circumstance of this case the following will emerge at the end of the analysis as follows:-

1. The object of the relief is that, the Judicial Committee of the Brong Ahafo Regional House of Chiefs, would have determined who is the rightful occupant of the Kojo Bofour stool and Adontenhene of the Yeji Traditional Area. The status of such a stool is that of a Divisional stool.
2. The judgment ultimately will enure to the benefit of either the Petitioner or the 1st Respondent.
3. Thirdly the judgment will be referable to a Traditional Council not a Regional House of Chiefs.
4. Finally, at all material times and for all purposes since the Kojo Bofour stool is a Divisional Stool, disputes concerning such a stool according to the relevant statutes is cognisable before a Traditional Council, reference L.I. 798 already referred to supra.

The overriding conclusion therefore is that, it is absolutely clear that the Judicial Committee of the Yeji Traditional Council and not that of the Brong Ahafo Regional House of Chiefs is the appropriate forum for the determination of the said dispute.

2. It is perhaps useful at this stage to refer also to the case of ***Konadu v Gyan [1987-88] 1 GLR 571*** where the Supreme Court emphatically held that the National House of Chiefs has no jurisdiction over a matter reserved exclusively for the jurisdiction of the traditional council.
3. See also the decision of the Supreme Court in the case ***Ansu-Agyei v Fimah*** already referred to supra.

In that case, the Judicial Committee of the Brong Ahafo Regional House of Chiefs had determined that it had no jurisdiction to determine the case because it did not involve a paramount stool. On appeal to the Judicial Committee of the National House, even though it accepted the fact that the case did not concern a paramount stool, it nevertheless proceeded to hear and determine it, saying it did so to avoid *"a funny situation"*. On a further appeal to the Supreme Court, **it held that the National House of Chiefs wrongly assumed jurisdiction over the case.** This signified the fact that all cases not involving the status of the Asantehene or a Paramount stool/skin must be commenced before the Traditional councils and not the Regional House of Chiefs.

ON THE ISSUE OF COSTS

Learned counsel for the Petitioner herein, Nana Obiri Boahen made references to the award of GH¢10,000.00 costs against the Petitioner when the Judicial Committee of the National House of Chiefs dismissed their appeal. Similarly learned counsel also took issue against the award of GH¢5,000.00 costs against them when leave was granted them to appeal to this court.

In his submissions, learned counsel argued that the said costs are not only unreasonable and excessive but are unacceptable and on the high side and should be overturned by this court.

We observe that the Judicial Committee of the Brong Ahafo Regional House of Chiefs delivered judgment in favour of the Respondents on 27th August 2013. We note further that the Notice of Appeal to the National House of Chiefs was filed on the same 27th August 2013 at 1.55pm.

On the 24th of October, 2013, the parties settled the appeal record and the following constitute the conditions of the appeal as executed by the parties.

> *"Under Rule 19 sub-Rules (1) – (4) and Rule 20 of the Chieftaincy (National and Regional House of Chiefs) Procedure Rules, 1972 – (C.I. 27) the following conditions are imposed."*

1. The Appellant is to deposit cash a sum of seven-hundred Ghana cedis (GH¢700.00) to cover the cost of preparation and transmission of the Appeal to the National House of Chiefs, Kumasi.
2. The Appellant is to pay a further sum of Two Thousand Ghana cedis (GH¢2,000.00) or in lieu thereof enter into a bond in like sum with two sureties to be justified for the due prosecution of the Appeal.
3. The above conditions are to be fulfilled on or before 7th November 2013.

All references to the appellant refer to the Petitioner herein. We observe that, instead of the GH¢2000.00 payment, the Petitioner executed a bond on the same 24th October 2013.

However, as at 10th September 2014, service of Form 7 on the parties was not complete and the Judicial Committee of the National House of Chiefs adjourned the suit sine die.

On the 17th of February 2015, when the Judicial Committee of the National House of Chiefs, reconvened, the matter was yet again adjourned sine die, because a panel member, Nana Kwesi Agyeman was unavoidably absent.

However on 17th April 2015 the Judicial Committee of the National House of Chiefs was duly constituted and the following orders were made:-

> *"Counsel and Judicial Committee agree that appeal is ripe for hearing and that written submissions be filed by counsel in respect of same. Counsel for Appellant*

to file within 3 weeks from today and Respondents counsel to respond within 3 weeks from date of service. Reply if any to be filed within 2 weeks from service of Respondents response. A date to be fixed by the Registrar for mention. Suit adjourned sine die".

Thereafter, learned counsel for the Respondents at the time, W.Y Oppong on the 20th May 2015 when the time allowed the Petitioner to file his statement of case elapsed, filed a search which indicated that the petitioners counsel had not filed any statement of case as at that date.

Thereafter the following applications were filed as follows:-

1. Motion to strike out action for want of prosecution filed by Respondents on 5th June 2015.
2. Motion on notice for extension of time within which to file written submission filed by the petitioner on 10th June 2015.

It was after these processes that the appeal was heard and determined by the Judicial Committee of the National House of Chiefs on 30th August 2018.

The above clearly indicate that the Petitioner and his legal advisers had been tardy at every stage of the process, hence the award of costs of GH¢10,000.00 and GH¢5,000.00 respectively against the Petitioner when judgment was delivered against him and also when extension of time was granted him to appeal to this court.

There is therefore sufficient justification for the award of the costs.

Furthermore, a close scrutiny of the record of appeal indicates that at sittings of the lower adjudicating tribunals, the 1st Respondent was always present whilst the 3rd and 4th Respondents were also always represented in court.

Besides, we believe this court can take judicial notice of the fact that, chiefs and or their representatives from and around the country inclusive of Yeji, who represent themselves or others have certain customary protocols they must comply with when travelling.

For example a chief or His representative must be decently attired for a court attendance, must be seen to travel in dignity, it is thus uncommon to expect the 3rd Respondent's representative to travel on public transport and or eat in a local chop bar for that matter.

We are strengthened by Rules 3.2.2, 3.2.5 and 3.2.7 of the *Code of Royal Ethics for Chiefs Part 3*, which deals with specific Rules of Royal Ethics for Chief as follows:-

3.2.2. "A chief should not eat, drink or smoke in pubic nor misbehave himself nor should he appear under the influence of alcoholic beverage in public."

3.2.5 A Chief should appear in public with dignity and royal honour and should not indulge in demeaning conduct unbecoming of a Chief." And

3.2.7 A chief should always appear in appropriate dress code to distinguish himself as a chief in accordance with the customary practice of his traditional area."

Reference page 149 of Handbook on Chieftaincy edited by the Ministry for Chieftaincy and Religious Affairs, 2017.

When we consider the delays that the Petitioner caused in the prosecuting of his appeal from the Brong Ahafo Regional House of Chiefs to the National House of Chiefs, and the protocols that chiefs are expected to comply with in dignity at all material times, we do not think the costs awarded were excessive, unreasonable and unwarranted. We will thus not disturb the costs awarded against the petitioner.

OBSERVATIONS BY THE COURT FOR REFORMS

We feel obliged to comment on the time that this case was commenced in the Brong Ahafo Regional House of Chiefs, which is the 28th day of March 2013 and the date it was finally disposed of by this court on 11th November 2020. A period of almost 7 years.

The decision of the Judicial Committee of the Brong Ahafo Regional House of Chiefs was rendered on 27th August 2013, meaning they took barely five months to dispose of the case. Nananom should be highly commended.

However, the appeal which was filed by the Petitioner on the same 27th August 2013 was not prosecuted until the 30th day of August, 2018, a period of almost 5 years. This is quite disturbing. The appeal against the decision of the Judicial Committee of the National House of Chiefs was filed on 2nd May 2019 pursuant to leave granted and this was completed in this court on 11th November 2020. We commenced this delivery by referring to excerpts from the Report of the Committee of Experts on proposals for a draft Constitution of Ghana which led to the Constitution of 1992.

In view of the inordinate delay in the prosecution of this appeal, we deem it expedient to once again refer to paragraph 141 of that report on page 157 which states as follows;-

141 *"The Committee has taken cognisance of the fact that the* ***social and economic significance of chieftaincy in our society has been significantly eroded by the proliferation of chieftaincy disputes.*** *Much of the blame for this unhappy situation attached to the Chiefs, traditional authorities and their people themselves."* Emphasis

How do we end proliferation of disputes when a simple case involving the nomination, election and installation of a chief over the Kojo Bofour stool, a Divisional stool for that matter will linger on for periods of aggregate of close to seven years , 2013 – 2020. This definitely is not a good testament.

We will therefore urge for urgent reform measures in the procedure rules of the Judicial Committee of all the Houses of Chiefs and the Traditional Councils to make their adjudicatory roles more time conscious. For example, it should be possible for reforms to be made in the empanelling of members of the Judicial Committees such that, apart from the regular panel members, there will also be waiting members of say (two) who will be on standby to join the panel anytime a regular member for one reason or the other cannot attend. This system has worked perfectly for the military and we believe can be adapted

with some modifications to work for the chieftaincy institution as well. Even though it will involve some increase in administrative expenses, the benefits are enormous and will result into social cohesion and peace in our communities.

Secondly, timelines should be given all adjudicating Judicial Committees from time of commencement up to time of completion of cases. This is because, we believe that the timely and prompt resolution of disputes by our revered traditional rulers will prevent the escalation of chieftaincy disputes in the country as was bemoaned by the Committee of Experts Report, referred to supra.

Thirdly, amendments should be made to the procedure rules that will require members of a Judicial Committee whose terms have lapsed to be granted extended terms to complete the adjudicatory process rather than to have the cases started afresh if they are not completed during the current limited period of extensions that are granted.

CONCLUSION

Having established that the substance, nature and effect of the reliefs claimed by the Petitioner against the Respondents before the Judicial Committee of the Brong Ahafo Regional House of Chiefs indicated quite clearly without any shadow of doubt that the Kojo Bofour stool is a divisional stool whose dispute is a cause or matter cognizable before the Judicial Committee of the Yeji Traditional Council, this court is unable to allow the appeal filed by the Petitioner.

Under these circumstances, the appeal by the Petitioner against the decision of the Judicial Committee of the National House of Chiefs dated 30th August 2018 fails entirely and is accordingly dismissed.

It was for the above stated reasons that we unanimously dismissed the appeal on the 11th of November 2020.

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

G. TORKORNOO (MRS.)

(JUSTICE OF THE SUPREME COURT)

C. J. HONYENUGA

(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)

(JUSTICE OF THE SUPREME COURT)

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