IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA GHANA

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF JUSTICE

ACCRA – AD. 2016

CORAM: AKUFFO (MS), JSC. [PRESIDING]

BAFFOE - BONNIE, JSC.

AKOTO – BAMFO (MRS), JSC.

APPAU, JSC.

PWAMANG, JSC.

CHIEFTANCY APPEAL.

NO.J2/2/2009.

9TH MARCH 2016

1. **NANA NIFA ABANKRO**	**(**KRONTIHEN**E)**	**PLAINTIFFS/**
2. **NANA YARFI ABABIO**	(GYASEHENE)	RESPONDENTS/
3. **NANA BOADU SEMERIKA**	(NIFAHENE **)**	**RESPONDENTS**
4. **NANA APPIA NUAMA**	**(**TWAFOHEN**E)**	
5. **NANA KWAKU NTRAMA**	(KYIDOMHENE)	

ALL OF ABEDWUM

VRS

NANA BOAKYE ANSAH (ABEDWIMHENE) DEFENDANT/APPELLANT /APPELLANT

JUDGMENT

BAFFOE-BONNIE JSC

This is an appeal against the decision of the Judicial Committee of the National House Of Chiefs (JCNHC) refusing to enlarge time within which to appeal against the decision of the Judicial Committee of the Adansi Traditional Council (JCATC) This appeal is pursuant to leave granted by this court on 3rd May 2013.

While preparing to write this decision we were served with a process titled AFFIDAVIT TO PULL OUT FROM THE CASE sworn to by Nana Nifa Abankro the first plaintiff /respondent in this case.. The 10 paragraph affidavit recounted the effect the suit has had on the development of the traditional area and concluded as follows;

8/ That, having thought about the bad effect the court case is having bad effect (sic) on the township I have decided to pull out from this case as the leader of the plaintiffs.

9/ That, I am therefore praying with the honourable Supreme Court Accra to strike my name from the case as the leader of the plaintiffs.

10/ That, I make this declaration to testify and certify that I am no more interested to pursue the case any further and that I have pull out from it absolutely for good.

This document signed by the first plaintiff personally was not accompanied by any motion and we do not know whether his counsel saw it and approves of it.

We do not know exactly the prayer that the deponent of the affidavit wants to convey. He recalls the negative effects that this suit is having on the traditional area and the need to discontinue with the action to heal wounds. If this is a sentiment shared by all the plaintiffs, then we think that the affidavit should be deposed to by all the plaintiffs or on their behalf, and they should be seeking to discontinue with the suit altogether. But the deponent assumes that being the first plaintiff he is the leader of the plaintiffs and therefore his prayer affects them.

Unfortunately, even if he is the ring leader or leader of the malcontents, the law recognizes the other plaintiffs as plaintiffs in their individual rights. So, even if he is struck off the list the case will still go on.

But looking at the bigger picture we believe that the procedure adopted by the first plaintiff to have his name struck off is wrong. At this stage in the proceedings if a party wants to opt out it can only be done with the leave of the court. Leave of the court is sought through a motion paper supported by an affidavit. Merely filing an affidavit and saying that he has pulled out of the case for good does not cloth this court with the jurisdiction to strike out the case or his name off the case.

The facts in this case are fairly simple and uncontroverted. The appellant in this case, Nana Boakye Ansah, is the chief of Abedwim, while all the respondents are sub chiefs of the said stool. The respondents brought some destoolment charges against the appellant before the JCATC. According to the appellant he prayed the JCATC for an earlier petition he had filed to be heard first, since the outcome of that would have a significant impact on the petition against him.

This prayer did not find favour with the committee which went ahead and heard the matter and a decision published which went against him.

According to him he made several attempts to procure a copy of the decision of the committee to enable him to appeal but he only received it after the time for appeal had lapsed. His attempt to file an appeal out of time also met the same fate with the reason that the registrar was always not on duty and that there was nobody to receive his documents. When time to appeal had lapsed the appellant then filed an application before the Judicial Committee of the Ashanti Regional House of Chiefs (JCARHC) for extension of time within which to appeal the decision of the JCATC.

His main reason for his application was that the registrar of the Traditional Council was sick and other personnel on duty had refused to accept his notice of appeal and file same.

In an affidavit in opposition sworn to by the registrar E. A. Boadu, he confirmed that he was posted to the Council on 27th November 1999 at the time when the previous registrar was sick. But he denied all the averments of the appellant regarding the efforts he had made to file the documents. He said;

> *3. that I was posted to the Adansi Traditional Council at the time when the substantive registrar was sick*
> *4. That throughout the period that I was in charge of the office nobody came to file any document on behalf of the Defendant(appellant herein).*
> *5. That when the solicitor for the Defendant complained about the fact that the defendant's notice of appeal had not been filed by the registry I wrote to Lawyer F.K Amoah and indicated to him that nobody had come to file any such papers*
> *6. That at all times material the registry of the Traditional Council was open and that other staff could have acted on the defendant's said papers.*

The JCARHC dismissed the application for extension of time within which to appeal on the grounds that

> a/ the affidavit of the registrar had debunked all the allegations of impropriety on the part of the registry staff regarding the failure to file the notice of appeal within time and at the appropriate forum i.e. the JCATC and b/ the application for extension of time had been filed after 7 months, which is 5 months, after the allowable 2 months.

The appellant appealed against this decision of the Regional House of Chiefs to the National House of chiefs.

The appeal before the National House was also dismissed on similar grounds. The National House reiterated the fact that with the affidavit sworn to by the registrar putting spokes in the wheel of his case, the appellant's failure to rebut some of the positive averments in the said affidavit was fatal to his case. Further, the NHC noted that even his application for extension of time which was filed in the first instance at the Regional House of Chiefs was procedurally wrong as same should have been filed at the court of first instance i.e. the Adansi Traditional Council. And

finally, the Regional House of Chiefs' reasoning that the application was hopelessly out of time was sound.

Pursuant to leave granted by the National House of Chiefs, the appellant has filed this appeal challenging the National House Of Chiefs' refusal to enlarge time for him to appeal against the decision of the Traditional Council on the following grounds;

i. The Judicial Committee of the National House of Chiefs failed to appreciate the facts as contained in the Affidavit of E.A. Boadu the new Registrar of the Adansi Traditional Council which clearly stated that he was posted to the Council on 27th November, 1999 at a time when the substantive Registrar was sick, confirming the Appellant's assertion that the Registrar was all along absent and was not at post to accept the appellant's notice of appeal for filing.

ii. The Judicial Committee of the Adansi traditional council erred in law when it failed to construe the true meaning of "proper officer" as contained in Rule 13 (1) CI 27 as interpreted in Rule 30 of CI 27 and in consequence, wrongly ruled that the Notice of Appeal could have been filed by other officials of the Council.

iii. The Judicial Council of the National House of Chiefs erred when they failed to consider the fact that the trial Judicial Committee ignored the respondent's petition to the trial committee to determine a matter pending between himself and Nana Guahyia Ababio, New Edubiasehene which was pending before the committee, was first in time, and whose outcome was likely to have a direct bearing and influence on the matter.

iv. The Judicial committee of the National House of Chiefs failed to exercise its discretion judicially and thus shut out the defendant appellant, thus perpetually preventing him from putting forward his side of the case.

After studying the records of proceedings very closely we are of the opinion that this appeal does not deserve any lengthy treatment. We believe that both the Regional and the National Houses' reasoning to the effect that the failure of the appellant to react to the rather damning affidavit of the registrar was fatal to his case, cannot be impeached. Not only did the registrar deny the assertion of the applicant that there was nobody on duty to receive the applicants documents for filing, he made a positive and verifiable statement to the effect that when the applicant's solicitor complained of the fact that the documents had not been filed, he (the registrar) wrote to Lawyer F.K. Amoah (who was counsel at the time) and indicated that nobody had come to file any documents.Positive and verifiable as this statement was the appellant did not find it needful to deny it.

We agree with both theRegional and National houses that failure to rebut this affidavit was fatal to the case of the appellant so the appeal fails on this ground.

In his 3rd ground of appeal, the appellant emphasizes the point that by not granting his application for extension of time, both the Regional and National Houses completely shut the door of litigation in his face thus, permanently preventing him from telling his side of the case. Here again, we believe that both the Regional and National Houses were right in not granting an extension of time to appeal on the grounds that the time lapse was too much. In reality the Regional and National Houses did not exercise any discretion in this matter. They merely threw the book at the appellant.

Rule 13(2) of Chieftaincy (National and Regional Houses of Chiefs) Procedure Rules, 1972 CI.21 provides,

"In accordance with sections 22(5) and 23 (6) of the Chieftaincy Act 1971 (Act 370), any appeal to the National House of Chiefs against a judgment or order of a Regional House of Chiefs, or to a Regional House of Chiefs against a judgment or order of a Traditional Council, shall be lodged within thirty days after the

judgment or order appealed against. Provided that the Judicial Committee to whom the appeal is directed may, if it appears to it to be just so to do, extend the said period in any particular case for a further period expiring not later than two months after the date of the decision appealed against"

The discretion of both houses to extend time can be exercised within two months of the judgment and no more. So if either the Regional or National Houses had purported to grant an extension when the application was filed after 7 months such an extension would have been a nullity and the appeal thrown out. This point was made more succinctly by our very able sister, Sophia Akuffo JSC in the case of DOKU V PRESBYTERRIAN CHURCH OF GHANA 2005-2006 SCGLR 200 holding 2; She said

"(2) It is not for nothing that rules of court procedure stipulate time limits. Because it is in the public interest that there shall be an end to litigation, the rules of the Supreme Court have set time limits to guide litigants with a view to achieving certainty and procedural integrity. Otherwise, in the case of appeals, any litigant may conveniently take his or her time to decide when to resurrect the litigation of suits in which decisions have been given. Thus time limits are too important for this court to ignore, even if it had any discretionin the matter; and although one might empathise with the appellant's prayer for this court to take into account the rules of equity to "prevent the respondent from taking undue advantage of the weakness or necessity" of the appellant, the court cannot craft new rules to suit the appellant's situation, nor will the ends of justice and equity be served in any attempt on the court's part to do so. There is no principle of equity that permits the court to ignore the time limits set by the rules so as to favour the appellant with an undue advantage."

This ground of appeal also fails.

Before us the appellant has argued for the first time another rather strange ground of appeal. This strange ground of appeal reads as follows;

> *"The Judicial Committee of the National House of Chiefs erred in law when it failed to construe the true meaning of proper officer as contained in Rule 13 (1) of CI 27 as interpreted in Rule 30 of CI 27 and in consequence, wrongly*

ruled that the notice of appeal could have been filed by other officials of the Council."

Rule 13(1) of CI 27 reads

'An appeal to a judicial committee in accordance with the chieftaincy act 1971 (Act370) shall be brought by notice of appeal in form 2 set out in the first schedule signed by the appellant or his counsel and filed with the proper officer of the judicial committee whatsoever decision is appealed against'.

Proper officer has been defined in Rule **30 of of C.I 27** as

"Proper officer means the officer, howsoever named performing the functions of Registrar in relation to a judicial Committee".

The appellant has submitted that the affidavit of the registrar clearly indicated that the registrar had been taken ill and that he was posted there later. So counsel submits that during that period there was no proper officer to receive and file his documents.

Coming from a party who has maintained all along that the registrar and other personnel deliberately avoided him and/or refused to accept his documents for filing, we found this ground of appeal and the submissions thereon very strange and rather confusing.

Is it the appellants case that the registrar was not there (deliberately or not) and the other persons refused to accept his documents for filing, or that the registrar was not around (deliberately or not) and though other persons were around they were not 'proper officers' so he could not entrust his documents to them for filing?

If it is his case that the registrar and his people all refused to accept his documents then it is our holding that the registrar's undenied affidavit jettisons his case. If his case rests on the meaning he has ascribed to a proper officer in his submission, then it is our holding that his understanding of 'proper officer' is wrong. The meaning ascribed to proper officer in Rule 30 is self-explanatory and needs no further interpretation. It means exactly what it says. A proper officer means the

officer, howsoever named performing the functions of Registrar in relation to a judicial committee.

A registrar has specific functions assigned to him to perform. If he is sick or absent and a clerk is assigned to act as the registrar he becomes the "proper officer' because for that moment he is performing the functions of the registrar. The normal thing is for somebody to be made to take over the responsibilities of a registrar in his forced absence through ill health or for whatever reason. Such a person acts and is the proper officer until the registrar returns. If his absence will be for a longer period, a new person is transferred from another station to hold the fort on relieving duties or permanently. So whether a person acts temporarily or permanently takes over, there is always a proper officer.

We believe that there is absolutely no merit in the appeal before us and the same is dismissed.

(SGD) P. BAFFOE- BONNIE
JUSTICE OF THE SUPREME COURT

(SGD) S. A. B. AKUFFO (MS)
JUSTICE OF THE SUPREME COURT

(SGD) V . AKOTO – BAMFO (MRS)
JUSTICE OF THE SUPREM COURT

(SGD) YAW APPAU
JUSTICE OF THE SUPREME COURT

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