IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2017

CORAM: ANIN YEBOAH JSC (PRESIDING)
BAFFOE- BONNIE
BENIN JSC
APPAU JSC
PWAMANG JSC

CIVIL APPEAL

NO:J4/40/2016

25TH JANUARY, 2017

NII NORTEY OWUO III	**PLAINTIFF/APPELLANT /APPELLANT**
VRS.	
1.GA TRADITIONAL COUNCIL	**1ST DEFENDANT**
2.NII DODOO NSAKI III	**2ND DEFENDANT**
3.GREATER ACCRA REG. HOUSE OF CHIEFS	**3RD DEFENDANT**
4.NATIONAL HOUSE OF CHIEFS	**4TH DEFENDANT**
5. NII OKWEI KINKA DOWUONA VI	**5th DEFENDANT/RESPONDENT /RESPONDENT**

JUDGMENT

BAFFOE-BONNIE JSC:-

This is an appeal against the ruling of the Court of Appeal delivered on the 25th day of June 2015. For a better appreciation of the main issues in this appeal let me attempt to set down in detail the facts giving rise to this appeal.

The plaintiff/appellant/appellant, hereafter described as plaintiff, issued a writ of summons against the 5 defendants, including Nii Okwei Kinka Dowuona VI, hereafter described as 5th defendant/ respondent, praying for

1. A declaration firstly, that the purported decision of the 1st defendant taken on or about 23rd August 2010 at an alleged Council meeting presided over by the 2nd defendant (concerning the forwarding to the 3rd defendant of the Chieftaincy Declaration Forms of the 5th Defendant for the purposes of procuring the insertion of the name of the 5th defendant as the Osu Mantse in the National Register of chiefs by the 4th Defendant, was a decision obtained by the fraud and collusion of the 2nd defendant and 5th defendant OR ALTERNATIVELY by the fraud and misrepresentation of the 2nd defendant alone.

2. A declaration secondly, that all steps taken by the 3rd defendant pursuant to its reception and approval of the said decision forwarded to it by the 1st defendant, and the consequential forwarding of the said Chieftaincy Declaration Forms of the 5th defendant by the 3rd defendant to the 4th defendant for the said purposes, were similarly null and void as tainted by the said fraud and collusion OR the said fraud and misrepresentation of the 2nd defendant and/or by the similar fraud and collusion of the 3rd defendant and 5th defendant.

3. A declaration thirdly, that all steps taken by the 4th defendant pursuant to its reception and approval of the said decision of the 1st defendant, forwarded to it by the 3rd defendant and the consequential recognition of the 5th defendant as Osu Mantse by the 4th defendant's unlawful insertion of his name as Osu Mantse in the National Register of Chiefs and/or otherwise unlawfully holding him out as Osu Mantse in the

absence of any proof that the plaintiff has been destooled and the Osu Stool thereby made vacant to be filled by a successor Osu Mantse, are steps which are null and void, and of no legal effect whatsoever.

4. A declaration fourthly, that the respective approvals and pursuant steps taken by the 1st defendant and the 3rd defendant concerning the forwarding of the Chieftaincy Declaration Forms, and all pursuant steps whatsoever, taken by the 4th defendant to hold out the 5th defendant as the Osu Mantse , are null and void and of no legal effect by reason that the deletion of the plaintiff's name from the National Register of Chiefs by the 4th defendant is not only void by also does not amount to destoolment of the plaintiff in any event.

5. A declaration fifthly, that the said respective approving decisions and pursuant steps taken by the 1st ,3rd and 4th defendants were taken at each level contrary to the respective standing orders and/or relevant laid down procedures of the 1st ,3rd and 4th defendants.

6. Exemplary damages for the said collusive fraud and misrepresentations on the part of the defendants.

7. Further or other relief as in the circumstances may be just or proper, including, in particular:

    a. An order upon the 4th defendant forthwith to restore the name of the plaintiff back into the National Register of chiefs as the incumbent, undestooled Osu Mantse; and
    b. A perpetual injunction restraining the defendants and each of them, whether by themselves, their servants, agents, privies whomsoever or otherwise howsoever, from holding out the 5th defendant in any manner whatsoever as ever having been properly installed as the Osu Mantse.

The writ was attached with a statement of claim the 4th paragraph of which read as follows;

"4. The 5th Defendant is the Pretender Osu Mantse who was unlawfully installed as Osu Mantse on 4th May 2007, when the Osu Stool was NOT vacant, since the plaintiff then as still now, was in occupation of the same, thereby rendering the 5th Defendant's status null and void up to now……"

The plaintiff followed this writ with an application on notice for an order of interlocutory injunction praying for an order **"*restraining the defendants and each of them, whether by themselves, their servants, agents, privies whomsoever, or otherwise howsoever, from holding out the 5th defendant in any manner whatsoever as the Osu Mantse, entitled in any manner whatsoever to perform or exercise the function or office, (customary and/or statutory), of the Osu Mantse pending the determination of this action….."***

The 4th defendant filed an appearance per counsel and followed it up with an application to dismiss the writ on the ground of want of jurisdiction since this is a cause or matter affecting chieftaincy and therefore cognisable only in the appropriate chieftaincy forum. At the hearing of the application for injunction, the respondent raised his objection to the jurisdiction of the Court again. In his ruling the learned judge stated the principles governing the grant or refusal of injunctive reliefs as follows

a. ***The applicant must demonstrate that unless an injunction is granted, his or her own rights would be nullified or impaired by the time the trial is over and that***
b. ***Neither the determination nor an order by way of an injunction would constitute a declaration of the rights of the parties on the merits of the main action.***

After this reminder, the learned Judge ruled as follows;'
"On the material and evidence before me, I am of the view that granting the remedy that the plaintiff seeks, an injunction pending trial, would be close to granting an ultimate remedy. It seems to me that the plaintiff is inviting this court to find that the plaintiff has the right to occupy the Osu stool, such an order will compromise the fair

determination of the issues as to who has the right to occupy the stool by the Ga Traditional Council and The Greater Accra Regional House of Chiefs."

The learned trial Judge then dealt with the preliminary objection to its jurisdiction and concluded as follows;

"Having perused the statement of claim and the motion paper, I am left with a stronger impression that counsel for the plaintiff has presented a cause or matter affecting chieftaincy and this is not a case which the High Court should exercise jurisdiction. I find that the judicial committee of the House of Chiefs is clearly the more convenient and appropriate forum, no harm would be done if this application is commenced at the House of Chiefs. In the circumstances this court is declining jurisdiction over the claims, the writ and motion is(sic) dismissed…"

Feeling aggrieved by this ruling the plaintiff appealed to the Court of Appeal on the following grounds.

i. The Ruling is against the weight of the affidavit evidence.

ii. The Ruling erred by declining jurisdiction on the patently untenable ground that fraud in procuring an imposter's name to be inserted in the National Register of Chiefs falls within the statutory definition of a cause or matter affecting chieftaincy under section 117(1) of the Courts Act, 1993 (Act 459) or section 76 of the Chieftaincy Act, 2008 (Act 759)

iii. FURTHER OR IN THE ALTERNATIVE the learned judge misdirected himself by failing to appreciate the binding effect on him of superior decided authorities such as

   a. Kwagyane & Ors v. Agyei & Ors. (1992)) 1 GLR 189, CA holdings (3) & (4)

b. Rep. v. High Court, Accra; Ex Parte: Odonkorteye (1984-86) 2 GLR 148, SC holding (2) and per Adade JSC dessentiente; and holding (3) (ii) per Adade JSC further dissentiente.

iv. The Ruling offends or breaches the rule in Dam v Addo (1962) 2 G.L.R. 200, S.C

v. The Ruling was perverse and only calculated to protect and provide a cover-up for the 4th & 5th defendants (shielding them from having to answer the fraud and particulars of fraud pleaded and in some cases attested by pleaded documentation in the plaintiff's Statement of Claim) with the predictable result of frustrating a fair trial, investigation and exposure of scandalous wrongdoing pleaded in the Statement of Claim as affecting all three established levels of institution of chieftaincy, namely at Traditional council level, Regional House of chiefs level and National House of chiefs level.

After reviewing the decision and the submissions of both counsels, the Court of Appeal came to a conclusion that the Trial judge was right in dismissing the writ on the grounds that the matter was a cause or matter affecting chieftaincy. The plaintiff has appealed to us.

There is a small point of law which we will like to briefly comment on. It will be seen that the trial judge dismissed the application for injunctive relief on one ground before upholding the preliminary objection on the grounds of jurisdiction. Even though it is not a ground of appeal before us and it really did not affect his overall reasoning on the issues before him, it is worth pointing out, as the apex court that, since by his reasoning the writ was not before the appropriate forum, he was not vested with jurisdiction to rule on the application for injunction. May be he felt obliged to rule on it since that was the main application before him. But this court has stated time without number that jurisdiction has to be determined first before anything else. If a court has no jurisdiction to entertain any writ then an application subsequent to the writ cannot be entertained either.

The present appeal before us is premised on two main grounds filed on 26th June 2015

(1) The Court of Appeal overlooked the critical issue as to the 5th defendant/Respondent's alleged capacity as Osu Mantse purportedly installed on the non-vacant Osu Stool on 4th May 2007 notwithstanding the total inability of the said Respondent to prove that the said Appellant had ever been destooled.

(2) The judgment was against the weight of evidence on record

(3) Additional grounds will be filed. (none was filed)

The appellant argued his case extensively in a 24-page written submissions and concluded as follows

> ***"it is respectfully submitted that all the foregoing matters show without dobt that great injustice has been visited upon Nii Nortey Owuo III, the true Osu Mantse and the instant Applicant herein. In fairness therefore it is hereby prayed on his behalf that their Lordships may be pleased to allow the appeal, award damages for fraud and substantial costs here and in the two Courts below, and furthermore to grant an injunctive relief sought by the notice of appeal."***

We must state from the very onset that after reviewing the evidence on record we believe that both the High Court and the Court of Appeal were right in their conclusion that, despite the claim and the deliberate attempt to argue otherwise, this is clearly a cause or matter affecting chieftaincy, and therefore the appropriate forum to vindicate his claim in this case should be the Judicial Committee of the Greater Accra House of Chiefs! It is not how the plaintiff has couched his claim, which in this case is a claim of fraud *et al,* but the substance of the claim, that should determine the appropriate forum.

Section 26 of the Chieftaincy Act2008, Act759 provides as follows;

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.

Section 57 of the Courts Act1993 Act 259 provides as follows

"Subject to the Constitution, the Court of Appeal, the High Court, a Regional Tribunal, a Circuit Court and a District Court shall not entertain either at first instance or on appeal a cause or matter affecting chieftaincy''

Section 76 of the Chieftaincy Act 2008, Act 759 on the other hand provides that

"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 of a chief.***

In his book; **The Law of Chieftaincy in Ghana [2008] Advanced Legal Publications,** Accra Justice Brobbey at page 232 wrote ***"if evidence on how the party was nominated, elected, selected, enstooled or enskinned, deposed or abdication is to be adduced before the issue raised in the case can be determined, then the case is almost certainly a cause or matter affecting chieftaincy"***

These provisions have been given judicial interpretation in a number of cases including **In re WaNa Republic v Fijoli Na Ex parte Yakubu 1987-88, 1GLR,50 CA**

The Rep. v Court of Appeal Ex parte Ekunten (1989-90) 2 GLR 168 SC. In the cases of **The Rep vs High Court, Koforidua Exparte Nyame (1994-95) GBR,513 SC,** the Supreme Court held as follows:

"*The intention of the legislator over time as in the courts Ordinance, cap 4 (1951Rev) section 88…….and Chieftaincy Act (Act 370), section 15(1) had been to entrust the adjudication of matters affecting chieftaincy exclusively to the chieftaincy tribunals, now judicial committees of traditional councils, regional*

and national houses of chiefs. The language of article 270(3) of the 1992 constitution show that the framers of the constitution were aware of the existing legislative provisions governing the institution of chieftaincy and the practice of the courts. The ambit of the provision was wide to accommodate section 15(1) of the Chieftaincy Act (act 370) as an existing law which gave exclusive jurisdiction to traditional councils in causes or matters affecting chieftaincy in their areas of authority, thus limiting the ostensibly all-embracing jurisdiction of the high court in all matters under article 140(1) of the Constitution. A definite intention was discernible on the part of the framers of the Constitution to create a hierarchy of chieftaincy tribunals, with the Supreme Court at the apex to handle disputes touching the institution."

From the totality of the evidence gleaned from his writ of summons, statement of claim and other processes, this court is left in no doubt that the plaintiff is asking the court to recognize him as the lawful occupant of the Osu stool while declaring the 5th defendant as an usurper to the stool and therefore should not be accorded any legitimacy.

For example, in his writ he claims in relief three as follows;

" A declaration thirdly, that all steps taken by the 4th Defendant pursuant to its reception and approval of the said decision of the 1st Defendant, forwarded to it by the 3rd Defendant, and the consequential recognition of the 5th Defendant as Osu Mantse by the 4th Defendant's unlawful insertion of his name as Osu Mantse in the National Register of Chiefs and/or otherwise unlawfully holding him out as Osu Mantse in the absence of any proof that the plaintiff has been destooled and the Osu stool thereby made vacant to be filled by a successor Osu Mantse , are steps which are null and void and of no legal effect whatsoever"

Then he claims in paragraph 4 of his attached statement of claim follows;

"The 5th Defendant is the pretender Osu Mantse who was unlawfully installed as Osu Mantse on 4th may 2007, when the Osu Stool was NOT vacant, since the Plaintiff then as still now, was in occupation of the same, thereby rendering the 5th Defendant's status null and void up to now. Furthermore,

the purported installation of the 5th Defendant was held to constitute a contempt of both the judgement of the Court of Appeal dated 18th February 2005 in Osu Stool v Unilever Ghana ltd (Nii Nortey Owuo III, Intervening) (2006)1 MLRG218, and the judgement of the Supreme Court dated 17th may 2006 in Re Osu Stool (2005-2006) SCGLR 628, thereby rendering his purported status as Osu Mantse doubly null and void.''

Clearly these two quoted statements put together is challenging the legitimacy of the enstoolment of the 5th defendant as against the plaintiff who claims he has not been destooled as the Osu Mantse. And this is cause or matter affecting chieftaincy!

Again in his writ of summons the plaintiff claimed as follows;

(7) Further or other relief as in the circumstances may be just or proper, including in particular

(a) An order upon the 4th defendant forthwith to restore the name of the plaintiff back into the National Register of Chiefs as the incumbent Osu Mantse.

(b) A perpetual injunction restraining the defendants and each of them, whether by themselves, their servants, agents, privies whomsoever or otherwise howsoever, from holding out the 5th defendant in any manner whatsoever as ever having been properly installed as the Osu Mantse.

These are repeated and amplified in the reliefs sought in his notice of appeal filed before us as follows;

(2) A consequential declaration that the said respondent cannot be the Osu Mantse in succession to the said appellant who has not been proved to have been destooled

(3) A consequential perpetual injunction restraining the said respondent, whether by himself, his servants, agents, privies, whomsoever, or otherwise howsoever from holding himself out in any manner whatsoever to be the Osu Mantse including, in particular, purporting in any manner whatsoever, to exercise any of the customary and/or statutory powers or function of the Osu Mantse.

If his long and laboured submissions before the High Court, the Court of Appeal and before us, created any doubt as to what the plaintiff is claiming, these quoted statements clearly expose the real and substantive reliefs being sought by the plaintiff. In the case of In Re Nungua Chieftaincy affairs; **Oda Ayiku IV vrs Attorney General (Borketey Laweh XIV Applicant in [2010] SCGLR 413** Ansah JSC at page 432 concurring in his decision in the case of **Anim vrs Ababio [1973] 1 GLR 509** held;

"when the jurisdiction of the High Court in a cause or matter affecting chieftaincy arose in the case of Anim vrs Ababio, it was held that jurisdiction was determined by the plaintiffs' demand and not by a defendant's answer, and the court must apply the test of what was the real issue between the parties and not look at the wording of the plaint"

The issues in this case are clearly matters that cannot be resolved without going into whether the plaintiff was ever a chief and whether he has ever been properly destooled, and whether the 5th defendant is a person legitimately installed as Osu Mantse.

These are questions that can only be appropriately asked and answered in the Greater Accra House of Chiefs. It is therefore our considered view that both the High Court and the Court of Appeal were right and so the appeal is dismissed.

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

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

(SGD) A. A. BENIN
JUSTICE OF THE SUPREME COURT

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