IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD 2019

CORAM: AKOTO-BAMFO (MRS), JSC (PRESIDING)

BENIN, JSC

APPAU, JSC

MARFUL-SAU, JSC

KOTEY, JSC

CIVIL MOTION
NO. J5/11/2019

6TH FEBRUARY, 2019

THE REPUBLIC

VRS

THE HIGH COURT (GENERAL JURISDICTION), ACCRA

EX-PARTE: NII AGYEMANKESE III ……. APPLICANT

AND

NII DODOO NSAKI II & 4 Others ……. INTERESTED PARTIES

RULING

APPAU, JSC:-

On 13th November 2018, the applicant herein Nii Agyemankese III, filed a motion on notice to invoke the supervisory jurisdiction of this Court in the nature of Certiorari and Prohibition; (i) to remove into this Court for the purpose of it being quashed the Order

of the High Court, Accra Coram, Justice Nicholas Abodakpi dated 2nd November 2018 and (ii) a further order to prohibit the 1st interested party Nii Dodoo Nsaki II from inducting the 3rd interested party into office as Ga Mantse. The Order of Justice Nicholas Abodakpi which is the subject of the quashing order being sought by the applicant was directed to the 1st interested party to purge himself of his contempt of court for non-compliance with an earlier Order of Mandamus issued by Justice Gifty Dekyem dated 17th January 2017. Justice Gifty Dekyem's Order in question was directed to the 1st interested party to induct the 3rd interested party Nii Tackie Adama Latse II into office as the Ga Mantse.

When the judicial review application came on for hearing on the 18th day of December 2018, counsel for the 2nd and 3rd interested parties gave notice of their intention to rely on a preliminary objection to the propriety of the application. The grounds of the objection were:

- ***i.*** *That the applicant had no locus to bring the application;*
- ***ii.*** *That the applicant was not a party in the suit in which the order he is seeking to quash by certiorari was made;*
- ***iii.*** *That the title to the application is erroneous; and*
- ***iv.*** *That the application lacked merits and must be dismissed.*

After hearing briefly from counsel for the 2nd and 3rd interested parties on the preliminary objection, the Court, instead of determining the preliminary objection, invited the lawyers representing all the parties in the matter to address it on the issue as to whether or not the substantive suit or action from which the Order of Justice Nicholas Abodakpi emerged, was not a cause or matter affecting chieftaincy. Our invitation was grounded on the premise that all courts, with the exception of the Supreme Court in the exercise of its appellate jurisdiction as provided under article 131 (4) of the Constitution, 1992, are insulated from exercising jurisdiction over chieftaincy matters.

Section 57 of the Courts Act, 1993 [Act 459] provides that; ***"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 117 (1) of the same Act defines the term; *"cause or matter affecting chieftaincy"* to mean:

"a cause, matter, question or dispute relating to

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

(b) ***The destoolment or abdication of a Chief, or***

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

(d) ***The recovery or delivery of stool property in connection with the nomination, election, appointment, installation, deposition or abdication, of a Chief or***

(e) ***The constitutional relations under customary law between Chiefs".***

Counsel for the 2nd and 3rd interested parties filed his written submissions on 11th January 2019 whilst counsel for the 1st interested party and counsel for the applicant filed theirs on 28th January 2019 and 29th January 2019 respectively. Counsel for the 5th interested party who had earlier on filed an affidavit in support of the applicant's application for judicial review, did not file any written submission but informed the Court that he was *ad idem* with the submissions filed by counsel for the applicant and the 1st interested party.

We have painstakingly considered the submissions made by counsel in this matter upon the invitation of this Court. We have also carefully perused the application before us and all the affidavits in support and against same, including the attached rulings of the

High Court particularly that of Justice Naa Adoley Azu dated 27th April, 2016; Justice Gifty Dekyem dated 17th January, 2017 and Justice Nicholas Abodakpi dated 2nd November, 2018. We are of the view that the substantive matter that was initiated in the High Court presided over by Justice Naa Adoley Azu on 15th June 2015 with Suit No. BMISC 862/2015 intituled NII TETTEH KWEI II & 5 Others v GEORGE ADAMA TACKIE 'aka' NII ADAMA LATSE & 16 Others, which is the progenitor of all the injunction, mandamus and contempt applications that gave rise to the three rulings referred to supra, is a cause or matter affecting chieftaincy. The 3rd interested party herein is the 1st defendant in that suit. The 1st to 6th reliefs claimed by the plaintiffs in that suit, which is still pending in the High Court were:

1. ***A declaration that the purported nomination, selection, installation and gazetting of the 1st defendant were wrongful and fraudulent;***
2. ***An order of the court directing the National House of Chiefs to strike out the name of the 1st defendant from the gazette;***
3. ***A perpetual injunction restraining the defendants from holding themselves as kingmakers and all the defendants from acting together as the purported rightful persons to nominate, select, install, cause to be gazetted and inducting the 1st defendant or any other person as Ga Mantse;***
4. ***A perpetual injunction restraining the 1st defendant from holding himself as Ga Mantse;***
5. ***A declaration that the 2nd defendant is not the Ga Dzasetse; and***
6. ***Perpetual injunction restraining the 2nd defendant from holding himself as a Dzasetse.***

Whilst we can say that the 2nd relief referred to above does not fall within the ambit of a cause or matter affecting chieftaincy, the same cannot be said about the remaining five reliefs. The plaintiffs by their reliefs 1, 3 and 4 are challenging inter alia, the nomination, selection and installation of the 3rd interested party herein as Ga Mantse while the 5th and 6th reliefs challenge the position of the 2nd defendant who is the 2nd

interested party herein as the Ga Dzasetse, which is also a chieftaincy position within the Ga chiefdom. The 2nd relief, though not a cause or matter affecting chieftaincy, cannot be determined in isolation as it hinges on the other reliefs. This brings the main subject-matter of the suit within the meaning of a cause or matter affecting chieftaincy over which the trial High Court, which determined the injunction application, had no jurisdiction. Justice Naa Adoley Azu should not therefore have entertained the interlocutory injunction application that sought to restrain the defendants from inducting the 1st defendant therein, i.e. the 3rd interested party herein, into the Ga Traditional Council as the Ga Mantse until the final determination of the substantive suit since she had no jurisdiction to determine the substantive suit itself. It was her ruling in the interlocutory injunction application which Justice Gifty Dekyem purported to enforce by the Mandamus Order, the refusal of which necessitated the Contempt Order by Nicholas Abodakpi, J against the plaintiffs in that suit.

It is surprising that Naa Adoley Azu, J, did not notice that the suit before her was purely a cause or matter affecting chieftaincy which the law debarred her from entertaining and for that matter, had no jurisdiction to determine the injunction application arising from it. In fact, she should have dismissed the suit *in limine* together with the injunction application and for failing to do so, she seriously erred which gave rise to a chain of legal errors committed by Gifty Dekyem, J, and Nicholas Abodakpi, J.

Flowing from the above narration, we have no option but to grant the application. We accordingly direct that the Injunction, Mandamus and Contempt Orders of Naa Adoley Azu,J dated 27th April, 2016; Gifty Dekyem, J dated 17th January, 2017 and Nicholas Abodakpi, J dated 2nd November, 2018 respectively be brought before this Court for the purpose of same being quashed and they are hereby quashed.

Having quashed the above rulings/orders, there is no justification for the sustenance of Suit No. BMISC 862/15 on the Cause list of the High Court. Same is accordingly struck out from the Cause list.

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

AKOTO-BAMFO (MRS.), JSC:-

I agree with the conclusion and reasoning of my brother Appau, JSC.

AKOTO-BAMFO (MRS.)
(JUSTICE OF THE SUPREME COURT)

BENIN, JSC:-

I agree with the conclusion and reasoning of my brother Appau, JSC.

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

MARFUL-SAU, JSC:-

I agree with the conclusion and reasoning of my brother Appau, JSC.

S. K. MARFUL-SAU
(JUSTICE OF THE SUPREME COURT)

KOTEY, JSC:-

I agree with the conclusion and reasoning of my brother Appau, JSC.

PROF. N. A. KOTEY
(JUSTICE OF THE SUPREME COURT)

COUNSEL

KWEKU PAINTSIL FOR THE APPLICANT FOR THE APPLICANT WITH HIM AUGUSTUS BREW, KWABENA MENSAH, YAO ANNOR.

GEORGE HEWARD MILLS FOR THE 1ST INTERESTED PARTY WITH HIM SELASIE DELALI WOANYAH.
BRIGHT AKWETEY FOR THE 2ND AND 3RD INTERESTED PARTIES.
NANA OBIRI BOAHENE FOR THE 5TH INTERESTED PARTY.