IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2017

CORAM: AKUFFO (MS), CJ PRESIDING
DOTSE, JSC
BAFFOE-BONNIE, JSC
GBADEGBE, JSC
PWAMANG, JSC

CIVIL APPEAL
NO. J4/54/2016

18TH OCTOBER, 2017

REPUBLIC

VRS

1. OGYEAHOHO YAW GYEBI	**…….**	**1ST RESPONDENT/APPELLANT/ APPELLANT**
2. CHARLES KWABENA FRIMPONG	**…….**	**2ND RESPONDENT/APPELLANT/ APPELLANT**
EX PARTE: NANA NGOA ANYIMA KODOM II	**……..**	**APPLICANT/RESPONDENT/ RESPONDENT**

JUDGMENT

PWAMANG, JSC:-

The facts giving rise to this interlocutory appeal are that on 28/7/97 four persons in their capacities as kingmakers of Bibiani/Krotohene Stool under Sefwi Anhwiaso paramouncy in the Western Region filed destoolment charges in the Judicial Committee of the Sefwi Anhwiso Traditional Council against the occupant of the Bibiani/Krontihene Stool in the person of applicant/respondent/respondent, hereafter referred to as respondent. The

Judicial Committee of the Sefwi Anhwiaso Traditional Council delivered a judgment on 9/9/1999 upholding the charges levelled against the respondent, destooled him and ordered him to hand over all stool properties to the Akwamuhene, one of the Petitioners, to take care of them until a substantive chief was installed. However, on 16/9/1999 the respondent filed an appeal in the Judicial Committee of the Western Regional House of Chiefs against the decision of the Judicial Committee of the Sefwi Anhwiaso Traditional Council. On 3rd August, 2004 the Judicial Committee of the Western Regional House of Chiefs delivered judgment in the appeal and held that the trial before the Judicial Committee of the Sefwi Anhwiaso Traditional Council was fraught with such inconsistencies that it could not stand as a decision worthy of acceptance. They proceeded to allow the appeal, set aside the judgment of the Judicial Committee of the Sefwi Anhwiaso Traditional Council and ordered a retrial with an entirely new panel which shall sit at a neutral venue, preferably Bibiani. This decision has not been set aside either on appeal or otherwise and it appears from the record that there has been no retrial.

On the back of the judgment of the Judicial Committee of the Western Regional House of Chiefs, respondent filed a motion on notice in the High Court, Sefwi Wiawso in October, 2012 praying for the committal of the respondents/appellants/appellants, hereafter referred to as appellants, for contempt of court alleging they had continuously disregarded and disobeyed the judgment of the Judicial Committee of the Western Regional House of Chiefs which judgment he brought to their notice specifically. In respondent's affidavit in support of his motion for contempt he deposed to conduct on the part of the appellants which he claims amounts to contempt of court.

Upon service of the motion on the appellants they filed individual affidavits in opposition on 23/11/12. The 1st appellant, who is the paramount chief of Sefwi Anhwiaso and President of the Sefwi Anhwiaso Traditional Council, in his affidavit stated that the respondent is not the chief of Bibiani and that it is misleading and fraudulent for him to so depose in his affidavit in support. He said that 2nd appellant was introduced to him as the chief of Bibiani by the kingmakers so, to him, unless the court determined who was the chief of Bibiani, it could not decide the issue of the contempt. In any event, he denied showing disrespect to the Judicial Committee of the Western Regional House of Chiefs.

2nd appellant in his affidavit deposed that he had been customarily selected, nominated and enstooled as the chief of Bibiani and, per paragraph 12 of his affidavit, this took place in October 1999 after the respondent lost his case in the Sefwi Anhwiaso Traditional Council. He said that it is he and not the respondent who is the chief of Bibiani and that the whole application related to a cause or matter affecting chieftaincy so his lawyer would object to the jurisdiction of the court. He nevertheless also denied showing disrespect and disregard or looking down on the judgment of the Judicial Committee of the Western Regional House of Chiefs.

In line with the hint in their affidavits in opposition, the appellants brought an application to set aside or dismiss the motion for attachment on the grounds that it did not disclose a cause of action against the appellants and secondly it was a cause or matter affecting chieftaincy over which the High Court lacked jurisdiction. This application was dismissed by the High Court on 19/12/14 and appellants appealed to the Court of Appeal. On 28th October, 2015 the Court of Appeal unanimously dismissed the appeal wherefore the appellants further appealed to this court.

We have perused the record of appeal, attended to the written statements of case of the parties and given consideration to the appellants' grounds in objecting to the determination of the motion on notice for contempt on its merits. The appellants claim that the 2nd appellant is a rival chief installed after the destoolment of respondent but the record before us shows that the notice of appeal against the decision of the Judicial Committee of the Sefwi Anhwiaso Traditional Council was filed on 16/9/1999 whereas 2nd appellant was purportedly enstooled in October, 1999. By the provisions of **section 27 of the Chieftaincy Act, 1971 (Act 370),** the decision destooling the respondent was stayed by the filing of the notice of appeal on 16/9/1999 so any status of Chief purportedly acquired by 2nd appellant in apparent violation of the statute cannot turn this matter into a cause or matter affecting chieftaincy. In his supplementary affidavit in support of the motion for attachment for contempt, respondent deposed that 2nd appellant was aware of the appeal against the decision of the Judicial Committee of the Sefwi Anhwiaso Traditional Council and was part of those who represented the petitioners at the settlement of the records for that appeal.

We understand the plaint of the respondent to be that the appellants' have conducted themselves in ways that undermine the administration of justice. The fact that appellants claim 2nd appellant to be a rival chief does not prevent the court from enquiring into whether their conduct in law amounts to contempt or not. We consider this ground of objection as misconceived and we dismiss same. See the case of **Republic v Sito, Ex parte Fordjour [2001-2002] SCGLR 322.**

The other ground of objection argued by the appellants before us is that they have a defence to the case in section 61 of the new **Chieftaincy Act, 2008 (Act 759)** which provides as follows;

"A chief is not liable to a charge of contempt of court in court proceedings because of an act done or a statement made in good faith in respect of or during legitimate customary proceedings or practices which are not in wilful violation of a specific order of a court".

In our understanding, this section affords a defence to a chief who would qualify as such under the Act and who satisfies the factual conditions stated clearly in the provision. Therefore, it is only a defence which, depending on the proven facts after a trial, may be upheld or dismissed so it cannot prevent a court from conducting a trial in a contempt matter even if the respondent were a qualified chief. We dismiss this ground of objection as well.

With these legal objections of the appellants disposed of, we do not find anything on the record that suggests that the High Court judge in dismissing the appellants' motion exercised his discretion wrongly. This appeal is accordingly dismissed as being without merit.

Before resting this delivery we wish to observe that the record of this appeal was too chaotic and contained a lot of irrelevant material which made consideration of this otherwise straight forward interlocutory appeal burdensome for the court. The appellants' lawyer in his statement of case complained of the disorderly nature of the record but failed to take steps to rectify it. Lawyers of parties to appeals must take the summons for settlement of appeal records seriously by personally appearing before the registrar and directing him to exclude material that is irrelevant to the determination of the appeal and

arranging processes in an orderly manner. They leave the matter in inexperienced hands and we at times end up with bulky records of appeal that unnecessarily raise the cost of the record for the parties and make appellate litigation far more expensive than it ought to be. The time will soon come when the court will hold lawyers responsible for extra costs incurred by their clients that could have been avoided if they acted with diligence in settlement of records of appeal.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

S. A. B. AKUFFO (MS)
(CHIEF JUSTICE)

V. J. M DOTSE
(JUSTICE OF THE SUPREME COURT)

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

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