IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA-2021

CORAM: APPAU, JSC (PRESIDING)
PWAMANG, JSC
DORDZIE (MRS.), JSC
LOVELACE-JOHNSON (MS.), JSC
AMADU, JSC

CIVIL APPEAL
NO. J4/27/2020

24TH MARCH, 2021

THE REPUBLIC

VRS

1. THE PRESIDENT
   NATIONAL HOUSE OF CHIEFS,
   KUMASI — 1ST RESPONDENT/APPELLANT

2. THE REGISTRAR
   NATIONAL HOUSE OF CHIEFS,
   KUMASI — 2ND RESPONDENT/APPELLANT

EX-PARTE:

1. NANA AMOA VII
   (a.k.a JOSEPH KWEKU ARTHUR
   (DECD.) SUBST BY NANA AMOA VIII
   (a.k.a PHILIP BRIGHT MENSAH) — 1ST APPLICANT/RESPONDENT/RESPONDENT

2. NANA OKOM EGUA
   (QUEENMOTHER) — 2ND APPLICANT/RESPONDENT/RESPONDENT

3. NANA EDUAFUL
   (HEAD OF ROYAL EBIRADZE
   No.1 FAMILY OF AMOSIMA) — 3RD APPLICANT/RESPONDENT/RESPONDENT

AND

NANA AMOAH VII
(a.k.a KWEKU BANYIN)] INTERESTED PARTY/APPELLANT/APPELLANT

JUDGMENT

AMADU JSC:-

(1) This appeal is from the decision of the Court of Appeal dated the 16th day of October 2018. The action culminating in this appeal was commenced by an originating motion for an order of mandamus to issue by the Appellants/Respondents/Respondents *(hereinafter referred to as "Respondents")* against the Respondents/Appellants/Appellants to expunge from the National Register of Chiefs the name of Kweku Benyi aka Nana Amoah VII the Interested Party/Appellant/Appellant *(hereinafter referred to as 'Appellant')* and to cancel an extract bearing Serial No.952 to the said Kweku Benyi or set same aside on grounds of fraud.

(2) In determining the application, the High Court found in favour of the Applicants whereupon it ordered the 1st and 2nd Respondents/ Appellants to remove the name of the instant Appellant from the register of chiefs. The instant Appellant, dissatisfied with the decision of the High Court appealed to the Court of Appeal which dismissed the appeal from which decision instant appeal has arisen.

(3) **BACKGROUND FACTS**

The case of 1st Respondent in High Court was that, he was elected, nominated, and installed as Ohene of Amoasima in 1979 by the Kingmakers. That one Kojo Adan claiming to be Chief of Amoasima under the name of Nana Amoah VI commenced an action before the Judicial Committee of the Asebu Traditional Council challenging the enstoolment of the 1st Respondent. That upon his death,

one Augustine Dadzie who was neither a chief nor elder substituted him. The 1st Respondent resisted the prosecution of the action by said Augustine Dadzie for lack of capacity. The challenge was ignored by the Judicial Committee following which the 1st Respondent walked out during the deliberations in protest. The Judicial Committee then entered judgment in favour of the said Augustine Dadzie against the 1st Respondent.

(4) On the 3rd of March 1980, pursuant to a certiorari application filed by the 1st Respondent with the Asebu Traditional Council as a party, the High Court presided over by Osei Hwere J. *(as he then was)* quashed the decision of the Judicial Committee of the Asebu Traditional Council against the 1st Respondent for failure to observe some fundamental requirements and ordered a re-hearing by the Judicial Committee with the legal effect that the proceedings and decision arising from the quashed proceedings against the original Respondent no longer existed. Notwithstanding this, to the consternation of the 1st Respondent, the Registrar of the Asebu Traditional Council submitted the name of the Appellant through the Regional House of Chiefs to the National House of Chiefs as Ohene of Amosima despite being seised of the judgment of Osei Hwere J. *(as he then was)* quashing the decision of the Judicial Committee of the Asebu Traditional Council in favour of the 1st Respondent.

(5) In praying for the order of mandamus, the 1st Respondents herein took issues with the Research Committee for the vetting, insertion and approval of the name of the name of the Appellant on the grounds that, the Research Committee at the time lacked the requisite quorum on the 13th and 14th day of March 1984 when it purported to approve the Appellant's Chieftaincy Declaration Forms. The 1st Respondent further assailed the action of the committee on grounds of lack of jurisdiction since under the Standing Orders of the National House of Chiefs, it was the Registration Committee that had exclusive mandate to make such approvals.

(6) The Appellant on the other hand deposed that, he was the recognized Chief of Amoasima and Nifahene of Asebu Traditional Council. He denied the authenticity

of the ruling of the High Court, Cape coast which quashed the judgment of the Judicial Committee of Asebu Traditional Council in favour of the Respondents. He further contended that, the Standing Orders of the National House of Chiefs relied upon by the Respondents to question the process by which his Chieftaincy Declaration Forms were approved were the 1991 Standing Orders which was not in force at the time his forms were approved in 1984. He contended that the Standing Orders at the time were the 1977 orders and that, the approval process conformed with those orders.

(7) The Appellant further contended that the allegation of fraud made by the Respondents could not be proved by affidavit evidence. Additionally, the Appellant deposed to the fact that the procedural jurisdiction of the High Court had not been improperly invoked since the matter fell within the ambit of a cause or matter affecting chieftaincy. It must be placed on record that the 1st and 2nd Respondents at the High Court associated themselves with the argument of the instant Appellant. As stated above, the High Court acceded to the prayer of the Respondents and granted their application for mandamus.

(8) **DECISION OF THE COURT OF APPEAL**

Not satisfied with the decision of the High Court, the Appellant appealed to the Court of Appeal. At page 382 of the record of appeal, the Court of Appeal summed up the issues as presented before the Court in context as follows:- ***"From the submission filed by counsel for the parties the main issues raised in this appeal are whether the additional grounds argued on behalf of the Appellants are properly before this court, whether this matter is a cause or matter affecting chieftaincy and is therefore outside the jurisdiction of the High Court, whether the Standing Committee had a quorum when it approved the Chieftaincy Declaration Forms of the Appellant, whether in view of the allegation of fraud made by the Respondents, the Trial***

Court ought to have insisted on the Respondents producing viva voce evidence and not affidavit evidence whether the conduct of the National House of Chiefs complained about in the case is amenable to mandamus".

(9) The Court of Appeal after a careful consideration of the entire record before it and the legal submissions of the parties, resolved all the above issues arising from the appeal in favour of the Respondents and accordingly affirmed the ruling of the High Court.

(10) **APPEAL TO SUPREME COURT**

The Appellant not satisfied with the judgment of the Court of Appeal, appealed to this court initially on one ground but subsequently he filed additional grounds pursuant to leave of the court. The one ground and additional grounds have been formulated as follows:-

"1. The judgment is against the weight of evidence.

The additional grounds of appeal have been set out as follows:-

1. ***The 1st, 2nd and 3rd Applicants/Respondents/Respondents lacked capacity to bring the application for mandamus.***
2. ***The 1st, 2nd and 3rd Respondents tendered a fraudulent Exhibit 'JKA6' to deceive the Trial Court.***

PARTICULARS

(1) *Exhibit 'JKA6' was a 2- page photocopy document on which the Respondent covered the lower part of the original copy of hide away the material information.*

(2) *Exhibit 'JKA6' was the minutes of the 1st ordinary meeting of the Research Committee of the National House of Chiefs held on the 13th and 14th March 1984 and covered material information on the lower portion from the court which showed how the committee dealt with the Chieftaincy Declaration Form of the interested Party/Appellant/Appellant.*

(3) *The 1st and 2nd Respondents/Appellants/Respondents embossed the official stamp of the National House of Chiefs on the blank lower part of Exhibit 'JKA6' to deceive the Trial Court that the Exhibit 'JKA6' to deceive the Trial Court that the Exhibit 'JKA6' was procured from proper custody (their custody).*

(4) *The combined effect of the particulars of fraud enumerated above was to deceive the Trial Court to believe that Exhibit 'JKA6' was the exact contents of the minutes of the Research Committee of the Respondent National House of Chiefs when the same was not the truth of the deliberations of the Research Committee.*

(5) *That the court below erred in not holding that the removal of the name of the chief from the National Register of chiefs is not amenable to orders of mandamus".*

APPELLANT'S ARGUMENTS IN STATEMENT OF CASE

(i) ADDITIONAL GROUND (2)

"The 1st, 2nd 3rd Applicants/Respondents lacked capacity to being the Application for Mandamus".

(11) The Appellant submitted that the Respondents lacked the requisite capacity to have applied for the order of mandamus they sought from the High Court Kumasi. According to the Appellant, a party commencing such action needed to demonstrate that it had a specific legal right in enforcement of which he prays for the intervention of the court. He contended that his name had been registered in the register of the National House of Chiefs on 14/3/1984 in compliance with the statutory provisions of the Chieftaincy Act 1971 (Act 370) the extant legislation at the time. Further that, 1st Respondent could therefore not have described himself as the Chief of Amoasima and seek redress in court for the name of the Chief of Amoasima to be expunged from the register.

(12) The 1st Respondent on the other hand stated that he had been duly nominated, elected and enstooled Chief of Amoasima in accordance with the custom and usage

of Amoasima so he had the requisite capacity to bring the application. He deposed that, his status as the duly enstooled chief was evident on the face of Exhibits "JKA2" and "JKA10" which are letters written to his employers after his installation notifying them of his customary position. He further stated that the 2nd and 3rd Respondents as Queen Mother and Head of the Royal family respectively, had capacity to apply to the court for the removal of the Appellant's name.

(13) We have considered the Appellant's submissions on the issue of capacity and it is clear to us that he is confusing capacity to embark on proceedings in a court of law with locus standing to sue in respect of a particular issue. The substance of the Appellant's case on this issue is that the Respondents do not have any legal right that the National House of Chiefs have refused to respect so as to entitle them to apply for mandamus against the House. But from the affidavit evidence, the 1st Respondent certainly has sufficient interest in the matter of having the name of the Appellant removed from the National Register of Chiefs since it is evident that he was enstooled chief of Amoasima and the presence of the name of the Appellant in the Register of Chiefs had impeded his efforts to get his name inserted in the register as the Chief Amoasima. Furthermore, as stated by the Respondents, the interest of the 2nd and 3rd Respondents in ensuring that the wrong person is not stated in the register as the Chief of their community cannot be doubted having regard to their customary positions. Consequently, we find no merit in this ground of appeal and same is dismissed.

(14) **Additional Ground 3:**

"That the Court below erred in not holding that the removal of the name of a chief from the National Register of Chiefs is not amenable to orders of mandamus"

The Appellant has also assailed the judgment of the 1st Appellate court for failing to hold that the removal of the name of a Chief from the Register of the National

House of Chiefs was not amenable to orders of mandamus. The Appellant cited in support, the decision of this court in the case of; **The Registrar & President National House Of Chiefs Ex-Parte;Kojo Yamoah & Anor. Civil Appeal No.J4/45/2017 dated 25th July 2018** as affirming holding (5) of the case of **IN RE; Oguaa Paramount Stool ,Garbrah Vs. Central Region House of Chiefs [2005-2006] SCGLR 193** as follows:- ***"because the act of registration did not constitute adjudicatory acts such acts, were not amendable to the writ of certiorari. However the exercise of administrative act could be challenged under Section 50(1) of Act 370 and otherwise by an action in the appropriate Court to set aside any wrong registration".***

(15) The Appellant maintains that, by implication when a person's name has been wrongly entered into the National Register of Chiefs, recourse to the aggrieved party was to section 50 (7) of Act 370 to challenge the said registration in this court. He argued further that in seeking to set aside such registration, the remedy could not be sought by resort to mandamus. The Appellant submitted further that this court per the **Ebusuapanyin Kojo Yamoah case** (supra) held that to act on grounds of fraud, the fraud must be established in a Court of competent jurisdiction. The Appellant submitted further as follows:- ***"The Ex-parte Ebusuapanyin Kojo Yamoah case appears to be on the same leg the name of the Appellant herein had been on the National Register since 1984 and the Respondents were aware of this because they staged in the same Amoasima town with the Appellant; and it is only on the 7th December, 2006 that the 1st Respondent wrote the "demand notice" i.e. about Twenty-three (23) years to the National House of Chiefs demanding that the Appellant's name be removed***'. The Appellants arguments attempted to draw similarities in the instant case with the facts and pronouncements of Appau JSC in the **Ex-parte Ebusuapanyin Kojo Yamoah case** (supra).

(16) In their response, the Respondents deny the claim of Appellants that the **Ex-parte Ebusuapanyin Kojo Yamoah case** (supra) laid down any proposition to the effect that an insertion of a name on the national register of chiefs could not be challenged in the High Court by an order of mandamus since an administrative duty could be enforced under article 23 of the 1992 Constitution for the performance of a public duty. In the judgment of the Court of Appeal *(page 396 of the record)* the court held thus:- ***"As noted above, the trial court upheld the Respondents application and ordered the issuance of mandamus. The Trial Court concluded that the Respondents were entitled to the writ of mandamus for the reason that the National House of Chiefs had not followed the proper procedure in approving the Chieftaincy Declaration Forms of Kwaku Benyi ,that having regard to the allegations contained in the supporting affidavit concerning the ruling of the High Court which allegedly quashed the judgment of the Asebu Traditional Council and the Appellant's and the National House of Chiefs reaction to the said allegation, the Appellant and the Respondent are deemed to have admitted the existence of that ruling and that the assertion of the Appellant's name in the Register had been fraudulently procured".***

(17) Whereas as earlier observed the Appellant made attempts to create similarities of the instant case and facts before this court in the **Ebusuapanyin Kojo Yamoah case** (supra) the two cases are clearly distinguishable. In the instant case, the Appellant was given the opportunity to be heard in all proceedings affecting his claim to the stool from the Judicial Committee of the Asebu Traditional Council and the respective proceedings of the High Court and the Court of Appeal. The Appellant's counsel appears to have clearly misapprehended the peculiar facts of the instant case with those of the **Ex-parte Ebusuapanyin Kojo Yamoah case** (supra) where Appau JSC *(incidentally the president of this panel)* held inter alia at page 16 of the judgment as follows:- ***"To say that a Chief's name be***

expunged from the Register means he has ceased to be a chief an the only acts that can justify and amendment and removal or both of a Chief's name from the Register as indicated supra, include death, abdication, destoolment and <u>such other occurrences as are recognized by law or as are added by law; for instance an order of a judicial committee or an order of a court of competent jurisdiction to that effect. Such occurrences are contested according to law and the chief whose name is stated for removal or deletion from the register is given a hearing (emphasis mine).</u> There should be a justification under the law for such a removal or deletion from the Register. This was not what happened in this case" (emphasis supplied)

(18) The learned judge in the above quoted passage was careful not to close the grounds upon which the name of a chief may be lawfully ordered to be removed from the national register of chiefs. He said ***"such other occurrences as are recognized by law."*** The gravamen of the case of the respondents is that the name of the Appellant was irregularly entered in the register of chiefs in that his chieftaincy declaration forms were forwarded for approval in the face of a high Court ruling that quashed the grounds upon which the Appellant was holding himself out as chief of Amoasima as against the 1st Respondent. That meant that the administrative processes leading to the insertion of the name of the Appellant in the register of chiefs were invalid and can be reversed by a writ of mandamus.

(19) The second point made in the ***Yamoah case*** was the need for the person whose name is to be removed to be given a hearing and in this case, the Appellant was served with the application seeking the removal of his name by mandamus and was accorded hearing before the order was made. In the circumstances, the ***Yamoah case*** does not advance the fortunes of the Appellant in this appeal.

WHETHER THE COURT CAN EXERCISE SUPERVISORY JURISDICTION OVER ADMINISTRATIVE BODIES

(20) The power of the High Court to exercise its supervisory jurisdiction to issue prerogative writs as provided for under Article 141 of the 1992 Constitution as follows:-

"The High Court shall have supervisory jurisdiction over all lower courts and any lower adjudicating authority and may in the exercise of that jurisdiction issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory powers".

The Appellant relying on this provision argues that as the approval and entry of the name of the Appellant was an administrative and not adjudicatory process, the High Court had no supervisory jurisdiction in respect of the decision to enter his name in the register of chiefs. This line of argument that limited the supervisory jurisdiction of the High Court to only judicial and quasi-judicial decision was once accepted in some cases in Ghana but for sometime now it has been firmly jettisoned. In the case of Republic v High Court (Fast Track Division) Accra; **Ex-parte Electoral Commission (Mettle Nunoo & Ors-Interested Parties) [2005-2006] SCGLR 514,** the Supreme Court stated categorically, that the High Court has supervisory jurisdiction over administrative bodies and in respect of administrative decisions. This is on account of the powers of the High Court at common law that have been preserved by Article 126(2) of the Constitution 1992 as well as Article 23 of the Constitution. See also the case of **Republic Vs. National House Of Chiefs Ex-parte Akrofa Krukoko II (Enimil VII - Interested Party) [2007-2008] SCGLR**. It is therefore no longer in doubt that the supervisory jurisdiction of the High Court covers administrative decisions. The Appellant further contended that, it was because the National House of Chiefs refused to enter the name of the 1st Respondent in the register of chiefs on account of the presence of the name of the Appellant that led to the application for mandamus. He then argued that the Chieftaincy Act 1971 (Act 370) provides that where the National House of Chiefs refuses to enter the name of a chief in the

register such chief may appeal to the Supreme Court. So since the statute has granted a relief to an aggrieved chief who has been refused entry of his name in the register the application for mandamus ought to have been refused. This argument too has been made before in relation to mandamus in a chieftaincy matter but was rejected by the Supreme Court in the case of **Republic Vs. National House of Chiefs; Ex-Parte Akrofa Krukoko II [2007-2008] 1 SCGLR 173 at 178.** In that case, this court ventilated its thoughts through Adinyira JSC thus:- ***"Though the remedy of appeal to the Supreme Court is available to the appellant as a person aggrieved by the refusal of the National House of Chiefs to register him as a chief under Section 50(2) and (7) of the Chieftaincy Act 1971 (Act 370) nothing in law precludes the High Court from entertaining his application if warranted". See the case of Republic Vs. Lands Commission; Ex-parte Vanderpuye-Orgle Estates Ltd. [1998-1999] SCGLR 677".***

Therefore, this ground of appeal too has no merits and it is accordingly dismissed.

(21) The Appellant in his statement of case has said a lot about what happened in the consideration of his Chieftaincy Declaration Forms at the National House of Chiefs and submitted that the processes were regular and it was rather the Respondents who attached incomplete photocopies of documents from the records of the National House of Chiefs and misled the court to grant their prayer. Our simple response to these submissions is that the information contained in those forms was false since it failed to indicate that the decision against the 1st Respondent and in favour of the Appellant had been quashed by the High Court. In the face of that, it was procedurally improper for the forms to have been forwarded and that has to be corrected by ordering the removal of the name.

(22) In conclusion, from our review of the entire record of appeal and the examination of all the grounds of appeal on which the Appellant anchored his appeal, as well as the application of the relevant law, we are not persuaded that we should

interfere with the findings and conclusions of a Trial Court and the Court of Appeal. Accordingly, we find no merit in the appeal and it is hereby wholly dismissed.

I. O. TANKO AMADU
(JUSTICE OF THE SUPREME COURT)

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

A.M.A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)
(JUSTICE OF THE SUPREME COURT)

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