IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: DOTSE, JSC (PRESIDING)
YEBOAH, JSC
BAFFOE-BONNIE, JSC
APPAU, JSC
PWAMANG, JSC

CIVIL APPEAL
NO. J4/45/2017

25TH JULY, 2018

THE REPUBLIC

VRS

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

2. THE REGISTRAR & PRESIDENT,
CENTRAL REGIONAL HOUSE OF CHIEFS, CAPE COAST ..... 2ND RESPONDENT

EX-PARTE:
1. EBUSUAPANTIN KOJO YAMOAH
(SUBST. BY EBUSUAPANYIN KOW ABAKA)

2. NANA ABOR YAMOAH ..... APPLICANTS/RESPONDENTS/APPELLANTS

JUDGMENT

APPAU, JSC:-

This is an appeal against the decision of the Court of Appeal dated 27th February 2017. The 1st appellant is the Ebusuapanyin of the 2nd appellant's royal family of Gomoa

Fetteh whilst the 2nd appellant Nana Abor Yamoah II, is the chief of Gomoa Fetteh. They would, hereinafter, be referred to simply as appellants.

The background to this appeal is that; on the 27th day of February 2012, the Central Regional House of Chiefs wrote a letter to the National House of Chiefs requesting the National House of Chiefs to expunge the name of the 2nd appellant from the National Register of Chiefs (Register) as the Chief of Gomoa Fetteh and the Twafohene of Gomoa Akyempim Traditional Area. When the appellants got wind of this letter which was written without any notice to them, they filed a suit in the High Court, Cape Coast against both the National House of Chiefs and the Central Regional House of Chiefs as 1st and 2nd defendants respectively. The reliefs sought in the writ were:

(a) A declaration that the 2nd defendant (i.e. the Central Regional House of Chiefs) has acted in contravention of the rule of natural justice in its decision contained in its letter No. CRHC/71/RC/02/V.3/92 dated 27th February 2012.

(b) A declaration that the said decision contained in the letter No. CRHC/71/RC/02/V.3/92 dated 27th February 2012 is void, ultra vires and offensive to the audi alteram partem rule of natural justice.

(c) Perpetual injunction restraining the 1st defendant from acting upon the said letter as directed by the 2nd defendant.

The 1st defendant entered a conditional appearance to the writ and filed a motion to challenge the jurisdiction of the High Court on the ground that the matters in contention constituted a cause or matter affecting chieftaincy for which the High Court's jurisdiction was constitutionally ousted. The trial High Court per Olivia Obeng Owusu, J, on the 20th of December 2012, dismissed the motion holding that the matter before the court was not a cause or matter affecting chieftaincy so the High Court had jurisdiction to determine it. The judge consequently ordered the defendants to file their statements of defence to the action. The suit, however, suffered a jilt when it had to be transferred from the Cape Coast High Court to the Winneba High Court on the transfer orders of the Chief Justice. As to what led to the transfer, the records are silent on that.

The Winneba High Court consolidated the suit with another suit titled Nana Abam & Another v Nana Abor Yamoah & Another. After the consolidation, the defendants repeated their challenge to the jurisdiction of the trial High Court notwithstanding the fact that the High Court in Cape Coast, which had co-ordinate jurisdiction with the High Court, Winneba, had dismissed a similar motion brought before it prior to the transfer of the suit. The trial High Court, Winneba, notwithstanding the earlier decision of the High Court Cape Coast dismissing a similar application, granted the application and

dismissed the action on grounds that the suit was a cause or matter affecting chieftaincy so it had no jurisdiction to entertain it. After holding that it had no jurisdiction to entertain the matter, the trial judge nevertheless, went ahead to make consequential orders which were executable in nature.

After the trial High Court's decision, the 2nd defendant wrote a letter dated 25th July 2014 to the 1st defendant in that action; i.e. the National House of Chiefs, which is the respondent herein and would hereinafter be referred to as such, urging it to expunge the 2nd appellant's name from the Register as it had earlier on requested in its letter of 27th February 2012. Attached to the letter was a copy of the judgment of the Winneba High Court per Adjei Wilson, J. The respondent acted on the letter from the 2nd defendant and went ahead to expunge 2nd appellant's name from the Register without any recourse to him.

When the respondent expunged the 2nd appellant's name from the Register on the advice or directions of the Central Regional House of Chiefs, the appellants applied for judicial review before the Supreme Court on the 4th of September 2014, to have the decision of the High Court, Winneba quashed on certiorari for want of jurisdiction. This Court, presided over by Adinyira (Mrs.), JSC in a unanimous decision, granted applicants' certiorari application on the 3rd of February 2015 and quashed the judgment and orders of the Winneba High Court, per Wilson, J. After the Supreme Court had quashed the decision of the High Court, Winneba, the appellants caused their lawyer to write a letter dated 16th February 2015 to the respondent requesting it **to abide by the decision of the Supreme Court and to re-enter the name of the 2nd appellant in the Register.** The respondent, however, did not respond to appellants' letter.

On the 23rd of March 2015, the appellants filed an application for judicial review in the nature of an order for mandamus in the High Court, Cape-Coast against the respondent herein as 1st respondent and the Central Regional House of Chiefs as 2nd respondent. Their prayer was for the trial High Court to compel the respondents in the application to cause the re-entry of the name of the 2nd appellant in the Register and for any further orders that the trial court might deem fit to make. The reasons for their prayer were contained in a forty-five (45) paragraphed affidavit in support sworn to by the 2nd appellant herein. The appellants, however, wrongly described the respondents in the application as: **"The Registrar and President of the National House of Chiefs and the Registrar and President of the Central Regional House of Chiefs"** respectively instead of; "**The National House of Chiefs per its President and the Central Regional House of Chiefs per its President"**, as provided under section 70

of the Chieftaincy Act, 2008 [Act 759] and as they rightly did in their suit in the High Court.

The parties contested the matter with this wrong description up to the Court of Appeal, where the respondent raised it for determination. However, the Court of Appeal dismissed the argument on the basis that; **(i)** the respondent did not raise it in its submissions in the trial High court and **(ii)** it was an error which did not oust the jurisdiction of the court. Though the respondent did not appeal against the decision of the Court of Appeal that the defective title did not oust its jurisdiction, it raised it in its statement of case filed before this Court on 31st July 2017 and has urged the Court to dismiss the appeal on the ground that the originating motion for mandamus which has triggered this appeal, was incompetent from birth because of the wrong title.

We are not enthused in the least with this line of argument, as there is no doubt that the mandamus application was intended against the Central Regional House of Chiefs, per its President and the respondent herein per its President. In fact and indeed, it was fought and decided on that basis and with that understanding. The motion was never intended against the Registrars and Presidents of the two Houses lumped up together as one party as was done in the instant case before us. That description was a mere misnomer judging from the title of the suit that was instituted in the Cape Coast High Court and later transferred to the Winneba High Court, which undoubtedly was the progeny of the originating motion leading to this appeal. Since the Court of Appeal has commented positively on this defect in the concluding part of its judgment, we will not flog the issue. We shall therefore dismiss respondent's arguments on this point and proceed to determine the substance of the appeal.

The two respondents opposed the application, and their main reason was that the decision to expunge the name of the 2nd appellant from the Register was not as a result of the High Court decision as such. According to them, they had already initiated measures to expunge the 2nd appellant's name from the Register because same was wrongly inserted through what they called *'strange circumstances'.* The trial High Court did not agree with the respondents and concluded that the removal or expunction of 2nd appellant's name from the Register was induced by the judgment of the trial High Court, Winneba and same having been quashed on certiorari by the Supreme Court, that act, which was consequent upon the decision of the impugned judgment, could not be made to stand. The High Court accordingly, granted the application and ordered the respondent herein to re-enter the name of the 2nd appellant in the Register.

The respondents appealed against the decision of the trial High court to the Court of Appeal on two grounds. These were that the decision of the trial court was wrong in

law and therefore incompetent plus the omnibus ground that the decision was against the weight of evidence. The Court of Appeal allowed the appeal against the grant of the mandamus order and set aside the decision of the trial High Court Cape Coast. The Court of Appeal was *ad idem* with the respondents that the expunction of the 2nd appellant's name from the Register was an administrative duty performed by the respondent herein but not contingent upon the decision of the High Court per Wilson, J, so the trial court wrongly exercised its discretion when it granted the mandamus order against the respondent. The appellants, who were the respondents in the Court of Appeal, have come before us for the dismissal of the decision of the Court of Appeal and for the restoration of the ruling of the High Court, Cape Coast, per Kwasi Dapaah, J. The only respondent in this second appeal is the 1st respondent in the judicial review application before the trial court, i.e.; the National House of Chiefs. The 2nd respondent in the matter; i.e. the Central Regional House of Chiefs decided not to partake in this appeal.

Parenthetically, whilst the case was pending before the Court of Appeal, the 2nd respondent in the application wrote a letter dated 30th September 2016 to the respondent herein rescinding its earlier letter that called for the expunction of the 2nd appellant's name from the Register. Paragraph 2 of the said letter read: ***"I am therefore directed by the President of the Central Regional House of Chiefs, Daasebre Kwebu Ewusi VII to request the National House of Chiefs to cause the re-entry of the name of Nana Abor Yamoah II, the Odikro of Gomoa Fetteh and the Twafohene of the Gomoa Akyempim Traditional Area in the Central Region into the National Register of Chiefs".***

In fact, it was this same Daasebre Kwebu Ewusi VII, as President of the Central Regional House of Chiefs, who directed the Registrar of the Central Regional House of Chiefs to write to the respondent to expunge the 2nd appellant's name from the Register, which the respondent herein acted on. After submitting this letter to the respondent herein retracting its earlier directives, the 2nd respondent in the application decided not to have anything to do again with this appeal. It manifested this by writing a letter to this Court through its registrar Anthony Yeboah, informing this Court of its lack of interest in the appeal before us. The letter which was dated 23rd March 2018 noted that the 2nd respondent never directed its Lawyer, Kofi Lamptey, Esquire, to file any appeal to the Court of Appeal against the ruling of the trial High Court per Kwasi Dapaah, J, so they were not interested in the appeal.

<u>The appellants' grounds of appeal before the Supreme Court</u>

The appellant's ground of appeal before us, which was filed on 28th February 2017, was the general or omnibus ground that the judgment was against the weight of affidavit evidence adduced at the trial. The legal implication of this ground as this Court has propounded in several authoritative cases is that an appellant who complains that a judgment is against the weight of evidence is implying that there were certain pieces of evidence on record which, if had been correctly applied vis-a-vis the law, would have ended in a decision in his favour but they were wrongly applied against him. It is therefore the exclusive duty of such an appellant to demonstrate to the appellate court the lapses in the judgment being complained of or appealed against. See the cases of **TUAKWA v BOSOM [2001-2002] SCGLR 61; AKUFFO-ADDOH v CATHELINE [1992] 1 GLR 377; ARYEH v AYAA [2010] SCGLR 891; ACKAH v PERGAH TRANSPORT LTD [2010] SCGLR 728; DJIN v MUSAH BAAKO [2007-2008] SCGLR 686,** etc. The major question is; has the appellant convinced us enough to justify our interference in the decision of the Court of Appeal?

Appellant's submissions in brief

Appellant's contention was that the 2nd appellant's name was expunged from the Register on the strength of the decision of the High Court, Winneba, per Adjei Wilson, J. They referred to Exhibits Y5 and Y12 for support; i.e. the letter the 2nd respondent in the application wrote to the respondent herein dated 10th July 2014 and then the decision of the Research Committee of the respondent, to expunge the name of the 2nd appellant from the Register dated 16th July 2014. They stated at page 12 of the last paragraph of their statement of case as follows: *"…if the Research Committee's decision was based on the judgment of the High Court, Winneba and the full House of the National House of Chiefs, i.e. the 2nd Respondent, was based on the Recommendations of its said Research Committee, then by the Supreme Court's decision above referred to, both Recommendations of the Committee and its adoption by the 1st Respondent that the name of Nana Abor Yamoa II be expunged from the National Register of Chiefs, would equally and by all means be equally quashed and declared null and void. And by all legal connotations, a decision, action, Ruling or Judgment based on a decision declared null and void will be said to be illegal, ab initio. In other words, it is as if the decision, action, Ruling or Judgment was not even made at all. Or better still; the status quo ante will be that the name of the 2nd appellant shall be deemed to be in the National Register of Chiefs."*

Respondent's submissions in brief

The respondent debunked the appellants' arguments and agreed with the narration made by the Court of Appeal in its judgment. According to the respondent, the

cancellation and deletion of the 2nd appellant's name from the Register became necessary after the 2nd respondent in the application (i.e. the Central Regional House of Chiefs) had discovered that the entry of the name and particulars of the 2nd appellant into the Register had been done under strange circumstances. The 2nd respondent accordingly drew the attention of the respondent herein through a letter dated 27th February 2012. However, while the respondent was taking the necessary steps to address this anomaly brought to its attention by the 2nd respondent, the appellants commenced the action in Suit No. E12/42/ 12 at the Cape Coast High Court on 30th March 2012, almost one month after the 2nd respondent had written to the respondent herein to have expunged from the Register, the name of the 2nd appellant. The respondent submitted that since the name of the 2nd appellant was not expunged from the Register on the orders of the High Court, Winneba or on the strength of the ruling of that court, the decision of the Supreme Court in quashing that ruling could not invalidate the act of the respondent in carrying out its administrative function.

After making the above submissions, the respondent went ahead to dilate belatedly on the propriety of the application itself, which in our view, did not have any substance. The first was in respect of the alleged defective title which we have already dismissed as being a misnomer as the Court of Appeal rightly held. The second was the argument on the non-endorsement of the appellant's lawyer's Solicitor's licence on the Motion paper, which we dismiss as having no merit in the wake of our decision in **REPUBLIC v COURT OF APPEAL; EX-PARTE: DAKPEMA ZOBOGNAA & Others (LANDS COMMISSION – INTERESTED PARTY)** – **Unreported judgment of the Supreme Court dated 5th June 2018**. In that case, we endorsed the Court of Appeal's decision that the mere non-endorsement of appellant's lawyer's Solicitor's licence on the motion paper did not render the application a nullity. For the respondent to succeed on such a point, he should establish that at the time the motion was prepared and filed by counsel, he had no Solicitor's licence to practice as a lawyer. The respondent did not do that and has not in this appeal convinced the Court that appellant's lawyer had no Solicitor's licence as at the time he prepared and filed the application for judicial review. The last point respondent canvassed, which we find untenable was the argument that the judicial review application filed by the appellant was an abuse of due process. According to respondent, the quashing of the decision of the Winneba High Court by the Supreme Court on 3rd February 2015, resurrected Suit No. E12/42/2012 over which Wilson, J ruled that he had no jurisdiction to determine. However, instead of the appellants going to the High Court, Winneba to have the said suit continued and determined on the merits, they abandoned same and resorted to the instant judicial review application before the High Court, Cape Coast per Kwasi Dapaah, J. This, according to the respondent, amounted to or constituted an abuse of due process.

We contend that the respondent got it all wrong on this point. Whilst we agree with the respondent that the quashing of the decision of Wilson, J. resurrected the suit pending before the High Court, Winneba, we hold that the pendency of that suit was not a fetter on the appellants in seeking any other judicial redress like a judicial review application for an order of mandamus, if the appellants thought that was an appropriate remedy that could address the issue at hand. Appellant had a choice as to which legal path to chart; either to continue with the action in the Winneba High Court, which we think was otiose, as the respondent had already acted on the 2nd respondent's letter, which formed the basis of that action, or to chart a new course altogether.

Issues for determination arising from the submissions of both parties

The issues that call for determination in this appeal are: -

1. *Whether or not the respondent herein expunged the 2nd appellant's name from the Register on the strength of the judgment of Wilson, J of the High Court, Winneba;*
2. *Whether or not the quashing of the decision of Wilson, J by the Supreme Court nullified the action of the respondent in expunging 2nd appellant's name from the Register;*
3. *Whether or not the respondent was performing its administrative duty when it expunged the 2nd appellant's name from the Register on the advice of the Central Regional House of Chiefs;*
4. *Whether or not the Central Regional House of Chiefs was performing its administrative duty when it suo motu, wrote to the respondent to expunge the name of the 2nd appellant from the Register;*
5. *Whether or not the appeal must succeed.*

Issue 1

On this issue, we endorse the position of the Court of Appeal that, before the Winneba High Court delivered its ruling per Wilson, J, attempts were underway to have the 2nd appellant's name expunged from the Register. It was when the appellants had wind that the 2nd respondent in the application had written to the respondent herein directing it to expunge the name of the 2nd appellant from the Register that the appellants instituted the suit in the Cape Coast High Court, which later found its way in the Winneba High Court on the transfer orders of the Chief Justice. The suit by the appellants came in to intervene as the respondent could not overlook its pendency to perform its so-called administrative function since same was being challenged. As the

Court of Appeal rightly reasoned, the decision of the High Court, Winneba though wrong and consequently set aside by the Supreme Court, cleared or paved the way for the respondent to perform what it called its administrative duty, whether rightly or wrongly.

Whilst we admit that the Research Committee of the respondent referred to the High Court decision per Wilson, J in its minutes of its meetings dated 15th and 16th July 2014, at which it advised the respondent to expunge 2nd appellant's name from the Register, the trial High Court did not, in its said decision, order the respondent to expunge the 2nd appellant's name from the Register. What the trial High court said was that within 28 days of its ruling that it had no jurisdiction in the matter; the respondent should set down a schedule for the determination of the entry of the name of the 2nd appellant in the Register. What we understand by that decision, which was quashed on certiorari by this Court was that, once the trial High Court had ruled that it had no jurisdiction in the matter which, according to it involved chieftaincy, the respondent should go ahead to determine either to grant or refuse the request submitted to it by the Central Regional House of Chiefs (2nd respondent in the application) in their earlier letter of 27th February 2012 requesting the respondent to expunge 2nd appellant's name from the Register. Our understanding is buttressed by the records of the minutes of the House dated 15th and 16th July, 2014. The 16th July meeting had the following record: -

"GOMOA FETTEH CHIEFTAINCY DISPUTE: REMOVAL OF NAME OF NANA ABOR YAMOAH II

The Chairman said the House received a letter from the Central Regional House of Chiefs, attached with a copy of the judgment of the High Court, Winneba dated 10th June 2014, relating to the Gomoa Fetteh stool. The High Court had ordered that a copy of the judgment be served on the National House of Chiefs to perform certain duties. The High Court had ordered that the National House of Chiefs set down a schedule for the determination of the entry of Nana Abor Yamoah II's name in the National Register of Chiefs. Barima said the Central Regional House of Chiefs had, meanwhile, brought a request that the National House of Chiefs removed Nana Abor Yamoah II's name from the National Register of Chiefs as chief of Gomoa Fetteh because his name was entered in the register under strange circumstances. He said, based on the request from the Central Regional House of Chiefs within which purview Gomoa Fetteh falls, the Committee had recommended that Nana Abor Yamoah II's name should be expunged from the National Register of Chiefs".

The above record shows without any doubt that the respondent decided to expunge the 2nd appellant's name from the Register not because the High Court, Winneba had ordered it to do so but because the 2nd respondent in the application (i.e. the Central Regional House of Chiefs) within whose jurisdiction Gomoa Fetteh falls, had directed it to do so. On the first issue therefore, we agree with the Court of Appeal that the respondent did not expunge the name of the 2nd appellant from the Register on the orders of the High Court, Winneba.

Issue 2

We equally find, in respect of the second issue that the quashing of the decision of the High Court, Winneba by this Court on the 3rd of February 2015, did not nullify the decision of the respondent to expunge the 2nd appellant's name from the Register. The fact is that the Supreme Court's decision in that matter did not touch on the cancellation of the 2nd appellant's name from the Register. It only quashed the ruling of the High Court, Winneba on the ground that the High Court, per Wilson, J, lacked jurisdiction to entertain the application when the High Court, Cape Coast per Olivia Obeng Owusu, J had earlier on ruled on the same matter. We therefore agree with the Court of Appeal that the grant of the mandamus order by the High Court, Cape Coast per Kwasi Dapaah, J on the ground that the decision of the Supreme Court referred to above nullified the cancellation of the 2nd appellant's name from the Register, was misplaced. The question however is; could the High Court have granted the application on grounds different from those canvassed by the appellants? This question brings to the fore the determination of issues 3 and 4 above which in sum are; whether or not both the Central Regional House of Chiefs and the National House of Chiefs were performing their administrative functions when they acted together to expunge the name of the 2nd appellant from the Register.

Issues 3 & 4

The Court of Appeal was of the view that the respondent herein in expunging the name of the 2nd appellant from the Register, was only carrying out its lawful duty when the 2nd respondent in the application directed it to do so on the assumption that there were complaints of controversies surrounding the installation and entry of the name of the 2nd appellant in the Register. That act, according to the Court of Appeal, was not amenable to mandamus so the trial High Court erred when it granted the application.

An appeal is said to be by way of re-hearing and as such, the Court of Appeal, in re-hearing the application, should have considered all the matters on record before it to decide whether the application deserved any consideration on grounds different from those the appellants canvassed in their submissions. This is grounded on the decision of

this Court in **ABAKA v AMBRADU [1963] 1 GLR 456-457**, which was applied by the Court of Appeal in **SERAPHIM v AMUA-SEKYI [1971] 2 GLR 132 @ 134** that; no judgment on appeal is upset on the ground that it is ratio erroneous, if there is another sound basis on which it can be supported. Also, rules **8 (1)**, **31 (1)** and **32 (1)** of the rules of the Court of Appeal **[C.I. 19]** provide:

"8(1) An appeal to the Court shall be by way of rehearing and shall be brought by a notice of appeal.

31(1) The Court shall generally have full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the Court as a court of first instance, and may

(a) Make an order necessary to determining the real question in controversy...

32(1). The Court may, in respect of an appeal before it, give a judgment and make an order that ought to have been made, and to make a further or any other order as the case may require including an order as to costs..." Again, the rules of this Court [C.I. 16] of 1996 has a provision under rule 23 (3) that; ***"The Court may in hearing a civil appeal make an order that the Court considers necessary for determining the real issue or question in controversy between the parties."***

It is trite that the Regional and National Houses of Chiefs perform both judicial and administrative functions and that in the performance of their administrative functions the courts are not supposed to interfere by the issue of prerogative orders like certiorari. The judicial functions of the Houses of Chiefs are performed by their judicial committees established for that purpose why the administrative functions are performed by the Houses in plenary through the Presidents and/or the Registrars with the assistance of their research and standing committees. The administrative functions of the respondent herein are provided under articles 272 of the Constitution, 1992 while that of the Regional Houses of Chiefs are provided under article 274 (3) of the Constitution. One of such administrative functions is the registration of chiefs who have been properly installed as such in the Register and the deletion of the names of chiefs who have ceased to be chiefs or on the orders of appropriate legal authority. The authorities have, however, expressed that the courts can intervene where the said institutions act ultra vires the powers conferred on them by the Constitution and the Act; i.e. [Act 759] in the performance of their administrative functions. In **IN RE OGUAAA PARAMOUNT STOOL; GARBRAH v CENTRAL REGIONAL HOUSE OF CHIEFS [2005-2006] SCGLR 193**, this Court held at holding (5) as follows: ***"The***

duty of the National House of Chiefs in the registration process, i.e. in pursuance of sections 48(2) and 50(2) of Act 370, namely, entering the names of chiefs in the register and recording such particulars was discretionary and administrative and not judicial. Because the acts of registration did not constitute adjudicatory acts, such acts were not amenable to the writ of certiorari. <u>However, the exercise of that 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."</u>

Though Act 370 has been repealed and replaced by Act 759, these operative sections have been reproduced under section 59 (1), (2) and (7) of Act 759. The necessity to register a chief's name in the Register was summarized in holding one of the judgment in the *Garbrah case* supra in the following words: ***"Where a person had already been enstooled as a chief, he had the statutory right to have his name registered on the National Register of Chiefs, unless there had been some demonstrable legal impediment against his registration as a chief".***

The procedure for registration starts by compliance with section 14 of the Chieftaincy Act, [Act 759]. Section 14 (2) & (3) read: - ***"(2) As soon as practicable after any change occurs in the membership of a Traditional Council, the Council shall notify the Regional House which shall in turn notify the National House and, subject to subsection (3), the National House shall cause the said Register to be altered accordingly.***

(3) Where the National House is satisfied after consultation with the appropriate Regional House that a chief shall, or shall not, be a member of a Traditional Council, the National House may amend the Register accordingly."

The chiefs whose names are required to be in the Register are the Asantehene, Paramount chiefs, Divisional chiefs, Sub-divisional chiefs, Adikrofo and other chiefs recognized by the National House. The 2nd appellant, whose name was deleted from the Register by the respondent on the advice or directions of the 2nd respondent in the application, was an Odikro and therefore qualified to be registered in the National Register. In practice, the process that leads to the registration of a chief's name in the National Register starts from the Traditional Council. The chief-elect and his elders or kingmakers will first collect Registration Forms from the secretariat of the Traditional Council responsible for the traditional area where the person was installed as chief. The forms are known as Chieftaincy Declaration Forms (CDF). When the forms are

completely filled, they are returned to the Traditional Council (Council). After the Council has received and approved the Forms and their attachments, it would forward them to the Regional House of Chiefs with a covering letter. At the Regional House of Chiefs, the documents would be vetted by the Research Committee of the House. After vetting by the Research Committee, the Forms are laid before the full Regional House of Chiefs. If the Regional House of Chiefs finds the Forms accurate, the plenary Regional House would then consider and ratify the application. After the ratification, the application and the accompanying CD Forms would be forwarded to the National House of Chiefs, which is charged with the responsibility to do the registration. At the National House, the Forms are further vetted by the Research Committee of the House. From the Research Committee, the Forms are laid before the Standing Committee of the House. The Standing Committee, when satisfied, may ratify the Forms for registration or refer same to the plenary House for ratification. After that ratification, the name of the chief would then be inserted in the Register, a process described as the final entry into the Register. {*Please, see S. A. Brobbey's book on;* ***"The Law of Chieftaincy in Ghana"****, published by Advanced Legal Publications, Accra-Ghana in 2008; pages 196-199}*

It has been held by this Court in the *Garbrah case* (supra) that the respondent has a duty to be fair in the discharge of this duty of registering chiefs in the Register. There is no doubt to the fact that as at the time the 2nd respondent in the application (i.e. the Central Regional House of Chiefs) requested the respondent to expunge the 2nd appellant's name from the Register, the 2nd appellant's name had been in the Register for thirteen (13) good years as the Chief of Gomoa Fetteh and the Twafohene of Gomoa Akyempim Traditional Area. From the records, the 2nd appellant was enstooled in August 1997 and the CD Forms requesting for the registration of his name in the Register as required by law for the performance of his statutory functions under the Chieftaincy Act, [Act 370] now [Act 759], was forwarded by the Central Regional House of Chiefs to the respondent herein. The Forms were approved by the respondent on 20th July 1999. The respondent accordingly entered the 2nd appellant's name in the Register in July 1999.

As the Court of Appeal rightly held in the case of the **REPUBLIC v NATIONAL HOUSE OF CHIEFS; EX-PARTE; FAIBIL III & Others [1984-86] 2 GLR 731**, as a chief properly nominated and installed as such, the 2nd appellant had a statutory right to have his name registered in the national register of chiefs and that right, he could by mandamus enforce, unless there was shown against such registration a legal impediment to justify non-registration. This decision by the Court of Appeal was affirmed by this Court in the *Garbrah case* (supra). The legal impediments which would

justify a refusal to register or the removal of the name of a chief from the Register, have been interpreted to include death, abdication or deposition. So, if the name of the 2nd appellant was in the Register and had been entered for more than twelve (12) years to the knowledge of the 2nd respondent prior to the authorship of its letter of 27th February 2012, then it is presumed that all the necessary processes were complied with before the entry was made. Anyone who therefore alleged that the entry was wrongfully made, almost thirteen (13) years after the said entry, had the onus to prove that allegation in the appropriate forum.

In the *Garbrah case* cited supra, this Court held that though the duty of the National House of Chiefs in entering and deleting names of chiefs from the Register is an administrative and not a judicial function for which certiorari would lie, the exercise of that administrative duty or function could be challenged by an action in the appropriate court to set aside any wrongful registration or removal as the case may be. Section 14 (2) and (3) of the Chieftaincy Act, 2008 [Act 759] provide that when a change occurs in the membership of a Traditional Council, the Council shall notify the Regional House which shall in turn notify the National House which shall cause the Register to be altered accordingly. The National House only alters the Register when it is satisfied after consultation with the appropriate Regional House that a chief shall, or shall not, be a member of a Traditional Council and in taking this decision, the National House is obliged to be fair and fairness entails hearing from the other side.

In the instant case before us, there is nothing on record to suggest that the entry of the 2nd appellant's name in the Register had been successfully challenged by anybody in the appropriate court for same to be set aside or expunged as wrongful. Again, there is nothing on record to suggest that the 2nd appellant had been destooled as the chief of Gomoa Fetteh or had abdicated as at the time the 2nd respondent wrote to the respondent to expunge his name from the Register to justify such correspondence. The only reason for the request was that the entry of the 2nd appellant's name in the Register was done under strange circumstances. There was no disclosure of what those strange circumstances were and when the 2nd respondent realized the existence of those strange circumstances. However, a proper perusal of the record shows that the only reason for the request made by the 2nd respondent was that some people had filed a suit at the judicial committee of the Gomoa Akyempim Traditional Council challenging the installation of the 2nd appellant as chief of Gomoa Fetteh. The question is; can a mere challenge to the enstoolment of a person as a chief, long after the name of that person had been entered in the Register, justify the cancellation of that person's name from the Register when the dispute over the enstoolment or installation has not been given a final judicial blessing?

It has been held per *Ex-parte Faibil III* (supra) that where a chief's name has already been entered in the Register, the only means whereby anyone can have such a name expunged is where the registration has been successfully contested in the appropriate court as having been wrongly made or where the person who has been registered as such has died, abdicated or been destooled. If that is what the authorities say, then can the Regional House of Chiefs request for the cancellation of a chief's name from the Register without any notice to the chief concerned just because the chief's installation was being challenged before a judicial committee at a time the entry had already been made in the Register? That was the crux of the appellants' suit in the High Court against the respondent herein as the 1st defendant and the 2nd respondent in the application as the 2nd defendant, which was deemed pending after the Supreme had quashed the decision of Wilson, J that the High Court had no jurisdiction to determine same. However, since the respondent had already acted on the letter of the 2nd respondent in the application by expunging 2nd appellant's name from the Register, the issues raised in that action had become *brutum fulmen* or moot.

The mere assertion that the entry of 2nd appellant's name in the Register was made through strange circumstances since there was a challenge to his installation or that the registration was fraudulently made when the alleged fraud or strange circumstances had not been proved in any appropriate court, is not enough to justify the cancellation of the 2nd appellant's name, which had been in the Register for about thirteen (13) years prior to the letter dated 27th February 2012 requesting for its removal. It is true there was a pending suit before the judicial committee of the Gomoa Akyempim Traditional Council challenging the installation of the 2nd appellant as the chief of Gomoa Fetteh. However, until the determination of that dispute, any purported expunction or cancellation of the 2nd appellant's name from the Register was null and void as there is no law backing the action of the respondent. This case has similarities with the *Ex-parte Faibil III case* supra. The difference in the two cases is that in the *Ex-parte Faibil case,* some persons who described themselves as kingmakers applied to the High Court to have the appellant's name removed or deleted from the National Register. The High Court granted the order and the Court of Appeal reversed it on appeal on the ground that the application in the High Court was filed out of time and the applicants never applied for extension of time to do so. In the instant case, however, it was the Central Regional House of Chiefs that wrote on the orders of its President Nana Kwebu Ewusi VII requesting that the 2nd respondent's name be deleted or expunged from the Register because it was fraudulently entered.

Fraud, it is said, vitiates everything including even solemn judgments of the courts. But to act on grounds of fraud, the fraud must first be established in a court of competent

jurisdiction. No court of law or appropriate tribunal had established fraud against the 2nd appellant with regard to the entry of his name in the Register as far back as 1999 to warrant the action taken by the 2nd respondent in requesting for the deletion of 2nd appellant's name from the Register. The Court of Appeal in the *Ex-parte Faibil III's* case held, as was affirmed by this Court in the *Garbrah case* (supra) that the fact that the Constitution has empowered Traditional Councils and the Regional and National Houses of Chiefs to establish and operate a procedure for the registration of chiefs in Ghana and the publication in the gazette or otherwise of the status of persons as chiefs, does not mean that the said councils or houses have the power to withdraw recognition by expunging names already registered without any due process. The power or authority granted to the respondent is to register chiefs who are qualified to be registered. The respondent does the registration when it receives the necessary forms, duly completed by the Regional House concerned, which also gets its strength from the inputs submitted to it by the Traditional Council where the person to be registered functions as a chief. After the name of the chief has been duly entered in the register, the respondent cannot expunge it from the register either on its own volition or on the advice of the Regional House when the chief concerned has not abdicated, died or been destooled or deskinned or when there is no appropriate order from a court of competent jurisdiction or judicial committee of either the Traditional Council, Regional House of Chiefs or the National House of Chiefs for the name to be so expunged. By expunging the name of the 2nd appellant from the National Register of Chiefs without any justifiable cause, the respondent was not performing an administrative function as such. Rather the respondent was performing a quasi-judicial function by determining the right of the 2nd appellant as a chief and member of the Gomoa Akyempim Traditional Council, when it had no jurisdiction to do so. Where the respondent extends its jurisdictional threshold to areas ultra vires its powers, as it did in this case, then it brings itself within the supervisory authority of this Court.

To say that a chief's name be expunged from the Register means he has ceased to be a chief and the only acts that can justify an amendment and removal or both of a chief's name from the Register as indicated supra, include death, abdication, destoolment and 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 slated for removal or deletion from the Register is given a hearing. 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.

We pause to ask that; why did the Central Regional House of Chiefs not allow the judicial committee of the Gomoa Akyempim Traditional Council to determine the matter before it until deciding on the course it took? This sort of practice is what Wiredu, JA (as he then was) in the *Ex-parte Faibil III's case* described as; ***"an action chosen to achieve by a short cut procedure, what their destoolment action pending before the judicial committee is in effect intended to achieve".*** Having succeeded in having the 2nd appellant's name removed from the Register, which has deprived him of his membership of the Gomoa Akyempim Traditional Council and the performance of his statutory functions under the Chieftaincy Act [Act 759] as provided under section 57 (5) of the Act, the persons who have filed a suit challenging the status of the 2nd appellant as chief, could relax in the prosecution of their case before the judicial committee because they have already achieved in the interim, albeit wrongly, their aim.

We agree that as a general rule, mandamus would not be granted unless the party complained of had known what it was he was required to do so that he had the means of considering whether or not he should comply; and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desired to enforce and that demand was met by refusal. It has been held that the demand and refusal principle is not applicable in possible cases. For instance, it would not apply where a person, by inadvertence, omitted to do or perform an act he was under a duty to do and whence and where the time within which he could do it had expired or passed – See the case of **REPUBLIC (No. 2) v NATIONAL HOUSE OF CHIEFS; EX-PARTE: AKROFA KRUKOKO II (ENIMIL VI-INTERESTED PARTY (No. 2) [2010] SCGLR 134.**

Again, mandamus would not lie where the demand is premature. However, the mere fact of non-compliance with a duty would be sufficient ground for the award of mandamus where the applicant had been substantially prejudiced by the respondent's procrastination. As Wright, J opined in the case of **R v THE GUARDIANS OF THE LEWISHAM UNION [1879] 1 QB 498 at 500**; an applicant in a mandamus application must first of all show that ***"he has a legal specific right to ask for the interference of the court".*** This same position was expressed in Halsbury's Laws of England (3rd edition) Vol. 11 at page 84 as follows: ***"the purpose of mandamus is to supply defects of justice; and accordingly it will issue to the end that justice may be done in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."***

Since the 2nd respondent in the application, which caused the removal of the 2nd appellant's name from the Register had written back to the respondent to re-enter the 2nd appellant's name in the Register whilst the matter was pending on appeal before the Court of Appeal, and on the strength of our decision in *Abakah v Ambradu* (supra), we hereby reverse the judgment of the Court of Appeal and affirm the decision of the trial High Court, albeit on different reasons. We accordingly allow the appeal and order the respondent to immediately re-enter the 2nd appellant's name in the Register to restore the *status quo ante*, pending the final determination of the suit before the judicial committee of the Gomoa Akyempim Traditional Council on the propriety or otherwise of his installation as Chief of Gomoa Fetteh and Twafohene of Gomoa Akyempim Traditional Area.

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

J. V. M. DOTSE, JSC:-

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

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

YEBOAH, JSC:-

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

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

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

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

PWAMANG, JSC:-

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

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

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