# IN THE SUPERIOR COURT OF JUDICATURE

# IN THE SUPREME COURT

# ACCRA, A.D.2015

**CORAM: ANSAH JSC (PRESIDING)**
**ADINYIRA (MRS),JSC**
**ANIN-YEBOAH JSC**
**BAFFOE BONNIE JSC**
**AKOTO BAMFO (MRS) JSC**
**BENIN JSC**
**AKAMBA JSC**

**CHIEFTANCY REVIEW MOTION**
**No.J7/20/2014**

**12TH FEBRUARY 2015**

**IN THE MATTER OF**

| | | |
|---|---|---|
| 1. | **NANA YEBOAH-KODIE ASARE II** | PLAINTIFF/ |
| | YONSOHENE & BENKUMHENE OF JAMASE | APPELLANTS/ |
| | HOUSE NO. YN 22, YONSO-ASHANTI | APPLICANTS |
| 2. | **NANA KWAME SARFO KANTANKA** | RESPONDENTS |

KRONTIHENE OF YONSO, YONSO RESPONDENTS

**VRS**

1. **NANA KWAKU ADDAI**

   BEDOMASE BRETUO ABUSUAPANIN

   YONSO

2. **NANA OFORIWAA AMANFO**

   BEDOMASE BRETUO BAAPANIN

   YONSO

3. **NANA KWAME BROBBEY**

   YONSO BEDOMASE GYASEHENE

4. **NANA OWUSU ACHIAW**

   GYASEWAHENE, YONSO

5. **NANA AGYAPONG** DEFENDANTS/

   YONSO BEDOMASE BRETUO BAAMUHENE RESPONDENT

6. **OPANIN ATAKORA MANU,** YONSO APPELLANTS

7. **ADDAE BOATENG,** YONSO BEDOMASE APPELLANTS

   BRETUO KYEAME RESPONDENTS

8. **FRANCIS YAW ADUSEI,** YONSO

# RULING

## BENIN, JSC: (FOR THE MAJORITY OPINION)

The processes culminating in this review application began at the Judicial Committee of the Mampong Traditional Council (JCMTC) where the plaintiffs,herein referred to as the applicants, sued the defendants, herein referred to as the respondents in a chieftaincy matter. The JCMTC dismissed the action by the applicants. Not satisfied with the decision by the JCMTC, the applicants appealed to the Judicial Committee of the Ashanti Regional House of Chiefs (JCARHC) which allowed the appeal. The respondents also appealed against the decision of the JCARHC to the Judicial Committee of the National House of Chiefs (JCNHC) which dismissed the appeal. The respondents appealed against the decision of the JCNHC to this court which by a majority decision allowed the appeal on 21st May 2014.

By the present application the applicants are asking this court to review its decision delivered on 21st May 2014. The applicants canvassed two grounds and these are set out in paragraph 3 at page 2 of the accompanying statement of case filed on 14th August 2014. They read:

(i) bias and,
(ii) other fundamental and basic errors of law and facts committed by the Court, not necessarily amounting to bias, but causing a substantial miscarriage of justice to the applicants.

Before proceeding with this application, it is necessary to recount the facts of the case. The applicants sought these reliefs against the respondents at the JCMTC:

a) A declaration that the priviledge previously vested in the Yonso Bedomasi-Bretuo family to nominate, elect and install a Yonsohene was validly abrogated by Nana Adu Gyamfi Brobbey III the then Jamasihene when the

said family rebelled against the Jamasi stool and proclaimed itself no longer subject to the traditional authority of the Jamasi stool.

b) A declaration that Nana Yeboah Kodie Asare II was lawfully elevated to the status of Yonsohene and Benkumhene of Jamasi by Nana Adu Gyamfi Brobbey III in the face of the said rebellion and all customary rites were duly performed to seal the elevation.
c) A declaration that the purported nomination, election and installation of one Francis Yaw Adusei (the 8th defendant) by the Yonso Bedomasi-Bretuo family or any other person as Yonsohene is contrary to Ashanti custom and usage and that the same is therefore null and void.
d) A declaration that Nana Oforiwaa Amanfo, the second defendant herein is an Obaapanin of Yonso Bretuo-Bedomasi family and not the queen mother of Yonso.
e) An injunction to restrain the 2nd and 8th defendants from acting or holding themselves out or allowing themselves to be held out as the queen mother and Chief of Yonso respectively.

It was accepted that the occupant of the stool of Yonso has for several years owed allegiance to the stool of Jamasi. But as to whether the Yonso stool was created by the Jamasihene and whether the occupancy of the said Yonso stool was conferred on the Bedomasi-Bretuo family of Yonso by the Jamasihene were highly disputed issues. It was also in issue whether the Yonsohene who also serves as the Benkumhene of Jamasi Divisional Council had rebelled against the Jamasi stool, along with his family. It was the applicants' case that as a result of this rebellion by the Bedomasi-Bretuo family, the Jamasihene divested the said family of its priviledge to occupy the Yonso stool and the Benkumhene of Jamasi Divisional Council. The applicants' case further was that the Jamasihene conferred the title of Yonsohene and Benkumhene of Jamasi on the 1st applicant of the Asona clan, who was then the Nkotokuahene of Jamasi and Odumasehene of Yonso, one of the clan stools of Yonso.

The JCMTC found as a fact, inter alia, that the Yonso stool was not created by the Jamasihene, and that its occupancy was not conferred on the Bedomasi-Bretuo family by the Jamasihene. Indeed the JCMTC made a significant finding that the

said Yonso stool was in existence and owned by the Bedomasi-Bretuo family before the arrival of the Jamasihene to his present site. The JCMTC also did not accept the story about the rebellion. The trial tribunal also held that it was the prerogative of the Jamasihene to confer titles on deserving persons and families and it was equally his prerogative to divest the Yonsohene of the position of Benkumhene and give same to the 1st applicant since he was the one who created that position. All these findings were based on the facts in evidence.

On the same facts in evidence, both the JCARHC and the JCNHC drew different conclusions from those of the JCMTC and therefore upset the decision of the JCMTC. When the matter came up on appeal to this court, the majority opinion confirmed the findings and decision of the JCMTC and allowed the appeal. The following extracts from the majority opinion are relevant to the ensuing discussion:

"From the evidence on record, it appears that Nana Jamasehene has the prerogative to elevate the status of any of his sub-chiefs to the position of Benkumhene. This he has done by elevating the 1st plaintiff. We cannot in this respect agree more with the conclusion reached in this matter by the JCMTC as follows:

***'Nana Jamasehene has the traditional right to elevate any of his Adikrofo or sub-chiefs and even youngmen and women who have distinguished themselves in the service of his traditional area. He can create new stools to people of his choice but he cannot transfer an ancient hereditary royal status from one family to another.'***

We agree with the above statement and endorse it…….

We will…….affirm the judgment of the JCMTC dated 16th February 1999 which we accordingly restore."

The instant application is thus inviting this court to take another look at its decision based on the two grounds set out above because in their view there were special circumstances resulting in a miscarriage of justice.

To begin with, let us consider the issue of bias. Simply put, the applicants are saying that the majority opinion of this court read by our distinguished brother Dotse, JSC, was tainted by bias. The language employed in expressing this opinion by the Solicitors of the applicants is not in good taste, to say the least. We shall return to this later. Judges are not infallible though, yet they deserve some respect from legal practitioners even when they are believed to have erred in the law. The use of bad and intemperate language brings the court into disrepute and ridicule and that in itself could be the subject of contempt against the legal practitioner who employs such language, albeit under the guise of submitting a statement of case to the court.

Counsel for the applicants set out the law on bias and cited some instances when it has been successfully applied by various courts. These will be summed up as follows. Counsel said bias applies "where circumstances exist which give rise to a reasonable apprehension that the judge trying a case may have been affected consciously or otherwise by extraneous matters to come to some decision." Counsel also said that when it comes to bias the court looks deeply "at the circumstances alleged and to consider whether or not there is such a degree of possibility of bias, the decision in question should not be allowed to stand; in other words, there are exceptional circumstances which have resulted in a miscarriage of justice". Further, counsel submitted that "if on any question at issue in the proceedings before the court a judge had expressed opinions in such extreme and imbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind, the decision cannot stand. This is because, where bias is established, it constitutes a breach of one of the principles of natural justice- ie. fair hearing."

Continuing with his submissions Counsel for the applicants recounted some of the forms whereby bias may appear. He said:"It may consist of irrational prejudice or it may arise from particular circumstance which for logical reasons, predispose a Judge towards a particular view of the evidence or issue before him."

Counsel cited these cases in support of his arguments**: R. v. Gough (1993) AC 646; R. v. Inner West London Coroner, ex parte Dallaglio & Ors. (1994) 4 All ER 139; Re Pinochet (1999) UK HL 1.**

After referring to the law and principles applicable to bias, Counsel for the applicants turned to the facts upon which the application is made. Counsel submitted that "His Lordship Mr. Justice Dotse's pronouncements in various parts of the majority judgment which he authored, exhibited actual bias. This was a fundamental breach of the 'fair hearing' rule. It occasioned a substantial miscarriage of justice to the plaintiffs. The judgment must be reviewed accordingly and set aside."

Counsel then proceeded to set out those pronouncements in the lead judgment which in their view support their claim of bias. First they pointed out the Judge's description of the applicants' reliefs sought at the tribunal of first instance, set out above, as having been "craftily drafted". In counsel's view the word "craftily" could only mean cunningly or deceitfully or hypocritically, going by the Oxford English Dictionary. In counsel's view "these reliefs are quite ordinary, mundane; no hidden meanings. So unless there operated on His Lordship's mind, consciously or unconsciously, some suspicions of oblique motives by the applicants, there was absolutely no reason for him to describe them as craftily drafted."

For his part, counsel for the respondents referred to some decided cases to support his submission that there was no foundation for the charge of bias. In his view a mere or reasonable suspicion of bias would not suffice; what was required was either actual bias or interest of a pecuniary or proprietary nature giving rise to a real likelihood of bias, citing the dicta of Lord O'Brien CJ in **R. v. Justices of County Court (1910) I.R. 271.**

It must be pointed out that the law on bias as applied in England has undergone some changes with the introduction of the jurisprudence of the European Court of Human Rights (ECHR) in October 2000. Whilst most of the principles as applied in cases like **R. v. Gough** and **ex parte Dallaglio**, supra, are still applicable in England, yet there have been some modifications to bring them in line with the

jurisprudence of the ECHR. Thus some caution should be applied in relying on the English decisions post 2000. However, in line with the practice in our courts, we do accept all external decisions as of persuasive value only. With that caution in mind we may proceed to rely on even the jurisprudence of non-commonwealth jurisdictions if it will help us apply a correct interpretation to our own laws.

Prior to the House of Lords' decision in **R. v. Gough**, supra, there were difficulties in rationalizing the law on bias with regard to what were the most appropriate tests or criteria to apply. The House of Lords tried to resolve the conflicts when it got the opportunity in **R. v. Gough**, supra. The court laid down the following approach to be followed by a court in deciding whether to set aside a decision of an inferior tribunal on account of bias. These are:

1. The reviewing court should first identify all the circumstances relevant to the issue of bias.
2. The reviewing court should not then consider the effect that those circumstances would have upon a reasonable observer, rather
3. It should itself decide whether, in the light of the relevant circumstances, there was a real danger that the inferior tribunal was biased.

Yet the difficulty did not end as some courts in England believed **R. v. Gough** had not completely resolved the problems associated with bias. For instance in **Locabail (UK) Ltd v. Bayfield Properties Ltd (2000) QB 451 at 476** the Court of Appeal observed that the test in **R. v. Gough**, supra, had not commanded universal approval outside England and that most courts in commonwealth jurisdictions were inclined towards the jurisprudence of the ECHR.

In the case of **In re Medicaments and Related Classes of Goods (No.2) (2001) TLR 84**the English Court of Appeal reviewed the existing law and decided cases vis-à-vis the jurisprudence of the ECHR and came up with this test at page 85 per Lord Philips, MR, reading the opinion of the court: "The court had first to ascertain all the circumstances which had a bearing on the suggestion that the judge was biased. It then had to ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased."

Thus for bias to prevail, there must be proof of actual bias, especially in the form of pecuniary benefit to the judicial officer. It could also be proved by interest of a proprietary or personal nature which may lead or amount to a real likelihood of bias. And it may also arise from the circumstances of the situation which a fair-minded and objective observer may conclude that there was a real danger or real possibility of bias.

In most cases where bias has been raised against judicial officers, the complaints have been in respect of their acts, deeds, utterances that occurred outside the judicial proceedings; and where they have taken place in the course of judicial proceedings they have been in the course of hearing, and not in their opinion or judgment. This may be due to the fact that it is difficult to ascribe bias to a judicial officer on account of how he has expressed his opinion. This may be the justification for the definition of 'judicial bias' proffered by the editors of Black's Law Dictionary, 9th edition at page 183. They say 'judicial bias' means a judge's bias toward one or more of the parties to a case over which the judge presides. It is usually not enough to disqualify a judge from presiding over a case unless the judge's bias is personal or based on some extrajudicial reason. The definition, although it makes proof of bias difficult, yet it leaves room for possible judicial bias to arise in certain circumstances, especially in extrajudicial situations. Thus In **ex parte Dallagio**, supra, the coroner was removed from his position not because of any opinion expressed in court, but on account of what he said at a press conference in connection with the inquest that he was presiding over. And in **In re Medicaments** etc supra, the charge of bias against a judicial officer was upheld when it was found that one of the panel members had applied for employment in a firm, one of whose members was due to appear before the inferior tribunal as an expert witness, notwithstanding that she had withdrawn the application on learning of the role the firm was to play in the enquiry. The Court of Appeal was of the opinion that a fair-minded observer would apprehend that there was a real danger that the judicial officer would be unable to make an objective and impartial appraisal of the expert evidence placed before the court by the firm to which she had earlier applied for employment.

The difficulty posed by the instant application is that it is based entirely on some expressions and conclusions in the decision of the majority which the applicants claim are evidence of bias. We would thus examine all the claims in the context of the tests of bias set out above.

Whilst responding to the applicants' submissions, counsel for the respondents referred to the reason/s given by the learned judge in describing the reliefs endorsed on the writ as being craftily drafted. The learned judge having reviewed at length the findings made by the two appellate courts below and pointing out inconsistencies therein held that the decision of the trial tribunal was sound and ought not to have been disturbed. The learned judge then delivered himself in the following words:

"However, the crux of this appeal is the determination of the constitutional relationship between the Jamasihene and the Yonsohene and its effect on the status of the two chiefs vis-à-vis their rights and priviledges. In view of the claims of one stool having the power to divest and vest etc. This no doubt will have some direct bearing on the reliefs which the plaintiffs so craftily drafted in their case at the JCMTC."

The learned judge proceeded to examine the constitutional relations between the stools of Jamasi and Yonso and how the former had tried to divest the occupant of the latter stool and give same to the 1st applicant, contrary to custom. It is this process he described as having been achieved by a crafty plot. What matters is whether by custom the Jamasihene has the right to take away the stool of Yonso from the Bedomasi-Bretuo family and give it to any other person, which the court held he had no such right. Thus the description given by the learned judge did not cause any miscarriage of justice warranting a review.

It is settled practice that the reason/s for any decision of a court or judge should be an important factor or guiding light in challenging the decision. The question that ought to be answered is whether the decision is supportable or not having regard to the reason/s given. In this application Counsel for the applicants made no reference, and indeed did not give any thought or consideration, to the

reason/s given by the learned judge in arriving at the conclusion that the reliefs were “craftily drafted” This cannot form the basis for review.

Counsel’s next line of attack was in respect of this part of the judgment where the learned judge wrote: “Indeed a careful reading of the reliefs which the plaintiffs claimed before the JCMTC reveals a crafty plot to take away the chiefly status of the defendants as far as the Yonso stool is concerned…..It is not surprising that the JCMTC saw through this mischievous attempt and boldly rejected it in all its forms.” Counsel’s contention was that the descriptive words employed by the learned judge showed he “gave a jaundiced view of their (plaintiffs’) claim in court……According to the BBC English Dictionary, if a person or their behavior is crafty, they achieve things by deceiving people. There was no evidence of any deception by the plaintiffs.”

Once again counsel made no reference to the learned judge’s reason/s for the conclusion they complain about. It was not out of the blue that the learned judge said whatever he said. Without paying any regard to the reason/s given, it is inappropriate to ask for a review of a decision.

Next, counsel for the applicants referred to the part of the judgment whereby the learned judge made reference to Article 277 of the 1992 Constitution and other constitutional and statutory provisions and explained his reason for doing so was “to hone in the issue that arises for determination in this Chieftaincy appeal”. He went on to set down the issue as “whether a person who has no real connection or at all to royalty can aspire to chiefly office either through his own machinations or by the deliberate acts of others as happened in this case.”

Counsel took the learned Judge to task on this. He said it was unfair for the learned judge to hone in on a non-existing issue as the one for determination in the appealand thereby ascribe malicious motives to the applicants. In counsel’s view, “the quintessential issues that arose for determination in the appeal stood out like a sore thumb. These are:

i) Whether or not the Yonsohene-Bedomasihene, Baffour Kofi Kwarteng of the Bretuo family, rebelled against his traditional overlord, the Jamasihene, and

ii) Whether or not the Jamasihene had the right and power to withdraw, and did withdraw, the priviledge previously bestowed on Baffour Kofi Kwarteng and his Bedomasi-Bretuo family."

Counsel went on to make references to the facts in evidence which he said supported both issues in favour of the applicants. He cited the case of **Metropolitan Properties Co. v. Lannon (1968) 3 All ER 304** which holds that the objective test should be applied on questions of bias and that if a right-minded person would think that there was a real likelihood of bias on the part of the judge then there was bias and the judge should not sit on the case.

In considering a judgment of a court, one should have regard to the entire decision and not just a part of it in order to appreciate what the court's decision was and the reason/s thereof. The issue the learned judge set down above was not the only one he considered in the judgment. He set out in detail what the issues were and for purposes of emphasis they are reproduced here. This is what the learned judge said:

"Having perused the grounds of appeal vis-a-vis the evidence in the appeal record together with the erudite submissions of learned Counsel for the parties, we are of the view that the following issues arise for determination in this appeal. These are:

1. Whether the allegation of bias has been adequately made against some panel members of the JCARHC by the defendants.
2. Whether a chiefly status can be divested from one family and vested in another family by a mere verbal declaration by an overlord chief irrespective of how that stool was created.
3. The constitutional relationship between chiefs in this case, the Jamasihene and Yonsohene vis-à-vis a critique of the reliefs claimed by the plaintiffs before the JTMTC.

4. The issue of concurrent findings made by the two appellate courts, viz, the JCARHC and JCNHC and whether on the strength of the authorities there is sufficient justification for this court to depart from those concurrent findings."

He did not only set out the issues, the learned judge went on to discuss them in detail and concluded that the JCMTC had made the correct primary findings of fact on all the core issues, except of course the first and the last which could not have arisen before the trial tribunal. He then rejected the decision by the JCARHC and the JCNHC which made concurrent findings of fact. It was after going through all these processes that the learned judge was led to the conclusion that there was an attempt to take away from the appropriate family what was rightfully theirs and give same to the 1st applicant who did not come from the Bedomasi-Bretuo family and whose family had never produced a Yonsohene. It is in this context that the learned judge's decision and pronouncements should be understood and appreciated. It is not evidence of bias. Whatever he said was supportable on the record which the trier of facts had found to exist. At the end of the day the judge had made it clear that the Jamasihene had taken the Yonso stool away from the Bedomasi-Bretuo family which had created that stool and occupied it for well over two centuries and had given it to the 1st applicant. The Jamasihene has no right to take away the Yonso stool from the Bedomasi-Bretuo family since he did not create it as found by the JCMTC. He could not confer the Yonso stool on the 1st applicant since he did not own it. In these circumstances nobody reading between the lines could begrudge the learned judge for concluding that there was a mischievous attempt to wrestle the Yonso stool away from its rightful owners.

Be that as it may, even if the remarks appear unpalatable, the fact remains that the decision of the court was based on the facts in evidence as captured by the trial tribunal which the court fully endorsed. Anything else was unimportant as it did not amount to special circumstances occasioning a miscarriage of justice to warrant a review within the meaning of rule 54 of the Supreme Court Rules, 1996, C.I. 16.

Yet another instance of bias alluded to by the applicants is the court's decision on whether the title of Yonsohene was vested in the Bedomasi-Bretuo family by the Jamasihene. The JCMTC had made a positive finding that it was not bestowed on the Bedomasi-Bretuo family by the Jamasihene. That finding was set aside by the JCARHC on the ground that the 8th defendant had admitted the Jamasi people were the first to settle in the area before the arrival of the Bedomasi-Bretuo family. The learned judge held that the JCARHC had no business to set aside the finding of fact by the JCMTC. This did not go down well with the applicants, especially the expression that the JCARHC had no business to depart from the findings made by the JCMTC. Counsel's view was that this portrayed bias of the clearest type against the learned judge, since the JCARHC was a duly and legally constituted tribunal vested with the power to upset the findings of the JCMTC.

With all due respect to the learned counsel, he has not properly appreciated the court's view. The court had made reference to the findings of fact made by the tribunal of first instance which had seen and heard the witnesses. The court's view was that so long as the first tribunal could support its findings of fact from the evidence on record it was not open to the appeal tribunal to disturb those findings. In law an appellate court cannot set aside findings of fact made by a trial court simply because the court of first instance should have taken a different view of the facts, or that the appellate court takes a different view of the facts in evidence. The use of the expression 'no business' is what is disturbing the applicants, but it need not if it is considered that the court was only stating the truth of the matter that an appellate court was not justified to do what the JCARHC did by substituting its own findings for those of the court of first instance when the latter's decision is supportable from the evidence on record. We should not lose sight of the fact that it is not in every situation where parties and witnesses on one side give inconsistent testimony that the case must be rejected automatically as the JCARHC purported to do by relying on the piece of admission by the 8th defendant ignoring all the other pieces of evidence from the defendants' side. It is trite learning that the court must consider the totality of the evidence adduced by and for a party in reaching a decision one way or the other.

The majority decision was thus justified and cannot be attacked on account of bias.

There is no law or rule of practice, nor are there hard and fast rules or guides as to the type of language a judge may use in describing events, issues, acts, etc in the course of deciding a case. What is important is that the language employed should express the judge's thoughts and ideas backed by reasons. Thus the entire decision will have to be examined in determining whether the judge had arrived at a just solution. If the decision is unsupportable on legal or factual grounds it is open to question, but not because of the language used. Counsel for the respondents cited the case of **Republic v. High Court, Sekondi; ex parte Abuna II and Others (1992) 1 GLR 524 CA** where the court held that in the absence of any rule of court which prescribed a method or manner for the delivery of a ruling or a judgment, the trial judge's finding that the manner in which the chairman of the judicial committee delivered the ruling terrified and terrorized the respondents and thereby constituted sufficient evidence of bias was not supportable in law. This case provides an illustration of the difficulty in attacking a judicial decision for bias because of the language used by the officer. Yet another illustration was provided by counsel for the respondentsin a case decided by the South African Constitutional Court. That is reported as **Enrico Bernett v. ABSA Bank Ltd. (2010) ZACC 28,** dated 9th December 2010. At the court the applicant raised bias against some of the justices who sat on the appeal. The grounds raised were:

a) One of the judges held shares in the respondent bank;
b) Two of the judges had a prior association with the respondent bank, in that their previous employer had been funded by the respondent;
c) The manner in which the presiding judge conducted the proceedings and
d) The factual findings made by that court, were so unreasonable that they were inexplicable except on the basis of bias.

For our present purposes it is only the last ground which is of some relevance for this review. The decision of that court in respect of the other grounds should better not be discussed here for irrelevancy. On the last ground the court found that the applicant's complaints of erroneous factual findings were not borne out

by the record as all the issues were properly considered. In other words once the judge's decision and conclusion are supportable on the facts and applicable law, a charge of bias would not lie simply on account of the language used to express same. And if such firm attitude is not displayed by a reviewing court, almost every decision will be contested on account of what a judge has said in the course of delivering his opinion which a party considers detestable.

Earlier we said the language employed by counsel for the applicants was in bad taste, to put it mildly. We return to this issue. In concluding the first ground this is what counsel for the applicants said: "There is over-riding public interest that there should be confidence in the integrity of the administration of justice in the country. Ordinarily, judicial adjudication must always be fair and reasonable, nurtured on the wings of humility and understanding, making due allowance for human frailties. This standard must never be lost sight of. The traditional image of the goddess of justice is a fair maiden, blindfolded and holding a raised sword in her right hand pointing to the sky and a pair of weighing scales. She is presented as the veritable incarnation of judicial virtue.

Mr. Justice Dotse's ravings and ranting against the plaintiffs, the JCARHC and the JCNHC in such extreme and uncontrollable outbursts are such as to throw doubt on his Lordship's impartiality or his ability to have tried the appeal before their Lordships in the Supreme Court fairly and reasonably; of course, with an objective judicial mind.

It is a universal principle of judicial performance that judges should, as far as possible avoid the temptation to discharge their judicial functions in a spirit of anger. This is because a spirit of anger leads to intemperate language and intemperate language invariably leads to bias. In our submission, a fair reading of the record leads us to conclude that his Lordship Dotse appeared to have succumbed to that temptation, writing his judgment obviously in a spirit of anger!

We have shown above without any doubt that his utterances in various sections of this Court's judgment were, in the words of their Lordships in the ferry disaster inquest, injudicious, insensitive and gratuitously insulting"

Counsel castigated the learned judge of not dealing with the case with an objective judicial mind. What did the judge say that makes his opinion subjective? How on earth could counsel for the applicants conclude that the learned judge wrote his opinion in a fury? It is unacceptable to impute a certain conduct to a judicial officer unless he has used clear language to connote the description or unless his acts, actions and utterances during the hearing justify the description. Nothing of the sort has taken place here. All what he said was based on the record especially the findings made by the JCMTC. His opinion based upon inferences from established facts has infuriated the applicants, but as a judge he is entitled to draw inferences from established facts, whether they are pleasing to a party or not. The use of words like ravings, ranting, anger, lacking in objectivity to describe the learned judge's opinion leaves much to be desired and is highly deprecated.

In conclusion there is no evidence of a personal, pecuniary or proprietary interest raised against the learned judge. And with regard to the circumstances of the case the learned judge based his remarks, observations, decisions and conclusions on the facts in evidence; he did not go outside them. Any fair-minded and informed objective observer would not consider the learned judge's views a real danger or real possibility of bias. The charge of bias is thus not established on the record; hence this ground for review fails.

The second ground for this application is that there were fundamental and basic errors of law and fact committed by the court which have caused a substantial miscarriage of justice to the applicants.

Counsel for the applicants relied on this court's decision in the case of **Quartey v. Central Services Co. Ltd. (1996-97) SCGLR 398**, on the application of exceptional circumstances in review

Counsel for the applicants outlined two instances in the decision which in his view amounted to exceptional circumstances. According to counsel, 'the first exceptional circumstance is that the court inadvertently made an error of law in its judgment when it purported to rehash the matter for determination in the appeal as being 'the issue of whether a person who has no real connection or at

all to royalty can aspire to chiefly office either through his own machinations or by the deliberate acts of others such as has happened in this case' when the quintessential issue in the appeal was whether or not the Yonsohene, Baffuor Kofi Kwarteng rebelled under customary law against the overlord, the Jamasihene and whether his overlord had the right and power to withdraw, and did withdraw the priviledge previously bestowed on Baffuor Kofi Kwarteng and his Bedomasi Bretuo family, having regard to the constitutional relations between the two chiefs."

Counsel continued that "the second exceptional circumstance is that the Court inadvertently made an error of law in its judgment when it rehashed the grounds of appeal filed by the defendants/appellants in this court and gave judgment on the rehashed grounds which they perceived to be the real issues."

On the first issue, Counsel made references to facts in evidence to show that the respondents' Bedomasi-Bretuo family had rebelled against their overlord who is the Jamasihene, as found by both the JCARHC and the JCNHC. Counsel's view was that the majority failed to give consideration to this important fact. Consequently, the second ground should have succeeded as a matter of custom since the overlord was entitled to divest a rebellious chief of his priviledges. Contrary to counsel's position the majority accepted the findings of fact made by the trial tribunal which did not accept the claim there was rebellion.

As rightly pointed out by counsel for the respondents, a review is not another appeal process whereby the court is called upon to rehear the case even if the decision of the ordinary bench is considered wrong. Review is a special procedure so all the relevant factors to be taken into consideration, as decided in a long line of cases some of which were set out by both counsels in their submissions, must exist in order to succeed under either sub-rule a or b of rule 54 of C.I 16.

But this is a case where the applicants are saying that the majority decision did not address the core issues in the case. On the other hand they claim the majority decision was founded on non-existent issues. Thus we would be compelled to go through the record to find out if indeed the appropriate issues were not dealt with and if so whether they constitute special circumstances resulting in a

miscarriage of justice. In the process it will appear the appeal is being re-argued, but it's the best way to attain the ends of justice in this application.

On the issue of rebellion, Counsel took issue with that part of the decision by our able brother Akamba JSC, whereby he equated it with a criminal offence that required a proof beyond reasonable doubt, albeit in a civil trial, under section 13(1) of the Evidence Decree, 1975 (NRCD 323). According to the applicants this has caused a substantial miscarriage of justice, since it prevented the learned judge from appreciating what rebellion meant in customary law. The definition that the learned judge preferred has both criminal and civil elements. By applying the standard of proof in criminal trial, the learned judge was drawing attention to the fact that rebellion was a serious indictment since it had the effect of depriving a person or family of its stool or chieftaincy title. But even assuming the learned judge wrongly raised the level of proof required for rebellion at custom, yet that per se did not cause any miscarriage of justice as he fully appreciated and affirmed that the Bedomasi-Bretuo family had the sole right to ascend the throne of Yonso and that the Jamasihene had no right to abrogate that right. Thus whether a rebellion was proven or not, the Jamasihene could not take away what he had not granted. But the lead judgment which was concurred in, did not apply the test of proof beyond reasonable doubt, and that remains the opinion of the court that in customary rebellion the normal standard of proof on a preponderance of probabilities would apply.

Still on the issue of rebellion, the respondents' head of family had written Exhibit J1 in response to Exhibit J written by Nana Jamasihene. In Exhibit J Nana Jamasihene had clearly divested the respondents' family of the stool of Yonso. In reaction they replied they did not owe him allegiance since they owned their own stool. This was after both chiefs had had their differences reconciled by the Mamponghene, as per Exhibit 4, dated 14$^{th}$July 1984. It was just two years after the settlement that the Jamasihene sought to divest the respondents' family of the Yonso stool. The settlement had wiped the slate clean so one could not talk about a rebellion having persisted for more than twenty-five years. In these circumstances, who would fault the JCMTC for not acceding to the claim of rebellion. If you take away from me what is lawfully mine, you should expect the

worst reaction from me. The circumstances called for that kind of reaction. That will explain why after a lapse of time and sober reflection, for time, it is said, heals wounds, the defendants admitted that the Jamasihene was their overlord in response to the applicants' statement of claim before the JCMTC, some years after Exhibit J1 had been written. All the foregoing facts were in evidence hence the JCMTC was able to find that the defendants owed allegiance to the Jamasehene. The trial tribunal was bound by the admission on the pleadings that respondents owed allegiance to the Jamasi stool and did not require any further proof in law. The pleadings contradicted Exhibit J1 so the pleadings being a judicial process would prevail. Thus when other factors were considered the JCMTC would be justified in not paying heed to the claim of rebellion.

There was also evidence before the trial tribunal that the Yonsohene had made it clear that they were not interested in the position of Benkumhene of Jamasi and would thus not continue to serve in that capacity. Hence he gave his full backing to the elevation of 1st applicant to occupy that position and partook in his installation in 1986. Thereafter the record shows that on 25th June 1987 at a meeting of the Mampong Traditional Council over which Nana Jamasihene presided, the Yonsohene Baffour Kwarteng III was present along with the 1st plaintiff in their capacity as the Yonsohene and Benkumhene of Jamasi respectively. Neither the Jamasihene who presided over the said meeting, nor the 1st applicant who claimed to have been made the Yonsohene a year earlier, is on record to have protested the presence of Baffuor Kwarteng III as the Yonsohene. Or was it a case of Yonso having two chiefs occupying the same stool at the same time? Certainly not.Thus if anybody talked about a rebellion by the Yonsohene that led to him being stripped of the title of Benkumhene of Jamasi and Yonsohene in August 1986 that would plainly be false. The true position was that the Yonsohene had told the entire Mampong Council at a meeting captured in Exhibit 4 that he was not prepared to serve as Benkumhene of Jamasi again. Whatever reason he had for saying that is immaterial as nobody can be compelled to take up a position he is not interested in. Thus a vacuum existed thereafter which the Jamasihene was entitled to fill and did fill in fact.

One would expect that for a serious customary offence as rebellion, formal charges would be leveled against the alleged rebel, leading to appropriate sanctions permitted by custom. Exchanges of letters undermining each other's authority do not constitute any charge of rebellion or conclusive proof thereof. Customary law requires that an offence which could lead to sanction of destoolment, inter alia, should be charged against the alleged offender to give him a chance to defend himself. The 'audi alteram partem' principle equally applies to customary matters. It is only where, after appropriate charge has been preferred and a proper hearing has taken place and the alleged offender has been found liable may appropriate customary sanctions be imposed. Unless this cardinal principle of hearing, not to talk of fair hearing, is insisted upon, impunity will have a field day in chieftaincy matters. For an overlord who believes his subordinate has offended him will just remove him from office by a mere letter, as happened in this case. No reasonable tribunal would accept lack of a hearing as proper customary practice. In these circumstances the JCMTC was justified in discountenancing any talk of rebellion. The majority cannot be said to have fallen in error let alone to talk about causing a miscarriage of justice.

Let us move on to the next point. It was the evidence that the JCMTC accepted and which the majority in this court endorsed being that the Yonso stool was not conferred on the Bedomasi-Bretuo family by the Jamasihene. Contrary to what the Jamasehene had said in Exhibits J and K, the JCMTC found as a fact that no family or clan other than the respondents' family had occupied the Yonso stool since the town was founded. What this means is that nobody has the customary right to take away the Yonso stool from the Bedomasi-Bretuo family, much less to give it to another person or family. The title of Benkumhene of Jamasi was conferred by the Jamasihene and that is what by custom he could take away from the respondents. The judgment is very clear on this. The JCMTC made these findings at page 187 of the record:

"From plaintiffs' evidence and that of their witnesses and the defendants and their witnesses they all accept the fact that the Bedomasi-Bretuo family have been chiefs at Yonso ever since the town was founded. Throughout the proceedings the plaintiffs could not establish any claim that any of their ancestors

have ever been Odikro or chief at Yonso. If therefore the Apaahene claims he gave Yonso land to Yonsohene and Frepo lands to 1st plaintiff's great granduncle then it is clear that the land was given to the first chief of Yonso who happens to be Nana Oforiwa Amanfo."

The above-quoted findings were based on facts in evidence. Under cross examination, the 1st applicant admitted that it is the Bedomasi-Bretuo family which produces the Yonsohene. This is an extract from his cross-examination:

"Q- How is Yonsohene enstooled?

A- Bedomasi Obaapanin nominates a candidate for approval by the elders.

Q- After nomination what follows?

A- She nominates for the elders of the Bedomasi family. If accepted he is installed.

Q- Is the candidate nominated for the Bedomasi elders alone or Yonso elders?

A- He is shown to Yonso elders."

He admits it is the Bedomasi family that produces the Yonsohene, notwithstanding his claim to have been given that title. He admitted he was not nominated by the Obaapanin of Bedomasi. He also admits he is not from the Bedomasi-Bretuo family.

Besides the admission by the 1st applicant that it is the Bedomasi family which produces the Yonsohene, the 2nd applicant at page 39 of the record admitted that apart from the Bedomasi-Bretuo family he was not aware that any other family had ascended the Yonso stool. Then PW3 Baffuor Kofi Akuoku who was the Twafohene of Yonso also affirmed that apart from the Bedomasi-Bretuo family no other family had ascended the Yonso stool. And DW2 who is a member of the 1st applicant's family and indeed his nephew also said at page 133 of the record that the Yonso stool has been occupied solely by the Bedomasi-Bretuo family of Yonso. All these pieces of evidence negative the Jamasehene's claim that the 1st applicant's family was the first to occupy the Yonso stool so he was only restoring

to them what was rightfully theirs, see Exhibit K at page 215 of the record paragraphs (ii) and (iii). No wonder the JCMTC rejected it and no wonder Dotse JSC described it as a mischievous attempt to take away the Yonso stool and confer it on the 1st applicant who did not come from the rightful lineage, which Dotse JSC described as not coming from royalty.

Next Counsel for the applicants took the position that "by allowing the appeal and restoring the judgment of the JCMTC, the court had, by necessary implication restored the errors of law committed by the trial Committee and reversed by the two appellate Committees, in holding that the 1st Appellant could be elevated to the status of Benkumhene of Jamasi Division whilst at the same time holding that the said Benkumhene cannot be Yonsohene, when under Ashanti custom, there could be no Benkumhene in the air and the finding by the trial committee that the1stappellant was Benkumhene of Jamase Division but not Yonsohene was contradictory and palpably contrary to Ashanti Constitutional arrangements relating to Chiefs and their sub-chiefs with respect to power and authority between them which was military in character and called for the supply of men for war."

Contrary to what Counsel for the applicants submitted above, the title of Benkumhene of Jamasi that was conferred on the 1st applicant did not exist "in the air". The 1st applicant was the Yonso-Odumasihene who owed direct allegiance to the Jamasihene. So it was in that capacity that he was given that position.Before then he also held the position of Nkotokuahene of Jamasi so he was elevated from Nkotokuahene of Jamasi to its Benkumhene, whilst at all material time he held the position of Odumasihene of Yonso.Thus it was perfectly in line with Ashanti custom, the position of Benkumhene of Jamasi only changed hands from the Yonsohene to the Odumasehene. No error of customary law was committed.

The next issue under reference is that the learned judge honed in the issues to just a non-existent one; but as earlier pointed out, it was not the only one dealt with by the majority opinion. They dealt with all the issues and endorsed the decision of the trial tribunal. By its endorsement of the judgment of the JCMTC,

this court had endorsed the issues set down for trial therein as well as the findings of fact and decision. Thus any review would also have to focus on the decision of the JCMTC. Did the trial tribunal consider what the applicants describe as the quintessential issues? It is only then can this court be said to have failed to consider the core issues in the case, assuming, but without admitting that it failed to consider all relevant issues or draw the appropriate inferences from the established facts. Let us return to the judgment of the JCMTC at pages 185-186, where the JCMTC said:

"In dealing with issues of this nature one may ask the following questions:

1. Who were the first settlers (Jamase or Yonso) and who settled first on Yonso lands-the Bedomasi-Bretuo family or the Asona Odumasi family?
2. How was the title Yonsohene acquired by the Bedomasi-Bretuo family?
3. What customary position was given to Nana Yeboah Kodie Asare by Nana Adu Gyamfi Brobbey III on his elevation?
4. Who is the Obaapanin of Yonso and whether her installation was according to custom?
5. Has Nana Adu Gyamfi Brobbey the customary right to strip Baffuor Kwarteng of all his titles if he actually rebelled against him?

These questions will have to be answered from the evidence adduced by both parties and their witnesses."

The last issue set down by the JCMTC embraces two matters, namely whether in fact Nana Kwarteng had rebelled against the Jamasehene; and if he had, whether the Jamasehene had the right to divest him of the Yonso stool and Benkumhene of Jamasi. These cover "the quintessential" issues the applicants talk about. The trial court dealt with them and the majority decision accepted their findings and decision that since the occupancy of the Yonso stool was not conferred on the defendants by the Jamasihene, the latter had no right to take it away from them. The court found the title of Benkumhene of Jamasi was conferred on the 1st applicant by the Jamasihene and held it was right by custom. This was confirmed by the majority decision. Thus even if there was rebellion by the defendants' family against the Jamasihene, the latter could only take away the title of

Benkumhene of Jamasi which he did. Thus the two positions Yonsohene and Benkumhene of Jamasi were decoupled since they are not one and the same despite the fact that in the past the same person had occupied both at the same time. Whereas the Yonso stool was created by the Bedomasi-Bretuo family and was thus their preserve, the title of Benkumhene of Jamasi was the creation of the Jamasihene.

From the evidence on record all the issues were dealt with and properly so too by the JCMTC which this court endorsed. On the second issue, the JCMTC resolved that the title of Yonsohene was not conferred on the Bedomasi-Bretuo family by the Jamasihene for reasons explained on the record.

One other contested issue was the third one listed by the JCMTC, as regards what title the Jamasihene conferred on the 1st applicant. The JCMTC resolved that the title conferred on the 1st applicant was that of Benkumhene of Jamasi only and not Yonsohene as well. The majority affirmed this as customarily legitimate and factually correct. The applicants, however, contend that the evidence was not duly considered as the majority chose to deal with non-existent issues, instead of a finding that the two positions, namely Yonsohene and Benkumhene of Jamasi being one and the same. Once again we are compelled to delve into the record to find out whether the applicants were right or not.

At the hearing before the JCMTC the 2nd applicant testified that when the Yonso queen mother died they enstooled the second respondent in her stead. After that they performed the funeral rites of the late queen mother. He continued after the funeral "Nana Adu Gyamfi Brobbey III summoned all the elders of Yonso and told us that Yonso was lacking behind all the towns under Jamasi so we should sit down and think over the issue……He informed us that he was making the Benkumhene of Jamasi the new Yonsohene. We told him we were going to inform our elders since we could not give an answer outright. After this we received a letter from Jamasihene and all the people of Yonso assembled and the letter was read to them by the Assemblyman Mr. George Amofa. The contents of the letter was (sic) that the Benkumhene of Jamasi have (sic) been made the Yonsohene so we should all help him to administer the affairs of Yonso….."

It is on record that the funeral of the late queen mother was held some time in 1992. Also from the record the said letter is Exhibit J. Thus the import and relevance of the 2nd applicant's testimony were the following:

i. By this letter the Jamasihene was announcing the removal of the Yonso stool from the Bedomasi=Bretuo family following a decision he and the Divisional Council had taken for alleged acts of rebellion without a customary charge and hearing from the affected family.
ii. As of 1992 the 1st applicant had not been made Yonsohene.
iii. The Jamasihene made the 1st applicant Yonsohene without reference to the elders of Yonso. The elders were only notified by a letter, Exhibit J.
iv. The people of Yonso and the assembled elders were notified of Nana Jamasihene's decision by the Assemblyman. When did an assemblyman become important or relevant in the scheme of customary chieftaincy matters? It is insulting to the good people of Yonso and their elders to be notified by the Assemblyman as regards such an important issue as who reigns as their chief. This only gives credence to the view that there was a plot to deprive the defendants of their right. How else would the Jamasihene not wait to hear from the elders before making any such move final? Otherwise how comewere the elders of Yonso not given the chance to deliberate over his decision before it was announced by the Assemblyman? Custom demands that the rightful customary title holders announce the choice of a chief to the people, and an assemblyman does not fall into that category of persons. It gives the impression that the right thing was not being done.

Besides the foregoing, the JCMTC took into account the contents of a complimentary card that the 1st applicant gave the 8th respondent. This appears at page 262 of the record as Exhibit 18. On that card the 1st applicant had described himself as the Yonso-Odumasehene and Benkumhene of Jamasi; he never described himself as Yonsohene. There was no objection and 1st applicant did not challenge its contents as inaccurate, nor did he lead any rebuttal evidence. The probative value of this piece of evidence was that the 1st applicant himself had portrayed himself to others that he was Yonso-Odumasihene and Benkumhene of

Jamasi and not as Yonsohene, which title would surely have appeared on such information if indeed he was the Yonsohene. Thus the JCMTC was justified in taking this into consideration in regard to the 1st applicant's status.

Yet again there was evidence from the 2nd applicant that Baffuor Kwarteng III remained Yonsohene until he abdicated on 4th October 1989. Even before the 2nd applicant had made this important assertion, the 1st applicant himself had stated the abdication of Nana Kwarteng in October 1989 as a fact and he tendered a document, viz Exhibit M at pages 219-221 of the record in support. This effectively debunks and exposes as a lie any claim by the 1st applicant that he was made Yonsohene in 1986, for as earlier pointed out, there could not be two persons occupying the same stool in the same town at the same time.

Putting the icing on the cake, DW2, a nephew of the 1st applicant said he accompanied his uncle Opanin Adade the then Atumtufuohene of Mampong to Jamasi palace to witness the swearing in ceremony of the 1st applicant as the Benkumhene of Jamasi on 23rd August 1986. He said before the swearing of the oath by the 1st applicant, the chiefs and elders present took turns to advise him. The last person to take his turn was Nana Jamasihene and he advised the 1st applicant that since there was a sitting Yonsohene he should co-operate with him. Thus there was overwhelming evidence from which the JCMTC could find that the title conferred on the 1st applicant was Benkumhene of Jamasi and not Yonsohene. It concludedat page 292 of the record "that Nana Yeboah Kodie Asare II swore the oath of allegiance to the Jamasihene and his elders as Benkumhene of Jamasi but not as Yonsohene."

The 1st applicant himself knew that he could not become Yonsohene until the Obaapanin of Bedomasi had nominated him for consideration by the elders of Bedomasi; he had not gone through any such process. The Jamasihene tried to impose him on the people of Yonso knowing full well that even if the Asona family of Yonso was given the right to produce a chief of Yonso, yet it is that family which has to nominate and install somebody before introducing him to the overlord for his acceptance. The Jamasihene as overlord on his own cannot hand pick anybody and make him the chief of Yonso without even consulting the elders

of the town, as happened in this case.The JCMTC found as a fact that the position of Yonsohene was elective and not appointive. It explained that what this means is that "Nana Jamasihene cannot nominate, appoint or enstool Yonsohene. The nomination and election is the prerogative of the Obaapanin and the Kingmakers respectively." Yet the Jamasihene did not follow this time honoured custom and rather selected the 1st applicant as the person to occupy the Yonso stool, without regard to the Obaapanin and stool elders of Yonso. See page 192 of the record. Was it not a customary coup d'etat, as held by Dotse JSC? All the core issues having been resolved by the JCMTC, this court's endorsement thereof was not in error.

In conclusion, for reasons set out above, there are no exceptional circumstances to warrant a review; the application is accordingly dismissed.

(SGD) **A. A. BENIN**

**JUSTICE OF THE SUPREME COURT**

(SGD) **J. ANSAH**

**JUSTICE OF THE SUPREME COURT**

(SGD) **S. O. A. ADINYIRA (MRS)**

**JUSTICE OF THE SUPREME COURT**

(SGD) **V. AKOTO BAMFO (MRS)**

**JUSTICE OF THE SUPREME COURT**

(SGD) **J. B. AKAMBA**

**JUSTICE OF THE SUPREME COURT**

# DISSENTING OPINIONS

## ANIN-YEBOAHJSC:

The applicants herein have moved this court for a review of the majority decision of this court delivered on 21st of May 2014. The facts of this application are amply captured in the opinion of my esteemed brother Benin JSC and it serves no purpose for me to repeat same. I have read the majority opinion several times but I find myself unable to agree with it as I think that it seeks to undermine basic customary law principles regulating chieftaincy which is one of the revered traditional institutions in our country.

This application has been argued at length in two main grounds clearly set out in the motion of the applicant as follows:

(a) Bias, and

(b) Fundamental and basic errors of law and facts committed by the court, nor necessarily amounting to bias, but causing a substantial miscarriage of justice to the applicants.

Both parties argued ground (a) first. I wish to consider it before I proceed to deal with ground (b). Learned counsel for the applicants has argued the issue of bias against one of our esteemed members of this court who delivered the majority opinion reversing as it did, the judgment of the National House of Chiefs affirming the judgment of the Ashanti Regional House of Chiefs. Several decided cases were cited in course of the argument to support this allegation of bias which was indeed never raised before the hearing of the substantive appeal but after the delivery of our judgments. The crux of the allegation of bias is based on the majority's opinion which according to counsel for the applicants amounted to extreme and imbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind, the decision cannot stand.

In his statement of case, counsel made reference to cases like **R V Inner West London Coroner, Ex Parte Dallagio &Ors [1994] 4 ALL ER 139** and **R v Gouch** [1993] AC 646 to support his contention that the use of certain words in the majority decision such as, *"craftily drafted"*, *"mischievous" attempt'* etc. are all traces of bias against the applicants.

I have carefully read the judgment of the majority and I must confess that I find it very difficult to agree with learned counsel for the applicants that the majority judgment had traces of bias against the applicants.

In my respectful opinion, a judge seized with a matter should be at liberty to express his opinion on the facts and law apparent on the face of the proceedings even though the use of certain words may not be acceptable to one of the parties. In the case of **Schandorf V Zeini& Others** [1976]

2 GLR 418 CA, the Court of Appeal, then the highest court of this country per Amissah JA said in the opening sentence of the judgment as follows:

> *"The appellants are rogues. They were found by the learned trial judge Koranten-Addow J to have fabricated a case and to have suborned witness to put up that case to the court."*

The finding was borne out by the evidence on record and the learned judge could not be criticized for being biased. In this application I entirely agree with the opinion of the majority that no sufficient material was placed before this court by the applicants to demonstrate in the least that the use of certain words in the judgment of the majority amounted to bias.

Bias like every allegation must be proved by compelling evidence by the party making the allegation against a judicial officer who is exercising normal judicial functions care should be taken to allow such allegations to gain currency in the administration of justice.

I think that ground (a), which was even though argued at length did not in any anyway persuade me to form a view that the judgment of the majority had any traces of bias. I accordingly reject this ground as unmeritorious and in my view does not warrant any consideration under our review jurisdiction.

The second ground of this application which was argued in detail is worthy of serious consideration. The applicants complain that the majority decision was in error as it did not accord with Ashanti custom and usage. In our

contemporary situation article 20 (1) of the 1992 Constitution has preserved the institution of chieftaincy as follows:-

> *270 (1) "The institution of chieftaincy together with its traditional councils as established by customary law and usage is hereby guaranteed."*

It has never been disputed throughout the commencement of this case that the Yonso stool's overlord is the Jamasihene and that the Yonso stool could not directly owe allegiance to Mamponghene without passing through the immediate overlord who is the Jamasihene. It was also not disputed that Exhibit 9 was written by the Abusuapanin of the Yonso stool stating categorically that their stool did not owe any allegiance to the Jamasihene. On record, ever since Exhibit 9 was written more than a decade ago, the family has not distanced itself from the contents. In clear customary manner it amounts to denouncing the overlord and also rebellious. In my respectful opinion, this action runs counter to Article 270 (1) of the Constitution of 1992 as it seeks to subvert the existing traditional or customary arrangements in the Mampong Traditional Council. On record the evidence established conclusively that the Buetuo family which installed Nana Kwarteng III as Yonsohene swore the oath of allegiance to the then Chief of Jamasi, Nana Adu Gyamfi Brobbey III. Swearing of oath of allegiance to an overlord has serious customary significance in the institution of chieftaincy. In the case of ***Kwaku v Boye [1987-88] 2 GLR 589 CA***, the Court of Appeal declared as null and void a purported severance by a party of his allegiance to the Golden Stool. It is not a case involving stools like the ones in this application before us and the case is

cited for its significance in dealing with swearing of allegiance by one stool occupant to the overlord. In Gold Coast Native Institutions (New Impression) 1970 by J.E. Casely Hayford the author at pages 51-52 clearly states the position of customary allegiance as follows:-

> *"**Allegiance is that personal relationship between the occupants of two stools whereby the inferior acknowledges the authority of the superior over him.** Such relationship has nothing to do with the lands of the vassal. It may happen that the superior Lord is at the same time licensor of the vassal in respect of his holding, but that will be merely accidental."*

In the ***Kwaku v Boye case***, (supra) Taylor JSC said of the consequences of severance at page 595 as follows:-

*"In the olden days such an attempt at severance would result in war."*

The Jamasihene whose oath of allegiance was breached by the Yonsohene in Exhibit "9" has all the customary powers vested in him as the overlord to punish as it were, the family which installed Nana Kwarteng III as the Yonoshene. The oath of allegiance is nothing more than a faithful and solemn declaration by the Yonsohene to serve the Jamasihene in a manner which would preserve the traditional values and customs of the two stools. A declaration of severance is such a serious customary offence which is visited with dire consequences which as pointed out could lead to war in the olden days.

The majority in their judgment in my respectful view, failed to appreciate that in our customary law governing chieftaincy an overlord who confers title on a sub-chief has the power to withdraw any title, honour or whatever he has conferred on the sub-stool. This may be a form of punishment which could affect the descendants of the stool occupant and for that matter the whole stool family. The Bretuo family of Yonso did nothing for over a period of over twenty-five years by exhibiting remorse for the severance and rebellious attitude exhibited towards the Jamasihene. In my respectful opinion the opinion of the minority delivered by my able brother AnsahJSC which I agreed with him in its entirety reflects the customary law position.

The Constitution merely preserves the existing chieftaincy institution and its coming into force did not permit any subversion of the existing relationship between chiefs. I think that the applicants have succeeded in establishing that a case for review is made out for us to review our decision. For in the first case of review application under the 1992 Constitution, which is ***Afranie II v Quarcoo and Others*** [1992] 2 GLR 561 SC this court was called upon to correct an error when the ordinary bench had overlooked a clear statutory provision regulating landlord and tenant action concerning recovery of possession. This court proceeded to correct the error which it had acknowledged.

Reviews are conferred on us as the last option for a litigant who has discovered that a patent error should not be allowed to exist if the grounds for correcting such error in review application exists and the circumstances are exceptional.

In the oft-quoted case of ***Mechanical Lloyd Assembly Plant Ltd. v Nartey [1987-88] 2 GLR 598*** it was held that:-

> *"It was therefore up to the court to determine the matter on the facts and circumstances of each case and as dictated by the ends of justice"*

In the case of ***Ababio and Others v Mensah & Others No.2 [1989-90] I GLR 573***, Taylor JSC made it clear that decisions of this court which were given per incuriam and void orders may constitute exceptional circumstances to warrant the invocation of our review jurisdiction.

Another case worth mentioning is that of ***Re Kwao (Decd), Nartey v Armah& Others*** [1989-90] 2 GLR 546 affirmed the principle that exceptional circumstances if not corrected which would lead to miscarriage of justice should be a ground for review.

This court as the last court whose decisions bind the lower courts must be able to correct its own errors if our attention is drawn to same in cases in which the circumstances warrant that our review jurisdiction should be exercised. I think that in this case the majority decision is clearly against the custom and traditions governing chieftaincy as an institution and the error, which the majority opinions, with due respect, seeks to endorse should be corrected for the custom to prevail. With this, I dissent in part from the majority decision delivered by my able brother Benin JSC.

(SGD) **ANIN YEBOAH**

**JUSTICE OF THE SUPREME COURT**

## BAFFOE-BONNIE JSC:

I had the opportunity of reading beforehand the opinion of my brother Yeboah JSC on dissent and of the majority. I think the exceptional circumstances of this case warrants a review to set right the customary law position which my brother Yeboah JSC has amply demonstrate in his dissenting opinion.

I accordingly grant the application.

(SGD) **P. BAFFOE BONNIE**

**JUSTICE OF THE SUPREME COURT**

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