IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA, A.D.2013

CORAM: J. DOTSE JSC (PRESIDING)
ANIN-YEBOAH JSC
P. BAFFOE-BONNIE JSC
A. A. BENIN JSC
J. B. AKAMBA JSC

CIVIL APPEAL.
No J4/11/2013

19TH JULY, 2013

REPUBLIC

VRS

1. **CENTRAL REGIONAL HOUSE OF CHIEFS**
2. **NATIONAL HOUSE OF CHIEFS**
3. **CHIEFTAINCY SECRETARIAT**

EX-PARTE NANA EHUNABOBRIM IDUN GYAN IX - APPLICANT/RESPONDENT /RESPONDENT

VRS

NANA IDAN ANDOH X (A.K.A ALBERT GABBY TAYLOR) - INTERESTED PARTY/ APPELLANT/APPELLANT

JUDGMENT

AKAMBA, JSC

This appeal lies from the judgment of the Court of Appeal delivered on 16th December 2010 which affirmed the ruling of the High Court, Cape Coast dated 13th January 2006.

FACTS

The brief facts giving rise to this case are that on 14 February 1987, the Applicant/Respondent/Respondent, hereinafter simply the Respondent, was enstooled as the Omanhene of the Kwamankese Traditional Area. He was given the stool name of Ehunabobrim Nana Idun Djan IX. Some seven years later, and precisely on the 7th February 1994 a petition was filed by some citizens of the traditional area at the Central Regional House of Chiefs, the 1st Respondents herein, seeking to destool him. From every indication the action is still pending determination.

While the petition is waiting to be heard and disposed of before the 1st Respondent, certain citizens of the traditional area have purportedly enstooled the Interested Party/Appellant/Appellant, herein after simply the Appellant as a rival Omanhene of the Kwamankese Traditional area.

Meanwhile the 1st Respondent with full knowledge of the pendency of the petition, forwarded documents to the Chieftaincy Secretariat (which was a party to the application at the High Court, Cape Coast as 3rd Respondent) and the 2nd Respondents for the name of the Appellant to be entered into the National Register of Chiefs as the Omanhene of the Kwamankese Traditional Area. The name of the Applicant was accordingly entered as requested hence the present action was initiated.

On 8th February 2005, the High Court, Cape Coast granted the Respondent herein, then as Applicant /Respondent, extension of time to institute certiorari

proceedings against the 1st, 2nd and 3rd Respondents. On 23rd May 2005, Albert Gabby Taylor successfully applied and was joined to the action as an Interested Party. A pursuant notice was subsequently filed for a judicial review for certiorari to issue to quash the purported gazette of the Interested Party/Appellant as Omanhene, which was apparently done without notice to the Respondent. The application also prayed for an order of mandamus to compel the restoration of the name of the respondent to the National Register of Chiefs.

On 13th January 2006, the High Court, Cape Coast per Nana Gyamera-Tawiah, J granted the order for judicial review in the nature of certiorari quashing the entry of the name of the Interested Party in the National Register of Chiefs as the Omanhene of the Kwamankese Traditional Area. Aggrieved by the decision of the High Court, Cape Coast, the Interested Party/Appellant appealed to the Court of Appeal which on 16th December 2010 dismissed same, thereby affirming the decision of the lower court. Further aggrieved by the dismissal, the present appeal has been brought to this court.

GROUNDS OF APPEAL

Two grounds of appeal have been filed in this court. They are:

(a) That their Lordship's judgment was against the weight of evidence.

(b) That their Lordships misdirected themselves or erred in law in affirming the order of certiorari to quash the entry of the name of the Interested Party.

ANALYSIS

I will determine this appeal in the same sequence first with the omnibus ground which contends that the judgment is against the weight of evidence.

This court has time and again stated that when a party relies on the omnibus ground of appeal as above couched it empowers us to re-hear the matter, not in a literal manner, but to take another look at the evidence and to analyze the whole record of appeal before us. In so doing we take into account the testimonies and documentary evidence at the trial and arrive at our own decision after satisfying ourselves on a preponderance of probabilities whether the conclusions of the trial

judge are reasonably or amply supported by the evidence. (See **Tuakwa v Bosom (2001-2002) SCGLR 61 @ 65).**

The appellant has the duty in this presentation to clearly show where the Court of Appeal went wrong or where they failed to take into consideration all the circumstances and evidence or had drawn wrong inferences without any evidence in support on issues of fact. In **Brown vs Quashiegah (2003-2004) SCGLR 930 @ 942** this court took the opportunity to clarify the position wherein a party relies on the omnibus ground of appeal. This court per Dr Twum, JSC, and relying on **Nkrumah v Ataa (1972) @ GLR 13 at 18** where the High Court per Osei-Hwere J (as he then was) explained that:

"Whenever an appeal is said to be 'by way of re-hearing' it means no more than that the appellate court is in the same position as if the re-hearing were the original hearing, and hence may receive evidence in addition to that before the court below, and may review the whole case and not merely the points as to which the appeal is brought"

Espoused that:

"This means that the jurisdiction of the appellate court is available but the rule of practice in our courts is that the plaintiff must invoke it by filing appropriate grounds of appeal, distinguishing the so-called omnibus ground from misdirection or errors of law, challenge to jurisdiction or capacity, etc. I have carefully read the authorities cited by learned counsel for the plaintiffs and I am unable to find any support for the stand taken by him in those authorities. In my view, a party who only gives notice that he intends to rely on the so called omnibus ground should not be permitted to argue points of law."

In short an appeal based on the omnibus ground of appeal does not permit reliance or arguments on point of law. The rules make specific provisions for invoking arguments on point of law which must be adhered to.

It is clear from the record of proceedings that none of the three respondents in the present application deemed it expedient or necessary to file a response to the application before the High Court a situation which manifestly gave the court the

liberty to deal within the limited material before it. Having observed as above, I have to state that judicial review lies to correct errors of law and not fact hence I wonder what errors of fact do emerge from the record in the first place and which could ripen into a situation that warrants correction by certiorari. I say this because the remedy of certiorari is available to correct or quash:

(i) Jurisdictional error arising from want of jurisdiction

(ii) Jurisdictional error arising from excess of jurisdiction

(iii) Jurisdictional error patent on the face of the record

(iv) Non-jurisdictional error latent, hidden or not patent on the face of the record

(v) Breach of the rules of natural justice

It is thus obvious to me that the appellant's attack on the decision of the Court of Appeal on this ground being based on fact is not amenable to correction by certiorari hence the same is bound to collapse.

The next ground of appeal raised for this court's consideration is that their Lordships misdirected themselves or erred in law in affirming the order of certiorari to quash the entry of the name of the Interested Party.

An error of law implies a mistake which the appellant must point out to the court as emerging from the decision. What error/s, if any, do the appellants raise for our determination? The appellant points to a number of steps taken before the Central Regional House of Chiefs which informed the eventual decision of the trial court. According to the appellant all the steps under consideration when put together are all administrative steps which cannot found an application for certiorari as granted by the trial High Court. These steps include the outcome of a search conducted at the Registry of the Central Regional House of Chiefs by the respondent's counsel filed on 8/02/2005 which search report was presented to the court below and exhibited at page 14 of the ROA indicating that the case in which destollment charges were preferred against the Respondent had been adjourned sine die. Counsel argued that since the said search report was of an administrative decision in nature and was one of the grounds upon which the trial

judge founded the grant of the certiorari application, the same cannot stand. A second search report filed on 23rd February 2006 upon which the trial judge also relied, was a search conducted at the Regional House of Chiefs seeking to know the stage of progress of the destoolment case before the Committee. The report stated that a notice of discontinuance had been filed in the matter. These administrative outcomes notwithstanding, the trial judge granted the relief prayed for by the respondent based on them.

In the instant determination, the pertinent question to ask is whether the trial court did act on the search reports and if it did, were those reports administrative or judicial decisions so as to be considered detrimental to the grant of certiorari? This is what the trial judge stated in his ruling of 13th January 2006 in part:

"Exhibit 'C' attached to the affidavit of the applicant in support of the motion on notice for an order for extension of time filed on 8/2/05 is a search conducted by applicant's lawyer at the office of 1st Respondent in Cape Coast on 1st September 2004. It reads that –

(a) There has not been any order of 1st respondent Judicial Committee striking out the suit as having been discontinued; and that

(b) the action is still pending.

If this is the case, then I wonder how the same 1st Respondent forwarded documents to 2nd and 3rd Respondent to have the name of the interested party entered as the Omanhene of Kwamankese Traditional Area. There is no document exhibited before me to indicate that the applicant lost the case before 1st respondent; or that applicant had been destooled. I must say that if respondents or interested party were to furnish me with such information, I would readily dismiss the application, because I can't enquire into the merits of the Judicial Committee of the 1st Respondent (for that will be a matter of appeal to 2nd Respondent Judicial Committee) or the propriety or otherwise of the applicant's destoolment (for that will be determined by the appropriate chieftaincy tribunal)."

(Italised for emphasis)

Without any measure of doubt the trial High Court judge premised the grant of the certiorari application pending before him on the fact that the search reports apparently confirmed that the action before the Central Regional House of Chief's Judicial Committee was still active and pending. It is being urged that the ruling of the High Court being based upon the answers to the search requests, which are administrative decisions by the Registrars; the same are not adjudicatory decisions so as to be amenable to judicial review.

A body is required to act in a judicial manner if it is obliged to determine questions of law or fact affecting individual rights and in so doing exercises a judicial or limited discretion after hearing evidence and deciding on the evidence between a proposition and an opposition. (See **Rep vs Awutu Senya Traditional Council; Ex parte; Nenyi Amu II (1981) GLR 368).**

In **Re Oguaa Paramount Stool (2005-2006) SCGLR 193** this Court had occasion to pronounce on the legal characterization involved in the registration or non registration of a chief's name in the National Register of Chiefs (NRC). This case coincidentally involves the very same Central Regional House of Chiefs just as the matter under consideration. In that case, the appellants filed a petition in the Central Regional House of Chiefs against the purported nomination and election of the 2nd respondent as the Paramount Chief of the Oguaa Traditional Area. While the petition was pending for adjudication, the 2nd Respondent obtained an order of mandamus at the High Court Cape Coast to compel the Central Regional House of Chiefs to transmit information of his enstoolment contained in the Chieftaincy Declaration Forms (CDF) to the National House of Chiefs (NHC) for registration in the National Register for Chiefs (NRC). Following an unsuccessful attempt to set aside the order of mandamus at the Court of Appeal, and with no further appeal filed against the latter, the name of the 2nd respondent was accordingly entered in the National Register of Chiefs. The appellants then filed a fresh petition before the Judicial Committee of the National House of Chiefs seeking a declaration under article 273 (5) © of the 1992 Constitution that the name of the 2nd respondent be removed from the National Register of Chiefs because the entry had been based on fraud or false information contained in the Chieftaincy Declaration Forms (CDF) sent to the National House of Chiefs by the

Central Regional House of Chiefs. A preliminary objection was raised by the respondents to the invocation of the original jurisdiction of the National House of Chiefs for want of jurisdiction. The objection was sustained by the Judicial Committee of the NHC and the petition dismissed. The appellants brought an appeal to the Supreme Court against the dismissal of their petition by the Judicial Committee of the NHC on grounds, among others, that the NHC had wrongly applied the provisions of article 273 (5) (c) of the Constitution and (ii) had erroneously abandoned its jurisdiction to entertain the petition for want of jurisdiction. This court held, on these facts, among others in holding 5 that "The duty of the National House of Chiefs in the registration process, i.e. in pursuance of section 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. 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 wrongful registration. Prof Modibo Ocran JSC, of blessed memory, reading the lead judgment of the court made very profound pronouncements on the failure to register a person as a chief at page 211 as follows:

"Furthermore, there is a clear statutory right under section 50 (7) of Act 370 for any person aggrieved by a decision of the National House of Chiefs not to register him or her to lodge an appeal with the Supreme Court. But if the House deems it fit in some cases to refuse registration, which is appealable to the Supreme Court, does it not mean that the House has at least an administrative discretion to register or not to register? As already indicated, Wiredu JA (as he then was) has held in the Faibil case that the House may decide not to register a name if, in his words, 'there is a legal impediment to justify non-registration.' However, Justice Francois's position in Akyeamfour is that there is an unflinching legal duty to register, except that the duty to do so is purely administrative and not judicial; and that because of that duty, the chief who is a victim of non-registration is given the legal right under section 50 (7) to come to the Supreme Court to enforce registration."

In the **Republic v The President, National House of Chiefs; Ex Parte Akyeamfour II, (1982-83) 1 GLR 10, CA,** the appellant and respondent were rival claimants to the Asokore stool. The appellant, claiming to be the rightful Asokorehene, paid his customary fees, swore the customary oath of allegiance before the Omanhene of the New Juaben Traditional Area and subsequently had his name registered in the register of the National House of Chiefs and same also published in the Local Government Bulletin in 1971. The respondent, also claiming to be the rightful occupant of the same stool, later instituted proceedings to stop the further publication of the appellant's name in the Gazette. Whilst the respondent's action was pending, the appellant's name was re-submitted for publication but was struck out. Meanwhile, the respondent's name had been published and gazette in 1975. Consequently, the appellant brought an application in the High Court seeking an order of certiorari to remove the name of the respondent from the National Register of Chiefs as well as the Local Government Bulletin of 20th June 1975 for the purpose of quashing same. The High Court refused the application and on appeal the Court of Appeal dismissed the same holding per Francois JA (as he then was) that the duty to maintain a register as laid down in section 50 (1) of the Chieftaincy Act, 1971 (Act 370) and the discretion given by section 50 (2) to the National House of Chiefs (NHC) to insert in the register certain information relating to chieftaincy which it might consider necessary or which might be considered desirable by the Act or other legislation such as the insertion of the name of a chief under section 48 (3) were all purely administrative functions. The Act made no provision for hearing objections to the registration functions of the NHC. The NHC, in the exercise of its registration functions, did not act judicially since there was no obligation on it to hear evidence from both sides in the event of a dispute, and come to a judicial decision. All its functions were associated with factual recording and did not extend to adjudicating on the merits. Thus, although the NHC had a duty to act honestly and fairly, it was a moral rather than a legal duty. Since its function was administrative, it could not be amenable to the prerogative writ of certiorari.

I agree with both Wiredu and Francois JJ A (as they then were) in the Faibil and Akyeamfour cases respectively in their important holdings that when the National

House of Chiefs acts pursuant to sections 48 (2) and 50 (2) in entering the names of chiefs in the register and recording particulars as it thinks fit, such acts are administrative rather than judicial and as such are not amenable to the remedy of certiorari to quash such a decision. This is because all these functions involve factual recordings and do not extend to any adjudication on merit.

It is worthwhile to point out that at the time material to the present case the facts were governed by the same Chieftaincy Act, 1971, Act 370 which was later repealed by the present Chieftaincy Act, Act 759 of 2008. This being the case it is pertinent to reproduce sections 48 and 50 of Act 370 to aid understanding as follows:

" 48 (1) A chief is an individual who has , in accordance with customary law, been nominated, elected and installed as a chief or as the case may be appointed and installed as such and whose name for the time being appears as a chief on the National Register of Chiefs:

Provided that no person shall be deemed to be a Chief for the purposes of the exercise by him of any function under this Act or under any other enactment, unless he has been recognized as such by the Minister by notice published in the Local Government Bulletin.

(2) Subject to the foregoing subsection (1) the name of any person who has been installed as a Chief shall be entered by the National House of Chiefs in the National Register of Chiefs not later than one month from the date of the receipt of the notification of such installation.

….

50 (1) The National House of Chiefs shall maintain a register to be known as 'the National Register of Chiefs', in this Part referred to as 'the Register'.

2.The National House of Chiefs shall cause to be recorded on the register such particulars relating to chieftaincy as it may think fit or as may be required by this Act or any other enactment to be recorded thereon

….

(6) Any other person shall, upon the payment of the fee prescribed in that behalf by regulations made under section 62 of this Act, be entitled-

(a) at any reasonable time, to enter the premises where the Register is kept and inspect the Register,

(b) to have supplied to him an extract of the contents of the Register or any part thereof duly certified by the Registrar or by any public officer authorized by him in writing to be true.

7. Any person aggrieved by the refusal by the National House of Chiefs to register him as a Chief may within thirty days after the decision appeal against the decision to the Supreme Court."

On the functions of the Registrar of the National House of Chiefs and each Regional House section 55 of Act 370 enacts that registrar shall be the chief administrative officer of the House of Chiefs concerned and shall have control over the other members of staff of that House. He shall perform such duties in relation to the functions of the House of Chiefs to which he is the Registrar as that House may direct. He shall keep minutes of proceedings of the House and have custody of all records and other documents of the House. It is quite clear from the very functions of the Registrar of the House of Chiefs under the Act that they are purely administrative.

In the light of the plethora of authorities on the issue, there is no doubt that the issuance of the search reports by the Registrar of the Central Regional House of Chiefs' Judicial Committee on the status of a case pending before the Committee cannot be anything else that an administrative act, more so when that act per se does not determine the rights of parties. Besides, from the foregoing authorities the very act by the Committee to request the registration of a chief is itself an administrative function subject to the process of appeal to this Court should a party express dissatisfaction with the process. The Court of Appeal grievously erred when it relied on a purported judicial decision of the Judicial Committee of the Regional House of Chiefs rather than the sole search report provided by the Registrar of the Regional House. The remedy of the appellant who was aggrieved

about the circumstances of the removal of his name in apparent preference for that of the respondent was to have invoked section 50 (7) of Act 370 and appealed to this court for redress. It is trite law that where a statute such as Act 370 provides a remedy for a wrong and provides a procedure for achieving same it is only by the procedure provided that and a party may approach the court failing which the action is bound to fail. This position is aptly captured by my able and respected brother, Gbadegbe, JSC in **Ahinakwa II (Substituted by) Ayikai vs Odjidja III & Ors (2011) 1 SCGLR 205 at 208** thus: "Where the rules of court prescribe a particular mode of seeking relief, the failure to initiate proceedings for relief in accordance with the prescribed mode, is not only an irregularity but raises an issue that goes to jurisdiction…" It is different if a statute provides a remedy but does not prescribe a means by which the remedy would be attained wherefore a party may approach a court by any of the known procedures for approaching the court. In this case the invocation of the process of the supervisory jurisdiction of the High Court over lower tribunals in the light of section 50 (7) of Act 370 given those facts, was wrong. It is also obvious that even though the High Court judge warned himself to steer clear of dealing in any causes and matters affecting Chieftaincy, by granting the relief sought under the circumstances, the court had fallen foul of that caution it set itself. No doubt the Court of Appeal equally swallowed the same bait.

CONCLUSION

I would accordingly allow the appeal on this ground and order that the application for certiorari granted by the High Court and same endorsed by the Court of Appeal be and is hereby set aside.

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREME COURT

DOTSE JSC:

I have been privileged to have read before hand the lucid judgment just delivered by my respected brother, Akamba JSC.

Even though I agree with the conclusions reached in this case, I am of the view that the conduct of the Institutions of state, namely the Central Regional House of Chiefs and the National House of Chiefs should not go without comment.

From the facts of the case, it is quite clear that despite the full knowledge about the pendency of litigation touching and concerning the enstoolment of the Respondent herein which litigation was pending before the Judicial Committee of the Central Regional House of Chiefs to wit the Omanhene Stool of the Kwamankese Traditional Area the 1st Respondent herein, they nonetheless proceeded to allow the Appellant herein to process his subsequent enstoolment over the same stool that the Respondent occupied.

So far as I am concerned, it would have been desirable for those institutions to wait for the outcome of the pending litigation before their own institutions to be terminated before processing documents for a new candidate to the same stool, whose occupancy is the new subject of litigation before them.

That is the only way that the revered institution of chieftaincy which an eminent jurist N. A. Ollennu in his works on *"Chieftaincy under the Law"* published in *Essays in Ghanaian Law page 52* described in such hallowed and respected terms as follows:

> ***"Chieftaincy is an ancient institution, the centre of rich culture, an object of awe and reverence as the active possessor of state power and possessor of the spirit of the ancestors of the state."***

It is however sad to observe that this sacred institution has by acts of commission and omission by its own principal actors brought the said institution into some disrepute. There is therefore the need to restore the past glory and dignity of the chieftaincy institution.

Finally, is it not an indictment on the adjudicatory processes of the chieftaincy Tribunal's that a suit commenced on 7th February 1994 would still be pending before the Judicial Committee of the Central Regional House of Chiefs awaiting determination as at 8th February 2005 when the proceedings herein commenced in the High Court, Cape Coast?

It is definitely necessary at this stage to give some timelines for the determination of cases commenced at the Judicial Committee's of the chieftaincy institutions.

Save for the above brief comments I entirely agree with my brother Akamba JSC, that the appeal be allowed.

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

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

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