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

CORAM: ATUGUBA, J.S.C. (PRESIDING)
ADINYIRA (MRS.), J.S.C.
BAFFOE-BONNIE, J.S.C.
GBADEGBE, J.S.C.
AKOTO-BAMFO (MRS.), J.S.C.

CIVIL MOTION
No. J8/8 2013

30TH JANUARY, 2013

THE REPUBLIC

VRS

NATIONAL HOUSE OF CHIEFS KUMASI --- RESPONDENT

EXPARTE; ODENEHO AKROFA KRUKOKO II --- APPLICANT

OSAGYEFO KWAMENA ENIMIL VI --- INTERESTED PARTY

R U L I N G

ATUGUBA, J.S.C.

The applicant moves this court for:

"an order of interlocutory injunction restraining the Interested Party/Respondent/Respondent herein from holding himself out in

any manner whatsoever whether by himself, his servants, agents, privies whomsoever or otherwise howsoever, to be the Omanhene of Wassa Fiasse Traditional Area, and/ or a member of the Western Region House of Chiefs, and/or a member of the National House of Chiefs, pending the hearing and determination of the said Applicant's appeal …"

The brief facts of this matter are that the applicant was destooled in 2002 as the Omanhene of Wassa Traditional Area consequent upon his committal to prison for contempt of court and the Interested Party was enstooled to replace him.

The applicant was also sued in the Western Regional House of Chiefs for inter alia, declaration and injuction that he was no longer the Omanhene of Wassa Fiase Traditional Area and should cease from posing as such Omanhene. The applicant did not file any defence and did not partake in the proceedings despite opportunity extended to him to do so. Accordingly, the plaintiffs led evidence upon which the reliefs claimed were granted against him.

Undaunted, the applicant applied to the High Court, Kumasi, unsuccessfully for mandamus directed at the National House of Chiefs to remove the said Interested Party's name from the Register of Chiefs and insert his name therein. His appeal to the Court of Appeal was dismissed, affirming the trial judge's ruling that the matter was a cause or matter affecting chieftaincy over which the ordinary courts have no jurisdiction.

He has appealed to this court and pending the determination of the same now applies for an injunction against the Interested Party in the terms aforementioned.

The Judgment of the Western Regional House of Chiefs against the applicant aforementioned is dated 11/6/2010 and the applicant has attached it as exhibited OAK4 to his affidavit in support of this application and is relied on by

both parties. The said judgment was not appealed against by the applicant and is therefore valid and subsisting.

It is trite law that a judgement of even the lowest court of competent jurisdiction is binding on the parties and can be pleaded as *res judicata* in all courts, see *Otu v. Owuodzi* (1987-88) 1 GLR 196 S.C. This means the said judgment against the applicant herein is at least, *prima facie*, against his claim. In *Luganda v. Service Hotels Ltd* (1969) 2 All ER 692 C.A. it was held that injunctions restraining some persons from evicting the plaintiff from certain premises were rightly given since the plaintiff was *prima facie* entitled to the protection of the Rent Act 1968.

Certainly therefore if it be right to grant an injunction to protect a person with a *prima facie* right to the *res litiga* (I do not thereby necessarily say that such *prima facie* right is a *sine qua non* to the grant of an injunction) it cannot be right to grant an injunction to the prejudice of the Interested Party herein who has a *prima facie* right to act as the Omanhene of the Wassa Traditional area, by dint of the aforementioned subsisting judgment of the Western Regional House of Chiefs.

Again it is a trite maxim of Equity that *Vigilantibus et non dormientibus jura subveniunt*. Injunction is an equitable remedy. It should not be open to the applicant who since his destoolment in 2002 never sought that relief until 12/10/2012 when he filed this application.

For all these reasons, this application is dismissed.

(SGD) W. A. ATUGUBA
JUSTICE OF THE SUPREME COURT

(SGD) S. O. A. ADINYIRA (MRS)
JUSTICE OF THE SUPREME COURT

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

(SGD) N. S. GBADEGBE
JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO BAMFO (MRS)
JUSTICE OF THE SUPREME COURT

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