# IN THE SUPERIOR COURT OF JUDICATURE
# IN THE SUPREME COURT
# ACCRA AD 2015

**CORAM: ANSAH JSC (PRESIDING)**
**DOTSE JSC**
**ANIN YEBOAH JSC**
**BAFFOE-BONNIE JSC**
**AKOTO-BAMFO (MRS) JSC**

**CIVIL APPEAL**
**No.J4/55/2014**

28TH MAY 2015

**THE REPUBLIC**

**VRS**

**1. WASSA FIASE TRADITIONAL COUNCIL**

C/O THE PALACE TARKWA

**2. NANA AKWASI SOMPREY II**

KOKOASE VIA BOGOSO

**EXPARTE:-**

**1. ABUSUAPANYIN KOFI NYAMEKYE**

ABUSUAPAYIN OF THE ROYAL

OYOKO FAMILY OF DUMASI **- APPLICANT**

**2. NANA KORKYE II**

EX CHIEF OF DUMASI

PRINCIPAL MEMBER OYOKO FAMILY

DUMASI, WASSA FIASE

**3. DR. FRANCIS BIH**

PRINCIPAL MEMBER OYOKO FAMILY

DUMASI, WASSA FIASE

**4. OBAAPANIN YAA KOM**

ACTING QUEEN MOTHER

ROYAL OYOKO CLAN DUMASI

# JUDGMENT

## DOTSE JSC:

This is an appeal by the Applicants/Appellants/Appellants, hereafter referred to as the Applicants, against the judgment of the Court of Appeal, dated 16th May2013which was in favour of the Respondents/Respondents/Respondents, hereafter referred to as Respondents.

From the above brief narration, what is certain is that, both the trial High Court and the first appellate court, the Court of Appeal all made findings of fact against the Applicants and ruled against them respectively.

There is no doubt therefore that, on the present state of the decided cases, the Applicants have a difficult task in attempting to set aside two concurrent findings of fact made against them, even though such a task is not insurmountable. See

cases such as ***Obeng v Assemblies of God Church [2010] SCGLR 300, Achoro v Akanfela [1996-97] SCGLR 209*** just to mention a few.

**FACTS OF THE CASE**

An attempt by some persons to install a rival chief at Dumase Wassa in the Wassa Fiase Traditional Area, led to the arrest and arraignment of some people before the Circuit Court, Tarkwa on charges relating to breach of the peace.

The 1st Respondent, The Wassa Fiase Traditional Council, applied to the Circuit Court, Tarkwa to have the matter withdrawn and referred to it for settlement. The Court granted the request of the 1st Respondents, but the attempt at settlement was not successful, and as a result, the matter was referred back to the court.

In order to appreciate the clarity of thought and reasoning that explained the referral of the case back to the Circuit Court, it is prudent at this stage to quote the relevant portions of the said decision.

> *"Due to the recalcitrant attitude of the culprits coupled with the refusal to obey the Omanhene's call and later instructions by the panel, we order that the case be sent back to court to be determined on it's merits."*

Despite the clarity of thought exhibited by the above quoted decision of the 1st Respondents in referring the case back to the Circuit Court, Tarkwa for hearing and determination, the Applicants herein filed an application for judicial review in the nature of Certiorari to quash the decision of the arbitration panel set up by the 1st Respondents to go into the case that was withdrawn.

It is also instructive to note that, the decision which the Applicants sought to quash was purported to have been taken by the 1st Respondents on 8th December, 2005. However, it was not until August 2011, that the Applicants applied for leave for extension of time to apply for the judicial review which by order 55 rule 3 of the High Court, Civil (Procedure) Rules 2004 ought to have been filed within six (6) months without any provision for extension of time, save the general provisions for extension of time provided in order 80 rules (4) and (5) of the High Court (Civil Procedure) Rules, 2004, C. I. 47.

The learned trial High Court Judge, Ohene Essel presiding over the High Court at Tarkwa, and proceeding under the belief that he had jurisdiction to grant extension of time, granted same as a result of which the Applicants filed the pursuant application for the judicial review, with the following relevant portions of the affidavit in support of the said application set out in full.

3. "That the Dumase stool was from time immemorial an inheritable Odikro stool within the Himan Division of the Wassa Fiase Traditional Area.

4. That there had been an earlier valid installation of the 2nd Applicant as the Chief of Dumase Wassa in October 2005.

5. That shortly thereafter a rival group purportedly attempted to install someone as a chief of the same village whereupon they were arrested by the Police, on charges relating to breach of the peace and arraigned at the Circuit Court, Tarkwa.

**6. That the 1st Respondent applied to the court to have the matter referred to it for settlement since it concerned chieftaincy.**

**7. That the said application or request having been granted, the 1st Respondent met the culprits with a view to dealing with them according to custom.**

8. That the 1st Respondent met the culprits on or about 8th December 2005.

9. That without any prior notice to the applicants whatsoever the 1st Respondent set up a so called arbitration panel and proceeded to deal with the applicants' stool affairs and made certain adverse decision against it.

**10. That in the process, the said panel set up by the 1st Respondent decided:**

**a. That Dumase has no black stool**

**b. That the Dumase Oyoko Royal house was no longer recognized.**

**c. The Dumase stool would subsequently be occupied by honorary Chiefs.**

**(d) The said honorary chiefs would be appointed by the 2nd Respondent**

**(e) All Dumase lands would go to the 2nd Respondent herein.**

11. That the 1st Respondent's decision has effectively caused serious grief and anxiety to the applicants as it sought to terminate their customary authority over their own town and stool lands.

12. That the decision of the said panel set up by the 1st respondent has made the applicants lose all their stool lands and royalties and the real beneficiary now is the 2nd respondent.

13. That the said arbitration was palpably wrongful in law as it lacked all the features of a valid customary arbitration.

14. …It is wrongful on the part of a body such as the 1st respondent to alter the boundaries of a traditional area as set up by statute (which it sought to do by its arbitration panel)

15 …It is against custom to convert a traditionally inheritable stool into an honorary one.

16. That the 1st respondent has further directed that the applicant's stool should serve the Kokoase stool instead of the Himan Division.

17. …that a traditional council has no power whatsoever to direct that one Odikro/subdivision should cease serving a particular Division and transfer its traditional allegiance to some other Division.

18. That this is a good case in which certiorari would be appropriate remedy to quash the wrongful decisions as here above mentioned.

19. That unless and until the Honourable Court intervenes issuing of the order of certiorari, the above pieces of injustice against my stool would persist, and the 2nd respondent would continue rather to be the beneficiary.

20. That I have annexed a copy of the 1st respondent's so called arbitration's report as Exhibit NK1A, B and C, in support of our case."

The application was subsequently heard by the trial court after the Respondents had responded to the application.

The learned High Court Judge, in dismissing the application for judicial review, first dismantled the hurdle by vacating the order for the grant of leave for extension of time to file the application in the following terms:-

> *"On the 19/9/2011, the court granted the lawyer for the applicants leave to file the substantive application. I have painstakingly studied the rules governing the granting of such applications and I find that I did not have the jurisdiction to grant leave for an extension of time to file the present application for judicial review in this matter since the decision to be quashed was taken on the 8/12/2005."*

After the above decision, the learned trial Judge concluded his reasons why the Applicant's application was dismissed in the following terms:

> *"Certiorari is meant to quash decisions for good reasons.* ***I equally do not find the decision meant to be quashed.*** *The 1st respondent was emphatic that the decision taken on 8/12/2005 was to refer the matter back to court. The applicants did not file any supplementary affidavit to dispute that fact.Be as it may, then the application was improper in the circumstances."*

**DECISION OF THE COURT OF APPEAL**

Not satisfied with the above decision of the High Court, the Applicants appealed to the Court of Appeal, sitting at Cape Coast, which similarly on the 16th day of May, 2013 dismissed the said appeal and the Court of Appeal, speaking through HonyenugaJ.A stated as follows:-

> *"After perusing the record of appeal and the submission of learned counsel for the parties, it is my view that the only issue worth considering is whether any decision was made by the 1st respondent which is amenable to certiorari.*
>
> *In conclusion, the application is void and therefore a nullity. The appeal fails and it is hereby dismissed. The judgment of the High Court dated the*

*16th day of April 2012 dismissing the application for certiorari is hereby affirmed."*

## APPEAL TO SUPREME COURT

Again, not satisfied with the decision of the Court of Appeal, the Applicants have launched yet another appeal to this Court against the decision of the Court of Appeal with the following as the grounds of appeal:

1. That the judgment is against the weight of evidence.

2. "The learned Justices of the Court of Appeal failed to realize that the learned Judge of the High Court, having rightfully granted the Application for Extension of time within which to apply for Certiorari, became functus officio in respect of that application and lacked the jurisdiction to reverse the extension of time already granted for the substantive application to be filed.

3. That the Learned Justices of the Court of Appeal erred when they agreed with the High Court Ruling that the Substantive Application for Certiorari was filed out of time and that the Learned Judge of the High Court did not have the authority to grant an Application for Extension of Time within which to file an Application for Certiorari.

4. That the learned Justices of the Court of Appeal erred when they agreed with the High Court that they could not find any decision meant to be quashed and therefore refused the application for an Order of Certiorari.

5. The purported Arbitration by the Paramount Chief of Wassa Fiase and the Wassa Fiase Traditional Council which was organized under the guise of settling a criminal matter pending in the Circuit Court on the offence of enstooling a Chief without Police permit, lacked jurisdiction and breached the rules of natural justice when it went on to pronounce on Wassa Dumasi Chieftaincy issues, which have affected and taken away the rights of the Appellants without inviting the appellants to part of the hearing.

6. That the learned Justices of the Court of Appeal erred when they held that Appellants were not affected by the decisions and findings of the 1st Respondent.

7. The purported Arbitration by the Paramount Chief of Wassa Fiase and the Wassa Fiase Traditional Council which purport to have appointed Nana Korkye II and converted the hereditary customary succession to the Dumasi stool into appointment to be exercised by the 2nd Respondent as null and void abinitio and of no effect for want of jurisdiction."

**STATEMENTS OF CASE FILED BY THE PARTIES**

I have read the submissions of bothcounsel in this case. I observe that, learned counsel for the Applicants failed to appreciate the narrow compass of the issues germane in this appeal and went on a frolic of his own. On the contrary, the brief submission by learned counsel for the Respondents was so incisive that it indeed addressed to my satisfaction the relevant issues for determination in this appeal.

**ISSUES FOR DETERMINATION**

1. Whether the grant of leave for extension of time to bring an action to quash a decision that has been taken or made beyond the 6 (six) months period as stated in order 55 rule 3 of C. I. 47 is null and void and can be vacated suomotu by the trial Judge.

2. Whether there was infact an order, decision or judgment that was made or rendered by the 1st Respondents which was attached or exhibited and which could have been the basis of an application for judicial review.

It is pertinent at this stage to refer to the following provisions of the High Court Civil (Procedure) Rules, 2004, C.I.47.

***Order 55 rule 3***

***Time for making application***

*3 (1) "An application for judicial review* ***shall*** *be* ***made not later than six months from the date of the occurrence of the event giving grounds for making the application."*** *emphasis*

*(2) "Where an order of certiorari is sought in respect of any judgment, order, conviction or other proceedings, the date of the occurrence of the event giving grounds for the making of the application shall be taken to be the date of that judgment, order, conviction or proceeding."*

***Order 55 rule 7***

***Certiorari***

*7(1) "Where the applicant seeks an order of certiorari to remove any proceedings for the purpose of quashing them the applicant shall at least seven days before the hearing of the application file in* ***the registry of the Court a copy of any order, warrant, commitment, conviction, inquisition or record verified by affidavit, otherwise the applicant shall not be heard unless the applicant's*** *failure to do so is explained to the satisfaction of the court." emphasis*

From the above procedure rules, it is clear that an application for judicial review, in the nature of the instant application for certiorari can be brought within six months of the making of the order complained of.

This means that, the High Court has jurisdiction to entertain an application for judicial review from the first day when the grounds for the application first arose up to a period of six months without any extension of time allowed.

Indeed, if an order had been made on the 1st of October 2013 for example then the period of six months will be calculated from that time up to and including the last day that the six months will lapse, which in this imaginary situation will be 31st March 2014, period.

This position is well articulated by order 55 rule 3 (2) of C. I. 47 already referred to supra. This provides that the date of the judgment, order, conviction or of proceedings or of the occurrence of the events leading to the application shall be taken to be the date of the judgment, order, conviction or of the proceedings etc.

I have examined all the contending positions stated by both counsel in their statements of case on this matter. I have also considered the positions taken by the trial court and affirmed by the Court of Appeal.

I have also examined and considered the decisions in the following cases ***Republic v High Court, (Fast Track Division) Accra, Ex-parte Macleod and Snowrad Limited [2009] SCGLR 517, Republic v High Court, Accra Ex-parte Continental Cargo and Trade Services Inc. [2001-2002]***

***SCGLR 901*** and also ***Republic v Asogli Traditional Council and others, Ex-parte Togbe Amorni VII [1992] 2 GLR 347***which was heavily relied on by learned counsel for the Applicants, which unfortunately was decided on the old order 59 r. 3 High Court (Civil Procedure) Rules 1954 (LN 140A) which permitted grant of extension of time.

I have also looked critically at the celebrated and locus classicus case of ***Mosi v Bagyina [1963] 1 GLR 337*** holding 4 and the restatement of the proper scope of the decision in Mosi v Bagyina as propounded by Acquah J, (as he then was) in the case of ***Republic v Asogli Traditional Council, Ex-parte Togbe Amorni***, already referred to supra.

The Court of Appeal, after reviewing all the above authorities and the facts of this appeal, rendered its opinion on the matter thus:-

> "*In the instant appeal, the appellant applied for leave to file an application for Judicial Review in the nature of certiorari to quash the decision of a panel set up by the 1st respondent on the 8th December 2005, to meet certain persons who had previously been arraigned before the Circuit Court, Tarkwa for a purported installation of a chief without police permit. The matter was to be an out of Court settlement. It is noted that the learned trial Judge granted leave on the 12th day of September 2011. The date of the purported arbitration is 8 December 2005. From the record of appeal, it is thus obvious that as at the time the learned trial Judge granted the application for leave, the statutory period of six month has long elapsed and therefore the order granting the leave was granted without jurisdiction. The leave so granted was void and thus a nullity since it was not warranted by any rule or procedure. The said order was contrary to Order 55 rule 3 (1) of C. I. 47.*
>
> *The learned trial Judge realized that he erred in law and therefore vacated the order and stated that the application is statute barred. I think that the learned trial Judge was right in vacating the order since he had an inherent jurisdiction to do so. Lapse of time was no bar to setting the order aside. The learned trial Judge was further right in vacating the order because it was void and therefore a nullity. He had an inherent jurisdiction to set aside a void order suomotu.* ***See Mosi v Bagyina (supra). The***

***learned trial Judge was therefore within his jurisdiction when he vacated the order for leave to file certiorari as same is void statute barred and a nullity"*** *emphasis supplied.*

However, learned Counsel for the Applicants, has urged us in this court to look at Order 80 rules 4 (1) and (2) of the High Court (Civil Procedure) Rules 2002 C.I 47 and by that hold that the grant of leave by the trial High Court was valid and by extension the Court of Appeal decision is wrong and ought to be vacated.

I have looked at the relevant provisions in Order 80 rule 4 (1) which provides as follows: -

*4 (1) "The Court may, on such terms as it thinks just, or by order extend or reduce the period within which a person is required or authorized by the rules or by any judgment, order or direction, to do any act in any cause or matter."*

*4(2) The Court may extend any such period although the application for extension is not made until after the expiration of that period"*

The Interpretation Act, 2009 (Act 792) also provides in section 42 as follows:-

*"In an enactment the expression 'may' shall be construed as permissive and empowering, and the expression 'shall' as imperative and mandatory"*

I observe that the operative word in order 55 rule 3 of C. I. 47 already referred to supra is "shall". By the ordinary rules of interpretation, the Interpretation Act, Act 792 is to be applied to give meaning, and operation to the contents of order 55 r. 3 of C. I. 47.

This by my understanding means that the 'shall' as used therein is to be construed imperatively and mandatorily to give meaning to the context in which the word 'shall' has been used.

Going by that definition, the meaning ascribed to 'shall' as used in section 42 of Act 792 would mean that the expression 'shall' as used therein indicates that the period not later than six months from the date of the occurrence of the event giving grounds for making the application is to be applied to have a mandatory and binding effect. In that respect, the effect would be that, judicial reviews shall

not be entertained by the High Court beyond the period of six months from the date when the grounds for the application first arose.

Can the High Court under such a situation grant extension of time beyond this six months mandatory period? I will revert to this issue later in the judgment.

The provisions of section 42 of Act 792 which have been referred to supra have been made applicable to enactments like the *High Court, (Civil Procedure) Rules* 2004, C. I. 47 by section 2 (1) and (2) of Act 792 and section 1 thereof which has defined enactment as meaning an Act of Parliament, or a statutory Instrument, or a constitutional Instrument, or a provision of an Act of Parliament, or of a constitutional Instrument (such as C. I. 47) or of a statutory instrument. Out of abundance of caution, let me quote in extenso sections 2 (1) &(2) of Act 792 to support the point I have made. These provide as follows:-

> *2 (1) "This Act applies to an enactment whether enacted before or after the coming into force of this Act, to a legislative measure continued in force by the Constitution, and an instrument made directly or indirectly under an enactment unless a contrary intention appears in that enactment, measure or instrument.*
>
> *(2) This Act applies to this Act and to an enactment specified in sub section (1) and references in this Act to an enactment so passed shall be construed accordingly."*

The above provisions and the definition of the word enactment in section 1 of Act 792 thereof bears ample proof and authority to the fact that the provisions of C. I. 47, enacted in December 2009 apply automatically to all existing enactments which fall under the said definition.

However, the matter cannot end here because of the provisions contained in Rule 4 (1)&(2) of Order 80 already referred to supra and the many decided cases under High Court Civil (Procedure Rules) LN 140A 1953 whose analogous provisions in Order 59 rule 3 of the High Court (Civil Procedure) Rules, LNI40A now repealed by C. I. 47 provides as follows:-

> *"Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six*

*months after the date of the proceeding or such shorter period as may be prescribed by any enactment."*

In the first place, it is to be noted that the word used therein in order 80 rule 4 (1) is 'may' and by section 42 of Act 792, it is permissive and empowering and not binding on the court, as is the word shall which is mandatory.

I have had the benefit of the invaluable book of S. Kwami Tetteh on *"Civil Procedure – A Practical Approach"* who is of the view that where the time required for applying for judicial review has expired, the party seeking the application must apply for extension of time for judicial review. This is how the respected and learned author puts it in the book under reference:

"*Where the time for applying has expired, a party seeking judicial review must apply for extension of time. The court may entertain a combined application for extension of time and judicial review or an oral application for extension of time at the hearing of the substantive application. Delay perse is not fatal to an application for judicial review but unexplained delay may be fatal. In granting extension of time, the court must consider the circumstances leading to the making of the application, whether the delay was reasonable, excusable and bona fide, also the nature of the application. Delay occasioned by fruitless lapsed proceedings taken upon incompetent legal advice may not be held against the applicant so may the court pardon delay where a grant of the application would abate illegality as where an unqualified person was appointed to a judicial post."*

See pages 757 to 758 of the book. I have observed that the learned author based his statement on grant of extension of time on the old High Court Civil (Procedure Rules) LN 140 A already referred to supra.

As is evident, all the cases referred to by the learned author are all pre-2005 cases which all dealt with the old Rules in LN 140A.

Some of the cases relied upon by the learned author are

1. **Republic v High Court, Kumasi ; Exparte Abubakari (No. 1) [1998-99] SCGLR 84**
2. **Republic v Asogli Traditional Council Counsel Ex parte; Togbe Amorni already referred to.**

3. **Republic v Commissioner for Local Government Ex parte:NiiArmar [1975] 2 GLR 122CCC**
4. **Republic v Asokore Traditional Ex parte; Tiwaa [1976] 2 GLR 231, CA and**
5. **Republic v Cape Coast District Magistrate Grade II ex parte Amoo [1976] I GLR 116**.

Secondly, it is apparent that even though this invaluable book (i.e. Kwami Tetteh's book) was first published in 2012, no reference whatsoever had been made to the Interpretation Act 792 and how it affected order 55 r. 3 (1) & (2) of C. I. 47.

Thirdly, in interpreting rule 4 (1) & (2) of Order 80 of C. I. 47 which combine to give the High Court jurisdiction to grant extension of time to applicants in deserving cases, it appears learned counsel for the appellants did not advert their minds to the philosophical underpinning and objectives inherent in the passage of C. I. 47 which is stated in order 1 rule (2) as follows:

> *"These Rules shall be interpreted and applied so as to achieve* ***speedyand effective justice, avoid delays and unnecessary expense****, and ensure that as far as possible, all matters in dispute between parties may be completely, effectively and finally determined and multiplicity of proceedings concerning any of such matters avoided". Emphasis supplied*

Commenting on the above quoted rule, Kwami Tetteh writes in his book page 27 thus:

> *"A major reform under C. I. 47 is the provision of an overriding objective of adjudication, expressed as speedy, final, complete and effective justice, devoid of delays, unnecessary expense and avoidance of multiplicity of actions."*

Continuing further, the learned author stated on page 27 as follows:

> *"The overriding objective in C.I. 47* ***thus serves as a constant statutory reminder to Judges and lawyers that effective justice has become the declared objective of adjudication,*** *and that the effective application of the rule of procedure must depend on a full appreciation of the fundamental purpose and spirit of the Rules."*

Even though the author gave some caution, it is my respective view that one sure way of giving total effect to this overriding objective is to interprete Order 55 rules 3 (1) and (2) strictly in terms of section 42 of Act 792 and also to prevent an abuse of the objectives behind the passage of the C. I. 47. This for example will mean that extension of time will normally not be granted in respect of applications for judicial review where the six months mandatory period has expired.

However in clear cases where notice of the decision, order, judgment or proceedings in question had not been given to the applicant or would not have been known after due diligence, then in those circumstances only, extension of time may be granted reference to the date when the applicant ought to have been deemed to have had notice (after due diligence).

The position might therefore be stated that, the provisions in order 55 rules 3 (1) and (2) of C. I. 47 does not admit the grant of extension of time to bring applications for judicial review outside the statutory six months period unless special circumstances exist, such as lack of notice to the party applying of the proceedings that terminated in the decision, order, ruling, judgment or action that the subject matter of the judicial review seeks to quash or probibit or as the case might be in appropriate cases. A case in point where lack of notice was made an issue and rendered null and void was decided by Amissah J.A, sitting as an additional Judge of the High Court, in the case of ***VASQUEZ v Quarshie [1968] GLR 62 where he*** held as follows:-

> *"A Court making a decision in a case where a party did not appear because he had not been notified would be doing an act which was a nullity on the ground of absence of jurisdiction."*

In circumstances therefore where the applicant for judicial review, was not aware of the proceedings which are the subject matter of the judicial review because he was not notified, it is clear that time will not run until he was notified or deemed to be aware after due diligence. In such cases it should be possible for the time to be computed from the time that notice will be deemed to be given to the applicant, but not from the date of the original date of the order, the subject matter of the judicial review. However, since none of the above situations exist in this case, this proviso will not apply.

I have also been persuaded by a number of respected English authorities referred to in the Invaluable book of ***VCRAC Crabbe, "Understanding Statutes"*** pages 151-155 which state held that after the expiry of the specified period judicial review of the validity of the order was absolutely cut off.

See case of ***Smith v East Elloe Rural District Council [1956] AC 736***, where the House of Lords refused to allow the action to proceed since it was brought outside of the specified period, that is more than six weeks after publication of the notice of confirmation, ***Viscount Simonds*** said that:

> *"Anyone bred in the tradition of the law is likely to regard with little sympathy legislative provisions for ousting the jurisdiction of the court, whether in order that the subject may be deprived altogether of remedy or in order that his grievance may be remitted to some other tribunal…"*

See also ***R v Secretary of State for the Environment, Ex-parteOstler [1977] QB 122.***

I am therefore of the view that under the circumstances of this appeal, the trial Judge properly vacated the grant of leave for extension of time to bring the judicial review outside the six months period suomotu since the High Court ordinarily does not have this jurisdiction to grant extension of time. The court has jurisdiction to suomotu set aside a void order, see case of ***Mosi v Bagyina*** already referred to supra. Under the circumstances, this ground of appeal fails and is accordingly dismissed.

The decision I have come to, could have disposed of the entire appeal, but for purposes of emphasis and clarity, I would want to bring all matters to an end.

**WAS THERE A DECISION THAT THE APPLICANTS SOUGHT TO QUASH?**

I have already referred to paragraph 20 of the Applicant's affidavit in support of their application for judicial review in the trial High Court.

In that paragraph, the Applicant's were quite certain that the 1st respondent's report in which the decision they were referring to are containedare, exhibits NKI A, B and C.

Exhibit NKI (A) for instance contains the following statement: -

*"Due to the recalcitrant attitude of the culprits coupled with their refusal to obey the Omanhene's call and later invitations by the panel we order that the case be sent back to court to be determined on its merits."*

Even though I have read portions of the same exhibit which contains statements affecting the position of the Applicants status as Chief of Dumasi vis-à-vis their constitutional relationship with the Kokoase/Bogoso Chief, those statements have no effect on their status as Chiefs and indeed also has no bearing in the case.

The substance of that exhibit lies in the fact that, at the end of the day, the 1st Respondent's were unable to settle the case they withdrew from the Circuit Court and therefore referred the case back to the court for determination. In cases like this, what has to be looked at critically is the substance of the contents of the exhibit not the form and other innuendos contained therein which have no bearing whatsoever on the merits of the case.

Similarly, exhibit "NKIB" contains words to the following effect:-

*"I have been directed by Osagyefo Dr. Kwamena Enimil VI, Paramount Chief of Wassa Fiase Traditional Area, to inform you to pursue the case at the appropriate forum".*

The total effect of the Applicant's own exhibits by which they sought to prove the existence of an order or decision which is amenable to judicial review has proved to be non-existent.

There was in fact no decision upon which the Applicants can put a finger on and conclude that this is the order which has changed their status as Chiefs or owners of a black stool without hearing them. This would have been in breach of the rules of natural justice. But there was in reality nothing like that.

However, from my observations, all the operative parts of exhibits NKIA, B and C are not orders capable of being quashed by certiorari. This is because no order has been made which has affected the rights of the applicants, save for the remittance of the case back to the Circuit Court for determination on it's merits. There is thus no decision to be quashed.

**CONCLUSION**

The authorities are quite certain that certiorari as a discretionary remedy would be used to quash any decision of a lower court, or administrative tribunal with judicial or quasi judicial powers that takes decisions or makes orders affecting the rights of others on stated legal grounds. These may include errors of law, lack or excess of jurisdiction, acting ultra vires, breach of the rules of natural justice and indeed on any stated legal grounds, capable of proof.

See the following cases which illustrate these positions: -

1. **Republic v High Court, Accra Ex-parte Ghana Medical Association (Arcmann-Ackumey – Interested Party) [2012] 2 SCGLR 768**

2. **Republic v Court of Appeal Ex-Parte Tsatsu Tsikata [2005-2006] SCGLR 612**

3. **Republic v High Court, Accra Ex-parte Commission on Human Rights and Administration Justice (Addo – Interested Party) SCGLR 312**

4. **Republic v High Court, Accra Ex-parte Industrialisation Fund for Developing countries [2003-2004] 1 SCGLR 348**

See also the following English authorities which laid the basis for the grant of judicial review in cases where there is excess of jurisdiction, want of jurisdiction, abuse of power, and the exercise of powers which are ultra vires or arbitrary, breach of the rules of natural justice, provided there is a record of the order, decision, ruling, judgment or proceedings.

1. **R v Northumberland Compensation Appeal Tribunal, Ex parte Shaw [1952] 1 KB 338 at 354 per Denning L.J (as he then was)**

2. **R v Logan Ex parte McAllister [1974] 4 DLR 676**

3. **John East Iron Works v Labour Relations Board of Saskatchewan [1949] 3 DLR 51**

Reference page 144 *of* "***Understanding Statutes" byVCRAC Crabbe***.

Since there is no such record, decision, judgment, or order that can be brought under any of the ambits of the above stated ground, the appeal herein must fail coupled with the other ground that it has been brought out of time.

Finally, it is worth mentioning the fact that the Applicants have also not convinced me to depart from the concurring findings of fact made by the two lower courts.

In the premises the appeal by the Applicant's against the judgment of the Court of Appeal, dated 16th May 2013 is accordingly dismissed as being without any merit whatsoever. The Court of Appeal judgment of even date is thus affirmed.

**(SGD) V. J. M. DOTSE**

**JUSTICE OF THE SUPREME COURT**

**ANIN YEBOAH, JSC:**

I had the opportunity of reading the judgment of my illustrious brother Dotse JSC in this appeal and I agree with him that the appeal should be dismissed. However, I am unable to agree with him on the issue of whether or not the High Court under the current High Court (Civil Procedure) Rules, 2004, CI47 has jurisdiction to grant extension of time in certiorari proceedings.

As the facts, as usual, have been accurately stated by my learned brother I will avoid repeating them and proceed to discuss the only issue on which I was compelled to disagree with my brother.

Under the Old Rules, that is, the Supreme Court [Civil Procedure] Rules, 1954, LN 140 A, Order 59 Rule 3 regulated the time within which applications for mandamus and certiorari could be brought. For a detailed appreciation of this opinion I proceed to quote the Rule as follows:

> "3. Leave shall not be granted to apply for an Order of Certiorari to remove any judgment, Order, Conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceedings or such shorter period as may be prescribed by any enactment; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the court or Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired"

Like my esteemed brother, I agree that the statutory period within which any application for leave ought to be brought under the old rules was six months. Indeed it was under the said rule that cases like REPUBLIC v

NATIONAL HOUSE OF CHIEFS & ORS; EX PARTE FAIBIL III & ORS [1984-86] 2GLR 731 CA, MENSAH & ORS v NSOWAH [1964] GLR 288 SC AND STATE v ASANTEHENE'S DIVISIONAL COURT BI; EX PARTE KUSADA [1963] 2 GLR 238 SC were decided and settled the law succinctly that application brought under Order 59 rule 3 of the old rules must be brought within the six months period stated above.

It must be observed after a careful reading of the said Order 59 rule 3 that the rule did not proceed to state that an application for extension of time should be applied for after the expiration of the six months period fixed by the rule. It does appear, after a careful reading of all the cases, that when the applications for extension of time were sought at the High Court, the Courts and the Supreme Court, on appeal, considered Order 59 rule 3 in conjunction with Order 64 rule 6 of the then rules of Court; that is LN 140 A of 1954, which rule was a general provision dealing with extension and abridgment of time.

I do not think that my brother Dotse JSC in his usual approach to resolving complex issues of law criticized the decisions which have laid down the law, that, under the old rules applications for extension of time to apply for certiorari or mandamus could not be granted. Indeed, he did not see the

decisions as wrong in law. His position is that: under the current rules, that is CI 47 of 2004 the High Court has no jurisdiction to grant extension of time in certiorari proceedings.

Under the current rules, that is, CI 47 of 2004, Order 55 rule 3(1) like order 59 rule 3 LN 140 A of 1954 makes no provision for extension of time within which to bring an application for certiorari. If Order 55 rule 3(1) is read in isolation I would have been convinced by the opinion of my esteemed brother. However, I am of the opinion that Order 55 rule 3(1) of CI 47 ought not to be read in isolation as was done in all the cases decided under the old rules. In MENSAH v NSOWAH [1964] GLR 288 SC Ollenu JSC in discussing the issue of extension of time in certiorari applications under the old rules read Order 59 Rule 3 in conjunction with Order 64 Rule 6….. said at page 296 as follows:

> "But first we must observe that our Order 59, Rule 3, which prescribes the time within which to apply for leave to make application for an Order of Certiorari is reproduction of Order 59, Rule 4 of the English Rules of the Supreme Court, (see the Annual Practice 1952, p.1306) and Order 64, Rule 6 giving the High Court power to enlarge time is a reproduction of Order 64, Rule 7 of the

English Rules of the Supreme Court, (see Annual Practice 1952, p. 1371)"

Order 80 Rule 4(1) appears to be the rule which the learned trial court initially read in conjunction with Order 55 Rule 3(1) of CI 47. In my respectful opinion, the Order 64 Rule 6 of the Old Rules and Order 80 Rule 4 of the new rules do not differ in this area of extension of time granted by the court in certiorari applications. Order 80 Rule 4(1) and (2) states as follows:

"4(1) The court may, on such terms as it thinks just, by or order extend or reduce the period within which a person is required or authorized by these Rules, or by any judgment, Order or direction to do any act in any cause or matter.

(2) The court may extend any such period although the application for extension is not made until after the expiration of that period"

The reading of the Rule above makes it very clear that Order 80 which deals with time is a general provision which gives power to the High Court to extend or limit times required under the rules in existence. Like order 81, which is a general provision dealing with non-compliance, Order 80 caters for situations to extend time or reduce time for taking steps in the

High Court just as the decided cases under the Old Rules LN 140A of 1954 read Order 59 Rule 3 in conjunction with Order 64 Rule 6 and extended time in appropriate cases, it sounds strange to me why the High Court under the current rules that is CI 47 of 2004 should not have the same power if Order 80 Rule 4 is read as a general provision. I think the Court of Appeal in supporting the learned High Court judge to hold that the High Court has no such power to grant extension of time was clearly in error.

I would have rested my delivery at this point but it appears this issue of extension of time was as usual fully addressed by my esteemed brother Dotse JSC so I have decided to go further beyond the rules.

Another point which was accepted by the learned High Court Judge and was equally endorsed by the Court of Appeal was that the lack of express provisions to provide for extension of time in the rules amounts to denial of jurisdiction to extend time.

Apart from the express provisions under Order 80 Rule 4, the learned trial judge should have considered whether he had inherent jurisdiction to extend time for Certiorari. This point is settled by authority in the case of DANAWI & SONS v DAKO [1961] GLR 72 SC. The then Supreme Court after giving adequate consideration to the Old Rules, that is Order 59 r 3 of

LN 140A of 1954, was of the opinion that irrespective of the Order 64 Rule 6 of the rules, the High Court had inherent jurisdiction to extend time if the justice of the case demands. Sarkodie-Addo, JSC (as he then was) who delivered the unanimous judgment of the court said at page 76 as follows:

> "This similarly falls within the mischief aimed at by Order 64, rule 6 as indicated in the said ruling. When it is found that in Order 59, rule 3 there appear no words referring to extension of time or limiting the time in which to make application for such extension the matter is left at large, and therefore in the absence of any mandatory rules limiting the time for an application for extension of time the court has inherent jurisdiction to extend time independently of the rules with a view to avoiding injustice to the parties"

In my respectful opinion, I think Order 1 Rule 2 of CI 47 which is also a general provision to guide the courts in interpreting the rules for effective and speedy trials by avoidance of delays should not be applied to deny the High Court the jurisdiction to extend time both under Order 80 Rule 4 of CI 47 and the inherent jurisdiction of the court in deserving cases.

It is for these reasons that I am unable to agree that the High Court has no jurisdiction to grant extension of time in certiorari proceedings. Save the

above reasons I also from the opinion that the appeal lacks merits as the order sought to be quashed was not any patent error or jurisdictional one under the circumstances for the intervention of the High Court by way of certiorari.

**(SGD) ANIN YEBOAH**

**JUSTICE OF THE SUPREME COURT**

**(SGD) J. ANSAH**

**JUSTICE OF THE SUPREME COURT**

**(SGD) P. BAFFOE BONNIE**

**JUSTICE OF THE SUPREME COURT**

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

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