IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

GHANA

CORAM: ATUGUBA JSC (PRESIDING)

OWUSU JSC

ARYEETEY JSC

GBADEGBE JSC

AKOTO-BAMFO JSC

CIVIL MOTION

SUITNO.J5/16/2011

29TH MARCH, 2011

THE REPUBLIC

VS.

HIGH COURT, SEKONDI

EX-PARTE: GEORGE KINGSLEY KWASI AMPONG -- RESPONDENT/APPELLANT

a.k.a ODENEHO AKRUFA KRUKOKO I

1. **NANA KWADU KYEREFO III -- INTERESTED PARTIES**
2. **NANA KOBINA ANGU II**
3. **NANA KWANDOW BREMPONG III**
4. **NANA KWAW AMOAH II**
5. **NANA KWABENA GYAN II**
6. **NANA AMPONG KWASI**

R U L I N G

AKOTO BAMFO J.S.C.

It is the prayer of the applicant herein George Kingsley Kwasi Ampong alias Odeneho Akrufa Krukoko II that the ruling of the High Court, Sekondi dated the 21st of December,2010 be brought up and quashed on the grounds set out in the supporting affidavit consisting of 19 paragraphs.

In brief, the events culminating in the present application are as follows;

On the 11th of June 2010; the Chieftaincy Tribunal of the Western Regional House of Chiefs gave a default Judgment in suit number 11/20/10. Nana Kwando Kyerefo III +5 Ors, the interested parties herein were the petitioners whereas George Kingsley Kwasi Ampong a. k. a. Odeneho Akrufa Krukoko II, the applicant herein was the respondent.

At the end of the proceedings, the chieftaincy Tribunal made this pronouncement;

1. "The respondent George K. Ampong is hereby declared as having been customarily destooled as Omanhene of Wassa Fiase Traditional Area with effect from 23rd April 2002.
2. The respondent is perpetually restrained from in any manner holding himself out as Omanhene of Wassa Fiase Traditional Area"

Subsequently a motion by the applicant to set aside the default judgment was on 27 October 2010 dismissed by the Chieftaincy Tribunal on grounds that the

applicant could not be heard since he was in contempt of the orders of the Chieftaincy Tribunal made on the 11th of June 2010.

The applicant thereafter filed before the Sekondi High Court a motion for a judicial review in the nature of Certiorari to quash the ruling of the Chieftaincy Tribunal on the 27th of October 2010.The said application was dismissed by the High Court, Sekondi on 21 December 2010. The instant application seeks, as stated earlier, to have the ruling that dismissed the application for judicial review brought up before this court and quashed on the several grounds stated in both the affidavit and statement of case filed on behalf of the applicant.

A greater portion of the averments in the 19 paragraphed affidavit filed in support recounted the landmarks in the applicant's journey through the Chieftaincy Tribunal and the Courts in his quest to "reclaim" as it were, the Stool of the Wassa Fiase Traditional Area.

Before proceeding to consider the application on its merits; I wish to address an issue arising from both the affidavit filed in support of the application and the Statement of Case.

In paragraph 10 of the former appears the following:

"The grounds of my instant application for an order of certiorari are, substantially the same as in the High Court, Sekondi, with one addition herein, namely:

"The High Court committed yet another error of law apparent on the face of the record by the unwarranted strictures it passed upon Counsel for the Applicant impugning his professional integrity on the basis (which that Court failed to identify) of a rule or practice which forbids Counsel, probing some matter, from

personally writing a letter to the registrar or a serving bailiff of a Court or Tribunal or other adjudicating authority."

Again in the introduction to the applicant's statement of case, the Court was left in no doubt as to the character or substance of the Statement of Case; for it was stated;

"The grounds of certiorari herein relied on are substantially the same as previously relied on in the High Court Sekondi. It is, however, respectfully proposed to add some supplementary submissions on behalf of the applicant under Ground 2 (in "abuse of process"). Over and above the supplementary submissions the applicant, who is raising a fresh ground of certiorari, namely unwarranted (strictures in the learned High Court Judge's ruling) on the professional integrity of the applicant's Counsel will respectfully show cause why

the judicial strictures (all constituting a "speaking order") ought to be brought up and quashed."

It is curious whether the facts grounding the 2 applications were similar or

Whether an applicant who files "substantially the same grounds of Certiorari in the High Court" and fails, has the right to repeat the same grounds before the Supreme Court in the exercise of its supervisory Jurisdiction.

Undoubtedly the Supreme Court has both its appellate and Supervisory Jurisdictions clearly set out under the 1992 Constitution as amplified under both the Courts Act 459 and C 1.16 the Supreme Court Rules.

Under Article 131(1 -4 of THE 1992 Constitution:

1. An appeal shall lie from a judgment of the Court of Appeal to the Supreme Court,
    a. as of right in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or a Regional Tribunal in the exercise of its original jurisdiction; or
    b. with the leave of the Court of Appeal, in any other cause or matter, where the case was commenced in a court lower than the High Court or a Regional Tribunal and where the Court of Appeal is satisfied that the case involves a substantial question of law or is in the public interest.

2. Notwithstanding clause (1) of this article, the Supreme Court may entertain an application for special leave to appeal to the Supreme Court in any cause or matter, civil or criminal, and may grant leave accordingly.
3. The Supreme Court shall have appellate jurisdiction, to the exclusion of the Court of Appeal, to determine matters relating to the conviction or otherwise of a person for high treason by the High Court.
4. An appeal from a decision of the Judicial Committee of the National House of Chiefs shall lie to the Supreme Court with the leave of that Judicial Committee or the Supreme Court.

It is clear that the Supreme Court has appellate jurisdiction from a judgment of the Court of Appeal as of right in any civil or criminal matter in respect of which an appeal is lodged in the Court of Appeal from any judgment of the High Court or Regional Tribunal in the exercise of its original jurisdiction.

Additionally, the Supreme Court is vested with jurisdiction under Article 132 of the 1992 Constitution with Supervisory jurisdiction over all courts and other adjudicating bodies.

It ought to be pointed out that under Article 141 of the 1992 Constitution, Supervisory powers similar to those vested in the Supreme Court have been vested in the High Court, the only point of departure being that whereas the Supervisory powers of the Supreme Court extend over all courts and other adjudicating bodies, the High Court exercises its Supervisory powers over all

lower courts and other adjudicating bodies. Rep v Chief Registrar of Lands Ex parte Dsane.2003-2004 2SCGLR 995

In the light of Articles 132 and 141 of the 1992 Constitution, can the applicant having failed to secure an order of certiorari in the High Court, proceed to this Court, and as his own words, in paragraph 10 of the supporting affidavit file substantially the same grounds as though it were a repeat application or in the nature of an appeal from the said refusal by the High court?

In other words; does the applicant have the right to re-argue before this Court under its Supervisory jurisdiction, substantially the same application which was argued before the High Court with the addition of a new ground, as learned counsel put it? We think not.

While commending learned counsel for the applicant on his exhibition of candour by stating that the grounds of the application before us were almost the same as those before the High Court,it appears from the circumstances that to base both applications on substantially the same ground is, at the very least, a misappreciation of the facts as per the affidavit evidence contained in

the processes filed before us in the matter. It additionally goes to undermine the good faith of the applicant in a proceeding that is based on affidavits.

It is evident that this Court is being called upon to invoke its Supervisory jurisdiction in the nature of certiorari. It is therefore necessary to set out its scope.

Certiorari ,it is trite learning, is a discretionary remedy granted on grounds of excess or want of jurisdiction and or some breach of a rule of natural justice; for as Per Twum JSC in Barclays Bank Ltd V Interested Party 2005-2006 SCGLR 107 at118.

"Certiorari is not concerned with the merits of the decision. It is a complaint about jurisdiction or some procedural irregularity like the breach of natural justice."

Additionally it would issue to correct a clear error on the face of the ruling of the court; or an error which amounts to lack of jurisdiction in the court so as to make the decision a nullity. Rep v Accra Circuit Court; Ex parte Appiah 1982-83 1 GLR 129. In other words the applicant must show the existence of an error of law apparent on the face of the record.

As to what constitutes an error of law, this Court held in the Republic V High Court Accra, Ex parte Soku 2003-2004 2 SCLR 719 per Adjabeng JSC that it must be an error so grave as to amount to the wrong assumption of jurisdiction. It must be so obvious as to make the decision a nullity.

Where however the High Court has made an error of law or fact not apparent on the face of the record, the applicant's remedy lies in an appeal. See: The

Rep V High Court, Accra, Ex-parte Industrial Fund for Developing Countries SCGLR 514.

In the matter under consideration, the focus of the applicants complaint is not that the High Court lacked jurisdiction; Indeed it was the applicant who

initiated the proceedings in that forum; it is his case that the learned Judge acted in excess of his jurisdiction when he found without further enquiry that there had been notification of the process on the applicant. He additionally submitted that by wrongfully allocating the burden of persuasion and castigating learned counsel for the applicant for writing to the bailiff to find out whether he indeed had served the process even though there was an indication from the record of the Court that there had been such service the Learned Judge committed jurisdictional errors.

We are of the view that the learned judge of the High Court made the ruling acting within the bounds of his jurisdiction and if he did commit any errors; which in the instant case cannot be said to be apparent on the face of the record; the applicant's remedy lies in an appeal. It is useful to reiterate what this court said in Rep. High Court Ex parte CHRAJ (Addo Interested Party) 2003-2004 1 SCGLR 312, that where the High Court makes a non-jurisdictional error of law which is not patent on the face of the record; the avenue for redress open to the aggrieved person is an appeal. Even though many other grounds were argued there appears to be no nexus between those issues and the prayer before this court as they properly speaking relate to matters that occurred before the application whose refusal has provoked this application was made.

We would in the circumstances decline the invitation to bring up for the

purposes of being quashed the ruling of the High Court, Sekondi dated the 21st of December 2010.

The application accordingly fails and is hereby dismissed.

[SGD] V. AKOTO-BAMFO

JUSTICE OF THE SUPREME COURT

[SGD] W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

[SGD] R. OWUSU

JUSTICE OF THE SUPREME COURT

[SGD] B. T. ARYEETEY

JUSTICE OF THE SUPREME COURT

[SGD] S. N. GBADEGBE

JUSTICE OF THE SUPREME COURT

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