IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- A.D. 2021

CORAM: DOTSE, JSC (PRESIDING)

PWAMANG, JSC

MARFUL-SAU, JSC

TORKORNOO, JSC

AMADU, JSC

CIVIL MOTION
NO. J5/09/2021

21ST JULY, 2021

THE REPUBLIC

VRS

THE HIGH COURT, TEMA

EXPARTE: NANA KWANDOH BREMPONG III ….. APPLICANTS

NANA KWAW AMOAH II

NANA AMPONG KWESI III

1. NATIONAL HOUSE OF CHIEFS

2. ODENEHO AKROFA KRUKOKO III **….. INTERESTED PARTIES**

RULING

MARFUL-SAU JSC:-

The applicants in this proceedings are praying for an order of certiorari directed at the High Court, Tema presided over by Ankamah, J. to quash the ruling of that court dated the 14th October 2020 in the suit No. E12/052/2021, entitled IN THE MATTER OF AN APPLICATION BY ODENEHO AKROFA KRUKOKO II AND EX-PARTE MOTION FOR AN ORDER COMPELLING THE NATIONAL HOUSE OF CHIEFS TO RE-ENTER THE NAME OF APPLICANT INTO THE NATIONAL REGISTER OF CHIEFS AS OMANHENE OF THE WASSA FIASE TRADITIONAL AREA TO COMPLY WITH THE DECISION OF THE WESTERN REGIONAL HOUSE OF CHIEFS PURSUANT TO SECTION 37 (1) OF THE CHIEFTAINCY ACT (ACT 759). The applicants further prayed that the trial Judge be prohibited from further hearing the suit for lack of jurisdiction.

The applicant in the said suit who is the 2nd interested party herein had applied to the High Court, Tema through an Ex-parte application to enforce a ruling of the Western Regional House of Chiefs dated the 19th August 2015, allegedly ordering the National House of Chiefs to re-enter the 2nd interested party's name into the National Register of Chiefs as the Omanhene of Wassa Fiase Traditional Area. The trial High Court heard the application and on the 14th October 2020 granted same and ordered the President and Registrar of the National House of Chiefs to re-enter the name of the 2nd interested party herein in the National Register of Chiefs as the Omanhene of the Wassa Fiase Trditional Area within seven days after service of the order on them. It is against this ruling or order that the applicants have invoked the supervisory jurisdiction of this court for same to be brought up to be quashed.

The Ex-parte application in the High Court, Tema was brought under section 37(1) of the Chieftaincy Act, Act 759, as demonstrated on the face of the Ex-parte motion. In essence the 2nd interested party herein was seeking to enforce a judgment or an order of the Judicial Committee of the Western Regional House of Chiefs, which is regulated in terms of procedure by section 37 of the Chieftaincy Act. The said section 37 provides as follows:-

''37. Enforcement of judgment of Houses of Chiefs or Traditional Councils

(1) On an application made by a party to proceedings before a judicial committee of House of Chiefs in whose favour a judgment or order was made by that Committee, the Committee shall forward a copy of the judgment or order to the High Court with a request for execution of the judgment or order.

(2) On the payment by the applicant of the prescribed fees, the High Court shall take steps and issue the process necessary for the execution of the judgment or order as it would take or issue if it were a judgment or order of the High Court.''

The above provision of the law clearly shows that for a party to invoke section 37 of the Chieftaincy Act, first there should be a judgment or order of a Judicial Committee; secondly, there should be an application from the party in whose favour the judgment or order has been made for the enforcement of the judgment or order; thirdly, the Judicial Committee itself shall forward a copy of the judgment or order to the High Court with a request for the execution of the judgment or the order and fourthly, upon the payment of the prescribed fees, the High Court will issue the necessary process for the execution of the judgment or order. My understanding of section 37 of the Chieftaincy Act on the enforcement of judgments and orders of the Judicial Committee of the Houses of Chiefs, clearly is that parties are not required to file any processes to invoke section 37 of the Act, to enforce a judgment or order of a Judicial Committee. A party is only required to apply to the Judicial Committee, which in turn will request the High Court to enforce its judgment or order. The party only pays the prescribed fees and the execution or the enforcement of the judgment or order is effected by the High Court.

Clearly, the enforcement procedure of decisions of the Judicial Committees of Houses of Chiefs is regulated by statute and parties are required to adhere to the statutory procedure in order not to abuse the law and end up in nullities. The law does not require

the 2nd interested party to apply to the High Court for a fresh order to be enforced. In the instant case, what the 2nd interested party did at the High Court, Tema was contrary to the law and was thus a nullity.

The record in this case shows that the procedure provided for under section 37 of the Act was not fully followed. On record is a letter from the Registrar of the Western Regional House of Chiefs, forwarding a copy of the ruling that the 2nd interested party sought to enforce to the Registrar of the High Court, Tema. This letter was written on 9th October 2020 and was annexed to the 2nd interested party affidavit in response filed on 22nd December 2020. Contrary to the procedure provided under section 37 of the Chieftaincy Act, the 2nd interested party hijacked the procedure and sought to enforce the alleged order of the Western Regional House of Chiefs by personally filing an Ex-parte application and moving same in the High Court. The fresh proceedings in the High Court, Tema, was procedurally flawed, unwarranted by law and thus void.

Now, turning to the current application before us, it is very clear that the trial Judge committed a blatant error of law on the face of the record which took away its jurisdiction as same was improperly invoked. The error committed by the trial court was so fundamental and same calls for the invocation of this court's supervisory jurisdiction. The fundamental error is so evident on the face of the record that this court as held in a plethora of cases ought to correct.

In the case of Republic v. High Court, Accra; Ex-parte Soku & Another (1996-97) SCGLR 525 at 529 this Court speaking through Adjabeng JSC, after making reference to article 132 of the Constitution, delivered as follows:

> ***''It must be said that but for this constitutional provision, the Supreme Court would not have any supervisory powers over the High Court and the Court of Appeal as they are not inferior court, or tribunals. If therefore, it is claimed that***

there is an error of law appearing on the face of the record of a superior court which warrants intervention by this court by the exercise of our supervisory jurisdiction, it must be such an error as goes to the wrong assumption of jurisdiction or the error is so obvious as to make the decision a nullity…"

As I have demonstrated above, the High Court adopted a wrong procedure in enforcing a judgment or order of the Western Regional House of Chiefs as provided under section 37 of the Chieftaincy Act, and as such committed a fundamental error on the face of the record which rendered the entire ruling of 14th October 2020 a nullity. Indeed, where a court is required by law to follow a particular procedure but acts contrary to that procedure, then even though it comes to a right decision, the supervisory jurisdiction of this court will always be invoked to quash such decisions, since the courts are enjoined to apply proper and legitimate procedures in all proceedings to promote certainty in the administration of justice. This is my understanding of the principle enshrined in the case of Okofoh Estate Ltd v. Modern Signs Ltd (1996-97) SCGLR 224, where this court brought up and quashed the decision of the High Court, when the court adopted a wrong procedure under Order 25 rule 4 of the old High Court (Civil Procedure) Rules, 1954, LN 140 A.

In that case the High Court had erroneously proceeded under its inherent jurisdiction and admitted and relied on affidavits and extrinsic evidence in the form of exhibits, when proceedings under Order 25 was for a different purpose from the procedure under the inherent jurisdiction.

The High Court, Tema committed a similar error when it heard and granted the Ex-parte application filed by the 2nd interested party and as such the order of 14th October 2020 ought to be brought up and quashed as having been made in error, under wrong assumption of jurisdiction.

Besides the wrong procedure that was adopted by the 2nd interested party, the record revealed that there was no order by the Western Regional House of Chiefs, meant to be enforced. On record as 'Exhibit C' was the ruling of the Western Regional House of Chiefs dated the 19th of August 2015, however that ruling did not contain any order that the name of 2nd interested party be re-entered in the Register of the National House of Chiefs as the Omanhene of Wassa Fiase Traditional Area. Indeed, ''Exhibit C'' was a ruling by the Judicial Committee assigning reasons for striking out a petition that was brought against the 2nd interested party herein. I have read the said ruling several times and nowhere does the ruling order that the name of the 2nd interested party be re- entered into the National Register of the National House of Chiefs.

Now, to the extent that the ruling of 19th August 2015 did not contain a specific order that 2nd interested party's name be re-entered in the National Register of the National House of Chiefs, the trial High Court did not have the jurisdiction to make the order it made on the 19th August 2015. There was nothing before the High Court to be enforced, consequently the order of 19th August 2015 was a nullity and same ought to be brought up and quashed.

The applicants are also praying for an order to prohibit the trial Judge from further hearing this case. In view of having quash the Ex-parte order which the pending proceedings are seeking to set aside those proceedings automatically abate hence there is no need for an order of prohibition.

S. K. MARFUL-SAU
(JUSTICE OF THE SUPREME COURT)

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

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

G. TORKORNOO (MRS.)
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