IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: TORKORNOO (MRS.) CJ (PRESIDING)

AMADU JSC

KULENDI JSC

ASIEDU JSC

GAEWU JSC

CIVIL MOTION

NO. J5/54/2023

27TH JUNE, 2023

REPUBLIC

VS

THE HIGH COURT, CAPE-COAST ……. RESPONDENT

EX-PARTE: BRIGADIER GENERAL AUGUSTINE ASIEDU ……. APPLICANT

AND

EBUSUAPANYIN OPPONG KYEKYEKU ……. INTERESTED PARTY

RULING

AMADU JSC:-

INTRODUCTION

(1) On the 27th day of June 2023, we dismissed the instant application and reserved our reasons. This ruling, thus, embodies the reasons informing our decision on the application. The conduct of the parties at the trial court from which our supervisory jurisdiction has been invoked necessitates a detailed reproduction of the events leading to the instant application and to further, expose the impropriety undergirding same.

BACKGROUND FACTS

(2) The Applicant, Augustine Asiedu is a Brigadier General of the Ghana Armed Forces. He is also, the Director General, in charge of Training. On the 5th day of December, 2022, the Interested Party claiming to be the Head of the Assinie Family of Nyankomasi Ahenkro commenced a petition before the Judicial Committee of the Central Regional House of Chiefs against the Applicant and others. The petition prayed *inter alia* restraining orders against the Applicant herein from being nominated to be considered for election as the Paramount Chief of the Assin Atandansu Traditional Area. The gravamen of the petition, as alleged by the Interested Party is that, he *(The Interested Party)* is the proper person to nominate anyone to be considered as the Paramount Chief of the said traditional area.

(3) Subsequent to the filing of the petition, the Interested Party applied to the judicial committee for an order of interlocutory injunction to restrain the Applicant from going through the customary rites of being confined and outdoored as Paramount Chief. The application for interlocutory injunction was duly opposed by the Applicant.

(4) While the application for interlocutory injunction was pending, the Interested Party asserts that, the Applicant commanded uniformed armed military men numbering about twenty (20) to intimidate the residents of Nyankomasi Ahenkro and forcefully imposed himself as the Paramount Chief of Assin

Atandansu Traditional Area. Indeed, Exhibit 'D' series attached to the affidavit in opposition to the application before this court substantially corroborate this allegation. It is consequent upon the conduct of the Applicant aforesaid that, on the 13th of January 2023, the Interested Party cited the Applicant herein and another to be committed for contempt for disrespecting the authority of the Judicial Committee of the Central Regional House of Chiefs.

(5) That contempt application was served on the Applicant herein and same came up for hearing on the 9th of February, 2023. At the instance of the *(Applicant herein)* the application was adjourned. However, on the 27th of February, 2023, the Applicant *(herein as "Respondent")* filed a motion on notice to strike out the application for contempt for want of capacity. That application was also fixed for hearing on the 21st of March, 2023. The trial court however, abridged time and fixed the application for hearing on the 8th of March 2023.

(6) Following the late filing of the affidavit in opposition to the motion to strike out the contempt application, there was another adjournment to the 20th of March 2023 where all parties were heard on the application. The Trial Court then adjourned its ruling until the 28th of March 2023. In its decision, the trial court dismissed the application to strike out the contempt application and directed that, the same will be heard. Counsel representing the Applicant *(herein)* however, intimated his unpreparedness to deal with the application hence same was adjourned to the 4th of April, 2023 for hearing.

(7) On the 4th of April 2023, the application for committal for contempt was moved and same was opposed. The Trial Court adjourned same to 4th May, 2023 for ruling. Subsequently, the Applicant applied to the Court of Appeal to stay proceedings *(this application was later dismissed)* and further petitioned the Honourable Chief Justice to transfer the suit from the trial judge on some allegations of bias.

(8) While the response to the petition to the Honourable Chief Justice was forth coming, the Applicant filed the instant application on the 28th day of April, 2023. The motion is accompanied by an affidavit in support, a certificate of Exhibits and one exhibit *(with its annexures)* including a copy of the petition to the Honourable Chief Justice. An affidavit in support of the application was also filed by the Applicant on the 4th day of May, 2023 which annexed two letters as exhibits. Significantly, no statement of case as required by Rule 61(2) of C.I.16 accompanied the application filed.

(9) As per the relief sought in the application, the Applicant prays this court as follows: ***"an order of Prohibition directed to the Cape Coast High Court presided over by Justice Malike Awo Woanya Dey to restrain it from hearing and determining the case entitled "REPUBLIC VS. EBUSAPANYIN KOFI YEBOAH AND BRIGADIER GENERAL AUGUSTINE ASIEDU" Suit No.E12/96/2023 and from having any further dealings with the suit pending the determination of a petition that was submitted to the Chief Justice for his consideration."*** The application is anchored on two grounds, namely:

i. ***Demonstration of the real likelihood of bias against the Applicant.***
ii. ***Pendency of a petition to the Chief Justice against the conduct of the trial judge.***

(10) In the affidavit in support on behalf of the Applicant by one Akwesi Asiedu, the Applicant's contention is that, the trial judge in the contempt application has put up a conduct, which shows clearly that, she was being biased in favour of the Interested Party. As a result, the Applicant petitioned the Honourable Chief Justice. Hence, the instant application.

(11) Clearly, the basis of the present application is simply because of Applicant's claim of having petitioned the Honourable Chief Justice without more. As is evident from the motion paper itself, Applicant seeks to restrain the trial High Court judge ***"from having any further dealings with the suit pending the determination of a petition that was submitted to the Chief Justice for his consideration."*** *(Our Emphasis).* Truly, the said petition to the Honourable Chief Justice is annexed to the affidavit in support but specifics of the alleged bias by the trial judge against the Applicant has not been set out.

(12) For purposes of emphasis, we hereby reproduce the salient portions of the eleven paragraphed affidavit in support of the application:

"4. That I am well seised of the facts of this case as well as the circumstances that necessitated the filing of this instant application as I happened to be an eye witness to these happenings.

5. That the Interested Party in this case filed an application for contempt of court at the Cape Coast High Court against the Applicant and falsely accused him of having interfered with the administration of justice.

6. That I accompanied the Applicant to the Cape Coast High Court on all occasions that the case was called-even to the point of representing him on a few occasions that he was absent from the court due to ill-health or the demands of his duty.

7. That from the conduct put up by the trial judge I could

clearly discern that she was being biased in favour of the interested party.

8. *That it was after an in-depth consideration of what we say that my uncle came to a conclusion after meeting members of our Eku gate family that he ought to petition the Chief Justice and have the matter transferred from the trial judge.*

9. *That the Applicant has accordingly petitioned the Chief Justice. Attached herewith is the said petition marked as Exhibit 'A'.*

10. *That we do not know when we would receive a response to the petition and it is for this purpose and of the fear that the trial judge may decide to proceed with the hearing of the case that prompted the Applicant to apply to this August court for the prohibition order.*

THE OPPOSITION

(13) The Respondent filed an affidavit in opposition to the application on the 26th of June 2023 as well as a statement of case embodying his legal arguments. In the affidavit in opposition, the Respondent recounted the factual background leading to the present application, and essentially invites the court to pay attention to the conduct of the Applicant who simply does not want the trial court to determine the application for committal for contempt. The thrust of the opposition is that, the excuse of the Applicant, being an apprehension that the trial judge will proceed with the contempt application if the instant application is not filed is unfounded because, all the adjournments granted by the trial

court subsequent to the filing of the petition together with the present application, have always been as a result of the pendency of the petition and not the instant application. For the Respondent, the petition alone, could have succeeded in halting the proceedings at the trial court without the need for this application.

(14) The Respondent further contends that, the Applicant is so desperate to prevent the trial judge from determining the contempt application and has resorted to the filing of numerous applications with the objective of frustrating the hearing and determination of the contempt application without more.

THE LAW AND PROCEDURE IN INVOKING THE SUPERVISORY JURISDICTION OF THE SUPREME COURT

(15) In the hierarchy of courts, only two courts; the Supreme Court and the High Court are vested with the jurisdiction to exercise supervisory powers over courts below them or adjudicating bodies. In the case of the High Court, the jurisdiction is exercised by way of judicial review. The supervisory jurisdiction of the Supreme Court is provided under Article 132 of the 1992 Constitution which provides that: ***"The Supreme Court shall have supervisory jurisdiction over all courts and over any adjudicating authority and may in the exercise of that supervisory jurisdiction, issue orders and direction for the purpose of enforcing or securing the enforcement of its supervisory power."*** See also, Section 5 of the Courts Act, 1993 (Act 459) which provides in detail some of the reliefs that may avail a successful Applicant in detail as follows:

"The Supreme Court shall have supervisory jurisdiction over all courts and over any adjudicating authority and may, in the exercise of that supervisory jurisdiction, issue orders and directions including orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo wararnto for the purpose of enforcing or securing the enforcement of its supervisory power."

(16) The supervisory jurisdiction of the Supreme Court in this respect can only be invoked under very strict and special situations of:

a. ***Alleged breach of the rules of natural justice***
b. ***Want or excess of jurisdiction***
c. ***Error of law patent on the face of the record, which error goes to the jurisdiction of the court and***
d. ***Any breach of the Wednesbury principles of illegality, irrationality and procedural impropriety.***

(17) In our jurisdiction, judicial authorities abound in support of the above grounds, including but not limited to the cases of :

REPUBLIC VS. HIGH COURT, KUMASI; EX-PARTE MOBIL OIL (GHANA) LTD. (HAGAN INTERESTED PARTY) [2005-2006] SCGLR312; REPUBLIC VS. HIGH COURT, DENU; EX PARTE KUMAPLEY (DZELU IV INTERESTED PARTY) [2003-2004] 2 SCGLR 719; REPUBLIC VS. HIGH COURT, ACCRA; EX-PARTE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (ADDO INTERESTED PARTY) [2003-2004] 1 SCGLR 312.

(18) To succeed in this application therefore, the Applicant should be able to demonstrate one of the grounds for the exercise of this court's supervisory jurisdiction. Interestingly, in reading the motion paper and the supporting affidavit, the principal ground for the application is the pendency of the outcome of the petition by the Honourable Chief Justice. The mentioning of breach of the rule against bias is only a supposition from the petition allegedly grounded on bias of the Trial Court against Applicant.

(19) The rules regulating proceedings in this court have detailed the procedure in invoking the court's supervisory jurisdiction under Part VI of the Supreme Court Rules, 1996 (C.I. 16). In terms of these rules, applications of this nature must be by motion on notice; accompanied by an affidavit as well as a statement of the Applicant's case based upon the reliefs sought and the grounds of the application. As earlier observed, the Applicant herein has failed to provide a statement of his case.

(20) This incompetency notwithstanding, there was no possibility of success of the application in the manner as presented to this Court. First, as can be gleaned from the affidavit in support of the application, the only basis for this application, is the Applicant's claim of the pendency of a petition submitted to the Honourable Chief Justice on which ground he seeks to prohibit the trial court from any further hearing of the matter.

(21) There is therefore, a disconnect between the basis of the application and the first ground of the application that, there is a demonstration of a real likelihood of bias against the Applicant by the trial judge. The question is, how does the continuation of a hearing, in the face of the pendency of a petition before the Honourable Chief Justice for the recusal of a judge amount to a real likelihood of bias, warranting the order of prohibition? It needs to be pointed out at this point that, even prior to the filing of the instant application, the Trial Judge has always prudently adjourned the hearing to abide the outcome of the petition of the Honourable Chief Justice.

(22) In any event, the Applicant has woefully failed to demonstrate, per the affidavits supporting the motion that the trial judge has misconducted herself in a manner, depicting a real likelihood of bias, hence necessitating an order prohibiting her from any further dealing with the suit. We observe that, the Applicant has misapprehended the settled practice that, applications of this

nature are not concerned with the merits of the matter. That is, the success or otherwise of the petition before the Judicial Committee is of no consequence to the grant of the application, particularly regarding the determination of the alleged bias by the trial judge against the Applicant.

(23) We have restrained ourselves from commenting on the petition since same was not directed to the court to pronounce on whether or not there is a likelihood of bias; the relief sought was only to urge the court that, pending the response by the Honourable Chief Justice, the trial court be prohibited. Of course, we will not usurp that administrative function of the Chief Justice hence, in accordance with the settled position for the determination of applications of this nature, our decision will not be contingent on the merits of the petition to the Honourable Chief Justice. As aforesaid, the Applicant has failed to demonstrate, per the present application, any real likelihood of bias, to ground a favourable grant of this application.

(24) Another misconception of the Applicant is the second ground which is, ***"pendency of a petition to the Chief Justice against the conduct of the trial judge."*** Once again, the Applicant has glossed over the fact that applications invoking our supervisory jurisdiction are originating in nature and thus, the reliefs to be sought are final. The Applicant masquerades the application to seek an interlocutory relief pending the exercise of the Honourable Chief Justice's administrative powers in respect of the petition. This ground is most untenable. In the round, we find the entire application as grossly incompetent and accordingly dismiss same.

(25) As the highest court of the land, we cannot rest this delivery without placing on record our observation of the conduct of the Applicant. We notice from the affidavit evidence of the Interested Party that, the Applicant's conduct constitutes an abuse of his highly revered public office. We have taken notice

of the fact that, the Applicant is a Brigadier-General of the Ghana Armed Forces. He is also the Director General in charge of training at the Ghana Armed Forces. Thus, he is no mean person, but a senior officer who directs and supervises the training of members of the Armed Forces.

(26) Upon our review of all the processes filed, and the conduct of the Applicant at the trial court, while we do not question his right to pursue his aspirations of being the Paramount Chief of his traditional area, we need to emphasize that, as an occupant of a high public office in the Armed Forces, he cannot deploy the machinery of the Armed Forces and for that matter privileges accorded him by the state as senior Army Officer of the rank of a one star General, to the disadvantage of his opponents in a private matter and thereby subvert the due process of the law through intimidation.

(27) As aforesaid while we recognise his right, if he so qualifies, to be enstooled as a chief, we wish to place on record that, the Applicant and all such persons with similar aspirations to act in accord with the strict dictates of the law and due process. We state without equivocation that, persons of the kind of the Applicant, must not be allowed to take advantage of their public offices in order to advance their private ventures whether commercial, social or customary.

(28) We dare say that a cardinal characteristic of the 1992 Constitution, is the vesting of sovereign power in the people of Ghana. It is the people of Ghana who have delegated their powers to others in public offices to administer same on their behalf but within the framework of the laws of the land. It is equally pertinent to state that, no person including the Chief of Defence Staff (CDS); the instant Applicant a Brigadier General of the Armed Forces; as well as Members of the Executive, the Legislature and Judiciary should take undue advantage of their

offices in pursuing private concerns to the detriment of their adversaries who have no access to the machinery of the state apparatus.

(29) With specific reference to the Applicant herein, a senior member of the Ghana Armed Forces, the Armed Forces Act, 1962 (Act 105) specifically prohibits any conduct which will blight its name; and bring the name of the service into disrepute. Section 32(2) of the Armed Forces Act, 1962 (Act 105) provides that: ***"A person in the Armed Forces who behaves in a cruel or disgraceful manner commits an offence and on conviction is liable to a term of imprisonment not exceeding five years or to a lesser punishment provided by this Act."*** In his authoritative book, **CONTEMPORARY APPROACH TO MILITARY LAW IN GHANA, (2017, PAGE 112) LT. COL. BINDITI CHITTOR** explains that: ***"In ordinary usage, a conduct is disgraceful if it is shameful or unacceptable. In that context, disgraceful conduct is synonymous with scandalous conduct."***

(30) Further, it is an offence for a military officer to use a military vehicle for an unauthorized purpose. Section 50 of the Armed Forces Act, 1962 (Act 105) provides thus: ***"A person of the Armed Forces who;***

(a) uses a vehicle for an unauthorised purpose, or

(b) uses a vehicle contrary to orders, instructions or the Regulations, commits an offence and on conviction is liable to a term of imprisonment not exceeding two years or to a lesser punishment provided by this Act."

An unauthorised purpose within this context is not only a purpose not sanctioned by authority; but also, a usage which is not in accord with the tradition, practice or normal use of the vehicle, such as using same for a personal objective to intimidate civilian opponents in order to occupy a traditional position.

(31) We appreciate from the provision of the Act that military men and officers are not to engage in conduct that are prejudicial to the good order and discipline of the service. Section 54(1) of the Act provides as follows:

> ***"Any act, conduct, disorder or neglect to the prejudice of good order and discipline shall be an offence and every person convicted thereof shall be liable to dismissal with disgrace from the Armed Forces or to any less punishment provided by this Act."***

(32) Therefore without prejudice to the pending contempt application, we note with great concern how the Applicant who is of such senior status in the Military will abuse his office with the support of his junior ranks in a contest for a traditional position. To say the least, his private interests ought to be segregated from his office. The manner in which the Applicant and the other soldiers in uniform armed with assault rifles as depicted in Exhibit 'D' series *(which the Applicant admits per his response to the contempt application)* is disturbing in a developing constitutional democracy such as ours. This is even more so when the situation involves a senior officer of an institution such as the Ghana Armed Forces where discipline is the cornerstone of it's existence.

(33) Finally, we need to place on record that, the observations hereinbefore made are without prejudice to the determination of the substantive contempt application before the trial court on the merits.

I.O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

G. SACKEY TORKORNOO (MRS.)

(CHIEF JUSTICE)

E. YONNY KULENDI

(JUSTICE OF THE SUPREME COURT)

S. K. A. ASIEDU

(JUSTICE OF THE SUPREME COURT)

E. Y. GAEWU

(JUSTICE OF THE SUPREME COURT)

COUNSEL

GUSTAV ADDINGTON ESQ. FOR THE APPLICANT.

EUNICE FRIMPONG ESQ. FOR THE INTERESTED PARTY WITH HER GEORGETTE LARBI-APPIAH.