IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- GHANA

CORAM: AKUFFO,(MS) J.S.C (PRESIDING)

DATE-BAH, J.S.C

ADINYIRA, (MRS) J.S.C

OWUSU, (MS) J.S.C

DOTSE, J.S.C

SUIT NO. CA J4/11/2008

10TH DECEMBER, 2008

THE REPUBLIC

VRS

EDWARD ACQUAYE @NANA ABOR YAMOAH II

EX-PARTE: CHARLES KWEKU ESSEL & ORS

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J U D G M E N T

DOTSE, J.S.C:

William Blackstone, the 18th century English Jurist, is credited with the following statement, which has had profound application in common law jurisdictions including Ghana. He stated and I quote:

"Better that ten guilty persons escape than one innocent suffer"

The story is also told of a Chinese law Professor who, when he was advised on the American and common law belief that it was better that a thousand guilty men go free than one innocent man be executed, retorted “Better for whom?” The Chinese law Professor was answered thus:

“Better for all, because as history has proven, if anyone can be unlawfully jailed, everyone can be unlawfully jailed”.

These are the principles that have underpinned the criteria for establishing the ingredients for offences such as contempt. This is because contempt is quasi-criminal and has to be proved beyond all reasonable doubt against whoever is accused of having flouted or disobeyed the court’s orders.

In Re: Effiduase Stool Affairs (No.2) Republic vrs. Numapau, President of the National House of Chiefs and others Ex-parte Ameyaw 11 (No.2) [1998-99] SCGLR 639 the Supreme Court stated as follows:

“Since contempt of court was quasi-criminal and the punishment for it might include a fine or imprisonment the standard of proof required was proof beyond reasonable doubt. An applicant must, therefore, first make out a prima facie case of contempt before the court could consider the defences put upon by the respondents”

We believe that it is also to reinforce this time tested principle of the contemnor being presumed innocent until proven guilty that the Supreme Court in the case of Republic vrs. SITO 1 Ex-parte Fordjour [2001-2002] SCGLR 322, laid down the following as the essential elements in dealing with the offence of contempt:

“There must be a judgment or order requiring the contemnor to do or abstain from doing something.

It must be shown that the contemnor knows what precisely he is expected to do or abstain from doing and

It must be shown that he failed to comply with the terms of the judgment or order and that disobedience is willful”

FACTS OF THE CASE

The facts of this case due to their presentation from the trial High Court to this court now admit of some complexities.

On the 14th day of April, 1997 an action was commenced before the Judicial Committee of the Gomoa Akyempim Traditional Council in a suit titled Ebusyanpanyin Kodwo Abor and 3 others vrs. Nana Abor Ewusie XIX and ANR seeking essentially reliefs which constitute a cause or matter affecting

chieftaincy. Basically, the reliefs sought to destool the Ist Defendant Nana Abor Ewuise XIX as chief of Gomoa Fetteh.

The Judicial Committee of the Gomoa Akyempim Traditional Council, on the 22nd day of August, 1997 at Gomoa Assin delivered a ruling in favour of the Plaintiffs therein, thereby confirming the destoolment of the 1st Defendant therein as Chief of Gomoa Fetteh.

Following this judgment of the Gomoa Akyempim Traditional Council, one Edward Acquaye, the Respondent/Appellant/Respondent herein, hereinafter referred to as the Respondent, was installed by the Plaintiffs therein as the Chief of Gomoa Fetteh under the stool name of Nana Abor Yamoah II on the 24th day August, 1997, barely two days after the judgment of the Judicial Committee of the Gomoa Akyempim Traditional Council. On the same date, the respondent herein swore the oath of allegiance before the Paramount Chief of Gomoa Akyempim, Nana Okututan Ahunako Acquah I who also conferred the Divisional title of Twafohene of Gomoa Akyempim on the Respondent.

The Defendants therein, on the 11th day of September 1997 filed an appeal against the decision of the Judicial Committee of the Gomoa Akyempim Traditional Council

On the 24th April, 1999, the Judicial Committee of the Central Region House of Chiefs delivered its judgment by allowing the appeal and set aside the decisions of the Judicial Committee of the Gomoa Akyempim Traditional Council and ordered a trial before the same traditional council with a properly appointed Judicial Committee

Whilst a new panel of the Judicial Committee of the said Traditional Council was re-hearing the matter afresh and before judgment could be delivered, the Plaintiffs therein filed an application before the High Court, Agona Swedru seeking an order of Prohibition to prevent the Judicial Committee of the Gomoa Akyempim Traditional Council from further hearing and determining the matter before it.

On the 26th day of June, 2001 the High Court, Agona Swedru presided over by Woanya J delivered the ruling in which he granted the order of prohibition against the Judicial Committee of the Gomoa Akyempim Traditional Council and prohibited it from further hearing and determination of the trial which was being heard de novo. Woanya J, as part of his ruling stated as follows:

“For the sake of peace, a new Judicial Committee properly and entirely differently constituted may be asked to sort out the same problem afresh

between the parties in a Judicial manner, and until and unless that is done, the status quo shall be maintained". (The emphasis is mine)

It is significant to observe that the first part of the admonition or advice by Woanya J., as he then was, that a different panel be constituted to sort out the problem afresh between the parties in a judicial manner has been completely lost on the parties in this protracted chieftaincy saga.

Instead, the innocuous advice that until and unless the matter is head de novo, the status quo shall be maintained has become the casus beli or the bone of contention between the parties these last couple of years.

CASE AT THE HIGH COURT

At the High Court, Agona Swedru, the Appellants/Respondents/Appellants hereafter referred to as the Appellants sought to attach the Respondent herein for contempt of court on the grounds that

"The respondent in flagrant disrespect for the High Court order dated 26th June 2001 has been holding himself out as chief or Ohene of Gomoa Fetteh during the celebration of Akwambo Festival of Gomoa Fetteh, by issuing writ of summons against Nana Wiabo chief of Gomoa Nyanyano and also against Kofi Asmah and 21st Century Real Estates Limited in which the Respondent described himself as the chief of Gomoa Fetteh by granting interview to "The Independent" newspaper and "Radio Gold" an Accra FM station whereby the Respondent described himself as the chief of Gomoa Fetteh"

Even though the said application at the High Court was vehemently opposed, the learned High Court Judge granted the application for contempt in the following words:

"I therefore find the Respondent guilty of the orders of the Central Regional House of Chiefs as confirmed by Woanya J. of the Swedru High Court, which asked the parties to maintain that Status quo".

APPEAL TO THE APPEAL COURT

Aggrieved and dissatisfied with the Ruling of the High Court, Agona Swedru, the Respondent herein successfully appealed against that decision to the Court of Appeal which by a unanimous decision reversed the ruling as per the judgment of Baffoe Bonnie J A as he then was wherein he stated in part as follows:-

"In Blacks Law Dictionary 7th Edition by Bryan Garnier at page 1420 STATUS QUO is defined as "The state of things as it exists currently".

Taking a cue from the above definition of status quo, the Court of Appeal concluded their judgment on appeal thus:

"From this definition of status quo the only logical inference that can be drawn from Justice Woanyah's orders was that he was prohibiting the panel from reading their judgment or finding and ordering a fresh panel to be constituted to go into the matter. In the interim however, the state of things as existed at the time should be maintained. And from the affidavit evidence together with all its annexure the existing state of affairs was that Nana Abor Ewusie XIX had been destooled and Nana Abor Yamoah II had been enstooled as the chief of Gomoa and duly gazetted. The fact of the decision the Central Region House of Chief which set in motion the series of events that culminated in the application for prohibition cannot detract from the fact that the appellant had been installed and gazette as a chief. The Appellants continued styling of himself as the Chief of Gomoa could therefore not be said to be contemptuous of the orders of Justice Woanyah J."

This is the Court of Appeal judgment that the Appellants herein have appealed against with the following as the grounds of appeal:

GROUNDS OF APPEAL TO SUPREME COURT

(1) That their Lordships at the Court of Appeal misdirected themselves or erred in law in their interpretation of section 27 of the Chieftaincy Act, 1971 (Act 370) particularly in respect of the appeal filed by the late Nana Abor Ewusie XIX and the late Ebusapanyin Kweku WU..

(2) That their Lordships Ruling/Judgment was against the weight of evidence.

(3) Other grounds of appeal will be filed upon receipt of a copy of the record of proceedings.

So far as the records are concerned, no additional grounds have been filed and this judgment will be dealt with along the two grounds of appeal referred to supra.

Before we deal with the substantive issues, it is perhaps pertinent at this stage to comment on the conduct of this case from the High Court up to the Supreme Court.

This case is a classic example of how a very small issue can be glossed over by an over zealous litigant and thereby introduce diversionary and irrelevant matters into the main body of the case.

What commenced before a Judicial Committee of a Traditional Council as a cause or matter affecting chieftaincy, has along the lines been abandoned and a contempt application been pursued recklessly.

We are surprised that with full knowledge of counsel, the parties had been misguided to pursue this contempt application as if that was going to solve their substantive application before the Judicial committee.

In this reckless pursuit, learned counsel who should have known better that the only way the rights of the parties can be vindicated is for them to go back to the Judicial Committee of the Gomoa Akyempim Traditional Council for the third panel to be constituted to deal with the matter, have professionally failed their clients.

It should have dawned on learned counsel that, because of jurisdictional limitations imposed on the superior courts i.e the High Court and Court of appeal, which have no jurisdiction in Chieftaincy matters as a court of first instance or of appeal, respectively the path they had pursued these past years would take them nowhere. For example, when the Appellants stated in their statement of case that "in a narrow sense, this is simpliciter an application for contempt. Yes, but this is the Supreme Court, where issues are looked at GLOBALLY.

From, the continuing paragraphs of the statement of case it is clear that the Appellants are expecting the Supreme Court to engage in a wild goose chase just as they had done by treating this appeal as if it is an appeal in a chieftaincy matter. This is absolutely wrong.

We concede that this court, unlike the other superior courts, has jurisdiction in appeals from decisions of the Judicial Committees of the National House of Chiefs. But certainly this is not an appeal to this court from a decision or ruling of the National House of Chiefs.

What must be noted is that the jurisdictional limits of courts in this country has been stated in the 1992 Constitution and the Courts Act, 1993 Act 459 as well as the various Rules of Court, to wit, C. I 47 for the High court, C.I. 19 with its various amendments for the Court of Appeal, and C. I. 16 and its amendment for the Supreme Court, have not been made for nothing.

These pieces of legislation and rules of procedure are to guide and regulate the jurisdictional limits of these courts anytime they consider cases that come before them.

In this regard, the invitation being made to this court by the Appellants to treat GLOBALLY this appeal is rejected outright as misplaced and without any basis whatsoever. What should be noted is that, even though the Supreme Court is the final court of the nation, and must rise up to the occasion to do substantial justice without regard to technicalities (see case of Okofoh

Estates Limited vrs Modern Signs {1996-97 SCGLR.227}) the court will not make orders which will not address the issues that have been brought before it. In other words, the Supreme Court will not create and expand its scope of jurisdiction in the appeal that has been brought before it by straying into unauthorised grounds.

APPEAL TO SUPREME COURT

As has been stated supra, the appeal to this court has been based on two grounds. However, in the formulation of the arguments of learned counsel for the Appellants, it is unclear which of the grounds has been articulated.

After a perusal of the appeal record and the statement of case presented by counsel for the parties, this court is of the view that the success or failure of this appeal depends upon the evaluation of the meaning attached to the words "STATUS QUO" as was used in the order made by Woanya J as he then was on the 26th June, 2001 at the High Court, Agona Swedru.

What was the nature of the application that was made to the High Court, Agona Swedru which Woanya J pronounced upon?

The answer to the above question can be found at page 5 of the record of appeal, "exhibit CKE 1" wherein Woanya J himself stated the nature of the application that came before him in the following terms:

"This is a prohibition application brought by the applicant herein under the High Court (Civil Procedure) Rules 1954 (LN 14OA) order 59 rule 2(1), praying for an order to prevent the Judicial Committee of the Gomoa Assin Traditional Council, Gomoa Assin from further hearing and or determining and delivering its judgment in the Chieftaincy matter before it between Ebusuapanyin Kwadwo Abor, Nana Kofi Koranteng III, Supi Kojo were on the other hand and Nana Abor Ewusie XIX (deceased) and Ebusuapanyin Kwaku Wu on the other hand"

From the above narrative, it is clear that it was a straight forward application to prohibit a lower court from delivering its judgment on grounds as was stated by Woanya J in that Ruling. Having granted that application it was completely out of place for Woanya J to have made the consequential orders or statements that have become the subject matter of these contempt applications and appeals to the court of appeal and this court.

Be that as it may, the crucial factor to consider is whether the conduct of the Respondent herein in the manner in which he has been stated to be conducting himself by styling himself as chief of Gomoa Fetteh constitutes contempt in terms of the orders made by Woanyah J.

We then proceed to evaluate the orders made by Woanyah J. along the lines directed by the Supreme Court in the Republic vrs. SITO I Ex-parte; Fordjour case already referred to supra as follows:

Was there an order or judgment requiring the contemnor, i.e. the Respondent herein requiring him to do or abstain from doing something? Quite clearly, the orders of Woanyah J, were directed primarily at the Judicial Committee of the Traditional council prohibiting them from proceeding to deliver judgment in the case that was pending before them. The other orders that the Traditional Council should empanel a new committee to hear the suit afresh is a surplusage as without it, that would have been the appropriate step. Again, that is not an order directed at the Respondent requiring him to do or not to do something. The third aspect of the order is the one requiring that the "STATUS QUO" should be maintained unless and until the new committee determines the case afresh. Since this aspect of the order is ambiguous and unclear, contempt cannot be founded on it.

Secondly, is the order so clear that the contemnor will know precisely what he is expected to do or abstain from doing? Our evaluation and assessment of this order of Woanyah J is that it is ambiguous and unclear. There is absolutely nothing in the entire order to suggest remotely that the Respondent was not to hold or style himself as a chief of Gomoa Fetteh.

The Supreme Court unanimously stated the above principle clearly in the case of Republic vrs. High Court, Accra Ex-parte Laryea Mensah[1998-99] SCGLR when it stated that "a person commits contempt and may be committed to prison for willfully disobeying an order of court requiring him to do any act other than payment of money or to abstain from doing some act, and the order sought to be enforced should be unambiguous and must be clearly understood by the parties concerned. The reason is that a court will only punish as contempt a willful breach of a clear court order requiring obedience to its performance"

In our opinion, since the orders made by Woanyah J which have been complained of are so fluid and clearly unenforceable in the manner in which they are being interpreted by the Appellants, the instant appeal herein must fail and same must be dismissed.

Thirdly and finally, has the Respondent wilfully disobeyed the orders of the court by failing to comply with the orders of the court?

We do not think so. This is because, as it has already been pointed out, the orders of the court relating "STATUS QUO' construed in their ordinary meaning in the context in which they have been used, does not require compliance or abstention from the doing of an act, to wit holding himself out as a chief of Gomoa Fetteh at the given time.

Having therefore answered all the three questions posed above on the lines suggested in the Ex-parte Fordjour case in the negative, it is established clearly that the conduct of the Respondent herein cannot constitute contempt in terms of the orders made by Woanyah J as he then was, in line with the Supreme Court decision in the case of in Re Effiduase Stool Affairs (No.2) Repubic vrs. Numapau, President of the National House of Chiefs and others Ex-parte Ameyaw II (No.2) already referred to supra.

On the facts, the Appellants have woefully failed to make a prima facie case for the Respondent to be called upon to make his defence if at all. The learned Trial Judge was therefore wrong to have committed the Respondent for contempt. What had to be noted is that, it is not the decision of the Judicial Committee that made the Respondent Chief of Gomoa Fetteh. That decision could have created the enabling environment for his nomination, election and installation by the Kingmakers of Gomoa Fetteh. The claim that an order for the parties to return to the "STATUS QUO" connotes a return to the position in which the Respondent was before he was made a chief is clearly untenable.

Under the circumstances we endorse the decision of the Court of Appeal on the matter. Just as we began this judgment, we reiterate the view that it is better for guilty persons to escape the scope of contempt by strictly enforcing the standards of proof as in criminal cases than for innocent persons such as the Respondent to be committed.

The appeal herein is accordingly dismissed as woefully unmeritorious and undeserving of any consideration whatsoever. The parties in this appeal are advised to seek wise counsel to pursue in the right fora the vindication of their Chieftaincy suit. The practice whereby litigants and sometimes counsel seek to use criminal and quasi -criminal actions to muzzle their opponents in chieftaincy actions is seriously deprecated and is frowned upon. This appeal is accordingly dismissed.

J.V.M. DOTSE

(JUSTICE OF THE SUPREME COURT)

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