IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- 2011

CORAM: BROBBEY,(PRESIDING) J.S.C.

DR**.** DATE-BAH,J.S.C.

BAFFOE-BONNIE,J.S.C.

ARYEETEY J.S.C.

AKOTO-BAMFO (MRS.) J.S.C.

SUIT NO: *CHIEFTAINCY APPEAL J2/1/2011*

DATE: *26TH OCTOBER, 2011*

1. **NANA ATOAA SRAMANGYEDUA III**
   QUEEN MOTHER OF WENCHI, WENCHI
2. **NANA DR. ABREFA MENSAH ABRAMPA**
   ABAKOMAHEMA OF WENCHI
3. **NANA OWUSU ACHIAW KUSI II**
   AKRAFOHENE OF WENCHI
4. **OHENEBA DR. KRABIRI BOATENG I**
   JUMAKWAIHENE OF WENCHI, WENCHI

PETITIONERS/APLTS
RESPONDENTS

Vs

1. **KWADWO NYAM NKETIA, WENCHI**
2. **NANA OWUSU ANSA KOKROKO**, KRONTIHENE OF WENCHI TRADITIONAL COUNCIL, AND ACTING OMANHENE AND THE PRESIDENT OF THE HOUSE
3. **NANA KUMI ADUSI POKU**
   GYEASEHENE OF WENCHI
   ALL OF WENCHI, B/A

RESPONDENTS/RESPS.
APPELLANTS

J U G D M E N T

BROBBEY JSC:

This is the unanimous judgment of the court. The facts which gave rise to this litigation were as follows: Nana Abrefa Mbore Bediatuo VII was the paramount chief of Wenchi Traditional area. He died on July 7, 2004. After his death, a former chief of Wenchi, Nana Kusi Appea, filed a petition at the Brong Ahafo Regional House of Chiefs. The petition was against the Wenchi Queen mother and the Wenchi Traditional Council. The petition was mainly for a declaration that he was the sitting chief of Wenchi Traditional Area. The petition was filed in April 2005. It was finally determined in favour of the queen mother and the Traditional Council on the 6th of June 2006. A series of meetings followed the determination of the case on that day. The most relevant of the decisions taken at the meetings was that the king makers requested the queen mother to nominate a person to be considered as a chief for the Wenchi Traditional Area to replace the deceased chief.

The queen mother replied that she needed three weeks to make the nomination. The king makers who made the request to the queen mother were of the opinion that since the death of the last chief, the stool of Wenchi had been vacant for some time and needed to be occupied. They premised their demand on the facts that already two royals had expressed interest in the position of the chief and had made the necessary approaches to the queen mother to that effect. Further, the process of replacing the chief had started soon after the former chief died in 2004. It was not new to the contestants, the queen mother and the king makers. They therefore insisted that they could not wait for as long as three weeks demanded by the queen mother for a chief to be nominated. The queen mother on the other hand maintained that there were consultations to be made and other contestants had to be given the chance to put forward their interests and therefore she could not be hustled into making the nomination as immediately as the king makers demanded.

Following what appeared to be a stalemate, the king makers approached the queen mother three times for her to nominate a candidate to be considered as the chief of Wenchi. According to the king makers, she delayed unreasonably. They therefore approached Madam Abena Frema Atuahene who performed the customary tasks which would have been performed by the queen mother in respect of the nomination and installation of the chief. Eventually, Kwadwo Nyam Nketia, hereinafter referred to as the first respondent, was nominated, enstooled and installed as the chief of Wenchi to replace the deceased Nana Abrefa Mbore Bediatuo VII.

The queen mother, the Wenchi Abakomahene and Wenchi Jumankwaihene filed a petition in the Brong Ahafo Regional House of chiefs. The respondents to the petition were Kwadwo Nyam Nketia, the chief elect, Nana Owusu Ansa Kokroko, the Krontihene and Acting Omanhene of Wenchi and Nana Kumi Adusi Poku, Gyasehene of Wenchi as

the first, second and third respondents respectively. The reliefs claimed in the petition were for:

> "a. A declaration that the purported nomination of the first respondent by Madam Abena Frema Atuahene as the candidate for Wenchi paramount stool is void;
>
> b. A declaration that the first petitioner is the rightful person to nominate a candidate to the King makers of Wenchi Traditional Council to be installed as the Omanhene of Wenchi.
>
> c. A declaration that the 2nd and 3rd respondents cannot install and enstool the 1st respondent as the Omanhene of Wenchi as the person who purported to nominate him lacks capacity to do so.
>
> d. An order for perpetual injunction restraining the 1st respondent from styling or holding himself as the Chief of Wenchi;
>
> e. An order of perpetual injunction restraining the 2nd and 3rd respondents from installing and enstooling the 1st respondent as the Chief of Wenchi."

In the Regional House of Chiefs, judgment was given in favour of the respondents. The petitioners appealed to the National House of Chiefs which entered judgment for the petitioners. It was against the latter judgment that the appellants who were respondents to the original petition have appealed to this court.

The original grounds of the appeal were:

a) "The judgment of Nananom of the Judicial Committee is against the weight of evidence.
b) The judicial committee found that the 1st appellant/respondent had not been properly summoned by the Elders and Kingmakers of Wenchi to nominate a candidate for the Wenchi paramount stool contrary to the clear evidence on record that 1st appellant/respondent admitted being so summoned and thereby drew an erroneous conclusion.
c) The Judicial Committee erred when it found that 1st appellant/respondent never agreed or refused to nominate a candidate despite overwhelming evidence on record to the contrary.
d) The Judicial Committee erred on a matter of fact when it found that 1st appellant/respondent never had any opportunity to nominate a candidate despite 1st appellant/respondent's own admissions on record to the contrary.
e) The Judicial Committee erred as a matter of law when it found that Exhibit 1, the Report of the Wenchi Stool Affairs Committee of the National House of Chiefs, could not be relied upon by a judicial panel to arrive at a judgment and thereby rejected the findings made therein and arrived at an erroneous conclusion.
f) The Judicial Committee erred as a matter of law that the processes leading to the enstoolment of 1st respondent/appellant was not consistent with Wenchi customary practice.

g) Nananom of the Judicial Committee of the National House of Chiefs (hereinafter, "Nananom) erred when they held that 1st petitioner/appellant/respondent (hereinafter, "1st respondent") "never took part in any meeting to discuss the issue of nomination of a candidate" contrary to clear evidence on record by which 1st respondent admitted as such.
h) Nananom erred when they held l that 1st respondent was never summoned to a meeting of the Wenchi royal family and Wenchi Kingmakers contrary to clear evidence on record.
i) Nananom erred when they disregarded evidence of Wenchi custom to the contrary and held that where a chief-elect uses any sword other than the customarily designated sword the enstoolment cannot be valid under customary law.
j) Nananom erred on a point of law when they held that where a chief-elect is not confined for the required period his enstoolment cannot be valid under customary law.
k) Nananom erred on a point of mixed law and fact when they held that the enstoolment of 1st respondent/appellant without the participation of the 1st respondent and the procedure adopted did not conform to the customary practice of Wenchi.
l) Nananom erred when they relied on alleged facts not in the record of appeal to determine the appeal.
m) Nananom erred on a point of mixed law and fact when they held that the trial court, the judicial committee of the Brong-Ahafo Regional House of Chiefs, erred in relying on the National House of Chiefs' Wenchi Stool Affairs Committee on Enquiry Report to arrive at its judgment.
n) Nananom erred when they found that only two chiefs in the history of Wenchi had been enstooled by kingmakers without the participation of the queen mother and fell into further error when they held that such was not the customary practice of Wenchi."

The appellants later filed what they described as additional grounds of appeal. From the original and additional grounds of appeal, the issues which the appellants summarized for determination in this court were:

"(1) Whether or not 1st respondent unreasonably refused to nominate a candidate for the Wenchi Paramount Stool?

(2) Whether or not the kingmakers of the Wenchi Paramount Stool properly exercised their rights to nominate and enstool 1st appellant upon the refusal of 1st respondent to honour the kingmakers' request to nominate one of two known and accepted candidate?
(3) Whether or not the report of the committee of Enquiry on Wenchi Stool Affairs, 1976 could validly be relied upon for a judgment?
(4) Whether or not 1st appellant was properly nominated and enstooled as the Omanhene of Wenchi."

A number of issues arose from the above as well as from the statement of case of the respondents. To resolve the issues, it is pertinent to consider the 1992 Constitution, Act 277 which defines who a chief is in this country. It reads:

> "a person, who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage."

This article underscores the requisites to be satisfied when considering the making of a chief. They are simply these:

1. Nomination
2. Election/Selection
3. Enstoolment, enskinment or installation

The satisfaction of these requirements should be in accordance with the peculiar customs and usages of the people in the area for whom the chief is being considered. From a plain reading of the definition in the Constitution, the most fundamental requirement is nomination. This applies of course to areas where nomination is an essential requirement before settling on a person to be considered as a chief. In this context, nomination simply means the proposal of a person for election or selection as a chief. Essentially, nomination boils down to naming or declaring a person who is considered by the queen mother as the rightful person to be made a chief.

Nomination should first take place before all the other processes can follow. In other words, it should always precede the election, selection, enstoolment and installation of the chief. The last four processes depend on the existence of appropriate candidate. They can only be performed after nomination. It is obvious that if no person is nominated, there will be no person to be elected, selected, enstooled or installed as a chief.

Nomination provides the foundation on the basis of which the other processes will take place. If there is no nomination at all, or where the nomination is so flawed or faulty as to be void, there will be no basis for performing the other four processes. In effect, nomination is sine qua non to the making of a chief, under normal circumstances.

At customary law, there are clearly well settled procedures to follow in making the nomination. It is not everybody or anybody who can make a nomination. By custom, only accredited queen mothers are authorized to make nominations. The only exception to the rule on nomination by queen mothers is where the king makers take over the making of a chief after the failure or refusal of the queen mother to make the nomination.

In the instant case, all the parties accept the fact that the first respondent is the queen mother of Wenchi. In that capacity, she is the rightful person to nominate a candidate for consideration as Wenchi chief.

The facts show that after the judgment had been given by the Regional House of Chiefs in connection with the case filed by Nana Kusi Apea, the family had their first meeting. That was on the 6th June 2006. The object was to celebrate the victory and ostensibly to plan the way forward. There was another meeting in the evening of the same day. At that meeting, the queen mother was requested to give to the king makers the name of the next candidate to be considered as the chief. She asked to be given three weeks within which to make the nomination. On the following day at 10.00 am there was another meeting at which she was again asked to name a candidate. She repeated her request to be given three weeks to name the candidate. The next request for the candidate was made at another meeting at 3.00 pm on the 7th of June. She again asked to be given three weeks. By 6.30 p.m on the 7th of June, 2006, sounds were heard of "fontomfrom" which signified that a new chief had been selected. He was the first appellant. By the 12th of June 2006, the chief had been installed.

That was immediately followed by the issuance of the petition in the Regional House of Chiefs which has culminated in the instant appeal. Throughout the case, the appellants had maintained that the failure of the queen mother to name a candidate when requested to do so was "unreasonable." They took the view that since the behavior of the queen mother was unreasonable, they were justified in going ahead to take over the nomination from her and to install another person for the position of a chief.

The simple answer to this issue is this: there is no doubt that the queen mother was given three chances to nominate a candidate. But all the three chances took place within a period of about twenty four hours – from 6th June to 7th June 2006. For the nomination to be properly made, all interested royals should be given the chance to consider putting their names forward for the post of the chief, if they are qualified. Additionally, custom demanded that there should be consultations by the queen mother with her advisors as well as elders. There are several authorities on the need for consultations in such matters as will be found in R. S. Rattray, ***Ashanti Law and Constitution,*** 1929 ed. at pa 1443 and ***In Re Kwabeng Stool; Karikari and Anor. V Ababio & Others*** [2001-2002] SCGLR 515.

Considering the fact that the demand was made soon after returning from the court judgment and repeated at 10 am and 3 pm, it follows that the queen mother was given a period of about twenty four hours within which to name a candidate. It cannot be said that the queen mother was given sufficient time to make necessary consultations or give due chances to other royals to decide whether or not to put their names forward for consideration. The basic question is whether or not the period of twenty four hours given to the queen mother to perform that customary function was reasonable or unreasonable In the peculiar circumstances of this case, it cannot be said that the twenty-four hour period given to the queen mother to perform that customary function was reasonable. In

the circumstances, the failure or refusal of the queen mother to make the nomination within twenty four hours could not be described as unreasonable.

She was not given adequate time to perform her functions. If she was not able to perform her functions properly, it was the nature of the demands made by the king makers which made it impossible for her to perform her functions properly. In effect, the king makers created the conditions which made it impossible to perform her functions properly and then turned round to complain and blame her that she did not perform her functions properly. That was unacceptable. Was the situation created different from the proverbial statement that “you can give a dog a bad name so that you can get the opportunity to hang it?” That is unacceptable to a court of equity and conscience like this Supreme Court.

When it became apparent to the appellants that the queen mother was not going to nominate a candidate within the time that they wanted, the king makers are alleged to have contacted the Obaapanin of the family by name Madam Abena Frema Atuahene. It is not clear if she nominated the first appellant for the position of Wenchi chief. As stated already, nomination is a duty conferred on queen mothers. For a woman to qualify to make a nomination, she must be a queen mother. If the one who performs the function is not a queen mother, she is not qualified to perform that function.

Obaapanin Frema Atuahene was not a queen mother. If she was contacted to nominate the first appellant as the chief and did in fact nominate him as such, she was not qualified to do so. That is the same as saying that she did not have the capacity to make the nomination or perform the function exclusively assigned to queen mothers. Her nomination was therefore invalid.

At every given time, there is only one queen mother in a place. There can be no proper situation where there is a queen mother at post and yet another person is chosen to perform duties assigned exclusively to the queen mother. If what the appellants did is endorsed, it will be a recipe for chaos: It will mean that it is possible to have a queen mother at post and yet king makers can bypass her and get another person to perform her functions for her, whether or not she has endorsed that move or delegated the other person to function for her.

At her installation, every queen mother including the first respondent swears to obey the call of the elders at day or night time, during rainy days or at non rainy days. It was alleged that the queen mother in the instant case was summoned by the elders but she refused to heed their calls. The failure to attend to the calls of the king makers constituted a ground for destoolment. Common sense alone dictates that if any queen mother including the first respondent is recalcitrant to, or refuses to heed the call of, the elders she provides a ground for her deposition. She should be deposed to pave the way

for another person to be appointed as the queen mother and to perform the functions assigned to queen mothers. That was what happened in ***Republic v Akim Abuakwa Traditional Council; Ex parte Sakyiraa II*** [1975] 2 GLR 115.

As was stated several years ago in ***Komey v Onanka*** [1962] GLR52 by Ollennu J (as he then was), at p 53:

> "So long as the substantive holder of an office has not been removed, has not resigned or abdicated or died, the office cannot be vacant, and any purported installation of another person into that office is void ab initio."

We would add that so long as the substantive holder of the position of the queen mother had not been removed, had not resigned or abdicated or died, the office cannot be vacant for another person to be asked to perform her functions for her without her authority or consent.

All the parties in the instant case agree that at all material times up till today, the first respondent was and has remained the queen mother for Wenchi. It was not proper to ignore her and get another person to perform her functions while she continued to remain at post as queen mother and continued to operate as such queen mother. Obaapanin Frema Atuahene could not have properly performed the functions assigned to queen mothers while there was a sitting queen mother who had not delegated her so to do.

There is no doubt that where the queen mother is unwilling to co-operate with the king makers or reluctant to nominate a candidate for three occasions, the king makers can proceed to put forward a candidate as a chief. This is a customary law principle too well settled to require any elaboration. An instance will however be found in ***Republic v Boateng; Ex parte Adu-Gyamfi II*** [1972] 1 GLR 317. The taking over by the king makers should however occur only where the queen mother has been given reasonable opportunity to nominate the candidate but she has failed to do so. If the king makers in the instant case went ahead and put forward the first appellant as the chief because the queen mother did not name a candidate within twenty four hours, it was they who made it impossible for her to name the candidate by the haste in which they demanded the candidate from her. As stated already, they created a situation which disabled the queen mother from performing her duties properly. They could not turn round and take advantage of the situation which they themselves had created by using it to take away her functions from her.

References were made to the fact in the past there had been occasions where chiefs had been nominated in the Wenchi Traditional Area without the involvement of queen mothers. The instances cited from the ***Committee of Enquiry into Wenchi Stool Affairs*** were situations where the queen mothers were given reasonable times and reasonable opportunities to nominate candidates and they refused or neglected to name the candidates. They are distinguishable from the facts of the instant situation where the queen mother was not given the opportunity to nominate a candidate because she was

not given adequate time to confer with her elders or make the necessary consultations before announcing her choice of candidate.

It was argued that the court or judicial committee of the National House of Chiefs could not base its decision on the report of the ***Committee of Enquiry into the Wenchi Stool Affairs.*** That argument is untenable considering the statutory law on the issue. In the Courts Act, 1993 (Act 459), s 55(2), the courts are permitted to consider "reported cases, text books and other sources that may be appropriate" when deciding on the contents of customary law. The issue at stake in the instant case was the content of the customary law of Wenchi which was covered by the report in question. The Regional House of Chiefs was right in taking into account the report of the ***Committee on Wenchi Stool Affairs*** which was clearly one of the appropriate sources. By the Courts (Amendment) Act, 2002 (Act 620), s 5, the judicial committees of the Regional House of Chiefs forms part of the lower courts of Ghana.

The argument that the process of nomination should be considered as having been started in 2004 when the last chief died or in 2005 when Nana Kusi Apea instituted his action is untenable. The case of Nana Kusi Appea lasted for nearly two years. Even if the process started in 2004 or 2005 and therefore could be said to have been pending, the king makers and all concerned knew pretty well that the lapse of time for the litigation had created a lull. Memories must have faded or waned and so people had to be reminded or interest rekindled somehow or the other. These could not be done within twenty four hours which the king makers gave to the queen mother to make the nomination. It should be borne in mind that the exercise was to nominate a chief for a whole group of people and not just a few individuals.

The attempt to single out Wenchi Traditional Area as having special customs different and distinct from other Akan customs on the powers of queen mothers and installation of chiefs was not successful. The custom on the role of queen mothers in the installation of chiefs which featured in the instant case was the same as the general Akan custom on such matters. Wenchi was part of he Ashanti Region until the establishment of the Brong Ahafo Region during the rule of the late Dr Nkrumah's CPP Government. The creation of the separate Region did not create along it new concepts of customary law for that new creation to be used as the reason for the generation of new customs. The people of Wenchi were Akans within the Ashanti Region and their customs remained unchanged in spite of the creation of the separate Region. It was the same people who were within the Ashanti Empire who geographically were mapped out to belong to a different Region.

On the facts, the queen mother could not be said to have acted unreasonably merely because she did not nominate a candidate within twenty four hours of the king makers making their demand for a candidate. The consequence of not giving the queen mother sufficient time to nominate a candidate and proceeding without her involvement was that the first appellant's election, selection, enstoolment and installation took place without a valid nomination.

Apparently, it is to forestall such hasty installations that the Chieftaincy Act, 2008 (Act 759), s 62(2) now contains the sweeping provision that:

> "(2) Despite any provision of this Act, an installation of a chief or queen mother is not valid unless, at least fourteen days before the date of the installation, public notice of it in accordance with the custom of the area, has been given."

If the installation of the first appellant had taken place after the coming into force of Act 759, it would not have been valid, considering the fact that the twenty-four hour notice or the seven-day notice of the installation (from 6th June to 12th June 2006) would not have satisfied the mandatory two weeks demanded by Act 759.

It has been explained already that where nomination is an essential part of the process for the making of a chief, like the Wenchi Traditional Area, the most fundamental process is nomination. All other processes are contingent upon a valid nomination taking place. Without a valid nomination, there can be no valid election or selection or enstoolment or installation.

On the facts of the instant case, the purported nomination of the first appellant was totally flawed, faulty, invalid and void. The ex post facto processes of election, selection, enstoolment and installation of the first appellant are irrelevant because they lacked the necessary foundation on the basis of which they could stand. As Lord Denning put it in the celebrated Sierra Leonean case of ***Macfoy v United Africa Trading Company Ltd*** [1961] 3 All ER 1169, at pages 1172-1173, PC:

> "If an act is void, then it is in law a nullity. It is not only bad, but incurably bad… And every proceeding which is founded on it is also bad and incurably bad."

That passage was appropriately adopted and applied in ***Mosi v Bagyina*** [1963] 1 GLR 337, SC.

In the instant case, there was no nomination at all. If there was any nomination, it was void and incurably bad. All the processes which followed from that void nomination were bad and incurably bad.

The subsequent processes of election, selection, enstoolment and installation of the first appellant simply fall out of place and should be regarded as equally invalid and void.

Having taken this line of reasoning, it is not necessary to consider the propriety or otherwise of the processes which took place after the flawed nomination.

For the foregoing reasons, the appeal fails and is dismissed.

[SGD] S. A. BROBBEY
JUSTICE OF THE SUPREME COURT

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