IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA, A.D.2014

CORAM: J. V. M. DOTSE JSC (PRESIDING)
ANIN YEBOAH JSC
P. BAFFOE-BONNIE JSC
N. S. GBADEGBE JSC
A. A. BENIN JSC

CIVIL APPEAL
No J4/46/2010

16TH JANUARY, 2014

IN THE MATTER OF
THE REPUBLIC

VRS

1. NII ADAMAH THOMPSON - - - APPELLANTS

2. HUMPHREY NII TEIKO ARYEE

3 ASAFOATSE CHRISTOPHER NETTEY

4. NII TETTEH ANKAMAH II

5. OFFEI DODOO

6. NII ANUM TETTEH

7. OTSIAME ALIMO

8. ATAA P. OKOE ARYEE

9. NAA AYIKAILE NADOBEN

10. JOHN ARYEETEY ARYEE

11. PERCY OKOE ADDY

EX- PARTE; NII TETTEH AHINAKWA II - - - RESPONDENT

(SUBSTITUTED BY FRANCIS NII AYIKAI)

JUDGMENT

BENIN, JSC:

This matter involves persons all of who belong to the Gbese Division of the Ga State. So it's like a house divided upon itself, which is quite unfortunate. It's one of the numerous chieftaincy problems that continually bedevil a lot of communities in this country, with the result that development suffers because the leadership is disunited and for that reason they are unable to mobilize the people at the grassroots. At the end of the day there is no winner, for whoever succeeds in the protracted litigation will still need support of all in order to rule. Why then do they fight among themselves? The answer to this question posed is not easy to find, except that the various factions believe, rightly or wrongly, that either side wants to cheat the other, or trample on their rights. It is in pursuit of their rights in the family or clan that the parties go to court to seek redress, not counting the cost of litigation. And the various courts or tribunals do not make matters any easier by oftentimes unduly delaying the matter. But as the saying goes, there is a pot of gold at the end of the rainbow, so the parties will fight to the bitter end, hoping one of them will mount the stool eventually.

This is one of such cases wherein the parties have contested the occupancy of the Gbese Stool in the Ga State since 1980, thirty-three years now. We would have wished this decision we are about to render will end the dispute but, as we shall shortly demonstrate, it may not.

The action began at the Ga Traditional Council (GTC) when the original petitioner/plaintiff, Nii Tetteh Ahinakwah II, suing as the head of Naa Onidin Akera/Akote Krobo Saki We family, sought the intervention of the GTC to declare his faction as the rightful persons to occupy the Gbese stool, and for a declaration that the nomination, installation and enstoolment of the defendant, Nii Ayitey Agbofu II, as Gbese Mantse was null and void. He also sought recovery of stool property in the defendant's custody. The defendant challenged the petitioner/plaintiff's capacity to sue. The petitioner/plaintiff passed away and one Francis Nii Ayikai, who claimed to have been elected the new head of family, applied to the GTC to be substituted for the late petitioner/plaintiff. This request, together with some other reliefs he sought did not find favour with the GTC. He appealed to the Greater Accra Regional House of Chiefs (GARHC) which allowed the appeal on 19th June 1985. All the foregoing facts have been gathered from the final judgment of the Judicial Committee of the GARHC, hereinafter called the Committee, dated 17th February 2003.

The record indicates that following the resolution of the appeal by the GARHC the matter was not returned to the GTC for same to be continued there, as one would normally expect. Instead the GARHC, with the consent of both lawyers, assumed original jurisdiction over the matter, heard evidence and delivered judgment. This is the relevant part of the judgment of the Committee:

"This is the proper forum because the dispute centred around a divisional stool in Greater Accra Region……..At the request of the two Counsels, the Judicial Committee of the Regional House of Chiefs agreed to hear the substantive case under section (sic) 23(3) of C.I. 27……..In the circumstances we find our way clear and proceed to declare the nomination, election and installation of the first defendant/respondent, Nii Ayitey Agbofu II, null and void and of no legal consequence. As a corollary we order that the Gbese Stool should be handed over

to the elders of the third ruling house for the purpose of installing their candidate and the incumbent should give vacant possession of all immovable property to his successor-in-office."

Subsequent to this judgment several applications, notably for contempt, have been made, mostly in the Superior Courts. It is not necessary to recall these applications, except such as are relevant in this appeal. For our present purposes it suffices to state that the applicant, the respondent herein, alleged that the then respondents, the appellants herein, have failed and/or refused to comply with the terms of the orders issued by the Committee, which we quoted above. The appellants asserted otherwise claiming to have complied with the orders by handing over the properties on 10th September 2006. The respondent commenced contempt proceedings against the appellants at the High Court seeking 'a joint and several order committing the above-named respondents and each of them to prison for their contempt of the judgment and **final short order** of the Judicial Committee of the Greater Accra Regional House of Chiefs, Dodowa, dated the 17th day of February 2003……' (The emphasis is supplied). That application was placed before Dzakpasu J. It must be pointed out that before the application for contempt went to the High Court presided over by Dzakpasu J. the respondent had brought another contempt application against the first six appellants herein which was heard by another High Court presided over by Lartey-Young J. who found them guilty and convicted them. This other process has also been raised in this appeal and will be addressed later in this decision.

The final short order of the Committee was directed to *"the elders and the respondent…….to release the Stool of Gbese and other paraphernalia to the petitioners and their elders to install their candidate."* This is the order the appellants are alleged to have violated. The High Court presided over by Dzakpasu J. upheld the application and committed all the respondents, save the seventh, for contempt. The respondents appealed to the Court of Appeal, but did not succeed. Hence this is a second appeal against their committal for contempt.

As many as sixteen grounds of appeal have been raised before this court. Some of the grounds were not argued and are thus deemed to have been abandoned;

these are grounds 7, 8, 9, 10, 11 and 14. The ground numbered 15 is no ground of appeal and is struck out accordingly, thereby leaving ten grounds which were all addressed on, namely grounds 1, 2, 3, 4, 5, 6, 12, 13, 16 and 17.

We begin with grounds 16 and 17 which go to the foundation of the whole matter which is the question of jurisdiction. They provide thus:

16. The whole judgment of the Judicial Committee of the Greater Accra Regional House of Chiefs sought to be enforced by contempt proceedings was a nullity and so absolutely unenforceable.

17. The Greater Accra Regional House of Chiefs had no jurisdiction to hear the matter in exercise of its original jurisdiction.

Counsel for the appellants argued them together. This point has been raised for the first time in this court; the courts below did not address it, most probably because it was not raised before them. Nonetheless it is a valid point since the issue of jurisdiction may be raised at any time, even on a second appeal. See DJABARTEY v. AWUA (1938) 4 W.A.C.A. 202; BENIN v. ABABIO (1957) 2 W.A.L.R. 216; MOSI v. BAGYINA (1963) 1 G.L.R. 337. That explains why each court must ensure that it has jurisdiction to entertain a particular matter, whether the point is raised by the parties or not. If the court realizes that it has no jurisdiction in the matter it must decline to hear it; no discretion arises.

We have referred to how the Committee came to assume original jurisdiction in this matter. According to the record it was conferred upon it by both Counsels by virtue of rule 23(3) of C.I. 27. The Committee was also convinced it had jurisdiction because it was a matter involving a Divisional Stool in Greater Accra. The questions that must therefore be answered are these: firstly, does the GARHC, and for that matter a Regional House of Chiefs, have original jurisdiction in respect of a chieftaincy cause or matter involving Divisional Stool or Chief in the Region? Secondly, does rule 23(3) of C.I. 27 confer or empower parties to confer original jurisdiction on a Regional House of Chiefs in respect of a chieftaincy cause or matter involving Divisional Stool or Chief?

In the judgment of 17th February 2003, the Committee stated that it was the appropriate forum to hear the chieftaincy matter involving the Gbese Stool. Unfortunately it did not give any reason or reference for that positive assertion. Be that as it may the jurisdiction of a Regional House of Chiefs itself and its Judicial Committee was set down by legislations, which at the material time were the Chieftaincy Act, 1971, (Act 370) and Chieftaincy (National and Regional Houses of Chiefs) Procedure Rules, C.I. 27.

Part V of Act 370 deals with Proceedings Affecting Chieftaincy. Section 23 is particularly important in this discussion. It is headed 'Original and appellate jurisdiction of Regional House of Chiefs' and it provides:

(1) Each Regional House of Chiefs shall have the following original and appellate jurisdiction:- (a) original jurisdiction in all matters relating to a paramount stool or the occupant of a paramount stool; and (b) appellate jurisdiction to hear and determine, subject to the provisions of clause (3) of article 105 of the Constitution, appeals from the highest Traditional Councils within the area of authority of the Traditional Authority within which they are established, in respect of the nomination, election, appointment, installation or deposition of any person as a Chief.

(2) Each such House of Chiefs shall also have jurisdiction to hear and determine appeals against any judgment or order given or made by any Traditional Council in any other cause or matter affecting chieftaincy.

(3) Any person aggrieved by any judgment or order made by a Traditional Council in any cause or matter affecting chieftaincy may appeal to the House of Chiefs of the Region as of right against the judgment or order.

(4) The original and appellate jurisdiction conferred on each Regional House of Chiefs shall be exercised by a judicial committee of that House comprising three persons appointed by that House.

(5) A judicial committee appointed under this section shall be assisted by Counsel who shall be a lawyer of not less than five years' standing as a lawyer appointed by the Regional House of Chiefs on the recommendation of the Attorney-General.

(6) Any appeal to a Regional House of Chiefs against a judgment or order of a Traditional Council shall be lodged within thirty days after the judgment or order appealed against unless the Regional House of Chiefs upon application made to it within thirty days after the expiration of the period within which an appeal may be lodged under the subsection, grants an extension of time within which to lodge an appeal.

(7) Upon any such appeal a Regional House of Chiefs may, subject to the provisions of this section confirm, reverse or vary the decision appealed against or remit the matter or any part thereof for reconsideration to the Traditional Council from which the appeal is brought and in each case subject to such conditions or directions as the Regional House of Chiefs may consider fit.

The entire section 23 and especially section 23(1)(a) of Act 370, supra, is clear and unambiguous and requires no interpretation: the original jurisdiction of a Regional House of Chiefs is restricted to chieftaincy causes or matters involving paramount stools or their occupants only. Thus the Judicial Committee of the GARHC erred when it held it was the appropriate forum to hear the matter involving the Gbese Stool, which is not in dispute, is a Divisional Stool within the Ga Paramountcy.

The Committee also assumed original jurisdiction in the matter at the request of both Counsel, and by virtue of rule 23(3) of C.I. 27. At this point let us state that parties and/or their lawyers cannot by consent or acquiescence confer jurisdiction upon a court where the court otherwise does not have such jurisdiction; see QUIST v. KWANTRENG and Others (1961) G. L. R. 605. And any agreement to confer jurisdiction on a court must equally be authorized by legislation. A typical example of this kind of jurisdiction by express consent existed under the Courts Act, 1971 (Act 372), since repealed. By section 37(1)(a) of the said Act, the jurisdiction of a District Court Grade 1, was limited to claims not exceeding ₵2,000 in civil matters. However, by section 37(3) of the same Act the court could proceed to hear a matter where the claim exceeded ₵2,000 if both parties agreed that the court should hear the matter. A similar provision existed under the Courts Act 1960 (C.A. 9), repealed, section 98(2), which provided that

'Where it appears that the subject-matter of a land cause exceeds £200 the (local) court shall not exercise jurisdiction except with the consent of the parties.'

In such scenario, the agreement by the parties enables the court to assume jurisdiction within the ambit and authorization of the statute. In other words, it is the statute, not the parties, which is conferring the jurisdiction on the court.

It is in this light that we have to examine the consent to hear the matter supposedly granted to the Committee by the lawyers under rule 23(3) of C.I. 27. It becomes necessary therefore to reproduce this subsection here. It reads:

*'The Judicial Committee may in hearing the appeal amend the grounds of appeal and make any order necessary for determining the real issue or question in controversy between the parties, and may amend any defect or error in the record of appeal and may direct the Judicial Committee below to enquire into and certify the finding on any questions which the Judicial Committee thinks fit to determine before final judgment in the appeal, and severally shall have as full jurisdiction over the whole proceedings at the first instance, **and may re-hear the whole case**, or may remit it to the Judicial Committee below to be reheard or to be otherwise dealt with as the Judicial Committee directs.* (The emphasis is supplied.)

We have examined this provision and we do not find where it allows a Regional House of Chiefs to assume original jurisdiction in a chieftaincy cause or matter which does not involve a paramount stool or occupant thereof. The closest expression in the provision just cited which might have deceived or misled the Committee is where it is said it 'may re-hear the whole case'. As rightly pointed out by Counsel for the appellants, re-hearing means the matter has been heard by the Judicial Committee of the Traditional Council and it has given judgment. And since appeal is normally by way of re-hearing, the Judicial Committee of the Regional House of Chiefs, in sitting on the appeal could decide to re-hear the matter if that would enable it to do justice in the appeal. It is never an original jurisdiction that it exercises, but an appellate one, so whatever re-hearing it conducts is to facilitate a decision in the appeal before it.

Our opinion is that rule 23(3) of C.I. 27 does not confer original jurisdiction on a Judicial Committee of a Regional House of Chiefs; neither does it enable parties and/or their lawyers to confer original jurisdiction on such a Committee. In the instant case the matter went to the GARHC by way of an interlocutory appeal for it to determine the capacity of the successor to the original petitioner/plaintiff. The cause had not been heard at all by the GTC, for according to the Committee's 17th February 2003 judgment, the original petitioner died after the close of pleadings and it was the application to substitute him that led to the interlocutory appeal. Thus the right to re-hear vested in the GARHC had not yet arisen. It will set a dangerous precedent to allow this decision to stand; for it will mean that a court with appellate jurisdiction can just decide to take over any matter and hear same under an original jurisdiction when the only reason why the matter is before it is to determine an interlocutory appeal. The proper procedure is that after an interlocutory appeal, such as the one on hand, the appellate tribunal is to give a decision and send the case back to the court below to hear the matter on merits. It is only after the court below has disposed of the case and decided on the rights of the parties, and the matter has come to the appellate court on appeal, that the latter court could exercise the discretion to re-hear the matter if it is deemed necessary. There was clear misapplication or misdirection as regards rule 23(3) of C.I. 27, we so hold.

We have had to look at other provisions of C.I. 27, particularly rule 23(1) in order to address the extent, if any, of the original jurisdiction of a Regional House of Chiefs to deal with a chieftaincy cause or matter affecting a Divisional Stool or occupant thereof. Rule 23(1) reads:

The Judicial Committee may in hearing the appeal *amend the grounds of appeal and make any order necessary for determining the real issue or question in controversy between the parties, and may amend any defect or error in the record of appeal and may direct the Judicial Committee below to inquire into and certify its finding on any questions which the Judicial Committee thinks fit to determine* ***before final judgment in the appeal****; and generally* ***shall have as full jurisdiction over the whole proceedings as if it were hearing the proceedings at first***

instance*, and may remit it to the Judicial Committee below to be reheard or to be otherwise dealt with as the Judicial Committee directs.*(Emphasis supplied)

This provision gives wide discretion to the Judicial Committee of a House of Chiefs to assume full control over a matter that has come before it on appeal. Read together with rule 23(3), it may re-hear the matter de novo if that will enable it to attain justice in the appeal. However it could only exercise that right if the original suit before the Traditional Council has been disposed of on merits and a final judgment has been given. In that case if the record indicates a mistrial, for instance, then rather than sending the case back to the Traditional Council to start same afresh, the Regional House is empowered by a combined reading of rules 23(1) and 23(3) to hear the matter de novo in order to determine the appeal. It must be emphasized that the hearing de novo in these circumstances is not an exercise of an original jurisdiction, but it is conducted as part of its appellate jurisdiction. Thus none of these two provisions empowers the Regional House of Chiefs to assume original jurisdiction in a cause or matter affecting a Divisional Stool or occupant thereof, as in this case, when the Traditional Council has not heard the matter on merits and given final judgment.

At this stage let us address a legal issue that Counsel for the respondent raised by way of an addendum to his statement of case. Counsel stated that in their statement of case the appellants had said Rule 23(3) of C.I. 27 was inconsistent with and ultra vires section 23(1)(a) of Act 370. He went to some length to rebut any such claim. However, Counsel for the appellants seriously challenged the claim by Counsel for the respondent on ground that they never made the assertion attributed to them. We believe that following the appellants' counsel's rejection of the claim, even if they did say that in their statement of case, they had reneged on it, so the issue is settled that there is no conflict or inconsistency between the two provisions under consideration. Be that as it may we do not find anywhere in the appellants' statement of case that they claimed a conflict existed between the two provisions. At any rate it is our opinion rule 23(3) of C.I. 23 is not inconsistent with section 23(1)(a) of Act 370.

What consequences flow from this wrongful assumption of jurisdiction by the GARHC? The authorities have not been unanimous as to how to handle this sort of situation, as submissions herein by Counsels for the two sides and some reported cases seem to suggest. But the weight of authority seems to be in favour of a conclusion that if a tribunal or court acts for want of jurisdiction, any decision or order that it makes should be treated as a complete nullity and a party affected is entitled to have it set aside accordingly.

Arguments by Counsel for the Appellants

Counsel relied mainly on the Court of Appeal decision in the case of BAKUMA v. EKOR (1972) G.L.R. 133 which decides that if an inferior court wrongly assumes jurisdiction the whole proceedings become a nullity. Counsel also relied on the English case of R. v. FULHAM, HAMMERSMITH AND KENSINGTON RENT TRIBUNAL; EX PARTE ZEREK (1951) KB 1, which decided that if a tribunal wrongly assumes jurisdiction, the entire process is void. Also cited is this court's decision in REPUBLIC v. HIGH COURT ACCRA; EX PARTE OSAFO (2011) 2 SCGLR 966. In the last case cited the applicant was cited for contempt by the High Court for having violated an order of the High Court. This court granted the application for certiorari by the alleged contemnor, on ground that the very basis of the High Court's order was fundamentally flawed. The court thus did not consider the merits of the contempt at all.

Arguments by Counsel for the Respondent

Counsel for the Respondent canvassed several legal points in his statement of case in answer to the jurisdictional question raised by Counsel for the appellants. These are:

I) Lack of jurisdiction in a court or tribunal confers no right on a party to violate the court's order.
II) By a decision of the Supreme Court dated 6th December 2005, the jurisdictional objection now being raised has become res judicata.
III) The jurisdictional objection is misconceived and caught by estoppel per rem judicatam.

IV) The appellants are barred 'in limine' from raising this objection, as 'they are blowing hot and cold.

V) Where there is a clash between the rule that jurisdiction can be raised at any stage and the rule that litigation must come to an end, the latter rule must prevail.

We have to begin with an examination of these legal points raised by Counsel for the respondent herein as well as the responses given by Counsel for the appellants. Starting from the last one, Counsel for the respondent does not dispute that the question of jurisdiction may be raised at any stage in the course of the litigation and even after judgment. His contention is that the public policy principle that there must be an end to litigation must prevail over jurisdictional issue that is raised at a very late stage. Counsel conceded that there was no authority for the proposition; however, he believes the public policy principle that there must be an end to litigation solves a wider social problem and is thus preferable.

For his part Counsel for the Appellants argued that a decision given without jurisdiction might be set aside at any time. He cited the MOSI v. BAGYINA case, supra, holding 4. He also referred to this court's decision in REPUBLIC v. HIGH COURT (FAST TRACK DIVISION) ACCRA; EX PARTE SPEEDLINE STEVEDORING CO. LTD. (DOLPHYNE, INTERESTED PARTY) (2007-2008) 1 SCGLR 102, holding 2, whereby the court held that once it was able to conclude that a decision was given without jurisdiction time element did not apply and it should be set aside 'ex debito justitiae'.

We are unable to agree with Counsel for the respondents, for the law is settled that jurisdiction is central, indeed at the core of every court's power to adjudicate. Ignore that, and you will find a Magistrate, for instance, hearing a case of interpretation of the constitution. If a magistrate determines a question of constitutional interpretation, is a party affected to sit idly by because there must be an end to litigation? Ignore the question of jurisdiction, and there will be no need to set up different courts for every court will then be in a position to handle every matter. It is the same public policy which requires that every court must be

confined to a certain type of jurisdiction to ensure sanity in the legal order and the hierarchy of courts.

We are unable to agree that any principle or doctrine founded on any public policy could be applied to undermine the fundamental basis of every court's power and function, which is that of its jurisdiction. The authorities are clear that any decision given without jurisdiction could be set aside at any time as a matter of right, and those authorities cannot be unsettled now on account of the public policy that there must be an end to litigation. Litigation can only come to an end when the right court with the requisite jurisdiction hears and determines a matter. In other words every case must be heard and determined by the court with competent jurisdiction in order that the public policy principle that there must be an end to litigation would come into play.

Next, to the issue of res judicata as per this court's decision dated 6th December 2005. On that day this court rejected an application by the appellants' privy one Nii Armah Quaye to be allowed to file a statement of case out of time. The court's reasons were that there was no satisfactory explanation for the delay and for lack of merit in the appeal. There was no issue determined by this court; it only refused to allow the late filing of a statement of case. It follows that the judgment of the Court of Appeal which was sought to be appealed from stood as the final judgment between the parties. And whatever issues were dealt with by the Court of Appeal would constitute res judicata between the parties and their privies. At best this court's dismissal of the application on grounds that there was no merit in the appeal meant it had impliedly or indirectly affirmed the Court of Appeal decision.

Counsel for the Respondent referred to the Court of Appeal decision that the appellant, Nii Armah Quaye, should comply with the orders of the GARHC before the appeal could be heard, and submitted that this decision assumed the factual and legal validity of the Committee's 17th February 2003 judgment. Counsel concluded that this decision operated as res judicata unless it was set aside on appeal. That submission is incorrect to the extent that the question of jurisdiction was not in issue before that court. See pages 26-30 of the record. Indeed that

court did not deal with the appeal at all on its merits; it was dismissed on a preliminary ground of objection.

Res judicata arises when the court has made a definite pronouncement or decision on a specific issue and/or other matters ancillary thereto. When an issue is not raised and the court makes no pronouncement or decision thereon, the court could not be said to have impliedly endorsed the issue by silence or acquiescence. This court's decision in IN RE SPEEDLINE STEVEDORING CO. LTD.; REPUBLIC v. HIGH COURT ACCRA, EX PARTE BRENYA (2001-2002) SCGLR 775, holding 1 is relevant. The court held that for a judgment to operate as res judicata it must be valid and subsisting, that is, it must be a final judgment delivered by a court of competent jurisdiction. Otherwise the judgment cannot operate as res judicata to bind the parties to it.

This court's decision of 6th December 2005 that Counsel for the respondent is relying upon started with a matter that was placed before the High Court by way of an application for leave to issue a writ of certiorari against the Committee's 17th February 2003 decision. That application was disallowed for being out of time. An appeal was lodged against that decision to the Court of Appeal which did not hear it following a preliminary objection raised by the other party. A further appeal to this court failed for reasons already explained. It is thus clear that none of the three Superior Courts had the opportunity to deal with the question of jurisdiction, which would have been the case if the application for certiorari had been argued. It is our view therefore that res judicata does not arise either by the Court of Appeal decision or by this court's implied or indirect endorsement of that decision.

We turn next to the point raised in respect of estoppel per rem judicatam. According to Counsel for the respondent, the jurisdictional objection is misconceived and same is caught by estoppel per rem judicatam. Counsel referred to an action mounted by the appellants' privies at the High Court which was in respect of the Committee's judgment of 17th February 2003. The core issue in that action which travelled all the way to this court, reported as AHINAKWAH II (substituted by AYIKAI) v. OKAIDJA III and Others (2011) 1 SCGLR 205, was

whether a writ of possession to hand over the Gbese Stool property to Nii Tetteh Ahinakwah II and his elders was illegal or unlawful and void. This was after the order had been partly executed against them under a writ of possession. The High Court allowed the claim and ordered Nii Okaidja III to be restored to the Gbese Palace. The Court of Appeal affirmed that decision. However, this court reversed the Court of Appeal decision. The issue before this court was whether the writ of possession could be set aside by a writ of summons instead of a motion to set it aside for its irregularity. This court held that the procedure of issuing a writ of summons to set aside the writ of possession was wrong and so the proceedings were a nullity. Besides, the court held the High Court lacked jurisdiction to entertain the matter as it affected chieftaincy; the issue being which of the contending parties had a right to the possession of the Gbese Stool property. The entire originating process having been declared as invalid and the matter having been dismissed for want of jurisdiction in the High Court, this Court could not be said to have endorsed anything. In this situation there is no question of any form of estoppel arising directly or impliedly by this court's decision, as Counsel for the respondent urged on the court.

Thus far the specific issue as to whether the GARHC had original jurisdiction to hear the matter had not been brought up and addressed by any of the courts. All the processes so far have been focused on enforcement of the decision of the Committee. We believe if this distinct issue had been addressed specifically, Counsel for the respondent would not have hesitated to bring it up, for it would have served as an issue estoppel. As earlier stressed when dealing with the issue of res judicata, estoppel per rem judicatam would apply if a specific issue has been raised in the action and determined by the court; this will bar the parties and their privies from re-litigating same. It is our view that there is no estoppel per rem judicatam in connection with the issue of jurisdiction as raised in this appeal.

The other point canvassed on behalf of the respondent is that the appellants' conduct is 'highly inequitable and simply in bad faith.' Counsel's submission was that "their conduct stultifies or undermines their own jurisdictional objection and thereby adds another dimension of abuse of process against themselves in limine,

quite apart from their infringements of section 26 of the Evidence Decree, 1975 (NRCD 323) and be used as a cloak or engine of fraud or inequitable or unconscionable intransigence, such as their continuing or serial contempt of the Dodowa orders for handing over the Gbese Stool, its paraphernalia and its immovables and even for the contempt of refusing thus far to write the mere letter of apology ordered by Dzakpasu J."

This submission appears to be based on estoppel by conduct, especially in view of the reliance upon section 26 of the Evidence Decree, which provides that:

'Except as otherwise provided by law, including a rule of equity, when a party has, by his own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest.'

We find it difficult to appreciate the reliance on this doctrine, sometimes called equitable estoppel. It is normally founded on fraud, as rightly alluded to briefly by Counsel for the respondent but without going into any detail. There are five elements to establish in order to succeed in a claim founded on estoppel by conduct. These are:

i. The party alleged to be in breach must have made a representation which was false or must deliberately have concealed material facts;
ii. The party making the representation knew it was false or that he acted negligently or recklessly in not knowing the falsity of the representation;
iii. The other party must have been led to believe the representation was true;
iv. The person who made the representation intended same to be relied upon;
v. The other person actually acted upon the representation and has suffered prejudice or loss that cannot be remedied unless the claim in estoppel succeeds.

What representation have the appellants made to the respondent? The only consistent conduct exhibited by the appellants that the respondent himself acknowledges is the fact that they opposed the decision of 17th February 2003 and have resisted attempts to enforce it. Besides this, we do not find anything said or done by the appellants which the respondent has acted upon. Be that as it may, estoppel by conduct is a rule of evidence which a party may rely upon in a claim or defence in an action. Thus if it is raised on appeal there must be a factual basis present on the record which the appellate court could accept and found a decision thereon. The question of estoppel by conduct finds no expression in the record before us.

It must be pointed out that whatever conduct is exhibited by a party in a case cannot be interpreted as conferring jurisdiction on a court, whether the party has participated in the proceedings mindful of the court's lack of jurisdiction or whether the other party has been put to expense in the conduct of the case, where otherwise the court lacks jurisdiction in the matter. This is because the duty to ensure that the court has the requisite jurisdiction is placed on both parties and more particularly on the court itself. It is in this light that the High Court decision in AMANKWA v. AKWAWUAH and Others (1962) 1 G.L.R. 324 cannot be supported. In that case the High Court held that the issue of lack of jurisdiction in the trial court was validly raised and unanswerable since the value of the land, the subject-matter of the litigation, exceeded the court's jurisdiction and the parties did not give their consent as required by statute. Yet it went on to dismiss the appeal because the party had participated in the proceedings and allowed the other party to incur expenses. The court totally ignored the fact that jurisdiction is fundamental and could not be acquiesced in by the parties. However, in similar circumstances another High Court allowed the appeal for lack of jurisdiction; that was the case of AMEKO v. AGBO and Another (1961) G.L.R. 747.This is just to stress the point that once the court lacks jurisdiction its decision can be set aside at any time that it is raised before a court of competent jurisdiction in legally and procedurally justifiable proceedings.

Finally, we return to the very first point raised by Counsel for the respondent. He submitted that "no one has a right to disobey a judgment or order of a court even

if he believes, however strongly, that the judgment or order was given or made without jurisdiction. One cannot take the law into one's own hands or unilaterally choose what law to obey or what to disobey. The matter was well explained by this court itself….in REPUBLIC v. HIGH COURT, ACCRA; EX PARTE AFODA (2001-2002) SCGLR 768, especially at 772-773. Assuming (without admitting) that the Appellant's jurisdictional objection to the proceedings and resulting judgment of the Judicial Committee of the GARHC…..were correct, nevertheless the Appellants were bound to obey the dispositive orders of 17th February 2003 requiring the handing over of the Gbese Stool……to Nii Tetteh Ahinakwa II and his elders…..to enable them to install their candidate as the next Gbese Mantse."

For his part, Counsel for the Appellants cited this court's decision in REPUBLIC v. THE HIGH COURT ACCRA, EX PARTE DR. ERNEST ASIEDU OSAFO (ALEX ABOAGYE, INTERESTED PARTY) Civil Motion No. J5/31/2011, dated 28th June 2011, where the court set aside a committal for contempt because the judgment on which it was based was a nullity. Note that this decision has since been reported as REPUBLIC v. HIGH COURT ACCRA; EX PARTE OSAFO (2011) 2 SCGLR 966.

Relying on an earlier decision of this court namely OBENG v. AMPOFO, Supreme Court, Cyclostyled Judgments, January-June, 1958 at page 143, unreported, Osei-Hwere J. (as he then was) in KRAMO v. AFIRIYIE (1973) 1 G.L.R. 95, held at page 100 that "*It is clear from the authorities that where there has been an abuse or usurpation of jurisdiction by an inferior court any pronouncement made or order given on the premise of such abuse or usurpation would be void and of no effect and when brought to the attention of a superior court, either by way of certiorari or appeal the court will not permit it to remain."*

There is also a decision of this court recently given in the case of REPUBLIC v. MICHAEL CONDUAH; EX PARTE SUPI GEORGE ASMAH; Civil Appeal No. J4/28/2012 dated 15th August 2013, unreported, wherein the court held that the High Court had acted without jurisdiction in the first place and accordingly vacated the order it had made over ten years earlier. However, the court held that as long as that decision had not been set aside the applicant had no reason to disobey it and so allowed the conviction for contempt to stand.

Thus the authorities are clear that the court could set aside any decision or order that is given without jurisdiction, whether it is given by an inferior court or by a superior court. The submissions by Counsel for the appellants which we referred to earlier are thus appropriate and relevant on the point being considered. Accordingly we hold that the judgment of 17th February 2003 which was given without jurisdiction is null and void**.**

We note that the order of committal for contempt was given by the High Court as part of measures taken to enforce the Committee's judgment. For that reason the appellants had to respect it whilst they took steps to set aside the decision of the GARHC. But that is not the end of the story. The appellants insist that they complied with the court's order by handing over the Gbese Stool property as directed, so they had not done anything wrong for which they should be charged for contempt. The Respondent disputes this, saying the purported handing over was not in conformity with the order of the Committee. This contradictory position on the facts leads us to a consideration of the other grounds of appeal.

We intend to deal with grounds 1 and 2 together, then with grounds 12 and 13 together, followed by grounds 3, 5 and 6 together and then finally with ground 4 separately, the way Counsel for the Appellants argued them. We noted an error in the numbering by Counsel for the Appellants, when he stated grounds 3, 4 and 6 instead of 3, 5 and 6. The detailed narration of this particular ground 5 of appeal and the fact that he had earlier argued ground 4 confirmed to us that he meant ground 5 and not a repetition of ground 4. It's a harmless mistake.

Grounds 1 and 2 read:

1. The learned justices of the Court of Appeal erred when they held that the contempt proceedings before His Lordship Lartey-Young J. were different from the contempt proceedings that were brought before His Lordship Dzakpasu J.
2. The learned justices of the Court of Appeal erred when they held that the defence of double jeopardy could not be successfully relied on by the appellants.

Counsel for the appellants made reference to the two applications both of which were for committal of certain named persons for contempt of the Committee's 17th February 2003 judgment. The first application was against six persons only, namely the first to sixth appellants herein. The facts relied upon in support of the allegation of contempt deposed to in the affidavit in support of the first application were that the alleged contemnors had admitted that the Gbese stool properties were in their custody and yet they had refused to surrender same to the applicant therein, see paragraph 7 of the said affidavit at page 305 of the record. They were also alleged to be aiding and abetting the defendants, that is the defendants in the chieftaincy case that went before the Committee, by their refusal to hand over the stool properties to the applicant. This was the application that went before Lartey-Young J.

Thereafter another application for contempt was filed by the same applicant against twelve persons, appellants herein, including the six in the first contempt application. This time the complaint was that the appellants had claimed to have complied with the orders of the GARHC, by a handing over that took place at the Gbese Palace, but which in fact was a sham. The reason being that the person that they purported to have handed over the stool properties to was neither the rightful head of family nor was he the one authorized by the judgment to receive same. It was for this reason that this second application was brought which application was placed before Dzakpasu J.

A cursory reading of the two applications would appear to disclose two non identical factual situations to justify the applications. However, a very careful scrutiny of the facts would reveal that the two Justices of the High Court dealt with the same matter. Whilst the first application was pending before Lartey-Young J. the alleged contemnors took steps to purge the contempt by handing over the stool properties. The learned Judge took note of this and addressed it at length in his judgment which is at pages 306-311 of the record. The learned Judge concluded that a proper handing over had taken place in accordance with the terms of the judgment of the Committee. The court found them guilty of contempt but decided to take into account the fact that they had complied, albeit belatedly. Their Counsel then put in a word for mitigation of sentence. After that

Counsel for the applicant said this: “There is no doubt at all that the respondent did their very worst to defy and frustrate the order of the GARHC. Further when they were brought before this court they did not show any sign of remorse or repentance or grief until they saw danger they hurriedly went to hand over the Stool in the absence of Applicant and his Counsel. This is therefore a case to impose sufficiently heavy fine as well as a custodial sentence of even a day.” The Court then proceeded with the sentencing which took the form of a bond for two years or in breach thereof to serve six months. Costs of a million cedis were awarded against each of the respondents.

It was thus clear that the subject-matter of the second application had been completely dealt with by Lartey-Young J. It was brought up before him, and Counsel for the applicant, respondent herein, fully participated in the proceedings even after the issue of compliance was introduced into the matter and allowed same to continue to a conclusion. This is the relevant portion of the decision by Lartey-Young J.:

”…….The Letters exhibit GSI series and the Daily Graphic publications therefore show that there has been handing over of the Gbese Stool and the paraphernalia to the Akwete (Akote) Krobo Saki We.

The issue now is does that satisfy the order by the GARHC? The order simply stated that the items should be handed over to the third ruling house simpliciter. What is the third ruling house is a fact known to the families in Gbese palace and people. The Daily Graphic story named all the stool families in Gbese and stated that the third ruling house was Akote (Akwetey) Krobo Saki We. The copies of the letters exhibit GSI to the counsel for both parties and the Daily Graphic publications are notices to the applicant and his family and in fact to the whole world of the handing over and therefore a compliance with the order of the GARHC.

The order did not state that the handing over should be done to the applicant in person and moreover the applicant brought the action in his representative capacity for the Akwetey Krobo Saki Ruling House of Gbese Accra.

I therefore find that the respondents have purged themselves of the contempt before they are committed, though after a long delay……."

The respondent herein has appealed against the finding of fact that there was a handing over in compliance with the orders of the GARHC. Despite the appeal they allowed another High Court to hear the same matter and arrive at a different conclusion. The relevant parts of the decision by Dzakpasu J. read:

"…….The handing over, according to the Respondents is in compliance with the judgment of the Committee, dated 17th February 2003, and with the judgment of the Court of Appeal dated the 4th February 2005 and also with the judgment of the Supreme Court dated the 6th December 2005. The Applicant in the instant application contends, on the contrary, that the handing over sinned against the very judgments that the Respondents purported to have acted in compliance with. The Applicant therefore submits through Counsel that all the Respondents have each and every one of them willfully committed contempt and ought in the circumstances be committed accordingly until their contempt is purged by handing over the Gbese Stool, its paraphernalia and Immovable Properties to the Applicant, not the Elders in compliance with the judgments of the Committee as confirmed by the Supreme Court…….All the defences having fallen through, the Applicant's case against the Respondents, except the 7th Respondent, is made out beyond all reasonable doubts that the Respondents acted in willful refusal to comply with the judgment and orders of the Committee dated 17th February 2003. I therefore find the 1st, 2nd, 3rd, 4th, 5th, 6th, 8th, 9th, 10th, 11th, and 12th Respondents liable in contempt and accordingly commit each and every one of them in prison until they purge their contempt by compliance with the orders of the Committee."

It is clear from the extracts quoted from the two High Court decisions that they both dealt with the issue of the handing over that took place on 10th September 2006. The first court had found that they had complied with the orders of the Committee and had thus purged themselves of contempt. The other High Court made an entirely different finding. This second decision is the subject of the appeal before us. The first decision is still pending before the Court of Appeal. What if the Court of Appeal, differently constituted, comes to the conclusion that

Lartey-Young J. was right in his view of the facts? There would be confusion galore in the judicial system. That is the justification why judicial comity would dictate that a court of co-ordinate jurisdiction should refrain from hearing a cause or matter that has been dealt with by another court on the same subject-matter and facts. In the circumstances the most appropriate procedure would have been to consolidate the two applications, or for both applications to have been placed before the same Judge.

Contempt is a quasi-criminal offence. Therefore once a court has made a finding of guilt or otherwise on the same facts, another court cannot try the same person/s on the same charge, it would amount to double jeopardy. Thus the second High Court presided over by Dzakpasu J. had no right to re-try the appellants on the same facts that they had not done a proper handing over and so were in contempt. They had been tried, convicted and penalized. Thus subject to the right of appeal, the matter was closed. The finding of fact made by Lartey-Young J. that a proper handing over had been made created an issue estoppel between the parties and their privies. The 7th to 12th appellants are privies to the 1st to 6th appellants since they acted together in the handing over. Thus that decision by Lartey-Young J. inured to the benefit of the 7th to 12thappellants notwithstanding that they were not parties to the first application. And not until a higher court has set aside the finding of Lartey-Young J. it could not be reversed either directly or indirectly by a court of co-ordinate jurisdiction. The 7th to 12th appellants could thus not be tried under a charge which had been resolved in favour of their privies in earlier proceedings involving the 1st to 6th appellants and the respondent.

The principle underlying double jeopardy was developed as part of fundamental human rights principles and as such must not be compromised by any court. Over time, it has been enshrined in the constitution of some common law democracies. In the United States for instance it was introduced into the constitution by way of the 5th Amendment which was ratified in the year 1791. It reads: *'nor shall any person be subject for the same offence to be twice put in jeopardy of life and limb.'* And under Ghana's 1992 Constitution it is an entrenched provision under Fundamental Human Rights and Freedoms, Chapter 5; Article 19(7) thereof reads:

'No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted, shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for the offence, except on the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.'

We think the entire proceedings before Dzakpasu J. and for that matter the Court of Appeal constituted double jeopardy in violation of Article 19(7) of the Constitution, supra, and thus illegal and is also an abuse of the court's process and we so declare. For these reasons we uphold these two grounds of appeal.

We shall now consider grounds 12 and 13. They state:

12. The learned justices of the Court of Appeal erred in holding that the handing over of 10th September 2006 was not in compliance with the order of the Judicial Committee.

13. The learned justices of the Court of Appeal erred in holding that the persons to whom the appellants handed over were not elders of the third ruling house even though there was no evidence before the court to that effect.

We believe our conclusion in respect of grounds 1 and 2 that the factual question about the handing over was determined by the High Court presided over by Lartey-Young J. should take care of these two grounds. There was an appeal against it which is yet to be determined so the matter was closed for now, and it could not be re-opened except in the appeal. We would grant these grounds of appeal simply on ground that allowing the Court of Appeal decision to stand would put the Appellants in double jeopardy, the issue having been earlier resolved in their favour by a court of competent jurisdiction.

Now to grounds 3, 5 and 6 which read:

3. The learned justices of the Court of Appeal erred when they held that contempt proceedings could be brought against the appellants although the judgment did not specify any time in which the orders were to be carried out.

5. The learned justices of the Court of Appeal erred when they held that the judgment was enforceable even though an entry of judgment after trial was not filed and served on the appellants.

6. The learned justices of the Court of Appeal erred when they held that if the respondent failed to file an entry of judgment, the appellants who were not parties in the suit ought to have filed the entry of judgment.

These grounds of appeal were premised on Rule 28 of C.I. 27. It provides:

Where no provision is expressly made by these rules or by any other enactment regarding the practice and procedure to be followed in any cause or matter before a Judicial Committee, that Committee shall follow such practice and procedure as in the opinion of the Judicial Committee the justice of the cause or matter may require, regard having had to the principles of the customary law and the practice and procedure of the High Court of Justice.

Counsel for the appellants went to some detail in submitting that the respondent did not comply with the High Court rules regarding enforcement of judgments which he believed were mandatory, therefore contempt proceedings were improperly commenced against the appellants. Counsel made reference to this court's decision in REPUBLIC v. CENTRAL REGIONAL HOUSE OF CHIEFS, EX PARTE MARK AABA (2001-2002) SCGLR 545 which decided that the High Court rules were applicable to proceedings before the Judicial Committee of the House of Chiefs where no provision is made under C. I. 27. Counsel stated that there was no entry of judgment so the judgment had not become enforceable in line with an earlier decision by this court in REPUBLIC v. COURT OF APPEAL; EX PARTE GHANA COMMERCIAL BANK PENSIONERS ASSOCIATION (2001-2002) SCGLR 883. Counsel therefore submitted that since the judgment had not been entered, it could not be enforced against the appellants even if they were parties to the original suit.

Counsel further stated that the judgment did not indicate any specific time within which the handing over was to be done, hence he submitted there was no violation of the order. He cited Order 41 rule 4(1)(2) and Order 43 rule 7 of the High Court (Civil Procedure) Rules, C.I. 47 to buttress his arguments. He also cited

this court's decision in REPUBLIC v. J SITO; EX PARTE FORDJOUR (2001-2002) SCGLR 322.

Counsel also submitted that failure to serve a penal notice on the appellants as required by Order 43 rule 7 of C.I. 47 disabled the respondent from citing the appellants for contempt.

Much as these legal points that have been raised in these grounds of appeal appear impressive, logical and sound, we think they are untenable having regard to Order 81 of the High Court (Civil Procedure) Rules, C.I. 47. Under Order 81 of C.I. 47, failure to comply with the rules does not nullify proceedings. Under rule 2 (1) a party affected by any proceeding he considers irregular is enjoined to apply by motion to have the said proceeding set aside. However, he is denied such right by rule 2(2) if he has taken any fresh step in the matter. Fresh step will include any step taken to comply with the terms of the alleged irregularity. In this case the High Court has found as a fact that the appellants have complied with the terms of the judgment of the GARHC and this no doubt is a fresh step in the matter amounting to a waiver of any irregularities in the enforcement process adopted by the respondent. Consequently, we are unable to go into any further discussion. We do therefore reject these grounds of appeal.

The final ground of appeal for our consideration is number 4 which provides:

The learned justices of the Court erred when they held that the orders of the Judicial Committee could be enforced even though they agreed with the appellants' submission that the orders were ambiguous and therefore unenforceable.

Counsel for the appellants' position was that the orders contained in the judicial committee's judgment differ in material respects from what the entry in the record book stated. In his view this created an ambiguity and for that reason he submitted the appellants could not be charged with contempt. He relied on the case of REPUBLIC v. HIGH COURT, ACCRA; EX PARTE LARYEA MENSAH (1998-1999) SCGLR.

The judgment of a court or judicial tribunal is what has been written down containing the reasons. The brief summary that is entered in the record book is intended as a quick reference and is never intended to replace or even supplement the actual judgment of the court, unless the record expressly states so. Sometimes the court will only read the judgment without making any consequential orders until it has heard from counsel and/or parties, as the case may be, on ancillary matters like costs or fine or sentence et cetera. In that scenario the consequential orders made are to be read as part of the court's main judgment. So the court must be careful about what it enters in the record book after it has read its judgment in open court. Thus if what is written in the record book differs in material respects from the judgment as read, the judgment will prevail, the entry in the record book will be treated as a genuine mistake and thus ineffectual to the extent of the conflict or inconsistency. And if the court's attention is drawn to it, it must not hesitate to correct the entry in the record book to conform to the judgment as read, and parties have a duty to seek such rectification especially for purposes of enforcement of the judgment and orders.

In the instant case, the Committee delivered its judgment in the open. The record does not show that after the delivery of the judgment the Committee took any further submissions before making the entries in the record book. In effect it just made a brief summary of its judgment and orders, in which case the entry should reflect exactly what the judgment said. Since this has become an important issue we will repeat the relevant part of the judgment as well as the entry in the record book.

The relevant part of the judgment reads: *"…….we find our way clear and proceed to declare the nomination, election and installation of the first defendant/respondent, Nii Ayitey Abofu II, null and void and of no legal consequence.* ***As a corollary we order that the Gbese Stool should be handed over to the elders of the third ruling house for the purpose of installing their candidate and the incumbent should give vacant possession of all immovable property to his successor-in-office."*** The emphasis is ours.

Two orders are clearly spelt out here, namely i. that the stool of Gbese should be handed over to the elders of the third ruling house; ii. The incumbent, Nii Ayitey Agbofu II, was to surrender the immovable properties of the stool to his successor-in-office. Whilst the first order was to go into effect immediately, the second order was postponed until a new Gbese Mantse from the third ruling house had taken office. Indeed there is no ambiguity about these orders, for the Gbese Stool was being occupied by Nii Ayitey Agbofu II and so any order to surrender the stool could only be directed to him, and being a judgment in rem to any other person who happened to be in possession of the stool pending when it would be handed over to the elders of the third ruling house. Customary law regards the head of family as an indispensable person when we talk about elders. Thus when a court order directs that the stool should be surrendered to the elders of the third ruling house it would suffice to hand it over to the head of that house, or if the elders are clearly identifiable to hand over to them. But in this case it was the person who claimed to be the head of family who mounted the action, so when the order directs the surrender to the elders, who else could the court have had in mind or be referring to other than the head of family who represented them in the action?

However, the appellants are saying that the short order entered in the record book which the respondent is relying upon differs from what is contained in the judgment. The relevant entry in the record book will be reproduced here. It reads: *"The judgment was read by Counsel for the house. Judgment was entered for the Petitioners. The election, nomination and installation of first respondent is (sic) declared null and void.* ***The Elders and the respondents are ordered to release the stool of Gbese and other paraphernalia to the petitioners and their elders to install their candidate."*** Emphasis supplied.

Counsel's complaint is that whereas the judgment enjoins the handing over of the stool to be made to the elders, the short order talks about the stool and other paraphernalia to be handed over to the petitioners and the elders. Hence the complaint is that the short order went beyond what the judgment had ordered, not only in respect of what was to be handed over, but also the persons to whom the handing over should be done. Both the High Court and the Court of Appeal

did not consider these as conflicting with the judgment. We think the courts below were right. We have said earlier that the petitioner as the head of family is an elder of the third ruling house, hence if the short order said the handing over should be done to him together with the elders there was nothing conflicting about that. The other point is the addition of 'other paraphernalia' to the 'stool' to be handed over. Here again when one talks about a stool there is no doubt it comes with some paraphernalia which the chief takes over on assumption of office. So you cannot hand over the stool without handing over everything else that goes with it. At any rate if you are ordered to hand over a stool just hand over what is in your possession, and that is all that the order is saying. You cannot hand over what you do not have. There is no ambiguity about the orders; they were just to hand over the stool and by implication whatever goes with it that was/were in their possession to the elders of the third ruling house, including the petitioner.

Counsel also stated that the order did not indicate who the elders were to whom the handing over was to be done. We believe this point was not made with any seriousness. From the record the parties knew themselves very well so it is hard to accept that they did not know the elders of the third ruling house. If they did not know how were they able to challenge the capacity of the plaintiff/petitioner as head of family? Be that as it may at least the petitioner had presented himself as head of the family, and as such by custom the rightful person to represent the family and its elders. So if they were mindful to comply with the order they could have handed over to him or his successor in office. This ground of appeal fails and we dismiss it.

We now return to the first point that Counsel for the respondent raised that we set out above. It is that no person has the right to disobey an order given by a court of competent jurisdiction. We have referred to some previous decisions of this court which have affirmed that position. However, in this case the High Court had earlier found that the appellants had complied with the court's order, though belatedly. The court convicted them for contempt and sentenced them as said earlier. We have held that subsequent proceedings before another High Court Judge on the same facts constituted double jeopardy. We therefore consider that

it would be unjust to punish the appellants twice for the same charge. We accordingly conclude that the conviction and sentence imposed on the appellants by the High Court presided over by Dzakpasu J. and endorsed by the Court of Appeal were not justified as already explained.

In conclusion we allow grounds 1, 2, 12, 13, 16 and 17 and reject grounds 3, 4, 5 and 6. The judgment of the Committee dated 17th February 2003 is declared a nullity the same having been given without jurisdiction. We set aside the conviction and sentence imposed on the appellants by the High Court presided over by Dzakpasu J. as well as the endorsement by the Court of Appeal.

(SGD) A. A. BENIN
JUSTICE OF THE SUPREME COURT

CONCURRING OPINION

DOTSE JSC:

I have been greatly privileged to have read and discussed the lead judgment just delivered by my respected brother Benin JSC, and even though I agree with the conclusions reached in this appeal that the appeal succeeds there are some fundamental issues that have been raised in the lead judgment which I think needs to be commented upon for purposes of emphasis and guidance of practitioners of the law.

My brother Benin JSC has so vividly recounted the salient facts and the law applicable in this case that it is pointless for me to restate same unless for purposes of emphasising an issue.

From the facts of this case, it is clear that the case commenced in the Judicial Committee of the Ga Traditional Council hereafter referred to as (JCGTC) in 1980 at the instance of the Respondent's predecessor. Following an appeal against the refusal of the JCGTC to grant an application for substitution following the death of the Petitioner, (therein) that was lodged by the Respondent herein, to the Judicial Committee of the Greater Accra Regional House of Chiefs at Dodowa, hereafter referred to as (JCGARHC) which allowed the appeal and granted the substitution on the 19th June, 1985. As has been stated, in the lead judgment, the matter did not end there, the latter committee, JCGARHC conferred jurisdiction on itself and proceeded to hear the substantive suit that was brought before the JCGTC.

From the 19/6/1985, when the JCGARHC assumed jurisdiction into the substantive suit it was not until the 17th day of February 2003 that it delivered its decision, a period of 17 years.

I believe the rationale for creating a special body to deliberate on causes and matters affecting chieftaincy is to ensure that persons with the requisite caliber and competence deal expeditiously with issues affecting chieftaincy that such a special body will bring into the determination of such cases. Indeed the Judicial Committees of the various Traditional, Regional and National House of Chiefs have been specifically set up to deal exclusively with chieftaincy related issues. Reference article 273 (2) of the Constitution 1992 on Judicial Committees of the National House of Chiefs, and section 25 (2) of Act 759 and article 274 (3) (c) and (d) of the Constitution 1992 and section 28 of Act 759 on Regional Houses of Chiefs.

I am therefore amazed and indeed dumbfounded that panel members of these Judicial Committees who are all Chiefs will deliberately delay in the adjudication of disputes that are placed before them. There are many chieftaincy related disputes which have led to many communal violence and breaches of the peace sometimes with fatal causalities in the country.

I will therefore reiterate my views which have previously been expressed elsewhere that timelines need to be given Judicial Committees which are

empanelled to adjudicate chieftaincy disputes. This no doubt will limit them in their quest to have free range in the adjudicatory process.

It is my utmost belief that if defined timelines are given the various Judicial Committees they will urgently attend to the cases that come before them and this no doubt will lead to reduction in the chieftaincy related communal disputes that plague our country.

I will therefore advocate for urgent appropriate legislative reforms in this regard to stipulate the maximum timelines within which decisions of the relevant Judicial Committees should be given. Speaking for myself, this period should not extend beyond two years in the case of trial of Judicial Committee's and one year in the case of appellate Judicial Committees after the records of appeal have been transmitted to the appellate Judicial Committee.

The next matter that I wish to comment upon rather forcefully are situations where a decision of a court or adjudicating body is a nullity or is considered void ab initio and the said impugned order has not yet been vacated or set aside by the court itself or on appeal or by the process of judicial review. What then is the compliance level to such a decision or order?

The authorities are fairly well settled and established through a long line of respected judicial authorities that no matter how an order or decision of a court of competent jurisdiction is considered to be, it is mandatory that the said order or decision be obeyed until set aside.

Adzoe JSC of blessed memory, in his brief concurring opinion in the locus classicus decision of this court in ***Republic v High Court, Accra; Ex-parte Afoda [2001-2002] SCGLR 768 at 774*** stated as follows:

> *"No litigant has the right to determine for himself whether or not a court order is valid to command his obedience to it compliance with the orders of the courts is only the sure route to public order and peace which we need to sustain a stable democratic social order." Emphasis supplied*

I must add that, any departure from the above will be a recipe for chaos and disaster and will send this country to the abyss of confusion, where people take the law into their own hands and in effect send the country into the valley of lawlessness, indiscipline and vulgarity into which we are gradually descending into as a country.

As a matter of practice, I wish to re-emphasise that the oft quoted support for the conduct that lends credence to the non-compliance with orders or decisions of courts considered to be *"void ab initio"* are from the decisions of ***Mosi v Bagyina [1963] 1 GLR 337, S.C*** and ***Macfoy v UAC Ltd. [1962] AC 152, 1961 3 A.E.R 1169, PC.***

In order to understand the real scope of this ***Mosi v Bagyina*** and ***Macfoy v UAC Ltd.*** line of cases, both already referred to supra, it is perhaps necessary to state in brief what Akufo-Addo JSC (as he then was) said in the **Mosi v Bagyina** case on void decisions. He delivered himself at page 342 of the report thus:

> ***"The law as I have always understood it, is where a court or a Judge gives judgment or makes an order which it has no jurisdiction to give or make or which is irregular because it is not warranted by any enactment or rule of procedure, such a judgment or an order is void, and the court has an inherent jurisdiction, either suo motu or on the application of the party affected, to set aside the judgment or the order."***

From the above statement or pronouncement, it is clear that, once the JCGARHC has no jurisdiction to have even assumed jurisdiction in the case which involved Divisional Stools, the entire proceedings and the decision of 17/12/2003 was thus delivered without jurisdiction and may be set aside upon application or suo motu by the court.

In the instant appeal, the issue of jurisdiction has not been raised until before this court when by a unanimous decision which I was privileged to have delivered, leave was granted the Appellants to raise and argue the additional grounds of appeal on jurisdiction. What this means is that, until and unless

that issue of jurisdiction has been raised and pronounced upon, the decision previously given albeit without jurisdiction must be complied with.

Any breach, or non compliance by anybody who ought to comply with that decision must exact the appropriate sanction during the pendency of the order. That is the only prudent and civilized method by which courts of law can ensure compliance with their decisions without giving the parties and their legal advisers the opportunity to pick and choose which orders and or decisions to comply with.

In this era in which we live in this country, where lawyers, social commentators and indeed the general public seem to be more knowledgeable than the Judges before whom cases are heard and the rightness or wrongness of decisions are commented upon with reckless abandon, a lot of confusion, anarchy and chaos might result if the principle laid down years ago in ***Mosi v Bagyina***, refined and re-emphasised in ***Ex-parte Afoda*** already referred to is not complied with, the last vestiges of respect for the rule of law and citadel of discipline will be lost. If that happens, there will be lawlessness and apparent break down of law and order.

As a matter of fact, Kpegah JSC in his lead opinion in the ***Ex-parte Afoda*** case at page 773 already referred to supra after referring extensively to quotations which reiterated the same principle in the cases of ***Kumnipah II v Ayirebi, [1987-88] 1 GLR 265 at 270*** and in ***Republic v Brew [1992] I GLR 14*** stated quite clearly and authoritatively on this matter in the following words which I ought in order to drum home the significance of the need to abide by the principle to quote in extenso as follows:

> *"We whole-heartedly endorse the principle as stated above, and consequently reiterate the law to be: the* ***fact that an order of, or a process from, a court of competent jurisdiction is perceived and considered void or erroneous should not give a party who is affected by the order, or to whom the process is directed, the slightest***

encouragement to disobey it; and when cited for contempt, only to turn round to justify the said disobedience by the fact that the order ought not to have been made or the process issued in the first place. The proper thing to do is to either obey, or sue for a declaration to that effect or apply to have it set aside. The proponent of the order then assumes the burden to justify the order on which he relies and so prove that the order or the process was not improvidently made*.*

As a matter of public policy it is important that the authority of the court and the sanctity of its process be maintained at all times. It is too dangerous to give a litigant and his counsel the right to decide which orders or process of the court are lawful and therefore deserving of obedience, and if not, must be disobeyed. An order or process of a court of competent jurisdiction cannot be impeached by disobedience. That way, we would needlessly be empowering lawyers, in their various chambers, to have supervisory jurisdiction over the courts. That is an effective way to undermine, if not destroy, the administration of justice. The application for a review will therefore be dismissed and it is hereby dismissed."

This court in the recent unreported case of ***Republic v Michael Conduah, Respondent/Respondent/Appellant Ex-parte: Supi George Asmah Applicant/Applicant/Respondent, C. A. J4/28/2012*** dated 15/08/2013 Coram: ***G.T Wood (Mrs) C.J, presiding, Dotse, Yeboah, Benin and Akamba JJSC's*** whilst setting aside an injunction that was granted by a Cape-Coast High Court on 21/6/2001 in a cause or matter affecting chieftaincy in which there was no writ of summons issued, held in a unanimous decision by my respected brother Akamba JSC as follows:

"In summary, as far as the application for contempt against the appellant for the alleged breach of the order of injunction is concerned, the appellant had no legitimate defence thereto. It was no defence to say that the order was void when the same had not been vacated. It is worth reiterating that it is not the business of litigants or their counsel to determine which orders or

processes of the court are lawful and deserving of obedience, and if not, must be disobeyed. The rule is that a party is obliged to take a proper course to question the validity of an act of a court, but while it exists it must be obeyed. We wish to reiterate our position as well echoed in this court's decision in ***Republic v High Court, Accra, Ex-parte Afoda [2001-2001] SCGLR 768."***

This therefore settles the point that as far as void and or irregular judgments or orders are concerned, unless they are set aside they must be complied with, otherwise the party in breach will be sanctioned.

This is not like a buffet meal where you are given the option to pick what you want to eat. In this case, you are bound to comply unless and until it is vacated. Under the circumstances, I am of the opinion that, but for the decision we have come to that the appellants have already been convicted and dealt with for the same contempt, by another High Court presided over by Lartey-Young J, this Court would not have disturbed the convictions for contempt of the appellants. However, once we have come to that conclusion, then it follows that the appeal succeeds in terms of the lead judgment as delivered by my respected brother Benin JSC.

I will only wish to sound a note of caution and advice to our respected Chiefs and traditional rulers to take a cue from the words of Ollennu JSC, that distinguished Jurist, Author and Statesman when he stated of the Chieftaincy Institution which was quoted with approval by Acquah J, (as he then was) in the case of ***Republic v Gbi Traditional Council, Ex-parte, Abaka VII [1995-96] 1 GLR 702*** as follows:

"Chieftaincy is an ancient institution, the centre of rich culture, an object of awe and reverence as the active possessor of state power and possessor of the spirit of the ancestors and of the state."

I have regrettably observed that the parties and their legal advisers in this particular appeal have spent more time in the law courts litigating than taking concrete steps to bring development to their people which is urgently needed. I am of the opinion that there comes a time in the life of a leader or someone

who aspires to leadership position to just let go to ensure peace, unity and development in freedom for the people.

This is a humble appeal being made although from what I have seen in other cases, there is every possibility that the battle ground in the courts will be continued.

However, if one considers the words of Ollennu JSC referred to supra, the Chieftaincy institution should be well and properly revered to ensure that it is restored to those ideals that Ollennu propounded. Saying goodbye to needless litigation is the only sure way to make the realisation of those ideals possible.

Save as stated in this brief concurring opinion, the appeal herein is allowed as per the lead judgment of Benin JSC.

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

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE BONNIE
JUSTICE OF THE SUPREME COURT

(SGD) N. S. GBADEGBE
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