IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA

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

ANSAH, J.S.C.
BONNIE, J.S.C.
GBADEGBE, J.S.C.
AKOTO BAMFO (MRS), J.S.C.

CIVIL APPEAL

NO.J4/46/2013

7TH MAY 2014

THE REPUBLIC

VRS

1. **THE NATIONAL HOUSE OF CHIEFS**,
   PER THE PRESIDENT; ---- RESPONDENT/RESPONDENT
   KUMASI /RESPONDENT

2. **THE CENTRAL REGIONAL HOUSE OF CHIEFS**
   PER THE PRESIDENT **----** RESPONDENT/RESPONDENT
   CAPE COAST /RESPONDENT

EX PARTE;- NANA AKWESI PEPRAH II.--- APPLICANT/APPELLANT.
/APPELLANT

JUDGMENT

ANSAH JSC.

On 7th May, 2014, this court gave a decision dismissing an appeal brought before it against the unanimous decision of the Court of Appeal dated 23rd February 2012, that certiorari did not lie to quash the deletion of the applicant's name from the National Register of Chiefs and intimated that full reasons for the decision will be filed with the Registry of the court by the close of work on Friday 8th May 2014; we hereby proceed to give the reasons today.

For a proper understanding and appreciation of the issues involved in this appeal, it is needful to state the facts and background of this case, albeit in a brief form.

Facts and background of case:

They are that the appellant filed a motion on notice under Order 55 Rule 1 of CI 47, for an order of Judicial review to quash by certiorari the decision of the research committee of the National House of Chiefs, (1st respondent) held on the 30th January 2009, removing the name of the applicant from the National Register of Chiefs. This appeal emanated from the Court of Appeal (Civil Division sitting at Cape Coast), to this court when it decided that was unable to quash by an order of certiorari the deletion of the applicant's name from the National Register of Chiefs when it was found that the deletion of that name from the said National Register was illegal and wrongful; the applicant maintained that after making that finding, the

respondent ought to have proceeded further to quash the decision by a certiorari, as a necessary sequel thereto.

The applicant averred in his affidavit in support of the application before the High Court filed on 27 July, 2009 that he was gazetted as a chief on 29th August 2009 and thereafter his adversaries afflicted him with several disputes all aimed at getting his name removed as a chief from the National Register of Chiefs, but to no avail. The reason claimed as providing the *cassus belli* for the efforts was his conviction by the Circuit Court, Dunkwa-On-Offin, on 24th February 1992. Efforts to have the letter removing his name from the National Register having failed, the applicant applied for certiorari at the High Court, Cape Coast, but failed in that application. The applicant was to suffer a similar fate at the Court of Appeal, Cape Coast, where the appellate court stated that administrative decisions are not amenable by certiorari.

Grounds of appeal before the Supreme Court:

Following upon that failure at the Court of Appeal, Cape Coast, on 23rd February 2013, the applicant brought the present appeal to this court on the grounds that,:

"a. The appellant (sic) court having made a finding of fact that Exhibit **E** upon which the applicant/appellants name was deleted from the National Registrar (sic) of Chiefs by the respondents was illegal and wrongful, should have proceeded to quash the decision by certiorari by relying on the decision of the Supreme Court in the case of the *Republic v High Court, Kumasi, ex-parte Mobil (Ghana) Ltd Hagan interested party [2005-2006] SCGLR 107.*

b. The Court of Appeal erred in law when they stated that Administrative decisions are not amenable by certiorari contrary to the *Wednesbury* principle, namely that, an administrative action or decision would be subject to Judicial review on the grounds that it was illegal, irregular or procedurally improper.

c. The Appellant (sic) court erred in law when it stated that if the Appellant felt aggrieved by the respondent's acts complained of his recourse is to the Supreme Court as envisaged in Section 50(7) of Act 759 when it failed to consider the decision of the Supreme Court in the case of the *Republic v National House of Chiefs; ex-parte Akrofa Krukoko II (Enimil VI Interested Party) [2007-2008] SCGLR* at page 178 and again in the case of *The Republic v Paddington Valuation Officer , ex-parte Peachey Property Corporation Ltd. (1966) 1QBD 380* and in the Australian case of the *Republic v Perth Shire; Ex-Parte Deward and Biurridge (1968) WAR 149."*

By this appeal, the appellant wants this court to grant him an order quashing the deletion of the Applicant/Appellants name from the National Register of Chiefs.

In our consideration we are of the opinion that a consideration of ground 'b' of appeal (above) alone, is able to dispose of the appeal and proceed with the utmost respect to counsel, to consider that ground as briefly as we can.

It must be stated that entries made in or deletions from the National Register of Chiefs have been commented upon in several authorities by this court and one statement that emerges from them is that such acts do not constitute adjudications determining who is a chief or who is not, but are rather purely administrative acts not occasioned by any procedural

irregularity and consequently not amenable to an order of certiorari; thus in *In Re Oguaa Paramount Stool; Garbrah & others v Central Regional House of Chiefs & Haizel [2005-2006] SCGLR 193*, this court considered the legal characteristics of the act of registration or non-registration of a chief's name in the register of chiefs, under sections 48(2) and 50(2) of the Chieftaincy Act, and asked whether or not acts such as these are qualified to be affixed with the label of 'judicial acts', so as to allow an order of certiorari to quash such a decision?

This Court, speaking through the voice of the much bemoaned late Prof. Ocran agreed with the holding in *Republic v The President, National House of Chiefs; ex parte Akyeamfour II [1982-83] 1 GLR 10*, CA where Francois JSC said at p16 that such functions do not extend to any adjudicating on the merits of a particular case and therefore certiorari will not issue in respect of them. The learned judge said: "In my opinion, therefore, even though the National House of Chiefs has a duty to act honestly and since its function is administrative, it cannot be amenable to the prerogative writ of certiorari." The learned judge (Prof Ocran), referred to Black's Law Dictionary on what constitutes a 'judicial act' as:

"An act which involves exercise of discretion or judgment… An act which undertakes to determine a question of right or obligation or of property as foundation on which it proceeds. The action of a judge in trying a cause and rendering a decision."

We also believe that the deletion of a name from the National Register of Chiefs is administrative but not a judicial act which will be subject to an order of certiorari; see *Republic v National House of Chiefs; ex parte Akrofa*

Krukoko II (Enimil VI Interested party) [2007-2008] SCGLR 173, at 177, where our respected learned sister Sophia Adinyira JSC, stated the settled law at p177 that:

"It is settled law that entries made in or deleted from the National Register of Chiefs do not constitute adjudication or determination as to who is a chief or who is not, but rather a purely administrative act ."

We agree with the submission by the respondent in their statement of case that "since the 1st respondents' acts of deleting the appellant's name from the Register of Chiefs was purely an administrative discretion and was not occasioned by any procedural irregularity, the appeal should be dismissed and the judgment of the Court of Appeal dismissed."

We wish to consider one other point germane to applications on orders of the nature under consideration and state that, in considering an application for an order of certiorari, one will necessarily need to consider the conduct of the parties especially the applicant, so that where he is guilty of a long delay in applying for the remedy, he may be denied it. It ought to be borne in mind that certiorari is a discretionary remedy and the conduct of an applicant is worthy of consideration. The circumstances of the case and the conduct of the applicant can disentitle him to the remedy. In the present application, the facts are that there was a delay spanning a period of about twenty one years (prior to the application) between when the applicant was released on bail pending appeal against his conviction and sentence. He stopped following the process to deal with them for the meanwhile till he woke up much later, from his slumber to pursue the proceedings which have resulted in the present proceedings in this appeal.

In our opinion, where there was an undue delay of a period of about twenty one long years in making the application, such as in this case, it will militate against the success of the application for the relief sought. Tardy and delayed applications scarcely succeed in securing favorable results in applications of this nature.

Considering all the above, in our candid opinion, the application fails and is hereby accordingly dismissed. The judgment of the Court of Appeal is affirmed.

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE BONNIE

JUSTICE OF THE SUPREME COURT

(SGD) N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO BAMFO (MRS)

JUSTICE OF THE SUPREME COURT

COUNSEL

KOFI LAMPTEY ESQ. FOR THE APPLICANT /APPELLANT /APPELLANT.

GILLIE CARSON ESQ AND JOSEPH NICHOLAS NKRUMAH ESQ. FOR THE 1ST AND 2ND RESPONDENTS/ RESPONDENTS/ RESPONDENTS.