IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2017

CORAM: PWAMANG, JSC SITTING AS A SINGLE JUDGE

CIVIL MOTION
NO. J8/81/2017

15TH JUNE, 2017

THE REPUBLIC

VERSUS

THE NATIONAL HOUSE OF CHIEFS
KUMASI .. 1ST RESPONDENT/APPELLANT

THE BRONG-AHAFO REGIONAL HOUSE OF CHIEFS .. 2ND RESPONDENT/APPELLANT

EX-PARTE:

NANA ODURO BOAMAH & 3 OTHERS … APPLICANTS/RESPS/RESPS/RESPONDENTS

AND

ASANTEMAN COUNCIL … 1ST INTERESTED PARTY/RESP/RESP//RESPONDENT

TECHIMAN TRADITIONAL COUNCIL …. 2ND INTERESTED PARTY/APPELLANT/ APPELLANT/ APPLICANT

RULING

PWAMANG, JSC.

The respondents to the application before me are chiefs of the towns of Tuobodom, Tanoso, Kenyasi No.1 and Tanoboase in the Brong-Ahafo Region and members of the Asanteman Council. They made efforts to get their names onto the National Register of Chiefs as paramount chiefs of their respective areas but met challenges including opposition by the applicant herein. The respondents therefore filed a motion in the High Court, Kumasi against the National House of Chiefs and the

Brong-Ahafo Regional House of Chiefs for judicial review in the nature of mandamus and prayed the court for an order for their names to be entered in the National Register of Chiefs as paramount chiefs. They added the Asanteman Council as an Interested Party. The applicant herein applied and was joined by the High Court to the Mandamus application as 2nd Interested Party. From the ruling of the High Court which has been exhibited, the application for mandamus was supported by the Asanteman Council but opposed by the 2nd respondent and the 2nd Interested Party who filed affidavits in opposition and were represented by the same lawyer. From the processes before me, though it was on 29th November,2010 that the High Court, gave a reasoned ruling granting the application, the formal order of Mandamus is dated 22nd November, 2010. The relevant part of the order is as follows;

"IT IS HEREBY ORDERED that the respondents herein enter the names of the applicants herein in the register of the National House of Chiefs as paramount chiefs of Tanoboase Traditional Council/Area, Tanoso Traditional Council/Area, Kenyasi No. 1 Traditional Council/Area and Tuobodom Traditional Council/Area respectively."

Being aggrieved by the decision of the High Court, the respondents and the 2nd Interested Party all appealed against it to the Court of Appeal and followed up with an application for stay of execution but same was refused by the High Court. Thereafter, the respondents herein got their names entered in the National Register of Chiefs, extracts from which have been exhibited to their affidavit in opposition as exhibits 'B1', 'B2', 'B3' and 'B4'. From the exhibits, the respondents' names were entered under Ashanti Region and not Brong-Ahafo Region. When the Court of Appeal came to determine the substantive appeal, they held as follows in their judgment dated 16 th July, 2015;

"…the respondents went ahead and inserted or entered the names of the applicants in the National Register of Chiefs. It is our considered opinion that the issue of whether or not the names of the applicants should be inserted or entered in the Registers of the National House of Chiefs and the Brong Ahafo Regional House of Chiefs is dead and buried and is no more a live issue worth a determination of this court…..the court will not countenance an issue that is moot and is not most likely to re-occur. For these reasons the appeal is struck out as being moot, dead and buried."

Notwithstanding the good intentions with which the Court of Appeal may have made their prediction that the issue will not re-occur, it has refused to go away. Ten days after their decision, an appeal against it was filed in the Supreme Court. Nonetheless, with the striking out of the appeal in the Court of Appeal, the

respondents have been urging the Brong-Ahafo Regional House of Chiefs to administer to them the appropriate oath to make them members of that house but the applicant filed a number of motions to prevent them from being admitted. Applicant has now brought this application for an order of interlocutory injunction pending appeal restraining the respondents from;

i. further enforcing the judgment and order of Mandamus of the High Court,

ii. holding themselves out and acting as paramount chiefs,

iii. subscribing to the oath of membership and participating as members of the Brong-Ahafo Regional House of Chiefs.

He is also praying for the House of Chiefs to be restrained from further compliance with the order of Mandamus.

At paragraph 27 of its affidavit in support it was deposed on behalf of applicant as follows;

"That if the respondents are not restrained by an order of interlocutory injunction, they would rely on the decision of the Court of Appeal to enforce the High Court order of Mandamus against the National House of Chiefs and the Brong-Ahafo Regional House of Chiefs to the following effects;

i) Compelling the National House of Chiefs to lay a bill in Parliament for passage into a legislative instrument which would include them in the membership of the Brong-Ahafo Regional House of Chiefs.

ii) Compelling the Brong-Ahafo Regional House of Chiefs to have them subscribe to the oath of office as members of the Regional House and participate in its functions."

The applicant further deposed in its affidavit that the above forecasted activities, if allowed to take place, will prejudice the determination of the appeal pending in this court as well as a dispute pending at the National House of Chiefs. It says further that those activities will result in breaches of constitutional and statutory provisions.

The respondents filed a 37-paragraph affidavit in opposition and contended that the Court of Appeal held that the case of the appellants is moot so this present application is needless, meaningless and at best frivolous. As for whether the applicant's substantive objection to the order of Mandamus is moot or not, it is for this court to determine since he has appealed against the decision of the Court of Appeal.

I have read all the processes filed in the application and I have noticed that both parties included matters pertaining to their chieftaincy dispute but I shall disregard those matters. This court does not have original jurisdiction in a cause or matter affecting chieftaincy but only appellate jurisdiction in respect of matters determined by the National House of Chiefs. It is for that reason that I shall strike out applicant's prayer for a restraining order against the respondents holding themselves out as paramount chiefs. In the case of **Republic v High Court, Koforidua, ex parte Otutu Kono III [2009] SCGLR 1** this court held as follows at Holding (1) of the Headnote;

"Thus the question of the existence, nature and composition of a traditional council had consistently been judicially regarded as a statutory or administrative matter which did not constitute a cause or matter affecting chieftaincy. The trial High Court therefore had jurisdiction to determine the existence, character and composition of a traditional council."

On account of the above, I shall confine myself to the matters related to the order for the respondents' names to be entered in the National Register of Chiefs which register is a creature of statute.

This application was filled after the record of appeal had been transmitted to this court and the court assumed jurisdiction to hear any application in the case pursuant to **Rule 16(1) of the Supreme Court Rules, 1996 (C.I. 16).** However, the orders of injunction pending appeal that the applicant seeks face two formidable hurdles; (i) the judgment of the Court of Appeal did not make any executable order and more important, (ii) the order of Mandamus which is the target of the application has already been complied with. Nonetheless, the applicant placed total reliance on this court's decision in the case of **Merchant Bank (Ghana) ltd v Similar Ways Ltd [2012] 1 SCGLR 440** in which, at pages 448 to 449, the venerable Atuguba, JSC said as follows;

"All along it is obvious that its applications and appeals do not relate to any executable order. That however, does not mean that it has no interest in holding off the enforcement of the substantive judgment to which its processes relate. If a stay of execution cannot lie, other remedies may lie. One of such remedies can be the suspension of the entry of judgment. In that event, the effect of the judgment itself is temporarily frozen and incidental processes such as execution cannot fly not because execution thereof is stayed but because the life of the judgment itself is in coma."

In that case, the judgment of the High Court that was the target of the order suspending the entry of judgment had decreed payment of money by the appellant but it had not been paid as at the time the application was made to the Supreme

Court. So it was the processes of execution to get the appellant to pay the judgment debt, which was outstanding, that were suspended by the order of the court. But in instant case, contrary to the impression applicant sought to create, the order of the High Court was for the names of the respondents to be entered in the National Register of Chiefs and no more. This has already been complied with by the National House of Chiefs so I find the anxiety expressed by applicant in his affidavit that, in execution of that order, a legislative instrument will be laid adding the names of the respondents to the Brong-Ahafo Regional House of Chiefs highly speculative as that is not apparent on the face of the order. The issues of threatened breaches of constitutional and statutory provisions are for a different jurisdiction of this court and I am not competent to determine them in this application.

In conclusion, the order of the High Court having been accomplished, I am not in a position to restrain or suspend its execution. In the circumstances, I refuse the application.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

COUNSEL

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FREMPONG BOAMAH FOR THE APPLICANTS/RESPONDENTS/RESPONDENTS/ RESPONDENTS AND 1ST INTERESTED PARTY/RESPONDENT/RESPONDENT.