

36,1960

UNIVERSITY OF LONDON  
W.C.1.  
- 7 FEB 1961  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

1.

IN THE PRIVY COUNCIL

No. 44 of 1959

20091

ON APPEAL  
FROM THE COURT OF APPEAL, GHANA

B E T W E E N :

NANA OWUSU AHENKORA II  
(APPLICANT) Appellant

- and -

KWABENA OFE (Respondent) and  
THE MINISTER OF LOCAL GOVERNMENT  
(Respondent) Respondents

10

CASE FOR THE APPELLANT

1. This is an Appeal from a Judgment and Order of the Ghana Court of Appeal dated the 4th November, 1957, allowing an Appeal by the Respondents from a Judgment and Order of the Supreme Court of the Gold Coast (Windsor-Aubrey J.) whereby the said Court granted to the Appellant a Writ of Certiorari requiring the Respondents to surrender to the Court the proceedings of a Committee of Inquiry purporting to have been appointed by the Governor on the 24th March 1956 and the Governor's purported confirmation thereof on the 5th November 1956 for the purpose of both being quashed and quashing the same.

Record  
p.43; p.66

p.28

20

2. The principal questions raised by this Appeal are:-

(1) Whether the said Committee was validly appointed under Section 8 of the State Councils (Colony and Southern Togoland) Ordinance No.82 of 1952 or whether its purported appointment was a nullity.

30

(2) Whether there was a valid reference of any matter to such Committee of Enquiry.

(3) Whether, if there was a valid reference of any matter to such Committee; its report was ultra vires its terms of reference, and accordingly void.

Record

(4) Whether the Governor's purported confirmation of the said report of such Committee was valid and effectual or was null and void.

(5) Whether in these circumstances an order of certiorari would issue, having regard also to section 88 of the Courts Ordinance (Cap. 4)

3. The facts of the present case are as follows:-

On the 1st September, 1952 the then occupant of the Stool of Adowsena, Ntiamoa Kofi III, was destooled by the Akim Kotoku State Council, the competent authority under the State Councils (Colony and Southern Togoland) Ordinance, 1952. No appeal was lodged against the said destoolment by Nitamoa Kofi III, and this destoolment was duly notified and was further recognized and endorsed by his conviction by the District Magistrate's Court, Swedru, for failing as an Ex-Chief of Adowsena to deliver the Stool properties when ordered by the State Council so to do, which conviction was ultimately confirmed by the West African Court of Appeal on 29th August, 1955.

p.3, l.31

p.23

p.3, l.37

p.5

pp.6-9

p.22

On the 28th March, 1955 the Appellant was installed according to custom as Ohene of Adowsena.

p.5

On the 20th August, 1955 Gold Coast Gazette No.73 contained Notification (No.2535) of the Destoolment of the Appellant on the Stool of Adowsena.

pp.10-12

4. On the 5th November, 1955 the Respondent Kwabena Ofe Krontihene and certain others, elders and electors of the Stool of Adowsena in the Akim Kotoku State preferred charges against the Appellant for him to stand his trial under Native Customary Law by the Akim Kotoku State Council. These charges were as follows:-

"1. That he is not a fit and proper person to be the Ohene of Adowsena because:-

a. he during his service with the United Africa Company Limited misconducted himself and was dismissed from service.

b. he after his dismissal from the employment of the United Africa Company Limited, entered the Police Force of the Gold Coast Government and as a result of a bad behaviour was again dismissed from service.

10

20

30

40

c. he after or during his dismissal from the service of the Gold Coast Police joined the fighting forces of the British Commonwealth and while serving as such stationed at Kintampo in Ashanti was convicted of the crime of burglary and served a prison sentence of five years.

10

2. That he by his correspondence and conduct has insulted the Ebusuapanin Nana Kwabena Ebu of the Stool Family and caused his destoolment without the knowledge and consent of the Stool Family of Adowsena.

3. That he by his act and conduct has undermined the right and authority of the Abusuapanin Ebu and the Gyasihene Boateng Kurankyi II over the property of the Stool of Adowsena which by Customary Law is vested in the said Abusuapanin and Gyasihene.

20

4. That he, being the Ohene of Adowsena as aforesaid, hath caused the arrest and prosecution of servants of the Stool of Adowsena duly appointed by the Abusuapanin Ebu in accordance with custom to look after the cocoa farms belonging to the Stool, intervention of the Gold Coast Police a riot would have ensued and as a result of which one of such servants was seriously wounded and admitted in hospital.

30

5. That he by unlawful means aided and abetted Kwame Ayim and an Ex-Ohemaa Abena Foriwaa, members of the Stool Family but not Electors of the Stool, to bring charges against the recognised Ohene Ntiamoah Kofi III, alias Kofi Ntoa for his destoolment and thereby caused his destoolment unlawfully by the State Council without the knowledge and consent of the Stool Electors and contrary to their wishes and directions whereby he the said Ntiamoah Kofi III is now serving a prison sentence of three (3) months in Her Majesty's Prison at Winneba and contrary to Gazette Notice No.1235 in Gazette No.57 of the 24th June, 1950.

40

THESE ACTS and facts being contrary to Native Law and Custom, the said Ohene is hereby called upon to defend and in failure of good defence the Electors do demand his destoolment."

Record  
p.12, 1.20

5. On the 24th March, 1956 the Governor purported to appoint a Committee of Inquiry under Section 8 of the State Councils (Colony and Southern Togoland) Ordinance, 1952.

The said section provides as follows:-

- "(1) If in the opinion of the Governor it is inexpedient that a State Council should enquire into any matter of a constitutional nature, or if in his opinion a State Council or a Committee is unable to arrive at a conclusion on such a matter without undue delay, or if such matter is not cognizable by a State Council or a Committee, he may appoint a Committee of Enquiry consisting of three persons of whom at least two shall be Chiefs, to enquire into such matter, and such Committee of Enquiry shall enquire into the same and shall submit a report thereon to the Governor, who may confirm, vary or refuse to confirm the findings thereof or may remit the matter to the Committee of Enquiry for further consideration with such directions as he may think fit as to the taking of additional evidence or otherwise. The Governor's decision upon the report shall be final and conclusive. 10
- (2) Where a Committee of Enquiry has been appointed under subsection (1) of this section to enquire into a matter of a constitutional nature, a State Council or a Committee, as the case may be, shall not have jurisdiction over the same, and any proceedings relating to the same then pending before a State Council or a Committee shall thereupon be stayed. 20 30
- (3) In the performance of the duties imposed upon it under the provisions of sub-section (1) of this section, a Committee of Enquiry shall have power to regulate the conduct of proceedings before it and for the purpose of compelling the attendance of parties and witnesses and the production of documents a Committee of Enquiry shall have the like powers as are possessed by a Magistrate's Court in the exercise of its Civil jurisdiction." 40

p.12, 1.20

The Notification of the purported appointment appeared in the Gold Coast Gazette No.20 of 24th

March, 1956 and was in these terms:-

Record

"His Excellency the Officer Administering the Government has appointed a Committee of Enquiry consisting of:

A. Obuadabang-Larbi, Esquire, Barrister-at-Law, Chairman.

Nene Lanimo Opata II, Heowe Manche of Shai, Member.

10 Nana Osei Djan II, Q.M.C., Adontenhene of Akwapim, Member.

to enquire into a dispute in Adowsena of the Akim-Kotoku State being a matter of a Constitutional nature, between Kwabena Ofe, Krontinhene of Adowsena of Akim-Kotoku State and others of Adowsena of Akim-Kotoku State and Nana Owusu Ahenkora II, Ohene of Adowsena of Akim-Kotoku State and to report on the dispute."

20 Nowhere in the Notification of the Committee's appointment is the "dispute" defined, nor are any specific terms of reference given to the Committee.

6. The Committee of Inquiry subsequently reported and on the 5th November, 1956 the Governor purported to confirm its findings. Its report and the Governor's purported confirmation of its findings were notified in the Gold Coast Gazette No.73 of 10th November, 1956 in the following terms:-

p.13, 1.19  
p.13, 1.38

30 "It is hereby notified for general information that the Committee of Enquiry, the appointment of which appeared under Gazette Notice No.637 of Gazette No.20 dated 24th March, 1956, appointed under Section 8 of the State Councils (Colony and Southern Togoland) Ordinance, 1952, to enquire into a dispute in Adowsena of the Akim-Kotoku State being a matter of a constitutional nature between Kwabena Ofe, Krontihene of Adowsena of Akim Kotoku State, has reported to the Governor that it has not been proved to the satisfaction of the Committee that, by custom, any barrier existed which precluded Nana Ntiamoah Kofi III from ascending the Adowsena Stool, and that no charges have been proved to merit his destoolment.

40

Record

In the opinion of the Committee Ntiamoah Kofi III has not been destooled, he is therefore the Ohene of Adowsena and not Owusu Ahenkora II.

On the 5th day of November, 1956 His Excellency upon consideration of the report of the Committee confirmed the above findings."

The report, it is submitted, omits any reference whatever to charges 1, 2, 3 and 4 and the sole matter it deals with does not in the Appellant's submission arise even under Charge 5.

10

p.1

7. By Motion dated the 6th December, 1956 the Appellant applied to the Supreme Court of the Gold Coast for an order granting leave to issue Writ of Certiorari to the Respondents and also the members of the said Committee of Inquiry calling upon them to surrender the proceedings of the said Committee of Inquiry and the purported confirmation by the Governor to the Court to be quashed on grounds set forth in the Appellant's supporting Statement.

p.3

20

p.14

On the 17th December, 1956 the Supreme Court gave the Appellant leave to issue the Writ of Certiorari to be served on the persons specified in the application.

p.15

By Motion dated the 19th December, 1956 the Appellant duly applied for an Order of Certiorari directed to the said persons. The application was heard by Windsor-Aubrey J. on the 23rd January, 1957 when it was argued inter alia on behalf of the Respondents to the application that the Court's jurisdiction was excluded by Section 88 of the Courts Ordinance (Cap. 4). This provides as follows:-

p.24

30

p.27, 1.17

"The High Court and Magistrates' Court shall not have jurisdiction to entertain either as of first instance or on appeal any civil cause or civil matter instituted for:-

(1) the trial of any question relating to the election, installation, deposition, or abdication of any Paramount Chief, Head Chief or Chief;

40

(2) the recovery or delivery up of Stool property in connection with any such election, installation, deposition, or abdication;

- (3) the trial of any question touching the political or constitutional relations subsisting according to native law and custom between two or more Paramount Chiefs or Head Chiefs, or between two or more chiefs; or between a Paramount Chief and a Chief, or between a Head Chief and a Chief."

10 On the 7th February, 1957 the learned Judge gave Judgment granting an Order of Certiorari requiring the surrender to the Court of the proceedings of the Committee of Inquiry and the Governor's confirmation thereof for the purpose of both being quashed and thereby quashing them. p.28

The Judgment of the learned Judge is in the following terms:-

"I do not think this application for an order of Certiorari presents any difficulties.

20 2. By an Order dated the 24th March, 1956 the Governor appointed a Committee of Enquiry to enquire into certain disputes. The order is most obscure but considered in the light of a letter dated the 12th December, 1955 from the Government Agent, Oda Birim (Exhibit '3' to applicant's affidavit of the 17th January, 1957) it would seem probable that the terms of reference are intended to mean that the Committee was to enquire into certain charges preferred against the applicant which might, if proved, justify his destoolment. All counsel seem to agree that this was the purpose of the enquiry. p.12, 1.20 p.23, 1.25

30 3. Crown Counsel, representing the Minister of Local Government, argues that if the Committee decided the charges were proved and that the applicant ought to be destooled it must inevitably conclude that the former stoolholder should be re-stooled.

40 His point as I understand is based on an alleged roving commission and an unbridled licence on the part of the Governor to make any decision under section 8 of the Ordinance which a State Council can make under section 5.

4. This argument is in my opinion wholly



Record

untenable. A committee can only be appointed in respect of a pending matter, and cannot reverse a decision already taken by a State Council. Furthermore the committee is bound by its terms of reference and whatever they may mean I cannot read into them any direction to recommend the re-stoolment of the former holder which is what the committee recommended and what the Governor confirmed.

5. Counsel for the respondent has argued that as any order by the Governor under section 8 is declared to be final and conclusive this Court has no jurisdiction to enquire into this matter. So long as an Order is lawfully made within the scope of the Governor's powers under section 8 the Court certainly cannot intervene but where the whole of the order is totally illegal that is precisely where the Court can and should. This is the whole essence of certiorari - a power conferred on the Court to quash illegal proceedings. 10 20

6. I have considered the powers of the Court in the case of In matter of an application for writ of certiorari J.R. Quansah and Another versus A. Quarcoo Tagoe which I decided in the Sekondi Divisional Court on the 28th day of August, 1956 and although that case is not wholly in point no arguments have been now put before me which lead me to conclude I was wrong on the general principles I therein enunciated. 30

7. The committee having recommended the re-stoolment of a destooled chief and the Governor having confirmed that recommendation, both have in my opinion acted without jurisdiction.

8. In my opinion, therefore, the application is well-founded and an order of certiorari is granted"

- p.33 8. By Notice of Appeal dated the 13th February, 1957 the Respondents appealed. 40
- p.35 On the 28th February, 1957, a stay of execution was granted pending hearing of the appeal.
- pp.36-43 The appeal was heard by the Ghana Court of Appeal (Van Lare, Ag. C.J., Granville Sharpe, J.A.)



10 and Adumua-Bossman, J) on the 22nd and 23rd October, 1957, when it was argued on behalf of the present Appellant that there was no specific form of reference of any matter to the Committee of Inquiry, that the nature of the dispute was not specified or identified by reference to any other document, and that the purported appointment of the Committee was in itself ineffective and a nullity, and alternatively that, if there were any specific matter referred to the Committee, its report went outside its terms of reference. It was further contended on behalf of the present Appellant that neither section 88 of the Courts Ordinance nor the provision in section 8 of the State Councils (Colony and Southern Togoland Ordinance) that the Governor's decision upon the report shall be final and conclusive was effective to prevent a Writ of Certiorari from issuing.

20 9. On the 4th November, 1957 Judgment was delivered by the Court of Appeal allowing the appeal. The majority of the Court (Granville Sharpe, J.A. and Van Lare, Ag. C.J.) held that Certiorari would have lain, Section 88 of the Courts Ordinance notwithstanding, if the Committee's report had been ultra vires, but that in fact the Committee had not acted ultra vires.

p.43

Granville Sharpe J.A. expressed his view in the following terms:

30 "I do not think that it can be questioned that the Committee of Enquiry is a judicial tribunal, and I am of opinion that the Governor's act in considering the report of the Committee and deciding what step to take upon it is part and parcel of the enquiry; necessary to effect its purpose. The decision must be made judicially.

p.47, 1.28

.....

40 "So therefore in the present case if it could be said that the Committee had acted in excess of its jurisdiction by a self-assumed enlargement of its terms of reference I would hold that the decision of the learned Judge in the Court below was a correct decision.

p.51, 1.19

"I cannot however find that there was in the manner in which the Committee proceeded any excess of jurisdiction.

.....

Record  
p.52, 1.5

"I do not think that the Governor exceeded his powers under section 8 of the Ordinance of 1952 or in any way erred when he appointed a Committee of Enquiry."

Van Lare Ag. C.J. said of Section 88 of the Courts Ordinance -

p.52, 1.17

"I am of the opinion that the effect of this section is not such as to exclude the supervisory jurisdiction exercised by the Supreme Court over inferior tribunals concerned with the matters mentioned in that section and, in particular over State Councils, or Committees of Inquiry appointed under the State Council Ordinance."

10

But he held -

p.57, 1.42

"that the terms of reference of the Committee of Enquiry were very wide and comprehensive enough to empower the Committee not only to inquire into charges preferred against the Ohene Nana Owusu Ahenkora II of Adowsena but also under the fifth charge to investigate the destoolment of Nana Ntiamoah Kofi III. Consequently I am also of the view that the findings of the Committee and confirmed by the Governor that 'Nana Ntiamoah Kofi III had not been destooled, and was therefore the Ohene of Adowsena and not Owusu Ahenkora II,' were not ultra vires."

20

p.58, 1.13

Adumua-Bossman J. reached a similar conclusion as to the Committee of Inquiry not having acted in excess of its authority and jurisdiction but held that Section 88 of the Courts Ordinance did preclude the Court from entertaining the application for the Writ of Certiorari.

30

p.58, 1.25

None of the learned Judges in the Court of Appeal dealt at all with the contention advanced on behalf of the present Appellant that no "matter" was ever referred to the Committee of Inquiry and that the appointment of the Committee of Inquiry was a nullity.

40

p.67

10. On the 10th March, 1958 the Court of Appeal granted the Appellant final leave to appeal to the Privy Council and a stay of execution.

11. The Appellant submits that Section 8 of the State Councils (Colony and Southern Togoland) Ordinance No.8 of 1952 provides for a specific and defined "matter of a constitutional nature" to be referred, in the circumstances therein mentioned, to a Committee of Inquiry for inquiry and report and for a Committee of Inquiry to be appointed by the Governor for the purpose of such reference. It is submitted that in this case no specific or defined matter was ever so referred. The Governor purported to have appointed the Committee "to inquire into a dispute in Adowsena of the Akim-Kotoku State .." without specifying or defining the dispute. It is true that prior to the purported appointment of the Committee, charges had been brought against the Appellant by the Respondent Kwabena Ofe and others and that on the 12th December 1955 the Government Agent wrote to the State Secretary, Akim Kotoku State, Akim Oda, referring to "the charges it is understood have been preferred against" the Appellant, but this was merely a notification that a Committee of Inquiry was to be recommended and a direction to the State Council to stay proceedings under Section 8(2) of the Ordinance. Neither the document containing the formulated charges against the Appellant nor the Government Agent's letter to the State Secretary formed any part of the purported appointment.

p.13, l.5

p.10

p.23, l.25

The Appellant therefore respectfully submits that there was no valid reference of any matter to the Committee and that therefore, since under the section the Governor was authorised to appoint such a Committee only for the purpose of enquiring into some matter specifically referred to it, the appointment of the Committee of Inquiry was itself ineffective and a nullity.

12. If, contrary to the Appellant's submission, the prior document containing the charges formulated against the Appellant is to be taken as containing the matters referred by the Governor to the Committee of Inquiry, then it is submitted that the findings of the Committee were ultra vires as being outside its terms of reference. The document charges the Appellant with certain specific conduct, including that in relation to the previous destoolment of Ohene Ntiamoah Kofi III and calls for the Appellant's destoolment. The Committee however, it is submitted, were not entitled to rehear the case of Ohene Ntiamoah Kofi III at all, but only to

p.10

Record

consider the Appellant's conduct in relation to it, and they were not entitled retrospectively to re-enstool Ohene Ntiamoah Kofi III or to find that he had never been properly or effectually destooled. It is submitted that there was no power in the Committee to enstool anybody.

It is submitted, that, equally upon the footing that the appointment of the Committee was a nullity or that its report was ultra vires its terms of reference, the Governor's purported confirmation of its findings was void and of no effect. The Governor was purporting to confirm a report of a Committee under s.8(1) of the Ordinance and, it is submitted, it is immaterial what powers he may have when purporting to act otherwise. 10

13. It is submitted that in purporting to act under s.8(1) of the Ordinance the Governor was acting judicially or quasi-judicially and that his decision is accordingly amenable to Certiorari. However, even if the Governor's purported confirmation of the Committee's report is to be taken as an executive and not a judicial act, in the submission of the Appellant, Certiorari will still lie if the Governor has exercised a power which does not fall within the four corners of the authority delegated to him. 20

14. The Appellant respectfully submits that Granville Sharp J.A. and Van Lare Ag. C.J. were right in holding that s.88 of the Courts Ordinance (Cap. 4) does not operate so as to bar the issue of a Writ of Certiorari. Such a Writ raises the issue only of excess of jurisdiction and does not institute a civil cause or civil matter for any of the purposes referred to in the section. 30

The Appellant respectfully submits that the Appeal should be allowed for the following among other

R E A S O N S

1. Because the appointment of the Committee of Inquiry was ineffective and a nullity.
2. Because there was no reference of any matter within the meaning of s.8(1) of the Ordinance. 40
3. Because in the absence of any terms of reference, the Committee's report was a nullity.

4. Because the Committee's report was ultra vires its terms of reference.
5. Because the Governor's purported confirmation of the Committee's report was outside the powers he was purporting to exercise under section 8(1) of the Ordinance and was null and void.
6. Because the Governor in making a decision upon the report of a Committee of Inquiry under Section 8(1) of the Ordinance is acting judicially or quasi-judicially and not administratively.
7. Because in any event the Governor's decision to confirm the Committee's report was amenable to the Writ of Certiorari.
8. Because Section 88 of the Courts Ordinance does not prevent a Writ of Certiorari from issuing.
9. Because the provision in Section 8(1) of the Ordinance that the Governor's decision upon the report shall be final and conclusive does not operate so as to remove such decision from the controlling jurisdiction of the Court exercised by way of Certiorari.
10. Because the Judgment of Windsor-Aubrey J. was right for the reasons therein stated and the Ghana Court of Appeal was wrong in reversing it.

DINGLE FOOT.

MONTAGUE SOLOMON.

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL, GHANA

IN THE MATTER of the STATE COUNCILS  
(COLONY AND SOUTHERN TOGOLAND)  
ORDINANCE 1952

- and -

IN THE MATTER of an APPLICATION for  
WRIT OF CERTIORARI to issue

---

B E T W E E N :

NANA OWUSU AHENKORA II  
(Applicant) Appellant

- and -

KWABENA OFE (Respondent) and  
THE MINISTER OF LOCAL GOVERNMENT  
(Respondent) Respondents

---

CASE FOR THE APPELLANT

---