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UNIVERSITY OF LONDON  
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- 7 FEB 1961  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

1.

IN THE PRIVY COUNCIL

No. 44 of 1959

50992

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 a WRIT OF  
CERTIORARI to issue

B E T W E E N :

10 NANA OWUSU AHENKORA II ... Appellant

- and -

KWABENA OFE and THE MINISTER  
OF LOCAL GOVERNMENT ... Respondents

CASE FOR THE RESPONDENT KWABENA OFE

20 1. This is an appeal from a Judgment and Order of  
the Court of Appeal of Ghana dated 4th November,  
1957, setting aside a Judgment and Order of the  
Supreme Court of the Gold Coast, Eastern Judicial  
Division, dated 7th February, 1957. By the said  
Judgment and Order dated 7th February, 1957 the  
Supreme Court had granted in favour of the Appellant  
Nana Owusu Ahenkora II (hereinafter called "the  
Appellant") an Order of Certiorari quashing (a)  
certain proceedings of a Committee of Enquiry  
appointed on or about 24th March, 1956 by the  
Officer Administering the Government of the Colony  
under Section 8 of the State Councils (Colony and  
Southern Togoland) Ordinance 1952 and (b) a deci-  
30 sion of the Governor dated 5th November 1956 con-  
firming the findings of the said Committee of  
Enquiry.

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pp. 43 to 67  
pp. 28 to 30

Record

2. A person named Ntiamoa Kofi III (who is not a party to this appeal) had until about 12th September 1952 admittedly been the Chief (Ohene) of Adowsena in the Akim Kotoku State in the Eastern Region of the Gold Coast Colony.

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3. On or about the said 12th September 1952 the Akim Kotoku State Council made an Order purporting to destool the said Ntiamoa Kofi III and the Appellant claimed that he was thereafter duly enstooled as the new Chief (Ohene) of Adowsena on 26th March 1955.

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4. On 5th November 1955 the Respondent Kwabena Ofe (hereinafter called "the First Respondent") and certain other Elders and Electors of the Stool of Adowsena presented to the Akim Kotoku State Council certain charges against the Appellant including the following charge:-

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"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 recognized 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 .....

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The First Respondent and the other Elders and Electors associated with him accordingly demanded that after due enquiry the Appellant should be destooled on the ground inter alia that the purported destoolment of Ntiamoa Kofi III in September 1952 had been unlawfully and irregularly obtained and was invalid.

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5. On or about 24th March 1956 the Governor of the Colony, in the exercise of the powers vested in him by Section 8(1) of the State Councils (Colony and Southern Togoland) Ordinance 1952 appointed a Committee of Enquiry to enquire into the matters arising upon the said dispute and to submit a report thereon to the Governor.

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6. In view of the appointment of the said Committee of Enquiry the jurisdiction of the Akim Kotoku State Council over the said dispute was ousted by Section 8(2) of the said State Councils (Colony and Southern

Togoland) Ordinance, 1952, and the said State Council was informed accordingly.

Record  
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7. The Committee of Enquiry, having held an enquiry as directed, duly submitted their report and recommendations to the Governor, and, after consideration thereof, on 5th November 1956 the Governor caused the following notification to be published for general information in the Gold Coast Gazette No. 73 of 10th November 1956:-

10 ANNEXURE 'E' - REPORT OF COMMITTEE  
OF ENQUIRY

THE GOLD COAST GAZETTE NO. 73 of  
10th NOVEMBER, 1956

MINISTRY OF LOCAL GOVERNMENT

No. 2554.

REPORT OF A COMMITTEE OF ENQUIRY

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20 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 and Nana Owusu Ahenkora II, Ohene 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.

30 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.

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

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8. On 6th December 1956 the Appellant filed a Motion ex parte in the Supreme Court of the Gold Coast applying for an Order of Certiorari to be issued to

1. The Minister of Local Government
2. The First Respondent
3. The Members of the Committee of Enquiry

calling upon them to surrender

(a) the proceedings of the said Committee of Enquiry held at Koforidua in the Eastern Province of the Colony ..... 10

and

(b) the confirmation by His Excellency the Governor of the Report of the said Committee as shown in Gazette Notice No. 2554 of Gazette No. 73 of 10th November, 1956.

to be quashed on the grounds set forth in the Affidavit dated 6th December 1956 attached to the Appellant's Motion.

p.3.

9. The grounds of the Appellant's application for an Order of Certiorari were inter alia as follows:- 20

"7. That the said Committee exceeded its terms of reference and went beyond its scope as is apparent from the findings and report and the confirmation thereof by His Excellency the Governor.

8. That the Committee was not asked to go into the merits or demerits of the destoolment of Ntiamoah Kofi III who was in no way referred to in the said Terms of Reference and who had not appealed against his said destoolment and who under the law existing at date of his destoolment had no right of appeal. 30

9. That the said Ntiamoah Kofi III did not give evidence before the Committee nor was the Akim Kotoku State Council which had declared him destooled given any opportunity of being heard by the Committee before reversing the decision of the said State Council. 40

10. That the Committee had no jurisdiction to get into the destoolment of Ntiamoah Kofi III and was not so authorised by any competent authority."

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10. The Appellant's motion was considered on 17th December 1956 by Windsor-Aubrey J., who granted leave to issue the Order of Certiorari "to be served on the persons specified in the Appellant's application" namely the First Respondent, the Minister of Local Government (hereinafter called "the Second Respondent") and on two of the three members of the Committee of Enquiry (the third member having died before the proceedings commenced). Notice of the Appellant's Motion was accordingly served on the 1st and 2nd Respondents and on the two said surviving members of the Committee of Enquiry.

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11. The Appellant made no application for a notice of his motion to be served, and no notice was in fact served, on Ntiamoah Kofi III who, having been reinstated as Chief (Ohene) of Adowsena, would have been directly affected by the Order of Certiorari applied for by the Appellant.

12. The First Respondent filed an Affidavit dated 10th January 1957 in which he raised inter alia the following objections to the grant of the Order of Certiorari asked for by the Appellant:-

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"3b. That the Akim Kotoku State Council was not under Customary Law the Competent Authority to destool the Ohene Nana Ntiamoah Kofi III nor did the State Councils (Colony and Southern Togoland) Ordinance 1952 give any power and authority to State Councils so to act.

c. That the alleged destoolment of the said Ntiamoah Kofi by the State Council was not recognised and accepted either by the Respondents who are the Electors of the Stool of Adowsena nor by Government, since the Governor ruled that the Notice of the said destoolment was not to be published in the Government Gazette.

d. That the Terms of Reference given to the Committee of Enquiry appointed by the Governor were general and comprehensive

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and that in order to determine the true position of the Ohene Owusu Ahenkora, the Committee was entitled to look into the circumstances which led to the alleged destoolment of Ntiamoah Kofi in view of the charge laid against the applicant (Charge 5) that he had aided and abetted certain persons to bring about the said destoolment unlawfully and without the knowledge and consent of the Respondents and contrary to their wishes and as these were matters of fact antecedent to a true assessment of the position the Committee had every right to enquire into and find the facts.

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e. That it was unnecessary for the said Ntiamoah Kofi to give evidence or for the State Council to be granted a hearing since, under Customary Law, a State Council is not a Party to any destoolment proceedings.

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4. That in any case the Governor's decision under Section 8 of the Ordinance was final and conclusive and cannot be questioned.

5. That the proceedings being in respect of a matter of a Constitutional Nature, the Supreme Court is barred from exercising jurisdiction to enquire into it and that the Writ of Certiorari did not lie."

13. After hearing Counsel for the Appellant and the Respondents on 23rd January 1957 Windsor-Aubrey J. pronounced judgment on 7th February 1957 and made an Order the operative words of which were to the following effect:-

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p.30

"an order of certiorari is granted requiring the respondent to surrender to this Court the proceedings of the committee of enquiry and the Governor's confirmation thereof for the purpose of both being quashed and they are hereby quashed, a formal order to be drawn up."

14. Windsor-Aubrey J. held inter alia:-

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p.29, 1.15.

(a) That the Committee of Enquiry in recommending the reinstatement of Ntiamoah Kofi III had exceeded its terms of reference, and that the

Governor, having confirmed that recommendation, had acted without jurisdiction.

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p.29, 1.40

(b) That the whole of the Governor's Order was "totally illegal" and was therefore amenable to an order of certiorari notwithstanding the provisions of Section 8(1) of the State Councils (Colony and Southern Togoland) Ordinance 1952.

p.29, 1.26

10 (c) That a Committee of Enquiry had no power to reverse a decision already taken by a State Council.

p.29, 1.14

15. The First and Second Respondents appealed against the Judgment and Order of Windsor-Aubrey J.

pp.30-33

16. The appeal was argued before the Ghana Court of Appeal on 22nd October 1957 and 23rd October 1957 before a bench of three Judges, and on 4th November 1957 the Court of Appeal made an Order as follows:-

20 "The appeal is allowed; the order appealed from requiring the respondents to surrender to the Divisional Court the proceedings of the Committee of Enquiry and the Governor's confirmation thereof for the purpose of being quashed is set aside and the application is dismissed.

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30 The appellants will have the costs in this Court fixed at £53.10.3 for 1st Appellant and £34.13.9 for 2nd Appellant and, in the Court below assessed for £12.12.0 each. Court below to carry out."

The reasons for the Order are contained in the separate judgments pronounced by Van Lare Acting Chief Justice, Granville Sharp J.A. and Adumua-Bossman J. respectively.

pp.43-66

40 16. Van Lare A.C.J. and Granville Sharp J.A. (who pronounced the principal Judgment) decided in favour of the Appellant that neither the provisions of Section 8(1) of the State Councils (Colony and Southern Togoland) Ordinance 1952 nor the provisions of Section 88 of the Courts Ordinance had the effect of ousting the jurisdiction of the Supreme Court to issue an order of certiorari in cases

p.48, 1.40  
p.52, 1.17

- Record
- p.57, 1.40 where the Committee of Enquiry and/or the Governor had overstepped the limits of their respective jurisdictions. Nevertheless, they took the view that the findings of the Committee and the confirmation thereof by the Governor were not ultra vires.
18. Adumua-Bossman J. decided (rightly, it is respectfully submitted):
- p.58, 1.11 (a) That the Committee of Enquiry whose findings were sought to be impeached by the Appellant did not act in excess of the authority and jurisdiction conferred upon them by their terms of reference. 10
- p.58, 1.20 (b) That the Governor in confirming the findings of the said Committee had also acted within the limits of his jurisdiction.
- p.65, 1.42 (c) That in any event the Supreme Court was precluded by the provisions of Section 88 of the Courts Ordinance (Chapter 4) from granting an application for an order of certiorari for the purpose of quashing either the report and recommendations of the Committee of Enquiry or the decision of the Governor. 20
19. Section 88(1) of the Courts Ordinance (Chapter v of the Laws of the Gold Coast, 1951 Revision) is to the following effect:
- "88. The Supreme Court and Magistrates' Courts 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;" 30
20. The First Respondent respectfully submits that the proceedings before the Supreme Court for an order of certiorari quashing the Governor's Order for the reinstatement of Ntiamoah as Chief (Ohene) constituted a "civil cause or matter" instituted for the trial of a question "relating to the election, installation and deposition" of a Chief within the meaning of Section 88(1) of the Courts Ordinance. Accordingly, the Supreme Court had no jurisdiction 40



to entertain or to grant the Appellant's application for an order of certiorari quashing the Governor's decision.

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21. The first Respondent further submits that all three judges of the Court of Appeal correctly decided that both the report of the Committee of Enquiry and the decision of the Governor thereon were intra vires and that the order of Windsor-Aubrey J. directing the said report and decision to be quashed was contrary to law.<sup>2</sup>

22. The recommendations of the Committee of Enquiry were in effect

(a) that the Appellant's purported enstoolment on 26th March 1950 should be set aside and declared invalid; and

(b) that Ntiamoah Kofi III should be reinstated in his office.

The First Respondent submits that each of the above recommendations was intra vires and that the Governor's decision confirming the same was not made in excess of jurisdiction.

23. The First Respondent further submits that, in view of the provisions of Section 8(1) of the State Councils (Colony and Southern Togoland) Ordinance 1952, the Governor's decision upon the Committee of Enquiry's report was final and conclusive and was for this additional reason not amenable to certiorari.

24. The procedure for prerogative Writs in the Supreme Court is laid down in Order 59 of the Supreme Court (Civil Procedure) Rules 1954 and Rules 2, 3 and 4 of Order 59 are as follows:-

"4(2) The notice or summons shall be served on all persons directly affected, and where it relates to any proceedings in or before a Court, and the object is either to compel the Court or an officer thereof to do any act in relation to the proceedings or to quash them or any order made therein, the notice of motion or summons shall be served on the clerk or Registrar of the Court and the other parties to the proceedings.

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(3) An affidavit giving the names and addresses of, and the place and date of service on, all persons who have been served with the notice of motion or summons shall be filed before the notice or summons is put in the list for hearing, and, if any person who ought to be served under the provisions of the last preceding paragraph has not been served, the affidavit shall state that fact and the reason why service has not been effected, and the affidavit shall be before the Court on the hearing of the motion or summons. 10

(4) If on the hearing of the motion or summons the Court or Judge is of opinion that any person who ought to have been served therewith has not been served, whether or not he is a person who ought to have been served under the foregoing provisions of this Rule, the Court or Judge may adjourn the hearing, in order that the notice or summons may be served on that person, upon such terms (if any) as the Court or Judge may direct." 20

It is submitted that the omission (in breach of the mandatory requirements of Order 59) to serve a notice of the motion on Ntiamoah Kofi III, the validity of whose reinstatement as Chief (Ohene) of Adowsena was challenged by the Appellant, was a fatal irregularity, and that the judgment and order of Windsor-Aubrey J. dated 7th February 1957, being contrary to law for this additional reason, ought not to be restored. 30

25. The First Respondent respectfully submits that the Appellant's appeal should be dismissed with costs and that the judgment and order of the Ghana Court of Appeal dated 4th November 1957 should be confirmed for the following amongst other.

R E A S O N S

1. BECAUSE, in view of the provisions of Section 88 of the Courts Ordinance (Chapter 4) and/or of Section 8(1) of the State Councils (Colony and Southern Togoland) Ordinance 1952, the decision of the Governor on the report of the Committee of Enquiry is not amenable to certiorari. 40

2. BECAUSE the Judges of the Ghana Court of Appeal correctly decided that the report and recommendations of the Committee of Enquiry were intra vires and that the decision of the Governor upon the said report was not made in excess of jurisdiction.
3. BECAUSE, the report of the Committee of Enquiry, in so far as it reported that the Appellant was not the Ohene of Adowsena, was in any event intra vires, and the Governor's decision in so far as it confirmed that finding was not made in excess of jurisdiction.
4. BECAUSE the Supreme Court had no power to quash the Governor's decision "that Ntiamoah Kofi III had not been destooled" except in proceedings of which the said Ntiamoah Kofi III was given due notice as required by the Supreme Court (Civil Procedure) Rules, 1954.
5. BECAUSE the judgment of Adumua-Bossman J. in the Ghana Court of Appeal was right for the reasons therein stated.

E.F.N. GRATIAEN.

No. 44 of 1959

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

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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

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C A S E

FOR THE RESPONDENT KWABENA OFE

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