

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

---

RECORD OF PROCEEDINGS

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Solicitors-for the Appellant

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Solicitors for The Minister  
of Local Government.

IN THE PRIVY COUNCIL

No. 44 of 1959

ON APPEAL  
FROM THE COURT OF APPEAL, GHANA

UNIVERSITY OF LONDON  
W.C.1.

- 7 FEB 1961

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

INSTITUTE OF ADVANCED  
LEGAL STUDIES

50990

- 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 -

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THE MINISTER OF LOCAL GOVERNMENT  
(Respondent)

Respondents

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No. 44 of 1959

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

10 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

RECORD OF PROCEEDINGS

No. 1

MOTION for leave to issue  
WRIT OF CERTIORARI

In the  
Supreme Court  
of the  
Gold Coast

No. 1

20 IN THE SUPREME COURT OF THE GOLD COAST

EASTERN JUDICIAL DIVISION  
DIVISIONAL COURT, ACCRA

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

- and -

IN THE MATTER of;

30 KWABENA OFE - Krontihene of Adowsena  
& Ors. ... Respondents

versus;

NANA OWUSU AHENKORA II  
Ohene of Adowsena ... Applicant

Motion for  
leave to  
issue Writ of  
Certiorari.

6th December,  
1956.

MOTION Ex-Parte by E.O. Asafu-Adjaye of Counsel  
for and on behalf of the Applicant herein Nana Owusu

In the  
Supreme Court  
of the  
Gold Coast

No. 1

Motion for  
leave to  
issue Writ of  
Certiorari.

6th December,  
1956

- continued.

Ahenkora II, Ohene of Adowsena for an Order granting leave to issue Writ of Certiorari to:

- a. The Minister of Local Government, Accra.
- b. The Respondents herein: namely Krontihene Kwabena Ofe of Adowsena: AND

c. A Committee of Enquiry consisting of:

- (1) Ne-ne Lanimo Opata II, Hiowe Mantse of Shai;
- (2) Nana Osei Djan of Aburi, Adontehene of Akwapim, and
- (3) A. Obuadabang Larbi, Esq., (Now deceased)

appointed as shown in Gazette Notice No. 637 of Gazette No.20 of 24th March, 1956;

calling upon them to surrender;

a. the proceedings of the said Committee of Enquiry held at Koforidua in the Eastern Province of the Colony and within the jurisdiction of this Court 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 this Honourable Court to be quashed on the grounds set forth in the Affidavit attached hereto and also for an order for stay of execution upon the granting of such leave and for any other order or orders as to this Honourable Court may seem meet.

TO BE MOVED under Order 59 Rules 2 and 3 of the Supreme Court (Civil Procedure) Rules 1954 on MONDAY the 17th day of December, 1956 at 9 a.m. in the forenoon or so soon thereafter as Counsel for and on behalf of the Applicant herein can be heard.

DATED at Adontene Chambers Accra this 6th day of December, 1956.

(Sgd.) E.O. Asafu-Adjaye.  
p.p. E.O. ASAFU-ADJAYE & CO  
(SOLICITORS FOR APPLICANT)

10

20

30

40

No. 2

STATEMENT in support of CERTIORARI  
MOTION with ANNEXURES

In the  
Supreme Court  
of the  
Gold Coast

No. 2

IN THE SUPREME COURT OF THE GOLD COAST

EASTERN JUDICIAL DIVISION

DIVISIONAL COURT, ACCRA.

Statement in  
support of  
Certiorari  
Motion with  
Annexures.

6th December,  
1956.

IN THE MATTER of the State Councils (Colony  
& Southern Togoland) Ordinance 1952

- and -

10 IN THE MATTER of an application for Writ of  
Certiorari to issue

- and -

IN THE MATTER of :-

KWABENA OFE, Krontihene of Adowsena

& ors. ... .. Respondents

versus:

NANA OWUSU AHENKORA II,

Ohene of Adowsena ... .. Applicant

20 STATEMENT OF NANA OWUSU AHENKORA II,  
OHENE OF ADOWSENA IN SUPPORT OF  
MOTION FOR AN ORDER OF CERTIORARI.

I, OWUSU AHENKORA, Ohene of Adowsena state as  
follows:-

1. That I am the applicant herein and was en-  
stooled in accordance with custom as the  
Ohene of Adowsena on 26th March, 1955 vide  
Gazette No.73 of 20th August, 1955 item  
30 appearing under Notice No.2535 in the said  
Gazette a copy of which said Notice is annex-  
ed hereto and marked 'A'.
2. That the previous occupant of the Stool of  
Adowsena was Ntiamoa Kofi III who was de-  
clared destooled on 1st September, 1952 by  
the Akim Kotoku State Council, the competent  
authority under the State Councils (Colony &  
Southern Togoland) Ordinance, 1952.
3. That no appeal was lodged against the said  
destoolment by Ntiamoa Kofi III and his de-  
stoolment was recognised and accepted.



In the  
Supreme Court  
of the  
Gold Coast

No. 2

Statement in  
support of  
Certiorari  
Motion with  
Annexures.

6th December,  
1956

- continued.

- Furthermore he was convicted by the District Magistrate's Court, Swedru for failing as an ExChief of Adowsena to deliver the Stool properties when ordered by the State Council so to do; the said conviction having ultimately been confirmed by the West African Court of Appeal on 29th August, 1955. A copy of the said Judgment is annexed hereto and marked 'B'.
4. That on or about the 5th November, 1956 the respondent herein Kwabena Ofe, then Krontihene, and some others preferred charges against me for my destoolment to the Akim-Kotoku State Council. I crave leave to refer to a copy of the said charges annexed hereto and marked 'C'. 10
  5. That a Committee of Enquiry was in due course set up by order of His Excellency the Governor with specific terms of reference to enquire into the dispute between the said Krontihene and me. A copy of the said order is annexed hereto and marked 'D'. 20
  6. That the said Committee sat at Koforidua within the jurisdiction of this Court and after an enquiry, allegedly under its terms of Reference, forwarded its findings and Report to His Excellency the Governor who confirmed the said Report on the 10th day of November, 1956 as evidenced by Gazette Notice No.2554 of Gazette No.73 of 10th November, 1956, a copy of which is hereto annexed and marked 'E'. 30
  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 Ntiamoa 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. 40
  9. That the said Ntiamoa 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.

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

WHEREFORE the applicant prays that the proceedings of the said Committee of Enquiry and the confirmation of its Findings by His Excellency the Governor be surrendered to this Honourable Court to be quashed.

DATED at Accra the 6th day of December, 1956.

(Sgd.) Owusu Ahenkora II  
(APPLICANT).

THE REGISTRAR,  
DIVISIONAL COURT,  
A C C R A .

In the  
Supreme Court  
of the  
Gold Coast

No. 2

Statement in  
support of  
Certiorari  
Motion with  
Annexures.

6th December,  
1956

- continued.

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ANNEXURE 'A' - GAZETTE NOTIFICATION

GAZETTE NO. 73, 20th August, 1955

MINISTRY OF LOCAL GOVERNMENT.

(Too late for Classification)

No.2535.

MEMBERSHIP OF STATE COUNCILS

THE STATE COUNCILS (COLONY AND SOUTHERN TOGOLAND)  
REGULATIONS, 1954.

Notification of the following changes affecting membership of a State Council has been accepted.

THE AKIM KOTOKU STATE COUNCIL

26-3-55 Willie Ofosu as Nana Owusu Ahenkora II,  
Ohene of Adowsena - Enstooled.

---

Annexure 'A'  
to Statement  
in support of  
Certiorari  
Motion.

6th December,  
1956.

ANNEXURE 'B' - JUDGMENT,  
Civil Appeal No. 30/55

In the  
Supreme Court  
of the  
Gold Coast

No. 2

IN THE WEST AFRICAN COURT OF APPEAL  
GOLD COAST SESSION

Coram:

Foster-Sutton, P.  
Korsah, Ag. C.J.  
Coussey, J.A.

Civil Appeal No.30/55

Annexure 'B'  
to Statement  
in support of  
Certiorari  
Motion,

6th December,  
1956.

29th August, 1955

10

The President of Akim Kotoku State  
Council, Plaintiff-Respondent-Appellant.

versus:

Nana Ntiamoah Kofi III  
alias Kofi Ntoa of Adowsena,  
Defendant-Appellant-Respondent

J U D G M E N T :

KORSAH, AG, C.J.: This is an appeal from the  
Judgment of the Divisional Court, Central Province,  
sitting as an appellate Court in a Criminal Appeal  
from the Judgment of District Magistrate, Swedru.  
The charge reads:-

20

Statement of Offence

"Failing to deliver stool properties contrary  
"to Section 15 ss 2 of the State Councils  
"(Colony) and Southern Togoland Ordinance,  
"1952."

Particulars of Offence

"To show cause why the defendant should not  
"be committed to prison for that you being an  
"Ex-Chief of Adowsena in the Akim Kotoku State  
"and within the Jurisdiction of this Court,  
"having been served with a State Council Order  
"by the Akim Kotoku State dated the 5th Octo-  
"ber, 1954, requiring you to deliver up pro-  
"perties in your possession, unlawfully

30

"detained by you, did fail to comply with the  
"said Order of the Akim Kotoku State Council:  
"Contrary to Section 15 ss 2 of the State  
"Councils (Colony) and Southern Togoland  
"Ordinance."

In the  
Supreme Court  
of the  
Gold Coast

No. 2

10 Defendant was prior to 1st September, 1952,  
the chief of Adowsena in the Akim Kotoku State,  
but in consequence of the decision of the Akim  
Kotoku State Council delivered on 1st September,  
1952, in a matter of a constitutional nature  
brought before it against the defendant, which  
inter alia contains the following pronouncement:-

Annexure 'B'  
to Statement  
in support of  
Certiorari  
Motion

6th December,  
1956  
- continued.

"This custom being one of the celebrated few  
"sacred customs infringed by Ntiamoah Kofi  
"III, Ohene of Adowsena, this Council hereby  
"find guilty of the charge.  
"He is automatically destooled with effect  
"from date of this decision."

The said State Council made the following Order:-

20 "Order: The properties belonging to the Stool  
"and the Stool itself must be delivered up  
"forthwith to the customary custodian who is  
"the Gyasehene of Adowsena until such time as  
"a new chief will be elected."

30 Defendant having refused to deliver up the  
said properties, he was brought before the District  
Magistrate's Court and convicted. On appeal there-  
from to the Divisional Court, Benson J. dismissed  
defendant's appeal. At a subsequent meeting of the  
State Council held on 5th October, 1954, it is re-  
corded:-

40 "The Judgment of Adowsena Constitutional  
"Matter was read and the following Order was  
"made:  
"In compliance with the Judgment by His Lord-  
"ship Justice H.B. Benson at the Supreme  
"Court, Cape Coast, on the 25th day of Septem-  
"ber, 1954, you are ordered by the Akim Kotoku  
"State Council to deliver the Adowsena Stool  
"and all its properties to Bafour Kwame Nimoh  
"the Gyasehene of Adowsena on the 18th day of  
"October, 1954."

In consequence of the defendant's refusal to  
obey the said Order of the 5th October, 1954, he

In the  
Supreme Court  
of the  
Gold Coast

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Annexure 'B'  
to Statement  
in support of  
Certiorari  
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6th December,  
1956  
- continued.

was again brought before the District Magistrate's Court by virtue of Sections 10 and 15 of the State Councils (Colony) and Southern Togoland Ordinance No.8 of 1952 and duly convicted.

Defendant appealed from that decision, to the Divisional Court, which by the Judgment of Benson, J. allowed defendant's appeal and quashed the conviction and sentence on the ground as stated by the learned Judge:-

"On the face of the "Order" therefore, and  
"which the State Council sought to enforce,  
"it was made, not by virtue of a decision of  
"the State Council, but to enforce a Judgment  
"given by this Court."

10

Complainant has appealed to this Court against the Judgment of Benson, J. and contends that the Order of the State Council was properly made in pursuance of the provisions of Section 15 ss 1 and 2 of the said Ordinance.

It is contended on behalf of defendant  
Firstly:-

20

There was no evidence before the Magistrate's Court that the Akim Kotoku State Council had held any enquiry into the destoolment etc.

This ground, however, is without foundation whatsoever, because the original record book of the State Council which contains the enquiry and decision of the State Council was tendered in evidence and marked Exhibit 'B'. It clearly proves that defendant was in consequence of the enquiry declared to be "automatically destooled as from 1st September, 1952". The learned Judge obviously overlooked this important piece of evidence.

30

Secondly:-

That the Order of 5th October, 1954 was unlawful and of no effect in that it purported to be grounded on a decision of the Divisional Court (Benson, J.) in a previous appeal involving the same parties, and not on a decision of the State Council regarding the destoolment of the Appellant.

40

This ground also fails, because the record of

the proceedings for the State Council shows that the previous Judgment of the Adowsena Constitutional Matter was read before the second Order was made. The mere fact that the said Order also recites the Judgment of the Divisional Court in respect of the original Order does not in my view prove that the said Order is based on the Judgment of Benson, J. It is more reasonable to conclude that by the reference to the reading of the previous Judgment of the State Council in the Adowsena Constitutional Matter, followed by the reference to the Judgment of Benson, J. the State Council merely intended to give a resume of the previous proceedings in their order of sequence, before making the Order of 5th October, 1954. In any event, I am clearly of the opinion that so long as there is a previous decision of the State Council, 1st September, 1952, apparently declared valid by a Court of Competent Jurisdiction, which has confirmed the conviction of the defendant based on that Order, made in respect of the said decision, the said Order of 5th October, 1954 is lawful.

In these circumstances, I am of the opinion that the Judgment of Benson, J., should be set aside and the Judgment of the District Magistrate restored.

FOSTER-SUTTON, P.: I concur

COUSSEY, J.A.: I concur.

J.B. Short for Appellant.

30 J.W. deGraft Johnson (Akufo Addo with him) for Respondent.

In the  
Supreme Court  
of the  
Gold Coast

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Annexure 'B'  
to Statement  
in support of  
Certiorari  
Motion

6th December,  
1956

- continued.

In the  
Supreme Court  
of the  
Gold Coast

No. 2

ANNEXURE 'C' - CHARGES made against  
NANA OWUSU AHENKORA II

Adowsena,  
5th November, 1955.

Annexure 'C'  
to Statement  
in support of  
Certiorari  
Motion,

The President,  
Akim Kotoku State Council,  
Oda.

And Nana Owusu Ahenkora II of Adowsena

6th December,  
1956.

Charges against Nana Osusu Ahenkora II,  
Ohene of Adowsena in the Akim Kotoku  
State in the Eastern Region of the Gold  
Coast Colony.

10

We, the undersigned, Elders, Electors of the  
Stool of Adowsena in the Akim Kotoku State in the  
Eastern Region of the Gold Coast Colony do hereby  
prefer the under-mentioned charges against the  
Ohene Nana Owusu Ahenkora II of Adowsena, Ohene  
(Divisional Chief) by virtue of Government Gazette  
Notice No.2535 (Gazette No.73 of 20th August, 1955  
page 1397) for him to stand his trial under Native  
Customary Law by the Akim Kotoku State Council  
namely:

20

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 him-  
self 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 be-  
haviour was again dismissed from service.
- c. he after or during his dismissal from the  
service of the Gold Coast Police joined  
the fighting forces of the British Common-  
wealth and while serving as such stationed  
at Kintampo in Ashanti was convicted of  
the crime of burglary and served a prison  
sentence of five (5) years.

30

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.

In the  
Supreme Court  
of the  
Gold Coast

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Annexure 'C'  
to Statement  
in support of  
Certiorari  
Motion,

6th December,  
1956

- continued.

10

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.

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.

SIGNED OR MARKED at Adowsena the 5th day of November, 1955.

40

(mkd)	Kwabena Ofe Krontihene	Their
(mkd)	Adjua Tenewah Ohemas	X
(mkd)	Kwabena Ebu Ebusuapanin	marks
(sgd)	Kwasi Boateng Kurankyi Gyasehene	



In the  
Supreme Court  
of the  
Gold Coast

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Annexure 'C'  
to Statement  
in support of  
Certiorari  
Motion,

6th December,  
1956

- continued

(mkd) Kodjo Boateng Sanahene  
(mkd) Kwesi Bayie Akyeamehene                      Their  
(mkd) Kofi Agyeikum Akwamuhene                      X  
(mkd) Kodjo Fordwo Babihene                      Marks  
Electors of the Stool of Adowsena  
Witness to Signature and Marks  
  
(sgd) ? Edmund.

Information copies to:-

1. The Minister of Local Government, Accra.
2. The Regional Officer, Koforidua.                      10
3. The Government Agent, Oda.
4. The Senior Government Agent, Kibi.
5. The Secretary, Akim-Kotoku State Council,  
Oda.
6. The Senior Supt. of Police, Cape Coast.
7. The Asst. Commissioner of Police, Cape  
Coast.

Annexure 'D'  
to Statement  
in support of  
Certiorari  
Motion,

6th December,  
1956.

ANNEXURE 'D' - APPOINTMENT of  
COMMITTEE OF ENQUIRY

THE GOLD COAST GAZETTE NO. 20 OF 24TH MARCH, 1956                      20

MINISTRY OF LOCAL GOVERNMENT

NO. 637

The State Councils (Colony and Southern Togoland)  
Ordinance No.8 of 1952.

APPOINTMENT OF A COMMITTEE OF ENQUIRY

It is hereby notified for general information  
that under section 8 of the State Councils (Colony  
and Southern Togoland) Ordinance, 1952, His  
Excellency the Officer Administering the Government  
has appointed a Committee of Enquiry consisting of:                      30

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

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

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

In the  
Supreme Court  
of the  
Gold Coast

No. 2

Annexure 'D'  
to Statement  
in support of  
Certiorari  
Motion,

6th December,  
1956

- continued.

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

10

ANNEXURE 'E' - REPORT of COMMITTEE  
OF ENQUIRY

Annexure 'E'  
to Statement  
in support of  
Certiorari  
Motion,

6th December,  
1956.

THE GOLD COAST GAZETTE No. 73 OF 10TH NOVEMBER,  
1956

MINISTRY OF LOCAL GOVERNMENT

No.2554.

REPORT OF A COMMITTEE OF ENQUIRY

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 be-  
ing 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 ascend-  
ing the Adowsena Stool, and that no charges have  
been proved to merit his destoolment.

20

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.

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

40

In the  
Supreme Court  
of the  
Gold Coast

No. 3

COURT NOTES granting leave to  
issue Writ of Certiorari

No. 3

17th December, 1956.

Court Notes  
granting  
leave to  
issue Writ of  
Certiorari.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL  
DIVISION, held at VICTORIABORG, ACCRA, on MONDAY  
the 17th day of DECEMBER, 1956, before WINDSOR-  
AUBREY, J.

17th December,  
1956.

Misc.38/56

IN THE MATTER of the State Councils  
(Colony and Southern Togoland)  
Ordinance, 1952

10

- and -

IN THE MATTER of an Application for  
Writ of Certiorari to issue

- and -

IN THE MATTER of -  
KWABENA OFE etc., & ors: Respondents

versus

NANA OWUSU AHENKORA II, Applicant

20

Motion for Writ of Certiorari.

Asafu-Adjaye for Applicant-Mover:

Application granted in terms of motion.  
Leave to issue Writ of Certiorari granted  
to be served on persons specified in  
application.

Hearing 23rd January at 9 a.m. (One day case)

(Sgd.) H.M. Windsor-Aubrey.  
J U D G E.

---

No. 4

APPLICATION FOR WRIT OF CERTIORARI

IN THE SUPREME COURT OF THE GOLD COAST,  
EASTERN JUDICIAL DIVISION,  
DIVISIONAL COURT, ACCRA.

In the  
Supreme Court  
of the  
Gold Coast

No. 4

Application  
for Writ of  
Certiorari.

19th December,  
1956

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

10

- and -

IN THE MATTER of :-

KWABENA OFE,  
Krontihene of Adowsena & ors. Respondents

versus

NANA OWUSU AHENKORA II,  
Ohene of Adowsena Applicant

PURSUANT TO AN ORDER made by this Honourable  
Court on the 17th day of December, 1956, Granting  
Leave to the Applicant herein to apply for a Writ  
of Certiorari, Take Notice that this Honourable  
Court will be moved by E.O. Asafu-Adjaye, Esquire,  
of Counsel for and on behalf of Nana Owusu  
Ahenkora II for an Order of Certiorari directed  
to:-

20

- a. The Minister of Local Government, Accra.
- b. The Respondent herein namely: Krontihene Kwabena Ofe of Adowsena and
- c. A Committee of Enquiry consisting of:

30

- 1. Nene Lanimo Opata II, Hiowe Mantse of Shai.
- 2. Nana Osei Djan of Aburi, Adontenhene of Akwapim and
- 3. A. Obuadabang-Larbi, Esq., (now deceased)

appointed as shown in Gazette Notice No. 637 of

In the  
Supreme Court  
of the  
Gold Coast

No. 4

Application  
for Writ of  
Certiorari.

19th December,  
1956

- continued.

Gazette No.20 of 24th March, 1956, calling upon them to surrender (a) the proceedings of the said Committee of Enquiry held at Koforidua in the Eastern Province of the Colony and within the jurisdiction of this Court 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 this Honourable Court to be quashed on the grounds set forth in the Statement attached to the application for leave and for any Order or Orders as to this Honourable Court may seem meet.

10

TO BE MOVED under Order 59 Rule 4 of the Supreme Court (Civil Procedure) Rules 1954 on Wednesday the 23rd day of January, 1957 at 9 a.m. in the forenoon or so soon thereafter as Counsel for and on behalf of the Applicant herein can be heard.

(Sgd.) E.O. Asafu-Adjaye.

PP. E.O. ASAFU-ADJAYE & CO.  
(SOLICITOR FOR APPLICANT)

20

The Registrar,  
Divisional Court, Accra.

AND TO -

1. The Minister of Local Government, Accra or his duly accredited Representative.
2. The Respondent herein, Kwabena Ofe, Krontihene, Adowsena (via Oda).
3. Nene Lanimo Opata II, Hiowe Mantse of Shai and
4. Nana Osei Djan of Aburi, Adontenhene of Akwapim.

30

No. 4a

Statement in  
support of  
Motion for  
Order of  
Certiorari.

6th December,  
1956.

No. 4a.

STATEMENT of NANA OWUSU AHENKORA II, Ohene of Adowsena in support of Motion for an Order of Certiorari with Annexures thereto.

Not reproduced as identical to No. 2.

No. 5

AFFIDAVIT of KWABENA OFE in REPLY

IN THE SUPREME COURT OF THE GOLD COAST

EASTERN JUDICIAL DIVISION

DIVISIONAL COURT, ACCRA

In the  
Supreme Court  
of the  
Gold Coast

No. 5

Affidavit of  
Kwabena Ofe in  
Reply.

10th January,  
1957.

IN THE MATTER of:-

THE STATE COUNCILS (Colony and Southern  
Togoland) ORDINANCE 1952

- and -

10

AN APPLICATION FOR WRIT OF CERTIORARI  
TO ISSUE

- and -

IN THE MATTER:-

KWABENA OFE,

Krontihene of Adowsena & ors. Respondents  
versus:

NANA OWUSU AHENKORA II,  
Ohene of Adowsena

Applicant

AFFIDAVIT OF KWABENA OFE IN REPLY

20

I, KWABENA OFE, Krontihene of Adowsena in the  
Akim Kotoku State in the Eastern Region of the Gold  
Coast Colony make Oath and say:-

1. That I represent the Respondents referred to  
in the above proceedings pending before this  
Honourable Court.

2. That I have been served with a copy of the  
Motion papers filed by the Applicant Nana  
Owusu Ahenkora and that I have had same read  
over and interpreted to me.

30

3. That in reply I state as follows:-

a. That paragraph 1 of the Statement of the  
Applicant is incorrect in that he was  
elected and enstooled in accordance with  
Custom which was a question of fact so  
found by the Committee of Enquiry.

b. That in reply to paragraph 2, the Akim  
Kotoku State Council was not under Custom-  
ary 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

40

In the  
Supreme Court  
of the  
Gold Coast

No. 5

Affidavit of  
Kwabena Ofe in  
Reply.

10th January,  
1957

- continued.

and authority to State Councils so to act.

- c. In reply to paragraph 3, Respondents say 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 10
- d. In reply to paragraphs 4, 5, 6, 7, 8 and 10 Respondents say that the Terms of Reference given to the Committee of Enquiry appointed by the Governor were general and comprehensive and that in order to determine the true position of the Ohene Owusu Ahenkora, the Applicant herein, 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. 20 30
- e. In reply to paragraph 9, Respondents say 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.
4. That the Respondents say that in any case the Governor's decision under Section 8 of the Ordinance is final and conclusive and cannot be questioned. 40
5. That these 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 does not lie.

Sworn at Cape Coast, the 10th day )  
of January, 1957, by the Deponent )  
after the contents thereof had )  
been read over and interpreted to )  
him in the Twi language by J. W. )  
deGraft Johnson of Cape Coast )  
when he appeared perfectly to )  
understand and approve of same )  
and made his mark thereto in my )  
presence:- )

his  
Kwabena Ofo X  
mark

In the  
Supreme Court  
of the  
Gold Coast

No. 5  
Affidavit of  
Kwabena Ofo in  
Reply.  
10th January,  
1957  
- continued.

And

Before me,

(Sgd.) J. KWAMINA ANTWI,  
Commissioner for Oaths.

The Registrar,  
Divisional Court,  
Accra.

And to:-

1. The Minister of Local Government, Accra,
  2. Nene Lanimo Opata II, Hiowe Mantse of Shai,
  3. Nana Osei Djan of Aburi,
  4. Applicant Ohene Owusu Ahenkora II of Adowsena  
or His Solicitors Messrs. E.O. Asafu-Adjaye &  
Co., Accra.
-



In the  
Supreme Court  
of the  
Gold Coast

No. 6

AFFIDAVIT of NANA OWUSU AHENKORA  
with EXHIBITS

No. 6

Affidavit of  
Nana Owusu  
Ahenkora with  
Exhibits.  
17th January,  
1957.

IN THE SUPREME COURT OF THE GOLD COAST  
EASTERN JUDICIAL DIVISION  
DIVISIONAL COURT, ACCRA.

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

10

- and -

IN THE MATTER of  
KWABENA OFE, Krontihene  
of Adowsena & ors.

Respondents

versus:

NANA OWUSU AHENKORA II,  
Ohene of Adowsena

Applicant

AFFIDAVIT OF NANA OWUSU AHENKORA OHENE  
OF ADOWSENA IN REPLY TO THE AFFIDAVIT  
OF KWABENA OFE Filed herein.

20

I, NANA OWUSU AHENKORA of Adowsena make oath  
and say as follows:-

1. That I am the applicant for the issue of a  
Writ of Certiorari herein and have been  
served with an affidavit opposing my applica-  
tion by Kwabena Ofe and to which I reply as  
hereunder.
2. That I was elected and installed as the Ohene  
of Adowsena and my installation was reported  
in due course by the Elders of Adowsena as is  
evidenced by a letter dated 28th March, 1955  
addressed to the Government Agent, Oda, Birim  
District and to the North Birim Local Council.  
(A certified copy of the said letter is annex-  
ed herein and marked '1').
3. That the Akim Kotoku State Council is vested  
with jurisdiction to hear and determine any

30

constitutional dispute or matter arising in the area of the Akim Kotoku State.

In the  
Supreme Court  
of the  
Gold Coast

No. 6

Affidavit of  
Nana Owusu  
Ahenkora with  
Exhibits.

17th January,  
1957.

- continued.

- 10
4. That the destoolment of Ntiamoah Kofi III was recognised and accepted not only by the State Council but also by the proper Electors of Adowsena and that notification of the said destoolment was duly communicated to Government who in accordance with the law noted the decision in its records. (A certified copy of the letter from the Government Agent noting this decision is annexed hereto and marked '2').
- 20
5. That Ntiamoah Kofi's destoolment was an accomplished fact not objected to by the said Ntiamoah Kofi or any other person; and did not form part of the Terms of Reference which were strictly limited to the charges preferred against me as is clear from a letter from the Government Agent written on the instructions of the Minister of Local Government, a copy of which said letter is hereto annexed and marked '3'.
6. That the point in issue in this application is whether the Committee of Enquiry has in law exceeded its Terms of Reference and thereby the authority given them by Statute.

Sworn at Accra, this 17th day) (Sgd.) Owusu  
of January, 1957 ) Ahenkora II.

Before me,

30 (Sgd.) D.A. Tetteh  
Commissioner for Oaths.

The Registrar,  
Divisional Court,  
Accra.

and to -

1. The Minister of Local Government, Accra.
2. Nene Lanimo Opata II, Hiowe Mantse of Shai.
3. Nana Osei Djan of Aburi.
- 40 4. The Respondent, Kwabena Ofe, Krontihene of Adowsena, or, His Solicitor J.W. deGraft Johnson of Cape Coast.

In the  
Supreme Court  
of the  
Gold Coast

No. 6

Exhibit '1'  
to Affidavit  
of Nana Owusu  
Ahenkora

17th January,  
1957.

EXHIBIT '1' - LETTER

Adowsena,  
28th March, 1955.

Sir,

NEW CHIEF OF ADOWSENA  
INSTALLATION OF -

Upon the directions of the Electoral people of the above-named town, we have the pleasure to announce to you officially, that one Mr. Willie Ofosu a member of the Stool family of Adowsena is customary installed as the Chief (Ohene) of Adowsena with effect from the 28th of March, 1955, with the Stool name of Nana Owusu Ahenkora II.

10

2. I submit this to you very respectfully for the information of all concerned please.

I have the honour to be,  
Sir,  
Your obedient servant.

The Secretary,  
Akim K. State Council  
Akim Oda.

(mkd.) Kwaku Kwakye  
Krontihene of Adowsena.

Their  
X

20

(mkd.) Kwame Nimo  
Gyasehene of Adowsena

X

(mkd.) Abena Foriwaah II  
Queenmother of Adowsena.

X

(mkd.) Kwame Ayim  
Head of Family.

X

ELDERS OF ADOWSENA  
(mkd.) Kwaku Dua.

X  
Marks

30

(Sgd.) A.Y. Bediako.

Copies:-

The Government Agent,  
Oda - Birim District.

The Clerk of Council,  
North Birim L. Council,  
Akim Oda.

w/w/mark/signs:-  
(Sgd.) A. Y. Bediako.  
(Gratis).

EXHIBIT '2' - LETTER

Ref.0011/sf.1/Vol.11/123.

Government Agent's Office,  
Post Office Box 26,  
Oda-Birim District.

23rd January, 1953.

In the  
Supreme Court  
of the  
Gold Coast  
No. 6  
Exhibit '2'  
to Affidavit  
of Nana Owusu  
Ahenkora,  
17th January,  
1957.

Dear Nana,

10 With reference to your letter No.445/10/1923  
dated 12th September, 1952, I have the honour to  
inform you that His Excellency the Governor has  
noted the decision of the Akim Kotoku State Council  
to destool Nana Ntiamoah Kofi II, Ohene of  
Adowsena.

I am, Nana,  
Your obedient servant,  
(Sgd.) J. Lawson,  
GOVERNMENT AGENT.

20 The President,  
Akim Kotoku State Council,  
Akim-Oda.

Copy to:  
Nana Ntiamoah Kofi II,  
Adowsena.

EXHIBIT '3' - LETTER

My ref. No.CA.9/91  
Your Ref.No.

Government Agent's Office,  
P. O. Box 26,  
Oda Birim.

12th December, 1955.

Exhibit '3'  
to Affidavit  
of Nana Owusu  
Ahenkora.  
17th January,  
1957.

30 Sir,

ADOWSENA AFFAIRS

I am directed to refer to the charges it is  
understood have been preferred against Nana Owusu  
Ahenkora of Adowsena and which are pending for  
hearing at the next meeting of the State Council  
and to inform you that the Minister of Local  
Government is recommending to His Excellency the  
Governor the appointment of a Committee of Enquiry  
under the provisions of Section 8(1) of the State

In the  
Supreme Court  
of the  
Gold Coast

No. 6  
Exhibit '3'  
to Affidavit  
of Nana Owusu  
Ahenkora.

17th January,  
1957

- continued.

Councils (Colony and Southern Togoland) Ordinance  
No.8 of 1952.

2. I am accordingly to inform you that the State  
Council should not hear this case.

I am, Sir,

Your obedient servant,  
(Sgd.) G.M. Darling.  
GOVERNMENT AGENT.

The State Secretary,  
Akim Kotoku State,  
Akim Oda.

10

Copy to -  
Regional Officer, Eastern Region,  
Koforidua.

No. 7

Proceedings.

23rd January,  
1957.

No. 7

P R O C E E D I N G S

23rd January, 1957.

E.O. Asafu-Adjaye for Applicant.  
DeGraft-Johnson for Respondents.  
Unger Crown Counsel for Minister of Local  
Government.

20

Asafu-Adjaye for Applicant.

Reads affidavit of Applicant dated 6th Decem-  
ber, 1956.

Paragraph 1 read.

Paragraph 2 read and Court referred to section 5  
of States Councils Ordinance (No.8 of 1952).

Government Agent by Exhibit 3 to my final  
affidavit of 17th January, 1957 refers to the de-  
stoolment charges pending. Therefore it is clear  
terms of reference were intended to relate to that  
matter only.

30

By Exhibit 'C' to affidavit of 6th December,  
1956 it is clear State Council had been consider-  
ing same destoolment charges.

The Commissioners instead of going into matters before State Council took upon themselves to enquire into an accomplished matter - The former destoolment of respondent which was accomplished in 1952.

In the  
Supreme Court  
of the  
Gold Coast

No. 7

All Committee was empowered to do was to report to Governor and make recommendations (Section 8).

Proceedings.

23rd January,  
1957

- continued.

10 Applicant was Ohone at time Committee of Enquiry. Respondent is estopped from denying this by Exhibit 'C' to applicant's affidavit of 6th December, 1956. Respondent was one of the persons who preferred charges against applicant.

Whole report is ultra vires terms of reference if destoolment of Ntiampoah Kofi III was in issue the State Council should have been represented.

On Law - Respondent alleges this Court has no jurisdiction - Paragraph 5 of this affidavit.

I say Court has jurisdiction -

20 Section 88 of Courts Ordinance does not exclude jurisdiction - Argues thereon.

Refers also Halsbury 2nd Edition Volume 9 - pages 840-847. This should be read in conjunction with 2nd Edition Short & Mellor on Crown Practice page 43.

I rely on decision of Sekondi Divisional Court Judgment of 28th August, 1956.

30 I refer to two more cases -  
Rex versus Electricity Commissions 1924 1 K.B.  
page 172.

Above case states circumstances in which Court has jurisdiction in prerogative writs over quasi-judicial bodies.

My submission is -  
Committee having excluded its powers, the whole findings of the Committee are null and void.

40 I also cite -  
The King versus London County Council 1931. 2 K.B.  
page 215.

The Queen versus The Justices of Surrey. Volume 5,  
1869-70. Queen's Bench Law Reports page 466.

In the  
Supreme Court  
of the  
Gold Coast

No. 7

Proceedings.

23rd January,  
1957

- continued.

The only jurisdiction of Committee is that conferred by terms of reference and they are strictly limited to these terms.

UNGER; - C.C. for Minister of Local Government.

Sekondi Divisional Court Judgment cited has no bearing on this case.

Under Section 8 of States Council Ordinance the terms of reference are of administrative nature.

The Governor is not bound by Committee's report and can make a legal order within his powers whatever the Committee decided. 10

The order contained in Exhibit 'E' (Gazette No.73 of 10th November, 1956) is a valid order - The Governor is empowered to re-stool a destooled Chief - I say this because his order is final and conclusive.

I cite following authorities -  
Healy versus Minister of Health 1954 2 K.B. page 221 and at page 235. 20

Governor's order is unassailable - Perhaps applicant could have intervened prior to the Governor's order.

The Committee investigated (in fact) one of the charges against applicant - Charge 5 of Exhibit 'C'.

In effect all Committee decided was that charge 5 had been proved.

I re-emphasise Governor acting administratively - I cite on this point -  
Johnson versus Minister of Health 1947 (Volume 2) All E.R. page 395. 30

Carthun Ltd. versus Commissioner of Works 1943 (Volume 2) All E.R. page 560 at 563.

Finally Court no jurisdiction to entertain application.

Gillingham Corporation versus Kent County Council, 1953 Chancery Division page 37 at page 42. Finally I say section 88 of Cap.4 excludes jurisdiction. 40

De GRAFT JOHNSON:

Governor's order depends on issues before him in consequence of a reference to Committee.

Terms of reference do not specify disputes to be enquired into. Those referred were of a constitutional nature within meaning of definition of "matter of a constitutional nature. Governor's finding under section 8 is final and conclusive".

10 Court cannot intervene - no excess of jurisdiction - Committee were only enquiring into charge 5 - Did not go outside its jurisdiction. Having found in effect that Kwabena Ofe was not properly destooled then applicant was never enstooled or destooled.

A State Council can never destool a chief. Kwabena Ofe was never properly destooled.

Section 88 of the Courts Ordinance precludes this Courts jurisdiction.

20 I cite Nana Obusu Enu versus J.B. Biney 8 W.A.C.A. page 70 at bottom page 72.

Committee was entitled to find in view of charge 5 that - Kofi III had not been destooled. A State Council has no right to destool.

The Governor has inherent power to remedy a wrong for which law provides no remedy. The findings of Committee are not inconsistent with its powers.

ASAFU-ADJAYE: - in reply:

Governor can only intervene under section 8 during finding of a case before State Council. Cannot appoint a Committee after matter concluded.

As regards charge 5 it could only be considered in relation to applicant as a ground for his destoolment - not as has been done to re-stool Kwabena Ofe.

Case of Enu versus J.B. Biney 8 W.A.C.A. is not on all fours at all.

Adjourned to Thursday 7th February for Judgment at 9 a.m.

(Sgd.) H.M. Windsor-Aubrey.  
Judge.

In the  
Supreme Court  
of the  
Gold Coast

No. 7

Proceedings.

23rd January,  
1957

- continued.



In the  
Supreme Court  
of the  
Gold Coast

No. 8

J U D G M E N T

7th February, 1957.

No. 8

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN  
JUDICIAL DIVISION, held at VICTORIABORG, ACCRA,  
on THURSDAY the 7th day of FEBRUARY, 1957, BEFORE  
HIS LORDSHIP MR. JUSTICE WINDSOR-AUBREY.

Judgment.

7th February,  
1957.

Suit No.38/56

IN THE MATTER of the State Councils (Colony  
and Southern Togoland) Ordinance 1952

10

- and -

IN THE MATTER of an Application for Writ of  
Certiorari to issue

- and -

IN THE MATTER of  
KWABENA OFE,  
Krontihene of Adowsena & ors. Respondents

versus;

NANA OWUSU AHENKORA II, Ohene  
of Adowsena

Applicant

20

JUDGMENT:

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

2. By an Order dated the 24th March, 1956 the  
Governor appointed a Committee of Enquiry to en-  
quire 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 pur-  
pose of the enquiry.

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 stool-holder should be re-stooled.

In the  
Supreme Court  
of the  
Gold Coast

No. 8

Judgment.

7th February,  
1957

- continued.

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.

10. 4. This argument is in my opinion wholly 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.

20 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.

30 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.

40 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.

In the  
Supreme Court  
of the  
Gold Coast

No. 8

Judgment.

7th February,  
1957

- continued.

8. In my opinion, therefore, the application is well-founded and 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.

Applicant's counsel is awarded twenty guineas costs, inclusive of all disbursements to be paid by the Minister of Local Government and the respondents in equal shares.

10

(Sgd.) H.M. Windsor-Aubrey.  
J U D G E.

In the  
West African  
Court of Appeal

No. 9

Notice and  
Grounds of  
Appeal of  
Kwabena Ofe  
and Others.

7th February,  
1957.

No. 9

NOTICE AND GROUNDS OF APPEAL  
of KWABENA OFE and OTHERS

IN THE WEST AFRICAN COURT OF APPEAL  
GOLD COAST SESSION, ACCRA

IN THE MATTER of an application for Writ  
of Certiorari

20

- and -

IN THE MATTER of State Councils (Colony  
and Southern Togoland) Ordinance 1952

- and -

IN THE MATTER of  
NANA OWUSU AHENKORA Applicant

versus:

KWABENA OFE, Krontihene  
and Ors. of Adowsena etc. Respondents

NOTICE OF APPEAL

30

Take Notice that the Respondents herein Kwabena Ofe and others being dissatisfied with the decision of the Divisional Court, Accra, contained in the Judgment or Order of His Lordship Mr. Justice Windsor-Aubrey, dated the 7th day of February, 1957,

do hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the Appeal seek the relief set out in paragraph 4.

AND THE APPELLANTS further state that the names and addresses of the persons directly affected by the Appeal are those set out in paragraph 5.

2. The whole decision of the Divisional Court.

3. GROUNDS OF APPEAL:-

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The decision of the Learned trial Judge ought to be set aside because -

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a. The Divisional Court had no jurisdiction to entertain the application for a Writ of Certiorari since its purpose was to question the validity and otherwise of a Report of a Committee of Enquiry set up under Section 8 of the State Councils (Colony and Southern Togoland) Ordinance No.8 of 1952 and the Governor's Order based upon that report in view of the prohibition contained in Section 88 of the Courts Ordinance.

b. The question in issue was of the nature of a Constitutional matter in which the Supreme Court has no jurisdiction.

c. The Respondents were never served with the reply of the applicant to their affidavit in defence.

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d. The applicant did not comply with the provisions of Rule 7(1) of Order 59 of the Rules of the Supreme Court (Amendment) Rules 1954.

40

e. The Learned Judge misdirected himself in holding that the powers vested in the State Council under Section 5 of the said State Councils Ordinance included a power of electing and destooling a Chief which power and authority was in fact vested under well established Customary Law in certain particular persons known as Electors or people exercising the right to elect and destool a Chief.

In the  
West African  
Court of Appeal

No. 9

Notice and  
Grounds of  
Appeal of  
Kwabena Ofe  
and Others.

7th February,  
1957

- continued .

In the  
West African  
Court of Appeal

No. 9

Notice and  
Grounds of  
Appeal of  
Kwabena Ofe  
and Others.

7th February,  
1957  
- continued.

- f. The decision of the Governor acting in his discretion under Section 8 of the Ordinance is final and conclusive and cannot be questioned in a Court of Justice.
- g. The decision of the Governor based upon the report and recommendation of the Committee of Enquiry was not inconsistent with the terms of reference of the said Committee of Enquiry.
- h. The terms of reference to the Committee of Enquiry were general comprehensive and the Committee was obliged not only to inquire into charges preferred against the applicant but also to investigate the alleged unlawful destoolment of Nana Ntiamoah Kofi III and the findings of the Committee and the Governor's decision based thereon were not ultra vires the terms of reference, in as much as the simple issue before the Committee was which of the two persons the applicant who was Chief de facto under Customary law was in fact the Chief of the Community of Adowsena since there could not be two occupants of the same Stool at the same time. 10
- i. The Respondents were not parties to the Report of the Committee and the Governor's decision nor were they given any opportunity to be acquainted with same before the publication in the Government Gazette. 20
- j. Applicant's Counsel was the Cabinet Minister at the material time when the Committee of Enquiry was appointed. 30
4. The Judgment of the Divisional Court should be reversed or a reference made to the Committee of Enquiry to do its work de novo.
5. Persons directly affected by the Appeal
- a. NANA OWUSU AHENKORA of Adowsena via Oda.
  - b. THE MINISTER OF LOCAL GOVERNMENT, Accra.

DATED at Cape Coast the 7th day of February, 1957.

(Sgd.) J.W. deGraft Johnson  
SOLICITOR FOR RESPONDENTS-APPELLANTS.

The Registrar,  
West African Court of Appeal,  
Accra.

and the above-named -  
NANA OWUSU AHENKORA II, of Adowsena and Oda.

No. 10

NOTICE AND GROUNDS OF APPEAL of  
the MINISTER OF LOCAL GOVERNMENT

In the  
West African  
Court of Appeal

No. 10

IN THE WEST AFRICAN COURT OF APPEAL  
GOLD COAST SESSION, ACCRA

Notice and  
Grounds of  
Appeal of the  
Minister of  
Local  
Government.

IN THE MATTER of an application for a Writ  
of Certiorari

13th February,  
1957.

- and -

IN THE MATTER of State Councils (Colony  
and Southern Togoland) Ordinance, 1952

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- and -

IN THE MATTER of  
NANA OWUSU AHENKORA

Applicant

versus;

KWABENA OFE, Krontihene and  
others of Adowsena and  
THE MINISTER OF LOCAL GOVERNMENT

Respondents

NOTICE OF APPEAL

20 TAKE NOTICE that the Respondents the Minister of  
Local Government and others being dissatisfied with  
the decision of the Divisional Court, Accra, con-  
tained in the Judgment or Order of His Lordship Mr.  
Justice Windsor Aubrey dated the 7th day of February,  
1957, do hereby appeal to the WEST AFRICAN COURT OF  
APPEAL upon the grounds set out in paragraph 3 and  
will at the hearing of the Appeal seek the relief  
set out in paragraph 4.

30 AND THE APPELLANTS further state that the names and  
addresses of the persons directly affected by the  
Appeal are those set out in paragraph 5.

2. The whole decision of the Divisional Court.

3. GROUNDS OF APPEAL -

a. The divisional Court had no jurisdiction

In the  
West African  
Court of Appeal

No. 10

Notice and  
Grounds of  
Appeal of the  
Minister of  
Local  
Government.

13th February,  
1957  
- continued.

because the Governor acted in his discre-  
tion under Section 8 of Ordinance No. 8 of  
1952.

- b. The Governor acted in his administrative capacity and his decision was therefore final and conclusive.
- c. The decision of the Governor based upon the report and recommendation of the Committee of Enquiry was not inconsistent with the terms of reference of the said Committee of Enquiry.
- d. The issue in question is a constitutional matter and the Court's jurisdiction is ousted by Section 88 of Cap.4.

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4. The Judgment of the Divisional Court should reversed.

5. Persons directly affected by the Appeal

- a. NANA OWUSU AHENKORA of Adowsena via Oda.
- b. KWABENA OFE, Krontihene and others of Adowsena.

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DATED at the Attorney-General's Chambers, Accra,  
this 13th day of February, 1957.

(Sgd.) E. Unger,  
CROWN COUNSEL for Respondents-  
Appellants.

The Registrar,  
West African Court of Appeal,  
Accra.



No. 11

ORDER GRANTING STAY OF EXECUTION

28th February, 1957.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION, held at VICTORIABORG, ACCRA, on THURSDAY the 28th day of FEBRUARY, 1957, before WINDSOR-AUBREY, J.

Misc.38/1956.

In the  
Supreme Court  
of the  
Gold Coast

No. 11

Order granting  
Stay of  
Execution.

28th February,  
1957.

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IN THE MATTER of the State Councils (Colony & Southern Togoland) Ordinance, 1952

- and -

IN THE MATTER of an Application for Writ of Certiorari to issue

- and -

IN THE MATTER of :-

KWABENA OFE, etc., & ors.

Respondents

versus

NANA OWUSU AHENKORA II

Applicant

RULING:-

20

This is an application for Stay of Execution on the grounds that enforcement of my order now is likely to result in disturbances. It is also argued, quite properly, that the law involved is exactly complex and fully justifies an appeal as a Higher Court might place a different interpretation on my powers to reverse a Governor's order. The applicant, however, in opposing the stay asserts with considerable justification that I have merely restored the status in quo prior to the Governor's order.

30

I accept all these contentions, but none the less after the Governor's order no disturbances occurred, and I believe the Government Agent's affidavit that if my order of certiorari is brought into effect now riots are highly likely to occur. Furthermore the fact that a case is complex and has a possibility of success on appeal is a recognised ground for granting a stay of execution.

40

I accordingly grant a stay of execution and postpone enforcement of my order until after the hearing and determination of the appeal subject to the condition that the appeal is prosecuted with all due diligence. No order as to costs.

(Sgd.) H.M. Windsor-Aubrey,  
J U D G E.



In the  
Ghana Court  
of Appeal

No. 12

Court Notes.

22nd October,  
1957.

No. 12

COURT NOTES

22nd October, 1957.

IN THE COURT OF APPEAL, TUESDAY the 22nd day of  
OCTOBER, 1957.

Cor: VAN LARE, Ag. C.J., GRANVILLE SHARPE, J.A.  
and ADUMUA-BOSSMAN, J.

66/57.

de Graft Johnson for appellant, Kwabena Ofe  
Scott for appellant, Minister of Local Government.  
E.O. Asafu-Adjaye for Respondent.

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de Graft Johnson:

Ground 3(d) The applicant did not comply with  
the provisions of Rule 7(1) of Order 59 -  
copy of proceedings not supplied at the hear-  
ing. Court draws attention order of the  
services which had been exhibited.

Additional Grounds 3(a) & (b)

Cites Refers to Osam Dadzie VI  
vs:

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The Attorney General l W.A.C.A. 271 -  
Act of Governor in making the order not  
a judicial Act but an executive Act.

Also 8 W.A.C.A. 70 Enu vs: Biney:

Court points out that this is a cause  
as distinct from the present appeal

Cites page 61 of Selected Judgments.  
Divisional Court. 1931/1937.

In re State Council vs: Kwamina Enimil at  
p.63/64. Submitted Section 88 Cap 4 expressly  
excludes jurisdiction of this Court on Constitu-  
tional Matters.

30

Refers to p.28 para.2 of the judgment - agreed  
that certain charges prepared against the appli-  
cant if proved justify his destoolment.

Refer to p.11 charge 5 is that the destoolment of  
the previous Omanhene was wrong. Therefore the  
matter the Committee had to enquire into affected

the destoolment of a Chief and the Committee can not be said to have exceeded its jurisdiction.

By Section 88 Cap 4 the Divisional Court is excluded from enquiring into any alleged excess of powers in determining matters of a Constitutional nature.

Section 8 gives power to the Governor to appoint a Committee and charged them with a duty. This had been done; Terms of Reference broad - no limits; Simply to enquire vide - Set out in ground h

Ground h: Judge wrong in holding that Terms of reference restricted.

Submitted there is no excess of jurisdiction.

Scott:

Arguments of de Graft Johnson adopted in so far as jurisdiction of the Supreme Court is ousted by sec. 88 Cap 4, in that this was a matter purely of a Constitutional nature consequently the Divisional Court was prohibited in entertaining any application whatever in this particular case.

Submitted in this case there was no excess of jurisdiction and there was in fact a dispute pending especially consideration the charges that were pending.

The finding that Ntiamo Kofi was not properly destooled is the result of the Committee's enquiring into charge 5 preferred against Ahenkora.

Having regard to the terms of reference the finding of the Court refers to R v; Fulham etc. Rent Tribunal - per Selvin, J. at p.488 (1951) 1 All E.R.

Asafu-Adjaye:

Submits that the destoolment of Ntiamo Kofi, the former Chief was one which had been made by the State Council, a competent authority, no appeal therefrom and could not form a subject matter of an Enquiry.

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Ghana Court  
of Appeal

No. 12

Court Notes.

22nd October,  
1957

- continued.

sic

In the  
Ghana Court  
of Appeal

23rd October 1957

Asafu-Adjaye:

No. 12

Court Notes.

23rd October,  
1957.

- continued.

Application was made yesterday that in view of section 88 Cap 4 Certiorari does not lie in this matter. Upon construction of section 88, it cannot be said Certiorari is taken away in the matters mentioned.

Submits Certiorari is not a civil matter. It is the exercise of the inherent right of the Supreme Court to bring before it criminal and as well as civil matters. Conceded that it is a "matter" all right and cannot be characterised as a "civil".

10

Question apart whether writ of Certiorari is civil section 88 does not prohibit writ of Certiorari where the matter is not brought for the trial of a matter which is of a Constitutional nature by the trial of those matters mentioned in the section, Certiorari is not excluded.

If Section 88 had read; The Supreme Court ... - "relating to" and not "instituted for"; there might be some force that Certiorari will not lie.

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The use of the word "for" should be interpreted strictly.

Any jurisdiction given to any body or tribunal derives its source from a Statute. If it is intended that the powers of Certiorari will not lie the Statute would specifically say so.

If Certiorari a matter instituted for the trial of any question relating to "election or deposition"? Submitted the answer is No!

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It is rather a matter to determine whether a party body or tribunal or Court has exceeded its jurisdiction or terms of reference. It raises simply the question of excess of jurisdiction.

Refers to the judgment of Windsor-Aubrey in Quansah & Anr. vs; A. Quarcoo Tagoe - 23th August 1956.

Refers to judgment of Bossman, J. at Cape Coast 20/9/57 in re Kweku Arhin VII. p.17: Distinction is this - "application in respect of

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any proceedings in a State". Submitted that the application here is not in respect of the proceedings, matter not instituted for the trial of Constitutional matter, but only in respect of the excess of jurisdiction of the Committee.

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Halsbury Halsbham Edition Vol. 9 paragraph 1455 p.861: Certiorari can only be taken away by express negative words etc.

Court Notes.

23rd October,  
1957

- continued.

10 Also paragraph 1458 p. 862: Although Certiorari is taken away it may be granted where the inferior Court had acted with or in excess of jurisdiction.

"For the trial of" is different from "in relation to";

20 Refers to Short and Mellor p. 43: A Statute getting away in words will not prevent a proceeding by Certiorari if appears the Justices have proceeded without jurisdiction in excess of it etc. If the body that is dealing with Constitutional matters had acted without jurisdiction or in excess of jurisdiction it cannot claim the benefit of section 88.

Next Point:

That so called Inquiry to be carried on by this Committee is a judicial enquiry. Refers to Section 8 of the State Council.

30 The following appears the words "to enquire into such matter" and "shall enquire into the same" in a compelling authority and it is submitted this is a judicial act.

The Governor too has a certain duty within the ordinance. Submit the Governor's act is part of the same judicial act. Governor also exercises judicial powers. Under Section 8(3) those powers given to the Committee it is a judicial enquiry. Likened unto the Referee's work, which is judicial, send this report to the Judge or the Court, which gives the judgment.

40 The Governor gives the judgment or decision etc., and therefore Governor's act under Section 8 State Council Ordinance is also a Judicial Act. Magistrate make a preliminary enquiry (Judicial) High

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Court Notes.

23rd October,  
1957

- continued.

Court, tries the case - (both judicial)

Refers Annual Practice 1957 p.3355 & 7 - refer to the Judicature Act 1925, repealed by Administrative Practice Act 1956 section 58 of that act analogous to section 8 of our State Council.

Refers to Wenlock Baroness vs: River Dee Co. 19 Q.B.D. WS. in the word "inquiry" signifies a judicial inquiry with witnesses.

Under section 8 of State Council enquiry is the same as reference under section 88 of the Judicature Act. See Form 32 Annual Practice. 10

The reference must be specific. A particular matter must be referred and not a roving commission. It is a formal matter. The reference must fail for lack of definition.

Section 8 State Council says "if the Governor etc. should enquire into "any matter", "such matter", submits the reference must be specific.

In the present case what is the "matter"? Was there a specific form of reference or not? Submit the appointment of the Committee was in itself ineffective and a nullity:- because; The nature of the dispute is (1) not specified; or (2) Not identified with any other document. 20

Refers to p.12 of Record; nature of the dispute be specified in the Order of the appointment at p.12, or it must be testified with some form of document. Submits there were no terms of reference at all, and if so Section 88 Cap 4 will not deprive the Supreme Court of powers to entertain Certiorari to quash the findings and the Governor's Order thereon. 30

Committee can only be appointed to enquire into some specific matter referred to it.

If appointment of the Committee is a nullity, then the Governor's purported confirmation is void and of no effect.

At p.13, Notice 2554 - this Governor's decision is a decision on the report; if the report is a nullity, then the Governor's Order is a nullity, Ex nihilo nihil fitit. 40

Refers p.10, 11&12 in the Charges: If these charges are to be taken as terms of reference then the findings of the Committee are abide those terms and therefore ultra viros. Document C at p.10 specified some charges and called for his destoolment. If the charges are the terms of reference then the Committee cannot re-hear the case against the Ex-chief - they cannot re-enquire into the destoolment of the Ex-Chief. Committee No power to recommend reinstatement. Submits the judgment appealed from must be confirmed Because there is no legal justification for the act of the Committee and the Governor's Order; even if the Governor is acting administratively or executively the Courts can deal with the matter. Cites: (i) Ayr Collicries, Ltd. vs. Lloyd-George (1945) 2 All E.R. 547.

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(ii) Cartons vs. Commissioner of Works (1943) 2 All E.R. 560.

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(iii) Rex vs. Electricity Commissioners (1924) 1 K.B. 205.

(iv) Rex vs. Woodhouse (1906) 2 K.B. 501.

On the alleged finality of the Governor's Order.

Cites: In re Gilmore's Application (1957) 1 All E.R. 796, C.A.  
Andrews vs. Mitchell 1905 A.C. 78  
Manchester Legal Aid Committee - Exparte Brand and Coy. Ltd. (1952) 2 Q.B. 427 & 431.

Coming back to Section 83:

30

Submits that application for Certiorari is not a matter instituted for the trial of any Constitutional matter. It simply invokes the powers of the Supreme Court in a matter, not a civil matter, but application to invoke the supervisory or controlling powers of the Supreme Court.

de Graft Johnson:

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On the question of the Act of the Governor in confirming or making an Order on the Committee's Report reliance must be placed on Osam Dadzie vs. A.G. 1 W.A.C.A. 271 - passage appears at p.272. Submits the Governor's act is not judicial but ministerial.

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Court Notes.

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1957

- continued.

In the  
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Court Notes.

23rd October,  
1957

- continued.

Committee's Enquiry is judicial-admitted.

What appears on p.13 is not a judicial act but ministerial.

That is why I argued that the order sought to be quashed should have been exhibited under Order 59(7) 1.

Refers to the case of the Electricity Commissioner - reference is made to 10 W.A.C.A. p.130 in the Paterson Case. When the Certiorari is or is not a "civil matter" - refers to Short and Mellor, p.14 says Certiorari is an original writ etc.

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Submits it is a civil matter, - the procedure is still. Certiorari is dealt with under Civil Procedure Rule and the application itself was filed in the Civil side of the Court.

Terms of Committee clear. Committee had enquire into a dispute of a Constitutional nature at Adowsena. What they had to enquire included every question falling within the ambit of a Constitutional nature.

20

Report submitted by the Committee p.13 comes within the terms of reference of the Committee; matter of a Constitutional. Draws attention p.13/14 of the Record in G.A's letter to the State Secretary.

Refers Judgment affected from paragraph 4; At the date of the appointment of Committee Enquiry: There was a dispute pending (a) that the respondent in this case is not a fit and proper person to be a chief and (b) that the previous occupant of the Stool had not been previously destooled.

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Granville Sharp:

But Asafu-Adjaye says the destoolment of the Ex-Chief had already been dealt with by the State Council.

do Graft Johnson refers p.18 paragraph 3(c)

If the Committee's Report p.13 is ....  
At p.23/24 files the charges against the present chief at the State Council. Therefore at the time of the appointment of Committee

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there was in fact a dispute pending before the State Council and the Governor considered it inexpedient that the State Council should hear it and therefore appointed a Committee.

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Ghana Court  
of Appeal  
No. 12

Scott:

Court Notes.

23rd October,  
1957  
- continued.

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Submits charges were in fact pending by the G.A.'s letter p27/24 at the time of the appointment of the Committee there was a dispute pending. Committee acted within the scope of its terms of reference and acted within their jurisdiction.

C. A. V.

(Sgd.) W. B. van Lare,  
Ag. C.J.

No. 13

No. 13

J U D G M E N T

Judgment.

IN THE COURT OF APPEAL  
ACCRA, GHANA.

4th November,  
1957.

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Coram: VAN LARE, Ag. C.J.  
GRANVILLE SHARP, J.A.  
ADUMUA-ROSSMAN, J.

Civil Appeal No.66/57

4th November, 1957

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IN THE MATTER of the State Councils (Colony & Southern Togoland) Ordinance 1952  
- and -  
IN THE MATTER of an Application for Writ of Certiorari to issue  
- and -  
IN THE MATTER of -  
NANA OWUSU AHEIKORA II of  
Adowsena etc., Applicant-Respondent  
v:  
KWABIENA OPE, Krontihene & others of  
Adowsena etc., Respondents-Appellants  
and  
THE MINISTER OF LOCAL GOVERNMENT,  
Respondent-Appellant

J U D G M E N T

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GRANVILLE SHARP, J.A.; This is an appeal from a



In the  
Ghana Court  
of Appeal

No. 13

Judgment.

4th November,  
1957

- continued.

judgment of Windsor-Aubrey, J. delivered on the 7th February 1957 by which he granted to the applicant an order of Certiorari requiring the Governor to surrender to the Court proceedings of a Committee of Enquiry and the Governor's confirmation thereof, and ordered that the said proceedings and confirmation thereof be quashed and that a formal order be drawn up.

The facts are as follows:-

On the 1st September 1952 Ntiamoa Kofi III, the then occupant of the Stool of Adowsena was destooled by the Akim Kotoku State Council as a result of an enquiry into certain charges laid against him by the respondent amongst others. This destoolment was duly notified and was further recognised and endorsed by the West African Court of Appeal on the 29th August 1955 in proceedings as to the exact nature of which it is not necessary to enquire further than to state that they were concerned with the destooled chief's refusal to hand over the property of the Stool.

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20

On the 20th August 1955 Gazette No. 73 contained Notification (No. 2535) of the enstoolment of the respondent on the Stool of Adowsena.

On the 5th November 1955 the appellant Kwabena Ofe, Krontihene and the elders and electors of the Stool of Adowsena in the Akim Kotoku State laid charges against the respondent, the most important of which, for the purposes of this appeal, is charge Number 5. This was, so far as it is necessary to state it, as follows:-

30

"That he by unlawful means aided and abetted Kwame Ayim and an ex-Ohemas Abena Foriwa, members of the Stool family, but not electors of the Stool, to bring charges against the recognised Ohene Ntiamoa Kofi III alias Kofi Ntoa for his destoolment and thereby caused his destoolment unlawfully by the State Council."

It was obviously undesirable in the circumstances that the State Council should enter into an enquiry into the constitutional matter raised by this charge, although there were four other charges into which the State Council could have enquired without objection being raised.

40

The Governor therefore, in the exercise of

the powers conferred upon him by Section 8 of the State Councils (Colony & Southern Togoland) Ordinance appointed a Committee of Enquiry "to enquire into a dispute in Adowsena of the Akim Kotoku State, being a matter of a constitutional nature, between Kwabena Ofo, Krontihene of Adowsena etc. and Nana Owusu Ahenkora II, Ohene of Adowsena of Akim Kotoku State and to report on the dispute".

In the  
Ghana Court  
of Appeal

No. 13

Judgment.

4th November,  
1957

- continued.

10 The Committee of Enquiry in due course, having considered the matter, forwarded their report and this fact was duly notified in Gazette No. 73 of 10th November 1956, No.2554. The report concluded as follows :-

"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."

20 There followed a further notification that on the 5th November, 1956, His Excellency, upon consideration of the report of the Committee, confirmed the above finding."

It is the findings of the Committee in its report, and the Governor's confirmation thereof that the learned Judge has ordered to be quashed.

30 Argument before us has revolved around the question as to what is the right interpretation to be placed upon the language (a) of Section 8 of the Ordinance of 1952 and (b) of Section 88 of Cap. 4, the Courts Ordinance, as well as the further important general question as to the limitation of the powers of superior Courts to intervene in their supervisory capacity in circumstances such as here exist.

Counsel for the first appellants argued that the Governor's act in confirming the report of the Committee was purely in his executive capacity and was an administrative act, and so not to be attacked by proceedings for certiorari. I do not think that this is a sound argument.

40 While it is quite true that certiorari will lie only in respect of judicial acts of inferior tribunals it has been held by the Courts that the procedure will lie against tribunals which do not at first sight appear to be judicial or performing judicial acts. The whole question was fully

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4th November,  
1957

- continued.

discussed by Lord Justice Moulton as he then was in the case of R. v. Woodhouse 1906 2 K.B. p. 501 and he stated the law simply in two passages that appear at pp.534 and 535 of the report. First he said "the cases show that the phrase 'Judicial Act' "must be taken in a very wide sense" and then after reviewing some of the cases he added "In "short there must be the exercise of some right or "duty to decide in order to provide scope for a "writ of certiorari at common law".

10

Section 8 of the Ordinance No.8 of 1952 reads 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.

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30

(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.

40

(3) In the performance of the duties imposed upon it under the provisions of subsection (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."

In the  
Ghana Court  
of Appeal

No. 13

Judgment.

4th November,  
1957

- continued.

10 It is clear from the wording of the section that it is the duty of the Governor upon a consideration of the report to decide between four courses; rejection, variation, confirmation of the findings of the report or whether to remit for further hearing upon directions.

In arriving at his decision I would hold that he must act judicially without taking into consideration extraneous or irrelevant matters.

20 The decision is followed by a purely administrative act namely the announcement of his decision in the Gazette to which I have referred. The provision at the end of subsection (1) of section 8 that the Governor's decision shall be final and conclusive I take to mean no more than that as between parties interested the decision shall be a final determination of the issues involved. The words are not necessarily to be construed as ousting the jurisdiction of the High Court.

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 and without consideration of extraneous or irrelevant matters and is a judicial act.

40 A more formidable argument, and this was advanced by Counsel for both appellants, was that the jurisdiction of the lower court was completely ousted by the provisions of section 88 of Cap 4. This provides as follows:-

"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:-

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

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Although, as will appear later, this appeal is not being decided upon this point it has been so strongly argued before us that an opinion upon it is necessary and desirable.

That there is a strong leaning against construing a Statute so as to oust or restrict the jurisdiction of the superior Courts cannot be doubted, and although it is said, historically, to derive from the days when the Judges' remuneration depended mainly upon their Court fees, it has survived for other adequate reasons. Nor is it to be doubted that if Parliament uses explicit expressions that indicate a clear intention to oust or restrict jurisdiction these expressions must be given full effect. An instance of such clear intention is to be found in the National Service (Armed Forces) Act 1939 (C.81) s.6 (9) which provides that "No determination.... made for the purposes of this section shall be called in question in any Court of law."

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It must however be noted that decided cases of long standing have clearly established the principle that enactments which expressly provide that proceedings shall not be removed by certiorari to the High Court have no application when the lower tribunal has overstepped the limits of its jurisdiction, or is not duly constituted, or where the party who obtained the order obtained it by fraud.

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Considering, as I do, the expressions used in

Section 88 of Cap 4 I cannot find any language that makes it clear that the intention is that in no circumstances can the High Court intervene simply because the tribunal whose conduct is being impugned has been engaged upon an enquiry into a matter falling within the categories described in the subsections. The controversy that has ranged around them would itself seem to support a conclusion that the words are vague and of uncertain intent. The presumption against an intention to oust or restrict jurisdiction is, as I have said, strong and Statutes evincing a tendency to do this must therefore be and always have been strictly construed. In the case of Goldsack v. Shore 1950, 1 K.B. 708 Sir Raymond Evershed as he then was M.R. said "I accept the submission that the jurisdiction of the King's Courts must not be taken to be excluded unless there is quite clear language in the act alleged to have that effect."

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It is not necessary to go beyond the four corners of the present case to instance circumstances in which it could be said that the tribunal - in this case the Committee of Enquiry - had overstepped the limits of its jurisdiction. Let it be supposed that charge number 5 had never been included, and that the Committee had, ignoring the four other charges which constituted their terms of reference, proceeded to enquire into the facts of charge 5 alone. A clearer case of excess of jurisdiction could hardly be imagined, and I cannot accept a contention that the lower Court or this Court is not entitled in such a case to intervene in the exercise of its supervisory jurisdiction.

Counsel for the respondents raised in this connection a further argument on the language that appears in Section 88 of Cap 4. He contended that proceedings for certiorari are neither "a civil cause" nor a "civil matter". This argument raises the whole question of the nature and character of prerogative writs, particularly of certiorari.

In the Annual Practice 1955 edition at page 1303 the following passage appears, and it seems to be based upon Short & Mellor's Crown Practice 2nd edition pages 15 et seq.:-

"The most important function of the order (of certiorari) is that by it, in the exercise of the "supervisory capacity of the High Court over inferior Courts, judgments, orders convictions

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"(other than judgments upon indictments) or other  
"proceedings of inferior Courts, whether civil or  
"criminal, made without or in excess of jurisdic-  
"tion may be removed into the High Court to be  
"quashed."

It has been argued before this Court by  
Counsel for the appellants that a proceeding for  
an order of certiorari must be either a civil or a  
criminal cause or matter. I confess myself unable  
to follow this argument. From its supervisory  
character, exercisable as it is over both civil  
and criminal matters, it appears to me that it is  
neither one nor the other, but lies outside and  
beyond both. It is, as the notes that I have  
read state, the High Court acting "in the exercise  
"of its supervisory capacity over inferior Courts",  
nothing more and nothing less, and neither a crim-  
inal nor a civil cause or matter.

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I agree with the further argument advanced by  
Mr. Asafu-Adjaye on behalf of the respondent that  
proceedings for a writ of certiorari are not  
instituted for the trial of any matter referred to  
in section 88 of Cap. 4. They are proceedings con-  
fined to the issue whether an inferior Court has  
so conducted itself or has been so ill-constituted  
as to merit the interference of the High Court in  
its operations whatever they may be. The Court in  
dealing with the matter is not concerned with the  
merits of the case before the tribunal in question.  
Its sole concern is the question whether the  
tribunal acted judicially or was for some reason  
unable to act judicially or had jurisdiction or  
exceeded its jurisdiction. The matter is not with-  
out authority. In the case of The Resident Ibadan  
Province & Anor. v. Momudu Lagunju, Selected judg-  
ments of W.A.C.A. 1952-1955 p.549, the question  
was similar to that raised by the respondent's  
Counsel. It related to prohibiting words contained  
in Section 3 of the Chieftaincy Disputes (Preclu-  
sion of Courts) Ordinance 1948 in Nigeria, the  
relevant words being "notwithstanding anything in  
"any written law contained whereby or whereunder  
"jurisdiction is conferred upon a Court, whether  
"such jurisdiction is original appellate or by way  
"of transfer, a Court shall not have jurisdiction  
"to entertain any civil cause or matter instituted  
"for:-

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"(a) the determination of any question rela-  
ting to the selection, appointment,

"installation, deposition or abdication  
of a Chief."

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10 In the West African Court of Appeal sitting at  
Lagos de Comarmond, Ag. C.J. and Coussey J.A. as  
he then was concurred in the judgment of Foster-  
Sutton, P that "proceedings by way of certiorari  
"taken with the object of compelling the executive  
"to perform its quasi-judicial function of holding  
"an enquiry cannot be said to be a cause or matter  
"instituted for the determination of any question  
"relating to the selection or appointment of a  
"chief within the meaning of the ordinance. It  
"determines no such question..... it is merely a  
"means of compelling the performance of a statutory  
"duty and I do not think it was the intention of  
"the legislature to deprive the subject of this  
"common law right, nor do I think that the Ordin-  
"ance does so."

20 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 de-  
cision of the learned Judge in the Court below was  
a correct decision.

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

30 Having regard to the provisions of section 8  
of the Ordinance of 1952 I think it is clear that  
the reason, and the only reason why the Governor  
appointed a Committee of Enquiry was that because  
of the inclusion of charge 5 the State Council  
would, if they were to adjudge the matter, be in  
the embarrassing position of being in some sense  
judges in their own cause. From this it would  
soem to follow that the real kernel of the matter  
when the enquiry was held was the question raised  
by charge 5. Into this question the Committee made  
their enquiry and understandably did not appear to  
40 enquire further. As to their conduct in the course  
of the enquiry no serious objection is raised nor  
was any objection urged before the Court.

I cannot accept the contention of Counsel for  
the respondent that there was no dispute pending  
within the meaning of section 8 of the Ordinance.  
The fifth charge very pointedly raised a pending



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dispute, and although it had some association with the earlier dispute as a result of which the respondent's predecessor had been destooled, it was in essence an entirely different dispute.

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.

For these reasons I would allow the appeal.

(Sgd.) G. Granville Sharp.

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VAN LARE, Ag. C.J.: In concurring with the judgment just read I desire to take the liberty of expressing my opinion on the effect of section 88 of the Court Ordinance, Cap 4, in respect of which there appears to be divergent views by various judges.

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 Enquiry appointed under the State Council Ordinance. To understand the reason for this it is necessary to consider the nature and history of the tools at the disposal of the Supreme Court for the exercise of this supervisory jurisdiction. The most important of these tools are the prerogative writs or orders, of certiorari, mandamus and prohibition. In so saying I am not losing sight of the fact that the Supreme Court has other tools at its disposal, as for example, the action for a declaration, as this has been used in such cases as Bernard v. National Dock Labour Board, (1955) 1 All E.R. 1113, and Vine v. National Dock Labour Board, (1956) 3 All E.R. 939 (H.L.). Nor do I lose sight of the fact that the writs, which sometimes overlap each other, can be used to control many other activities besides those of inferior tribunals. Thus, mandamus, to use the language of Blackstone, can be "directed to any person, corporation, or inferior court of judicature, within the King's dominions; requiring them to do some particular thing therein specified, which appertains to their office and duty". See Blackstone's "Commentaries" iii, 110. Had Blackstone been writing in this century he might

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perhaps have couched his definition in terms of duties to discharge administrative, judicial, or quasi-judicial acts. I make this point not because the definition of mandamus needs to be re-stated, but to draw attention to the fact that unless the Legislature, in imposing a duty upon a "person, corporation, or inferior court of judicature", classifies the nature of the duty thus imposed (and in fact this is something that the Legislature seldom does) then, if the commission or omission of the Act is called in question it is for the Supreme Court to make the classification. In discharging this task the Supreme Court is, in fact, settling the scope and limitations of its own jurisdiction. Thus, the classical description of the scope of certiorari and prohibition is still that of Lord Atkin in R. v. Electricity Commissioners, ex parte London Electricity Joint Committee Co. (1920), Ltd. and others (1924) 1 K.B. 171, C.A. at p.205:

20 "Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs". It will be noticed that this description does not attempt a definition of what is and what is not a judicial act; this remains the province of the Supreme Court to decide in each case brought before

30 it. Similarly, unless this point has been declared upon, it is the function of the Supreme Court to decide whether or not a tribunal discharging a judicial function is a "court of inferior jurisdiction" against which the writ can issue. As to the question whether a State Council or a Committee of Enquiry sitting in a judicial capacity is a "court of inferior jurisdiction" I will deal with it later in this judgment; suffice it now to say that both Lord Atkin and Bankes L.J. in R. v. Electricity Commissioners made it clear that the

40 phrase is widely interpreted. There is in fact a host of later authorities confirming this wide interpretation.

The earliest origins of the prerogative writs of mandamus, certiorari and prohibition are lost to us in the mists of history. It is clear however that they were important instruments in the general machinery of government in the days when the King's Bench sat coram rege and before it had

50 broken away, as an established court, from that

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fertile mother of English governmental institutions, the "Curia Regis." There was at that time no question of the writs providing remedies for the ordinary citizen; they lay solely at the prerogative of the King and were used simply as part of the machinery of government. The writs sometimes issued out of other courts besides that of the King's Bench. Thus, certiorari issued at the suit of the King out of the Chancery; while prohibition and what was at first a limited form of habeas corpus issued out of the Common Pleas. The Court principally concerned with the writs however was the King's Bench. This was because, even after the King's Bench had become simply another common law court it still preserved, in both its style and jurisdiction, traces of the days when it was a court of a very different kind. In its wide powers of control over other courts and officials, and in its wide criminal jurisdiction, it retained power of a quasi-political nature which came to it from the days when the court, held coram rege, was both King's Bench and Council. Coke, in summing-up and distinguishing between its various jurisdictions, speaks specifically of its criminal jurisdiction, its varying types of civil jurisdiction, and in addition to but quite distinct from these says: "this court hath not only jurisdiction to correct errors in judicial proceedings, but other errors and misdemeanours extrajudicial tending to the breach of the peace, or oppression of the subject ..... or any other manner of misgovernment". (Coke, Fourth Instit. 75). To express this in more modern terms and borrowing the language of Holdsworth in his "History of English Law", the distinct jurisdictions of the King's Bench can be summarized as:

(a) a criminal jurisdiction; (b) a civil jurisdiction, and (c) a general superintendence over the due observance of the law by officials and others. It is of course this last jurisdiction in which the prerogative writs lie. The jurisdiction is now statutorily vested in the Queen's Bench Division of the High Court of Justice in England by the Supreme Court of Judicature (Consolidation) Act, 1925, ss. 4 and 18, and the Administration of Justice Act, 1928, but it remains a distinct jurisdiction of the High Court there, and by our Courts Ordinance, section 15, a jurisdiction of the Supreme Court here.

It is now possible to consider section 88 of

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the Courts Ordinance, Cap 4, and it is at once apparent that its effect cannot be that of ousting the "general superintendence" jurisdiction of the Supreme Court. The section ousts the jurisdiction at first instance or on appeal in civil causes or civil matters, and the reference in each case to civil jurisdiction is specific. There is no ousting of criminal jurisdiction, or of that "general superintendence" jurisdiction exercised by the Supreme Court. The latter may perhaps be described as a quasi-criminal jurisdiction exercised not at "first instance" or "on appeal" but in the nature of a review. I must therefore concede that there is a great force in Mr. Asafu-Adjaye's contention that certiorari although "a matter" cannot properly be described as a civil matter. It is undoubtedly not a civil cause.

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Even if it were not the case that civil jurisdiction and the "general superintendence" jurisdiction were separate and distinct, it would still not be possible to say that section 88 of the Courts Ordinance, precludes the use of the prerogative writs against State Councils or Committees of Enquiry, for it is clear in a long line of cases that the use of the writs can only be taken away by express negative words. Thus, Abbot C.J. in R. v; Hanson (1849) 106 E.R. 1027, drawing the distinction between the procedure by the writs and on appeal, said; "For the rule of law is, that although a certiorari lies, unless expressly taken away, yet an appeal does not lie, unless expressly given by statute". By "expressly taken away", I take it is meant "taken away by express words or by necessary implication" but in section 88 Cap 4 I can see neither express words nor necessary implication to take away the prerogative writs. In my view this must indeed be so when it is remembered that the prerogative writs now exist primarily as a protection for the rights and liberties of the subject against the abuse of statutory powers, whether this abuse takes the form of sins of omission or commission. The nature of an intervention by the Supreme Court, using the prerogative writs, into matters which appear at first sight to be peculiarly within the province of State Councils or a Committee of Enquiry is often misunderstood. The writs do not comprise a means whereby the Supreme Court can usurp the powers statutorily entrusted to State Councils; they do however comprise the means whereby the Courts can prevent a

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State Council or a Committee of Enquiry from abusing or exceeding the powers entrusted to it by the Legislature or by the Governor as the case may be, or can compel a State Council, or for that matter any other public authority, to discharge a task statutorily laid upon it. A jurisdiction to compel obedience to the law by a prerogative writ is quite a different matter from a jurisdiction to entertain either as of first instance or on appeal any civil cause or civil matter instituted for a trial relating to elections and constitutional relations of Chiefs or such issues as enumerated in the section under discussion. This is precisely what Foster-Sutton, P. said in the case of The Resident, Ibadan Province and Anor. vs: Memudu Lagunju, 14 W.A.C.A. at p.549 as quoted by my Lord Granville Sharp in his judgment.

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At this stage it is perhaps appropriate to make the point, although this is not essential to the decision before me, that even if section 88 Cap 4 were couched in such express words as to preclude the use of the prerogative writs by the Supreme Court in any cause or matter "relating to the elections and constitutional relations of Chiefs", etc., this direct expression would still not prevent the use of the writs against a State Council or a Committee of Enquiry where either had acted in excess of, or without jurisdiction, or where, when sitting in a judicial capacity, it had failed to act in conformity with the rules of natural justice. There is abundant authority for this proposition. I refer in particular to the Colonial Bank of Australasia v: Willan (1874) L.R. 5 P.C. 417; The Minister of Health v: The King (On the prosecution of Yaffe) (1931) A.C. 494; and to the Canadian case of R. ex. rel. Davies v: McDougall Construction Co. Ltd. (1930) 1 D.L. R. 621.

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I now turn to the final point, which is whether a State Council or a Committee of Enquiry, acting in a judicial capacity, is a "court of inferior jurisdiction" and thus amenable to the supervisory jurisdiction of the Supreme Court exercised by means of certiorari. The law on this point was exhaustively reviewed in R. v: St. Edmundsbury and Ipswich Diocese ex parte White (1947) 2 All E.R. 170 C.A. In this case Lord Evershed drew the following distinction:

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"There is ..... a difference in principle

"between courts having exempt jurisdiction in the sense that by some statute exclusive jurisdiction *quo ad subject-matter* is conferred upon them .... and courts administering a system of law wholly distinct, both in substance and in matters of procedure, from the system of law administered in the King's Temporal Courts...."

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10 In the former case, unless expressly excluded by statute, certiorari will lie; in the latter it will not. I therefore have to ask myself if the system of law administered in a State Council sitting in a judicial capacity, is wholly distinct, both in substance and in matters of procedure, from the system of law administered in the Supreme Court. It is clear, I think, that it is not. State Councils are themselves a creation of statute and exercise only powers conferred upon them by statute. The customary law they administer is a

20 part of the Ghana common law which is normally administered by the Supreme Court. Section 87(1) of the Courts Ordinance, Cap 4, specifically preserves the right of the Courts to observe and enforce the observance of native law and custom. Were it not for the provisions of the section following it, that is section 88, the Supreme Court would itself "entertain causes and matters relating to elections and constitutional relations of Chiefs". That this is so must, I think, be

30 obvious from the very existence of section 88, preventing the Supreme Court, as it does, from operating in that particular field. The contention of Mr. de Graft Johnson, with respect to him, that the Divisional Court has no jurisdiction to entertain an application for a writ of certiorari to issue because the matter which the Committee of Enquiry decided was of a nature of a constitutional matter in which the Supreme Court has no jurisdiction is not well founded.

40 But I agree with my brother Granville Sharp in upholding as he has done the argument of Mr. de Graft Johnson on behalf of the appellant 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

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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. In my opinion the learned Judge in ordering the findings of the Committee of Enquiry and the confirmation of the Governor to be quashed fell into error when he said that these were ultra vires. For this reason and for the reasons given in the judgment read I also would allow the appeal.

(Sgd.) W.B. van Lare.

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ADUMUA-BOSSMAN, J.: I have had the advantage of reading the judgments just read by the learned Ag. C.J. and the learned J.A. respectively, and agree with them in their final conclusion or decision that this appeal should succeed on the ground that the Committee of Enquiry whose findings were sought to be impeached by the Certiorari proceedings now on appeal before us, did not act in excess of the authority and jurisdiction conferred upon them by their terms of reference, nor did His Excellency the Governor act without authority and jurisdiction in confirming the findings of the said Committee.

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It is however with regret, although naturally with the utmost respect in all the circumstances, that I have to express disagreement with them as regards the opinion or view expressed by both of them that the Divisional Court was not precluded, having regard to the terms of Section 88 of the Courts Ord. Cap.4 from entertaining the application or Motion for the Writ of Certiorari - or more accurately the Order of Certiorari, for it is an Order, not a Writ, which by the new Rules, can now be applied for and obtained.

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I recently had occasion to consider the matter and study the legal position when a similar application came before me sitting in the Divisional Court, Cape Coast, and in a considered judgment or Ruling which I delivered on the 20th day of September, 1957 in that application entitled:-

Motion No.18/57; In the Matter of the State Councils (Southern Ghana) Ord. No.8/1952

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And

In the Matter of Charges preferred against Chief Kwaku Arhin III; Akonfudzihene of Oguaa State

And

In the Matter of Application for an Order of Mandamus, (hereinafter referred to shortly as Chief Kwaku Arhin's Mandamus matter).

I felt bound to follow, and followed, the hitherto leading authority; In re State Council of Wassaw & Enimil V: Divl. Court 1931-37 p.61 which was approved and confirmed by the decision of the W.A.C.A. in the as yet unreported Consolidated Civil Appeals Nos.6 & 7/57 entitled In re Membership of Eii Adjei Onano. La Manche, of the Ga State Council And In re Gazette Notice No.2716 notifying acceptance of Samuel Anyetei Sowah (Anyetei Kwakranya II) as enstooled as La Mantso dated the 15th day of March, 1956.

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In that matter I expressed it as my view that:-

"the undoubted unimpeachability and soundness  
"of Deane C.J.'s decision in the State Council  
"of Wassaw & Enimil case (if one may say so  
"with the utmost respect) is further borne-  
"out and reinforced by the decision in an  
"English case subsequently decided; Rex v:  
"Chancellor of St. Edmundsbury & Ipswich  
"Diocese: Ex parte White (1948) 1 K.B. 195, a  
"decision of the Court of Appeal affirming  
"that of a Divl. Court constituted by Goddard  
"L.C.J. & Lewis & Oliver, JJ. where it was  
"held that the Court of King's Bench will not  
"remove into the King's Bench proceedings not  
"capable of being determined there such as the  
"proceedings of an ecclesiastical Court.  
"In that case, at p.214 of the Report,  
"Wrottesley, L.J. said as follows:-

'Asked therefore, for a Writ of Certiorari  
'to an ecclesiastical Court the King's  
'Bench was bound to refuse it, for the  
'reason that it would remove into the  
'King's Bench, proceedings not capable of  
'being determined there.'

"And Evershed then L.J. (afterwards M.R.) at  
"p.218 of the Report, said as follows:-

'I agree with the Lord Chief Justice that  
'the inevitable inference to be drawn from  
'the absence of any precedent for the issue  
'of a Writ of Certiorari directed to an  
'ecclesiastical Court administering or pur-  
'porting to administer ecclesiastical law  
'is that, so to do was regarded and must  
'now be regarded, as outside the jurisdic-  
'tion of the King's Bench Court x x x x



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'I am disposed to think that the true  
'ground for the absence of jurisdiction is  
'to be found in the fact that the ecclesi-  
'astical Courts administered a system of  
'law foreign to and having, in the words  
'of *Ellenboro C.J.* no 'privity with' the  
'Courts of Common Law.

"So far therefore, as Certiorari to remove  
"proceedings relating to a constitutional  
"matter before a State Council (or other  
"Constitutional tribunal) to the High Court  
"is concerned, there can be little or no  
"doubt that the authorities are clear conclu-  
"sive and decisive, that the High Court has  
"no jurisdiction to entertain any application  
"for the Order of Certiorari."

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After examining the position with regard to the  
sister Orders or processes of Mandamus and Pro-  
hibition, I expressed the following further views:-

"The argument that Certiorari only can poss-  
"ibly be affected by the prohibition imposed  
"by Section 88 of Cap 4, because in the case  
"of Certiorari the High Court must go into  
"the case itself and it is prohibited from so  
"doing, whereas so far as Mandamus and Pro-  
"hibition are concerned, the High Court has  
"not to go into the case itself but has merely  
"to order the State Council (or other Con-  
"stitutional tribunal) to do or refrain from  
"doing something, can hardly bear serious  
"examination;

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"Each process, in its own way, would be  
"effective to invalidate a decision in a  
"Constitutional case determined by a State  
"Council or other Constitutional tribunal -  
"if it were the case that Section 88 of the  
"Courts Ord. Cap 4 does not operate to pro-  
"hibit just that.

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"As the *Simond's Halsbury* (3rd Ed.) Vol.11  
"has it at page 53 in paragraphs 109-110:-

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'In modern practice the most important  
'aspect of the three (3) Orders is their  
'use as a means of controlling inferior  
'Courts and other persons and bodies of  
'persons having legal authority to deter-  
'mine questions affecting the rights of  
'subjects and having the duty to act  
'judicially. Where (as is frequently the

'case) no right of appeal to the Courts  
'exists, the three Orders here under con-  
'sideration, form the principal means by  
'which the determinations of these tribun-  
'als and other persons can be brought  
'before the Court.

10 'The three Orders are in general employed  
'to the same end, and the question which  
'of them is appropriate, will depend on  
'the stage of the proceedings at which the  
'application is made and whether the  
'inferior tribunal has declined or usurped  
'(or threatens to usurp) jurisdiction.

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20 "It would seem to follow therefore that there  
"would scarcely be any point in prohibiting  
"the use of one whilst allowing the use of  
"the other or others x x x x  
"It results from the foregoing, that I am of  
"the opinion that Sec.88 of the Courts Ord.  
"Cap.4, constitutes an absolute, comprehen-  
"sive deliberate and effective ouster of  
"jurisdiction from the High Court in respect  
"of the constitutional matters specified in  
"that section, and that the High Court has no  
"jurisdiction to entertain any application  
"for any of the prerogative orders or pro-  
"cesses of Certiorari, Mandamus and Prohibi-  
"tion, so far as any constitutional matter  
30 "pending in or before any State Council,  
"Constitutional Committee or Commissioner is  
"concerned."

I am afraid that nothing which I have heard  
in the course of the arguments on this appeal has  
succeeded in persuading me that I was wrong and  
therefore made me feel disposed to alter the views  
above set forth.

40 It has to be, and I believe it is, conceded  
that the right to any or all of the three (3)  
prerogative processes under discussion can be taken  
away by Statute.

The core of the problem therefore would  
appear to be firstly whether or not the terms of  
Section 88 of Cap 4 which it is admitted, consti-  
tute sufficiently clear enough "express negative  
words" taking away jurisdiction, can be construed  
to include or embrace the form of proceedings  
which are initiated by means of the said three

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prerogative processes under discussion; that is to say whether or not an application for any of the said three processes comes within the words "any civil cause or matter"; secondly, and perhaps more important, whether or not the question or questions which may be raised for decision and determination by means of any of the said three processes, in respect of or relation to any constitutional proceedings before any constitutional tribunal, can be properly said to be "a question or questions relating to a constitutional matter" - to satisfy the requirements of Section 88 of Cap 4.

10

There is no difficulty about a straightforward action or suit instituted for the trial of issues or questions of or concerning or relating to constitutional matters. It appears to be generally accepted and agreed that such an action or suit would not lie, by virtue of the Section 88 of Cap 4.

20

The difficulty appears to be whether the application by motion for any of the said processes, constitute the institution of a "Civil Matter" and whether in any event the determination by the High Court of the question of, say, absence or excess of jurisdiction, illegality, breach of the principles of natural justice, bias, or any other ground capable of being raised by the said processes, can be properly said to "relate to" or be "in relation to" a constitutional matter, as required by the terms of the section.

30

In the Akonfudzihene Kwaku Arhin's Matter, the views I expressed were as follows:-

"By reason of the definition of "Cause" contained in the definition Section 2 of the Courts Ordinance Cap 4 as including:-  
"Any action suit or other original proceeding between a Plaintiff and Defendant -  
"It is not possible to maintain that an application by Motion for any of the prerogative processes of Certiorari, Mandamus or Prohibition, constitutes the institution of a "Cause".

40

"But does not such an application constitute the institution of a "Matter" defined by the same Section 2 of Cap 4 "Every proceedings in the Court not in a 'Cause'.

"As Deane, C.J. observed in the State Council

"of Wassaw & Thimil case:- 'It must be one  
 "or the other'. The true character or nature  
 " of 'Matter' appears to be aptly illustrated  
 "by two cases:-

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10        "(a) In re Mysore West Mining Coy. (1889)  
           42 Ch. D.525 - Where by Section 62  
           of the Companies Act 1862 upon a  
           voluntary liquidation of a company  
           and a consequential winding-up any  
           dispute as to the price of the shares  
           of a dissentient member had to be  
           referred to arbitration which in  
           effect became an arbitration under  
           the supervision of the Court, and in  
           the course of such arbitration the  
           Liquidator applied by summons to the  
           Court for commission for the examina-  
           tion of witnesses abroad.  
           Chity, J., said (pp.557-8):

20            'This application is in a matter,  
               'otherwise the parties could not  
               'come here. It is in the "Matter"  
               'of the Companies Act 1862; and the  
               'Coy. being in voluntary liquidation  
               'the present question being one  
               'arising in the matter of such wind-  
               'ing-up and determinable upon an  
               'application by the liquidator under  
               'Section 138 of the Coys Act 1862.  
               'It is therefore plain that this is  
               'a "matter within Rule 5 of Order 37.

30            (b) 'Per Contra' - In re Arbitration be-  
           tween Shaw & Ronaldson (1892) 1 Q.B.D.  
           91 - Where parties had made a private  
           submission to arbitration out of Court  
           and one of the parties applied for  
           commission to issue for examination  
           of witnesses abroad, the application  
           was refused Mathew, J., in the Court  
           of Appeal said as follows:- p.93 (2):

40            'It is conceded that the proceeding  
               'in question is not a "Cause", but it  
               'is contended that it is a "Matter"  
               'within the meaning of the Rule. By  
               'the Judicature Act 1873 Sect. 100,  
               '"Matter" shall include every proceed-  
               'ing in the Court not in a "Cause".  
               'Is this arbitration a "proceeding in  
               'the Court" within the meaning of that

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'section? It is most clearly a pro-  
'ceeding not in the Court. The very  
'purpose of the submission to arbitra-  
'tion is to take the matter away from  
'the jurisdiction of the Court.'

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"I apprehend therefore that whenever, either  
"by virtue of the Common Law or Statute the  
"Court can have cognisance of and give con-  
"sideration to any question, proceedings  
"commenced or instituted other than by action, 10  
"suit or other original proceedings between a  
"plaintiff and defendant, whereby application  
"is made to the Court to make determination  
"of that question, constitutes the commence-  
"ment or institution of a 'Matter'.

"Within that definition of 'Matter', an  
"application for any of the prerogative pro-  
"cesses under discussion, as the very intitul-  
"ing of the application shows, clearly falls."

Next comes the more important question whether, 20  
trying or determining the question of jurisdiction  
illegality or violation of the rules of natural  
justice, which may be raised by prerogative pro-  
ceedings, involves the trial or determination of a  
question "relating to" election, installation,  
deposition or abdication, as the case may be.

Learned Counsel for the respondent on this  
point relied on the case Quansah v: Quarcoo Tagoe  
Divisional Court Sekondi, dated 28th August 1952  
dealt with by Windsor-Aubrey, J. and the case of 30  
Resident Ibadan Province v: Lagunju 14 W.A.C.A.  
p.549.

With the utmost respect - I do not consider  
the point was given adequate consideration in  
either case and am not persuaded by the 1st case  
a decision by a Judge of equal jurisdiction, and  
I am obliged to decline to follow the latter which  
is in conflict with another decision of the same  
W.A.C.A. Consolidated Appeals Nos. 6 & 7/56 dated  
15th March, 1956 already referred to. 40

To express the view that the determination of  
a question raised by or in prerogative proceedings,  
had no relationship to the subject matter of the  
constitutional proceedings concerning which that  
question is raised - seems to me to overlook and

completely disregard the very object and purpose of the raising of that question by or in the prerogative proceedings at all.

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As set out supra in the citation from paragraphs 109-110 Halsbury (3rd Ed.) Vol.11 p.53.

10 "The 3 orders here under consideration form  
"the principal means by which the determina-  
"tions of these tribunals and other persons  
"can be brought before the Court. The 3 orders  
"are in general employed to the same end and  
"the question which of them is appropriate  
"will depend on the stage of the proceedings  
"at which the application is made."

20 The question raised by each of them, does,  
and must, relate or be in relation to the proceed-  
ings in respect of which the application to the  
High Court is made, and necessarily to the subject  
matter of the said proceedings i.e. election,  
installation deposition or abdication, as the case  
may be.

30 Looked at from the point of view of the effect  
of the grant or refusal of any of the said pre-  
rogative processes, which is that a constitutional  
determination is set aside, or not interfered with,  
it seems to me that it is not possible to argue  
that the trial or determination of the question or  
questions raised by the application for any or all  
of the 3 processes, does not "affect" or "relate  
to" the constitutional determination by the  
constitutional tribunal in respect of which the  
application is made.

40 I am of the opinion therefore that an applica-  
tion for Certiorari, Mandamus or Prohibition  
constitutes the institution of a "civil matter" as  
contemplated by sec.88 of Cap. 4, and that whatever  
question is raised for enquiry trial and determina-  
tion by such an application, necessarily "affects"  
or is "in relation to" the constitutional matter  
involved in the proceedings before the constitu-  
tional tribunal and in respect of which the  
application is made to the High Court.

For the foregoing reasons, I am of opinion  
that the institution of prerogative proceedings for  
the trial of any question which may be raised by  
or in such prerogative proceedings concerning any

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constitutional proceedings in or before any constitutional tribunal, constitutes the institution of a civil matter for the trial of a question affecting or relating to election, installation, deposition and abdication (whatever may be the subject matter of the constitutional proceedings in respect of which the prerogative proceedings have been instituted in the High Court) and that Sec.88 Cap. 4 is an effective bar.

(Sgd.) K. Adumua-Bossman.

10

de Graft Johnson for appellant - Kwabena Ofe Scott, Senior Crown Counsel, for the Minister of Local Govt.  
Asafu-Adjaye for respondent.

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Order.

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O R D E R

4th November, 1957.

IN THE COURT OF APPEAL, MONDAY the 4th day of NOVEMBER, 1957.

Cor: VAN LARE, Ag. C.J., GRANVILLE SHARPE, J.A.  
and ADUMUA-BOSSMAN, J.

20

Civil Appeal  
No. 66/57.

IN THE MATTER of the State Councils Ordinance  
And in re Certiorari.

NANA OWUSU AHENKORA II

vs:

KWABENA OFE, etc.

And

THE MINISTER OF LOCAL GOVERNMENT.

30

Judgment delivered :

The appeal is allowed; the order appealed from requiring the respondent 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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Ghana Court  
of Appeal

The appellants will have the costs in this Court fixed at £55.10. 3 for 1st appellant and £34.13. 9 for 2nd appellant and, in the Court below assessed at £12/12/- each. Court below to carry out.

No. 14

Order.

4th November,  
1957

- continued.

(Sgd.) W. B. van Lare,  
Ag. C.J.

10

No. 15

No. 15

ORDER granting FINAL LEAVE to APPEAL  
and STAY of EXECUTION

Order granting  
Final Leave to  
Appeal and Stay  
of Execution.

10th March, 1958.

IN THE COURT OF APPEAL, MONDAY the 10th day of  
MARCH, 1958.

10th March,  
1958.

Cor: GRANVILLE SHARPE, J.A. sitting as a Single  
Judge of Appeal.

Civil Motion  
No. 9 of 1958

20

IN THE MATTER of the State Councils (Colony  
& Southern Togoland) Ordinance 1952

- and -

IN THE MATTER of Application for writ of  
Certiorari to issue

- and -

IN THE MATTER of:

NANA OWUSU AHENKORA II Applicant  
(Appellant to Privy Council)

30

v:

KWABENA OFE & ANR. Respondents  
(Respondents to Privy Council)

Motion on Notice for an Order granting  
Final Leave to appeal to Privy Council  
and a Stay of Execution.

ORDER:

Final Leave granted as prayed, all the Condi-  
tions having been fulfilled.

Execution stayed pending decision of the Privy  
Council.

40

(Sgd.) G. Granville Sharp,  
J.A.