

**IN THE JUDICIAL COMMITTEE OF EASTERN REGIONAL
HOUSE OF CHIEFS, KOFORIDUA SITTING ON
WEDNESDAY 24TH MARCH 2021**

BEFORE:-

NENE SAKITE II	-CHAIRMAN
OKOTWAASUO KANTAMANTO OWORAE AGYEKUM III	-MEMBER
NANA OSEI NYARKO III	-MEMBER

COUNSEL/RECORDER: DC HAMMOND

	SUIT NO. JC/ERHC/AP.4/2020
NANA AGYEIWAA KODIE II & 9 OTHERS NKWATIA-KWAHU	PETITIONERS/APPELLANTS/ APPLICANTS
VERSUS	
NANA KISSI BOADUM TUASAKYI & 5 OTHERS	RESPONDENTS/RESPONDENTS/ RESPONDENTS

PARTIES

Appellants

1st, 6th and 7th – Absent. The rest are present.

Respondents –

2nd – Absent, 3rd – deceased, the rest are present.

Counsel

Phidelis Osei Duah for the Petitioners/ Appellants/ Applicants

Franklin Asamoah for the Respondents/ Respondents/ Respondents.

RULING - NKWATIA

INTRODUCTION

This is a Ruling of an Application filed by the Petitioners/Appellants/Applicants (Applicants) seeking “...an Order of Interlocutory Injunction restraining the Respondents/Respondents/Respondents (Respondents) either by themselves, agents, assigns,



workmen, personal representation or assigns from continuing with the process of installation of the 6th respondent as chief of Nkwatia and from dealing with or doing anything at the chief's palace Nkwatia in any manner whatsoever pending the final determination of this Appeal..."

BACKGROUND

The Appellants being the Nkwatiahemaa and (9) Other Stool Elders filed a Petition against the Respondents seeking, among others, a declaration that the 1st to 5th Respondents had no mandate to nominate, elect and install the 6th Respondent as Nkwatiahene and an Order of Perpetual Injunction restraining the Respondents from holding the 6th Respondent as Chief of Nkwatia.

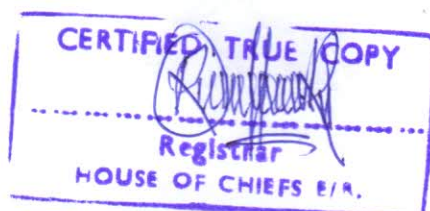
In their response to the Petition, the Respondents indicated that there was an initial misunderstanding during the selection of the new Chief for Nkwatia but in the end, the Krontihene and his elders enstooled the 6th Respondent as Nkwatiahene and paraded him through the principal streets of Nkwatia. He was later taken into the stool room and given a stool name.

Delivering its Judgment in the substantive matter, the Judicial Committee dismissed the Petition and, among others, declared that the 6th respondent was duly selected as Nkwatiahene. The Judicial Committee then ordered that the 6th Respondent should swear the Oath of Allegiance before the head of the Benkum Division of Kwahu within 3 days from the date of the Judgment and for the Benkum Division to take steps to lead the 6th respondent to swear an Oath of Allegiance to the Omanhene.

The Applicants lodged an Appeal against the decision on 16th October, 2020 and subsequently filed the present Application on 20th November, 2020.

THE APPLICATION

In moving his Application, Counsel for the Applicants stated that the Judicial Committee of the Kwahu Traditional Council in its Judgment of 16th October, 2020 made certain Consequential Orders including an Order for the 6th Respondent to swear the Oath before the head of the Benkum Division within 3 days which Order was unwarranted.



That very day, Notice of Appeal was filed in the matter. According to Counsel, Section 34 of the Chieftaincy Act (2008), Act 759 provides that the Notice operates as Stay of Execution and the legal effect is that on filing the Appeal, every process on the Enforcement of the Judgment is Stayed. This is a Statutory Injunction. Counsel cited the Supreme Court case of Republic Vrs. High Court, Fast Track Division Ex-parte National Lottery Operators Association and Others [2009]SCGLR 390 @ 402 to buttress his point that as the statutory provision has been breached, anything done subsequent to the filing is illegal and void.

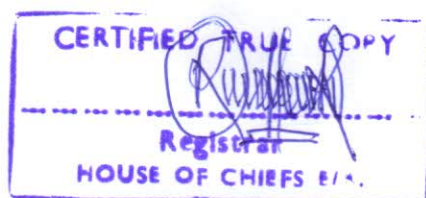
He then referred to the guiding principle regarding Interlocutory Injunction which purposely is to maintain the balance between the parties. Counsel noted that before judgment was given in the matter, the palace was in the hands of the Krontihene but in a matter of days after the Judgment, the 6th Respondent started demolishing portions of the Palace and claimed in their Affidavit in Opposition that they had to secure the property.

It is the contention of the Applicants that if the status quo is maintained, it is the Krontihene who should take charge of the Palace and to proceed to give the Palace the kind of protection Respondents have in mind. Counsel also referred to the cases of Owusu Vrs. Owusu Ansah [2007-2008] 2 SCGLR 870 and John Akparibo Ndebugri Vrs. Attorney General [2014] 68 GMJ 48 to support his position that an Interlocutory Injunction will not be granted if the case is one where damages could possibly be awarded after the trial.

Counsel further submitted that his clients will suffer irreparable damage if the Respondents are allowed to continue with their acts of removing windows and other fittings in the Palace which in itself is an illegality and which cannot be compensated for in damages, should the substantive matter go in their favour after changing the character of the palace.

In his response, Counsel for Respondents opposed the Application and stated that the restriction on Stay of Execution kick-starts when a party is served with the process and not when it is filed.

From the record, the Notice of Appeal was filed on 16th October, 2020 and his client was served on the 19th October, 2020. Counsel referred to the Judgment of the Judicial Committee and insisted that the 6th Respondent was declared as having been validly nominated, selected and installed. He noted that this is a finding of fact and what was left was for him to swear the Oath to the Omanhene .



He indicated that even the courts are protective of chiefs when it comes to matters of injunction and referred to the case of Republic Vrs. High Court, Sekondi; Ex-parte Perko II [2001-2002 2GLR 461] where the Court took time to explain how a Chief should be treated in such matters. Counsel contends that when such an application is filed, it does not restrain a Chief from performing his duties since he plays a key role in the society and therefore granting such an application will undermine the duties of the Chief.

Counsel then cited the case of 18th July Ltd vrs. Yehans Int. Ltd [2012]SCGLR167 which sets out 3 grounds in granting an Injunction Application, being that the case is not frivolous, the need to maintain the status quo so that irreparable damage is not caused and the issue of balance of inconvenience.

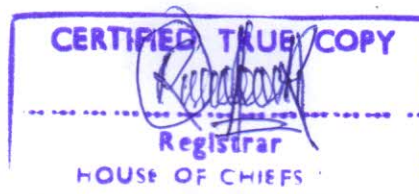
According to Respondent's Counsel, in refurbishing the Palace, irreparable damage would be occasioned if the Application is granted against the substantive Chief as the balance of inconvenience will weigh on the Respondent who has been determined as rightly elected as Chief.

On the issue of status quo, Counsel submitted that the parties at the moment are at daggers drawn. The Applicants do not even greet or lower their cloth when they meet the 6th Respondent and they therefore have no business going to the Palace. They will also not be inconvenienced in any way and therefore the Application is frivolous and should be refused with punitive cost.

ANALYSIS OF APPLICATION

An Injunction is an Order of the Court directed at a Party to do or abstain from doing a particular act. In this case, the appellants is seeking a restraining Order against the Respondents from continuing with the process of installation of the 6th Respondent as Chief of Nkwatia and from dealing with or doing anything at the Chief's Palace. This has been opposed by the Respondent.

Order 25 Rule 1 of CI47 provides that the Court may grant an Injunction by an Interlocutory Order in all cases in which it appears to the Court to be just or convenient to do so.



It is an established principle that an Interlocutory Injunction order is a temporary measure taken by the Court to preserve the status quo pending the final determination of the suit. Though discretionary, an Injunction would be granted when the justice of the case demands it. The Court will however exercise the discretion in favour of the Applicant if he demonstrates that he has a legal right to be asserted at law or in equity and that his case is not frivolous and vexatious and there is no need to establish a prima facie case. The question here will therefore be whether the pleadings and Affidavit of the Applicants discloses any right which is reasonably capable of being protected by the Court.

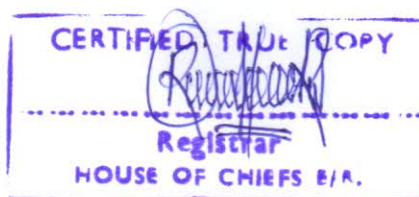
Stay of Execution on the other hand, and according to the Supreme Court in the case of Republic vrs. Court of Appeal, Ex parte Sidi [1987-1988] 170 @ 176 per Taylor JSC, is the suspension of any process or procedure that follows a Judgment. If an Applicant asks for a stay pending the hearing and determination of his Appeal, what he is in effect seeking is that all processes that can be taken after Judgment for the purposes of satisfying the Judgment should be stayed until the Appeal is finally heard and a decision given. In the case of matters affecting chieftaincy, this has already been granted by statute and therefore there is no need for a party to make a formal application for Stay of Execution after filing an Appeal.

As stated by Counsel for the Applicant, section 34 (1) of the Chieftaincy Act (2008), Act 759 states as follows;

“Subject to subsection (2) an Appeal to the National House of Chiefs or to a Regional House of Chiefs against a final Judgment or Order operates as a Stay of the Judgment or order appealed against and any other order made on it consequentially unless the Appellate Tribunal otherwise directs”

Counsel for the parties in their submissions differed in their opinions on this. Whereas Counsel for the Applicant says the Stay of Execution starts from the time the Notice of Appeal is filed, the Respondent’s Counsel insist it is at the time the other party is served.

The understanding of Nananom of this provision that *“...an Appeal to the National House of Chiefs or to a Regional House Chiefs ...operates as a Stay of the Judgment...”* could only be referring to the filing of the process and not at the time of service. This view is supported by S. A. Brobbey in his book *The Law of Chieftaincy in Ghana*(2008) where he states (page 301)



that there is an automatic stay of execution whenever an Appeal is filed against the decision or order of a Judicial Committee or a Regional House of Chief.

However, it is possible that the Respondent in such matters may not be aware of such a process having been filed if it is not brought to their notice by way of service. In such a situation, if a party proceeds with any step at the time he has not been served with the process, then the action of that party cannot be a subject matter of contempt proceedings.

Nananom are therefore of the opinion that as there is an automatic Stay of Execution upon filing a Notice of Appeal, the issue of restraining the Respondents from proceeding to conclude the traditional process of installation of the 6th Respondent as Chief of Nkwatia as ordered by the Judicial Committee has been stalled by the filing of the appeal and therefore unnecessary. There is therefore no need to make any orders on the first part of the application. That prayer is hereby refused.

On the issue of the Palace, the Respondents in paragraph 12 of their Affidavit in Support indicated that the Respondents have taken over the Chief's Palace at Nkwatia, destroyed some structure at the palace and are in the process of remodeling some structures on the premises of the palace. They annexed some photographs as Exhibit "D" series as proof of the allegation.

In their response in their Affidavit in Opposition, the Respondents denied the assertion and said that the 6th Respondent has already sworn the Oath of Allegiance to the Acting Benkumhene. They also stated that the 6th Respondent being Chief of Nkwatia is *"...responsible for the safety of the Nkwatia palace, the black stool and stool regalia. All he is doing is to refurbish the palace and to improve its security in order to avert theft of irreplaceable stool regalia and structural deterioration of the building.*

They also stated in paragraph 11 that *"...an Injunction Order will simply expose the stool regalia to possible theft whereby the 6th Respondent will be accused of stealing and possibly jailed to enable the Applicants to achieve their aim of getting rid of him. It is therefore clear that this motion has been brought in bad faith".*

In referring to the principle in the 18th July Ltd vrs. Yehans Int Ltd case (supra), Nananom are of the opinion that the case of the Applicants is not frivolous and vexatious and there is also



the need to maintain the status quo in this case to ensure that irreparable damage is not caused to the parties and to the people of Nkwatia.

From every indication, Nananom cannot say that either party has no interest in the subject matter. Nananom are interested and also hold in high esteem the idea of protecting a palace and its contents at all times and will therefore be in favour and in support of a cause that will achieve that purpose.

The Respondents say the 6th Respondent is taking measures to secure and protect stool property at the Palace. It is certain that both parties will be interested to find that the stool property is well protected and it will therefore cause irreparable damage to the parties if anything is done to defeat the purpose. Therefore, maintaining the status quo in the matter pending the determination of the Appeal will be useful.

In considering the Application therefore, Nananom will grant the Application for Injunction restraining the Respondents from dealing with or doing anything at the Chief's Palace Nkwatia in any manner whatsoever pending the final determination of this Appeal.

However, in order to preserve the stool property affected by this dispute and in order that the palace will be fully secured, Nananom hereby orders the Registrar of the Eastern Regional House of Chiefs to take possession of the Palace until the final determination of the Appeal. This is in accordance with Section 48 (1) of Act 759 which states that the Regional House acting in accordance with the order of the Judicial Committee of that House may order the Registrar of the Regional House to take possession of stool property:

- a) *Where the stool property is affected by pending proceedings in respect of a cause or matter affecting chieftaincy,*
- b) *Where the Judicial Committee is satisfied on reasonable grounds that there is a pending dispute affecting the stool property that it is in the interest of Public Order or it is in the interest for the preservation of the stool property to take possession of the property.*



It is further ordered that an inventory is taken of the structure of the Palace and the contents.

There is no order as to cost.

Nananom directs that Appellants file their submission not later than 14th April, 2021 and Respondents by 5th May, 2021.

Suit adjourned to 12th May, 2021 for date for Judgment.

**SGD.
CHAIRMAN
(NENE SAKITE II)**

**SGD.
MEMBER
(NANA OSEI NYARKO III)**

**SGD.
MEMBER
(OKOTWAASUO KANTAMANTO
OWORAE AGYEKUM II)**

**SGD.
COUNSEL/RECORDER
(D.C. HAMMOND)**

