

AHENKORA II v. OFE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
22ND NOVEMBER, 1960

**CORAM: LORD KEITH OF AVONHOLM, LORD MORRIS OF BORTH-Y-GEST
AND LORD HODSON**

Constitutional law | Councils | of enquiry | and duties of committee of enquiry | of jurisdiction | State Councils (Colony and Southern Togoland) Ordinance, No. 8 of 1952, s.8.

CASE SUMMARY

The Governor-General of the then Gold Coast, acting under the powers conferred upon him by the State Councils (Colony and Southern Togoland) Ordinance, No. 8 of 1952, section 8, appointed a committee of enquiry to enquire into a constitutional dispute in Adowsena, in Akim Kotoku State, between certain stool elders represented by Kwabena Ofe, Krontihene, respondent herein, and Nana Owusu Ahenkora II the Chief of Adowsena, appellant herein. The dispute arose out of the preferment upon the chief of certain destoolment charges, among which was the allegation that he had, some months earlier, improperly procured the destoolment of his predecessor Nana Ntiamoah Kofi III.

The terms of reference of the committee were to enquire into the dispute between the elders and the chief Nana Owusu Ahenkora II and to report thereon.

In its report the committee found that Nana Ntiamoah Kofi III, the predecessor of Nana Owusu Ahenkora II, had been wrongly destooled and recommended that he should be re-entooled. The report as notified in the Gold Coast Gazette of the 10th November, 1956 stated: "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."

The appellant made a successful application to the Supreme Court for an order of certiorari to quash the proceedings of the committee and the Governor-General's confirmation thereof, on the ground that the terms of reference of the committee gave no authority to investigate and make a finding on the re-entoolment of the destooled chief. The Court of Appeal reversing the Supreme Court, held, inter alia, that the finding of the committee was one which it was competent to make. On further appeal to the Privy Council,

Held: the reference was in terms sufficient to entitle the committee to report as it had done. The committee had under the ordinance, a freedom to operate within the limits of the jurisdiction conferred on it, just as a State Council had in a similar dispute. The propriety or otherwise of the destoolment of Nana Ntiamoah Kofi III was one of several matters referred to the committee for investigation and the committee acted within its jurisdiction when it found that the destoolment was unlawful.

Judgment of the Court of Appeal Affirmed.

Editorial Note: The State Councils (Colony and Southern Togoland) Ordinance, No. 8 of 1952, was repealed by section 69 (1) of the Chieftaincy Act, 1961 (Act 81). Causes or matters affecting Chieftaincy, other than those to which the Asantehene or a Paramount Chief is a party are now within the jurisdiction of traditional councils (s.15(1)). Causes or matters affecting Chieftaincy to which the Asantehene or a Paramount Chief is a party are within the original jurisdiction of [p.18] a committee to be appointed from time to time by the President (s.34 (1)). The provisions affecting Chieftaincy are contained in Part v of Act 81.

NATURE OF PROCEEDINGS

APPEAL (No. 44 of 1959) from the judgment of the Court of Appeal (van Lare, Ag. C.J., Granville Sharp, J.A. and Adumua-Bossman, J.) reported at (1957) 3 W.A.L.R. 145, which allowed an appeal from the decision of Windsor-Aubrey, J. in the Eastern Judicial Division of the Supreme Court of Ghana, reported at (1957) 2 W.A.L.R. 233. The facts are set out in the judgment.

JUDGMENT OF LORD KEITH J.

Lord Keith delivered the judgment of their Lordships. This appeal, by final leave of the Ghana Court of appeal, arises out of matters relating to the destoolment of a former occupant of the stool of Adowsena, Ntiamoah Kofi III, and the enstoolment in his place of the appellant, Nana Owusu Ahenkora II, as Ohene of Adowsena.

The history of the matter is as follows. On the 1st September, 1952, the then Ohene, Ntiamoah Kofi III, was destooled by the Akim Kotoku State Council, the competent authority under the State Councils (Colony and Southern Togoland) Ordinance, 1952.¹ The precise reason for his destoolment does not appear apart from an indication in one of the documents in the case that it was for purported infringement of some sacred custom. Following the destoolment the State Council ordered the properties belonging to the stool and the stool itself to be delivered up forthwith to the customary custodian, the Gyasehene of Adowsena, "until such time as a new chief will be elected". After a variety of procedure in respect of the failure of Ntiamoah Kofi III to deliver up the stool property, it was ultimately held by the Supreme Court of the Gold Coast that he had been properly convicted for such refusal by the district magistrate, under the State Councils Ordinance of 1952.² The date of this judgment of the Supreme Court was the 29th August, 1955. In the meantime the appellant had been enstooled a few months earlier, on the 26th March, 1955, as Ohene of Adowsena. On the 5th November, 1955, certain elders, electors of the stool of

Adowsena, of whom the first was the respondent, Kwabena Ofe, preferred certain charges against the appellant before the Akim Kotoku State Council. It is necessary to set out the relevant document in full.

"Adowsena"

5th November, 1955

"The President",

Akim Kotoku State Council

Oda.

And Nana Owusu Ahenkora II of Adowsena.

CHARGES AGAINST NANA OWUSU AHENKORA II, OHENE OF ADOWSENA IN THE AKIM KOTOKU STATE IN THE EASTERN REGION OF THE GOLD COAST COLONY.

"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:

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

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

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

(c) he after or during his dismissal from the service of the Gold Coast Police joined the fighting force of the British Commonwealth and while serving as such stationed at Kintampo in Ashanti was convicted of the crime of burglary and served a prison sentence of five (5) years.

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

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

"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 (sic) a riot would have ensued and as a result of which one of such servants was seriously wounded and admitted in hospital.

"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.

(mkd)Kwabena Ofe
 Krontihene Their

(mkd)Adjua Tenewah
 Ohemaa X

(mkd)Kwabena Ebu
 Ebusuapanin marks

(sgd)Kwasi Boateng Kurankyi (Gyasehene)

(mkd)Kodjo Boateng
 Sanahene Their

(mkd)Kwesi Bayie
 Akyeamehene X

(mkd)Kofi Agyeikum
 Akwamuhene marks

Electors of the Stool of Adowsena

Witness to Signature and Marks

(sgd) ? Edmund."

By notification in the Gold Coast Gazette of the 24th March, 1956, announcement was made of the appointment by His Excellency the Officer administering the Government, under section 8 of the State Councils Ordinance³, of a committee of enquiry consisting of three members, a barrister-at-law as chairman and two chiefs, "to enquire into a dispute in Adowsena of the Akim-Kotoku State being a matter of a Constitutional nature, between Kwabena Ofe, Krontihene of Adowsena of Akim-Kotoku State and 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."

The section 8 referred to is 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.

"(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.

"(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."

It will be convenient here to dispose of a submission made by counsel for the appellant on a minor point with reference to the appointment of this committee of enquiry. It was said that there was no identification of the dispute into which enquiry was to be made. In their Lordships' view there is no substance in this. The dispute is sufficiently identified by the reference to the parties between whom it exists and refers to the charges preferred against the appellant. The appellant himself recognised this in proceedings which he subsequently raised. If further corroboration is required it is to be found in a letter of the 12th December, 1955, (exhibit 3), addressed by the Government Agent to the State Secretary, Akim Kotoku State, in the following terms:-

"Adowsena Affairs

"Sir,

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 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."

Their Lordships will have no occasion to refer further to this matter.

To resume the narrative of events, the Gold Coast Gazette of the 10th November, 1956, noted the issue of the Report of the Committee of Enquiry and its confirmation by the Governor in the following terms:-

"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 being a matter of a constitutional nature between Kwabena Ofe, Krontihene of Adowsena of Akim Kotoku State and Nana Owusu Ahenkora II, Ohene of Akim Kotoku State, has reported to the Governor that it has not been proved to the satisfaction of the Committee that, by custom, any barrier existed which precluded Nana Ntiamoah Kofi III from ascending the Adowsena Stool, and that no charges have been proved to merit his destoolment.

"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."

Following this the appellant on the 6th December, 1956, commenced the present proceedings by motion in the Supreme Court at Accra for leave to issue a writ of certiorari to the Minister of Local Government, Accra, and Kwabena Ofe, the respondents in the present appeal, and also to the committee of enquiry appointed by the Governor.

The Supreme Court (Windsor-Aubrey, J.) on the 7th February, 1957 granted an order of certiorari on the view that the destoolment of Ntiamoah Kofi III by the State Council was final, that the reference to the committee of enquiry covered no power to recommend his re-entoolment, and that the committee in recommending his re-entoolment and the Governor in confirming that recommendation had acted without jurisdiction. Kwabena Ofe and the Minister of Local Government appealed against this decision and on the 4th November, 1957, the Ghana court of Appeal (Granville Sharp,

J.A., van Lare, Ag. C.J. and Adumua-Bossman, J.)⁵ allowed the appeal, set aside the order appealed from and dismissed the application. All three of the learned judges proceeded on the ground that the committee of enquiry did not act in excess of jurisdiction under its terms of reference in the recommendations it made, nor the Governor in confirming its findings. In the course of their judgments Granville Sharp, J.A. and Van Lare, Ag. C.J. gave opinions (in this [p.22] respect upholding the view of the Supreme Court), that proceedings by way of certiorari were competent in the circumstances of the case. Adumua-Bossman, J. took the opposite view holding that such proceedings were excluded by the terms of section 88 of the Courts Ordinance⁶. Their Lordships have heard no argument on this matter. They decided to consider first whether the appeal could succeed in face of the reasons unanimously come to by the Court of Appeal for dismissing the appellant's application. As the Board has decided that for these reasons the appeal must fail, their Lordships have found it unnecessary to hear argument on the question on which difference of opinion has manifested itself in the Court of Appeal.

The argument for the appellant on the point of jurisdiction is that the reference to the committee of enquiry did not entitle it to do more than examine the charges made against the appellant, as narrated above, and to decide whether any of them were established against him and merited his destoolment as not being a fit and proper person to be the Ohene of Adowsena. It was not entitled, it is said, to find that his predecessor was still the true Ohene of Adowsena.

In finding that the committee had not acted in excess of jurisdiction Granville Sharp, J.A. added:

"Having regard to the provisions of the State Councils (Southern Ghana) Ordinance, s.8, I think it is clear that the reason, and the only reason, why the Governor appointed a committee of inquiry 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 seem to follow that the real kernel of the matter when the inquiry was held was the question raised by charge 5. Into this question the committee made their inquiry and understandably did not appear to inquire further. As to their conduct in the course of the inquiry no serious objection is raised nor was any objection urged before the court."⁷

In their Lordships' opinion the reference was in terms sufficient to entitle the committee to report as it had done. The committee came in place of the State Council and in investigating "the dispute" had necessarily to take cognisance of the matters mentioned in the fifth of the charges against the appellant. That involved considering the charges brought against Ntiamoah Kofi III on the occasion of his destoolment and whether they were a lawful reason for his destoolment. The destoolment may have been unlawful because the charges were false or because, by custom or otherwise, they were insufficient to warrant the destoolment. The report is not one of the documents in the present proceedings and the Board have before them only the conclusion of the committee as notified in the Gazette, which was:

"that it has not been proved to the satisfaction of the Committee that, by custom, any barrier existed which precluded Nana Ntiamoah Kofi III from ascending the Adowsena Stool, and that no charges have been proved to merit his destoolment. 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."

If this were so it was, in a sense, irrelevant to go on to consider whether the appellant aided and abetted the bringing of the charges. The destoolment was unlawful and it would seem to follow that Ntiamoah Kofi III was still the Ohene. That was the view of the committee, two of whom were chiefs, who were presumably versed in such questions, and who under the Ordinance had, in place of a State Council, jurisdiction to enquire into matters of a constitutional nature. Such a matter is defined in section 2 of the Ordinance⁸ as a cause, matter, question, or dispute relating to, inter alia,

"(a) the nomination, election, or installation of any person as a Chief, or the claim of any person to be elected or installed as a Chief; or

(b) the deposition or abdication of any Chief."

The committee of enquiry under the Ordinance had, in the view of their Lordships, a freedom to operate within the limits of the jurisdiction conferred upon it, just as has a State Council in a similar matter, or dispute. The committee was not bound to exhaust all the matters referred to it. The question whether charges had been proved to merit the destoolment of Ntiamoah Kofi III was one of the matters in issue in the dispute referred to the committee and in their Lordships' view one of the matters on which it was entitled to report. The Court of Appeal, in their Lordships' opinion, reached a right conclusion.

DECISION

The Board will accordingly report to the President of Ghana as their opinion that this appeal should be dismissed, and that the appellant should pay the costs of this appeal.

COUNSEL

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E.F.N. GRATIAEN, Q.C. AND G. DOLD FOR THE FIRST RESPONDENT.

J.G. LE QUESNE FOR THE SECOND RESPONDENT.