

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD. 2025

CORAM: BAFFOE-BONNIE AG. CJ (PRESIDING)

AMADU JSC

ASIEDU JSC

KWOFIE JSC

DARKO ASARE JSC

CIVIL MOTION
NO: J8/81/2025

23RD JULY, 2025

1. SHAIBU JEBUNI
2. YAHAYA WITO

**PETITIONERS/RESPONDENTS/
APPLICANTS**

AND

3. PUTIEHA JOHN BADINGU **CO-PETITIONER/RESPONDENT/**
VRS **RESPONDENT**

**1. SANJIE MWINIBANKURO
(SUBST. BY ALHAJI CHAANG) 1ST RESPONDENT**

2. NANA SHAIBU MWINIBANKURO 2ND RESPONDENT/APPELLANT

RULING

MAJORITY OPINION

TANKO AMADU JSC:-

INTRODUCTION:

- (1) My Lords, access to justice is a critical indicia and component of the rule of law. As stated by Dr. Date-Bah JSC, in **ADOFO VS. ATTORNEY-GENERAL [2003-2005] 1 GLR 239.** "*unhampered access to the courts is an important element of the rule of law.*" The concept seeks to *inter alia* prevent the refusal to grant an Applicant the opportunity to pursue just claims before the courts and the avoidance of such procedural impediments that may thwart the final resolution of disputes albeit through due process.
- (2) In pursuance of this objective and in the interest of justice, the framers of the 1992 Constitution have even where statutorily, a litigant is out of time in pursuing a particular claim, whether by appeal or review, created a window by way of a *special leave* procedure to accommodate such a litigant upon the demonstration that, the matter is worth considering, either in the public interest and/or development of our jurisprudence.
- (3) It must however be noted that, the admission of a matter pursuant to special leave from this court, is not automatic nor will it be granted based on a prayer for leave ordinarily from the court which mainly requires the satisfaction of a justifiable reason for failure to pursue the action within time, as well as a *prima facie* demonstration that the action is not frivolous. Additionally, for this court to grant special leave to a litigant to pursue a matter before it, the litigant must demonstrate a clear error, which *prima facie* is likely to be reversed as well as a justifiable essence in the interest of justice. Indeed the public interest and the need to bring an end to

the litigation are also essential requirements. See **ANSAH VS. ATSEM [2001-2002] SCGLR 906; KOTEY VS. KOLETEY [2000] SCGLR 417.**

- (4) It is one of such situations that confronts us in the instant application resulting from what appears to be a result of the tardiness of the Applicants' previous lawyers. The Applicants by this application have invited this court to extend time for them to file an appeal against the decision of the National House of Chiefs following a dismissal of an earlier application filed more than one year after the decision of the said House. For the Respondents, the Applicants' application is misplaced, as the same is inconsistent with Rules 7(1) and 30 of C.I. 16, and the decision of this court in **IMBEAH VS. ABABIO [1999-2000] 2 GLR 295** which settled the question that, an application under Article 134(4) of the 1992 Constitution for leave to appeal a decision of the National House of Chiefs must be brought within 14 days of the date of the decision in accordance with Rules 7(1) and 30 of C.I. 16.

THE APPLICATION

- (5) On 28th March 2025, the Applicants applied to this court as follows:- "*Motion on notice for leave to appeal to the Supreme Court pursuant to Article 131(4) of the Constitution, Section 4(4) of the Chieftaincy Act, 2008 (Act 759)*".
- (6) In the affidavit in support of the application, it is deposed that, on 2nd April, 2020, the Judicial Committee of the Upper West Regional House of Chiefs entered decision in favour of the Petitioners/Respondents/Applicants (*hereinafter referred to as the "Applicants"*) against the Respondents/Appellants/ Respondents (*hereinafter referred to as the "Respondents"*). Dissatisfied with the decision of the Upper West Regional House of Chiefs, the 2nd Respondent appealed against same to the Judicial Committee of the National House of Chiefs.

- (7) According to the Applicants, on 29th September 2022, the Judicial Committee of the National House of Chiefs delivered its decision dismissing the 2nd Respondent's appeal while affirming the decision of the Judicial Committee of the Upper West Regional House of Chiefs with variation. The nature of the variation was however not disclosed to the parties.
- (8) The Applicants asserted that, it was not until the 24th of November 2023, that the Judicial Committee of the National House of Chiefs gave reasons for its decision wherein it delivered *inter alia* as follows:-
- "it is the turn of the Nyagayiri sub-gate or family/section of or within the Nayipani gate to provide the candidate for occupation as Paramount Chief of the vacant Kaleo Naalung (Imola) Paramount Skin of the Kaleo Traditional Area, in accordance with the laid down custom, tradition, practices and usages of the Kaleo Naalung (Imola) Paramount Skin of the Kaleo Traditional Area and as codified by the Declaration of Customary Law (Kaleo) Traditional Council Instrument, 2010 L.I. 1980."*
- (9) According to the Applicants, even though they are not necessarily aggrieved by the dismissal of the appeal, they were however dissatisfied with the variation which sought to include the Co-Petitioner's gate as one of the sub-gates of the Nayipani (Nipala) gate in the Kaleo Traditional Area contrary to customs and traditions of the area. Aggrieved with the variation, the Applicants claim they expressed an intention to appeal against that aspect of the decision to this Court. However, it was not until 13th December, 2023 that, the National House of Chiefs released the full reasons of the decision of its Judicial Committee.

- (10)** On 7th December 2023 however the Applicants' former lawyer had filed an application for leave to appeal against the decision of the National House of Chiefs at the registry of this Court. While the application was pending, the Applicants changed their lawyer and appointed their present lawyer to prosecute their case.
- (11)** According to the Applicants, during conference with their new lawyer, their attention was drawn to a fundamental error in filing the application at the registry of the Supreme Court and not before the National House of Chiefs.
- (12)** Consequently, the Applicants' lawyer filed a notice to withdraw the application for leave filed on 7th December 2023 with liberty to reapply. On 5th March 2024, this court struck out the application as withdrawn. The Applicants subsequently filed a fresh application for leave to appeal to the Supreme Court on the 11th of March 2024 at the registry of the National House of Chiefs. On 20th March 2025, over a year since the filing of the motion, the National House of Chiefs dismissed the application for leave to appeal to the Supreme Court on grounds that same was filed outside the statutory period for filing appeals against the decision of the Judicial Committee under Rule 7(1) of the Supreme Court Rules 1996, C.I 16.
- (13)** In this application it is the contention of the Applicants that, Rule 7(1) of C.I. 16 is premised on Article 131(1)(b) of the 1992 Constitution which applies to an appeal from the Court of Appeal and hence same is inapplicable in a Chieftaincy appeal. The Applicants argue that, the intended appeal will raise issues of law and facts relating to the eligibility of the Co-Petitioner's gate to ascend and/or provide a candidate for the Kaleo Paramount Skin. Further that, justice will be served if this court exercises its discretion in favour of the Applicants by granting the instant

application to allow the Applicants appeal to this Court against the decision of the National House of Chiefs.

THE OPPOSITION

- (14) In an affidavit in opposition filed on the 15th of April 2025, the Respondents contested the application. According to the Respondents the earlier application filed before the National House of Chiefs on the 11th of March 2024 was filed woefully out of time in terms of Rules 7 and 30 of the Supreme Court Rules, C.I 16. According to the Respondents, the Applicants' prayer sins against Rules 7(1) and 13 of the Supreme Court Rules C.I.16 which limits the filing of such applications to 14 days from the date of the decision and as espoused in cases such as **IMBEAH VS. ABABBIO [1999-2000] 2 GLR 295.**
- (15) The Respondents contended that, if the Applicants' reasoning is accepted, then there would not be any time limit within which an intended Appellant could apply for leave from the decision of the National House of Chiefs; a situation which would lead to uncertainty for the victorious party as he would not know when his litigation has come to an end which situation is against public policy. The Respondents asserted further that, the National House of Chiefs having dismissed the application for leave, the Applicants are estopped from bringing the instant application.

THE LAW AND EVALUATION

- (16) The instant application has been brought under Article 131(4) of the 1992 Constitution, Section 4(4) of the Courts Act, 1993, (Act 459) and Section 24(b) of the Chieftaincy Act, 2008 (Act 759). All these provisions are of the same effect, which is that:

"An appeal from a decision of the Judicial Committee of the National House of Chiefs shall lie to the Supreme Court with the leave of that Judicial Committee or the Supreme Court".

- (17) Undoubtedly, the Constitution, the Courts Act, and the Chieftaincy Act, invest a litigant with the substantive right to seek leave of the National House of Chiefs or the Supreme Court to launch an appeal against a decision of the National House of Chiefs. Clearly, appealing a decision of the National House of Chiefs is not as of right. Leave must first be sought. As can be observed from the provision, substantive enactments are silent on the timelines within which the application for leave must be brought, and /or the manner in which the application must be made.
- (18) These are however provided under the Rules of this Court. As rightly pointed out by Counsel for the Respondents, the relevant provisions are as provided under Rules 7(1) and 30 of C.I. 16 as follows:

Rule 7(1):

(a) "An application for leave to appeal under paragraph (b) of clause (1) of article 131 of the Constitution shall be by motion on notice in the Form 2 set out in Part I of the Schedule to these Rules and shall be filed with the Registrar of the court below within fourteen days of the date of the decision against which leave to appeal is sought".

- (19) Rule 30 which deals with Appeals in Chieftaincy Matters also provide :

"The provisions of these Rules relating to civil appeals shall, with such modifications as the Court may determine, apply to the hearing by the Court of an appeal from the National House of Chiefs brought

to the Court under clause (4) of article 131 or clause (1) of article 273".

- (20)** It is not in dispute that, Rule 7(1) which references Article 131(1)(b) of the 1992 constitution focuses on appeals from the Court of Appeal. The chapeau of Article 131(1) reads: "*An appeal shall lie from a judgment of the Court of Appeal to the Supreme Court*".
- (21)** However, Rule 30 of C.I. 16 makes it clear that, in the case of appeals from the National House of Chiefs, the provisions under the rules pertaining to civil appeals (such as appeals from the Court of Appeal) shall apply to them, *mutatis mutandis*. Therefore, the attempt by learned counsel for the Applicants to seek to revisit this issue, and urge on us to depart from such decisions like **IMBEAH VS. ABABIO** is unconvincing. Indeed, this court in **IMBEAH VS. ABABIO [1999-2000] 2 GLR 295** held as follows:

"The relevant rule which applied to the instant application was Rule 7(1) of the Supreme Court Rules, 1996 (CI 16). Rule 7(1) clearly specified a time limit of fourteen days within which the applicant could apply for leave to appeal to the National Houses of Chiefs which, if refused, could be repeated at the Supreme Court, also within the fourteen days after the date of the refusal of the National House of Chiefs to grant leave to appeal to Supreme Court from the decision of the National House of Chiefs. In the instant case the National House of Chiefs had refused leave on 5 November 1997, so that the present applicants should have filed their notice for leave within fourteen days from 5 November 1997. They failed to do so but rather went to the National House of Chiefs again for a review of its refusal to grant leave, and it was only when the application was refused that the applicant

filed their motion for leave in this court on 9 June 1999, by which time they were already almost a year and seven months out of time. The rules made no provision for extension of time of the said fourteen days' time limit provided by C.I 16, Rule 7(1); and since the application was completely out of time, it could not be properly brought".

- (22) Having so observed, it is my considered view that, the application can be properly saved under Article 131(2) of the 1992 Constitution which allows this court to grant special leave in any cause or matter, civil or criminal for an appeal to be admitted. Article 131(2) of the 1992 Constitution provides:

"Notwithstanding clause (1) of this article, the Supreme Court may entertain application for special leave to appeal to the Supreme Court in any cause or matter, civil or criminal, and may grant leave accordingly".

- (23) Consequently, a combined reading of Article 131(4) and Article 131(2) of the 1992 Constitution in my view invest this court with the authority to grant special leave even in a chieftaincy dispute, in respect of an appeal emanating from the National House of Chiefs.

- (24) I have no hesitation in holding that, this is a just case where the court ought to admit the appeal by granting special leave to the Applicants, having examined the proposed notice of appeal and the issues provoked in the intended appeal. Particularly, and without prejudice to the substantive appeal, I notice the seemingly *prima facie* error on the face of the decision regarding the variation issue, which necessitates a second look by this court. I am also mindful of the precarious nature of chieftaincy disputes, which, in the utmost interest of justice, must be

completely and finally resolved. These in my view are the pertinent considerations which invite a favourable exercise of our discretion. In the *locus classicus* of **DOLPHYNE (NO) 2 VS. SPEEDLINE [1996-97] SCGLR 373**, this Court spelt out the guides to applications of this nature as follows:

"The principles-to be applied as guides – on which the Supreme Court might determine whether to grant special leave to appeal or not were:

Where there was a prima facie error on the face of the record; or a general principle of law had arisen for the first time; or a decision by the Supreme Court on the point sought to be appealed against would be advantageous to the public."

See also **KOTEY VS. KOLETEY** (supra).

(25) Thus, rather than a statement on the applicable law of general application, each application ought to be dealt with on the basis of the peculiar facts and circumstances the application presents on a case to case basis. Therefore, after my consideration of the totality of the instant application in the round, I find that exceptional circumstances exist to warrant the favourable exercise of the court's discretion in granting the application which I hereby so grant. The Applicants are hereby granted special leave to file the appeal within seven (7) days.

(SGD)

I. O. TANKO AMADU
(JUSTICE OF THE SUPREME COURT)

(SGD)

P. BAFOE-BONNIE
(AG. CHIEF JUSTICE)

(SGD)

S. K. A. ASIEDU
(JUSTICE OF THE SUPREME COURT)

(SGD)

H. KWOFIE
(JUSTICE OF THE SUPREME COURT)

DISSENTING OPINION

DARKO ASARE JSC:-

1. This is an application for leave to appeal to this Court pursuant to Article 131(4) of the 1992 Constitution, against a decision of the Judicial Committee of the National House of Chiefs.

2. The application was supported by a 35 paragraphed affidavit which was subsequently augmented with a supplementary affidavit deposed to by one Yahya Witol, the 2nd Applicant on behalf of the Applicants.

3. From the contents of the supporting and supplementary affidavits filed by the Applicants, the instant application stems from a judgment delivered by the Upper West Regional House of Chiefs on April 22nd 2020, in favor of the Petitioners (Applicants herein) against the Respondents, whilst certain reliefs sought by a Co-Petitioner regarding the Kaleo chieftaincy, were granted and

others refused. Dissatisfied, the 2nd Respondent appealed to the National House of Chiefs.

4. The Judicial Committee of the National House of Chiefs delivered its decision on September 29th 2022, dismissing the 2nd Respondent's appeal but affirming with a variation, the judgment of the Upper West Regional House of Chiefs. The nature of the variation was however, not disclosed until the Committee provided its reasons on November 24th 2023. Thereafter, the Petitioners received the judgment on December 13th 2023, and, aggrieved by the variation affecting traditional customs, declared their intention to appeal to this Court.
5. Consequently, an application for leave to appeal against the National House of Chiefs' decision was initially filed with this Court on December 7th 2023, but was later withdrawn due to a fundamental error, arising from filing the said application with this Court as the court of first instance, rather than with the National House of Chiefs. A new application was thereupon filed with the National House of Chiefs on March 11th 2024. However, the Judicial Committee dismissed it on March 20th 2025, citing late filing under Rule 7(1) of C.I. 16.
6. In this application, it has been contended by the Applicants that the National House of Chiefs wrongly applied Rule 7(1) of C.I. 16 to the facts on record. According to the Applicants, Rule 7(1) of C.I. 16, which is premised on Article 131(1)(b), contemplates appeals through the Court of Appeal, and is therefore not applicable to appeals from the Judicial Committee of the National House of Chiefs.

7. Applicant further contended that Article 131(4) of the 1992 Constitution, Section 4(4) of the Courts Act, and Section 24(b) of the Chieftaincy Act establish a specific and distinct procedure for appeals from the Judicial Committee of the National House of Chiefs directly to the Supreme Court.
8. Consequently, so asserted the Applicants, decisions applying Rule 7(1) to appeals emanating from the National House of Chiefs are *per incuriam*, and this Court is urged to depart from them and correct the practice and procedure for appeals from the National House of Chiefs to the Supreme Court.
9. At paragraphs 24, 25, and 26 of the supporting affidavit, the crux of the Applicant's case is summed up in the following terms:-

24. That I am also advised by Counsel and verily believe same to be true that by the provisions of the 1992 Constitution, Courts Act, 1993 (Act 459) and the Chieftaincy Act, 2008 (Act 759) appeals emanating from the Judicial Committee of the National House of Chiefs do not pass through the Court of Appeal and therefore Rule 7(1) of C.I.16 could not be applicable to appeals from the National House of Chiefs.

25. That I am again advised by Counsel and verily believe same to be true that Article 131(4) of the 1992 Constitution, Section 4(4) of the Courts Act and Section 24(b) of the Chieftaincy Act have created a specific procedure for appeals from the decisions of the Judicial Committee of the National House of Chiefs to the Supreme Court.

26. That I am further advised by Counsel and verily believe same to be true that any decision that is based on Rule 7(1) of C.I.16 which is referable to Article 131(1)(b) of the 1992 Constitution and which has been applied to appeals from the Judicial Committee of the National House of Chiefs is per incuriam Article 131(4) of the 1992 Constitution, Section 4(4) of the Courts Act and Section 24(b) of the Chieftaincy Act, and to that extent this Honourable Court is prayed to rewrite the wrong by departing from such decisions that relied on Rule 7(1) of C.I. 16, and redirect practice and procedure relative to appeals from the National House of Chiefs to Supreme Court.

10. Naturally the Respondents are opposed to the grant of the application herein and in an affidavit in opposition contended that the instant motion for leave is time-barred and should be dismissed. According to the Respondents, the National House of Chiefs delivered its judgment on September 29th 2022, and provided its reasons on November 24th 2023, whilst the Applicants filed their motion for leave to appeal to the Supreme Court on March 11th 2024.
11. Respondents contended that by the combined effect of Rules 7 and 30 of the Supreme Court Rules, 1996 (C.I. 16), the Applicants had 14 days to apply for leave to appeal. However, computing the time from the date of judgment or the date reasons were given, the application was filed woefully out of time.
12. Respondent finally denied the assertion that cases like Imbeah v Ababio [1999-2000] 2GLR 295, which applied Rule 7(1) of C.I. 16, to appeals emanating from the National House of Chiefs, were decided *per incuriam*, and urged this Court to decline the invitation to depart from such decisions. In the Respondents' estimation, acceding to the position urged by the Applicants in this case would

lead to a situation where appeals from the National House of Chiefs to the Supreme Court would not be bound by any time frames leading to uncertainty and undermining the sound policy requirement that litigation must have an end

13. At paragraphs 12, 13 and 14 of the affidavit in opposition, the Respondents stated as follows:-

12. That I am advised and verily believe the same to be true that Applicants interpretation of the Rules of the Supreme Court are misplaced as Rule 7 (1) and 30 of CI 16 read together makes it clear that the statutory time for applying for leave is 14 days as stated in the Case of IMBEAH v ABABIO (1999-2000) 2 GLR 295.

13. That per Applicants' reasoning, there would not be any time limit within which an intended Appellant would have to apply for leave at the National House of Chiefs or at the Supreme Court, a situation which would lead to uncertainty for the victorious party as he would not know when his litigation has come to an end; a situation that sins against public policy.

14. That I am advised and verily believe same to be true that as Applicants were out of time before the National House of Chiefs upon the dismissal of their Application, they cannot bring the instant application as they are equally out of time before the Supreme Court.

Analysis

14. Intrinsic to the claims asserted by the Applicants in this case are two key propositions of the law; (i) firstly, that Rule 7(1) of C.I. 16 is exclusively referable to Article 131(1)(b) of the 1992 Constitution, and therefore only applies to appeals via the Court of Appeal, not appeals from the Judicial Committee of the National House of Chiefs; and (ii) secondly, that appeals from the National House of Chiefs to the Supreme Court are governed by a distinct statutory framework, namely the 1992 Constitution, the Courts Act, 1993 (Act 459), and the Chieftaincy Act, 2008 (Act 759), rendering prior decisions like *Imbeah v Ababio per incuriam* and warranting departure. These two propositions must be examined in turn.

i) Argument that Rule 7(1) of C.I. 16 applies exclusively to appeals via the Court of Appeal pursuant to Article 131(1)(b) of the Constitution, and not appeals from the Judicial Committee of the National House of Chiefs to the Supreme Court

15. Since the dispute in this case arises from a judgment delivered by the Judicial Committee of the National House of Chiefs in a chieftaincy litigation, the prime legislative framework that must engage this Court's consideration must definitely be Article 131(4) of the 1992 Constitution.

16. Now, it is not in doubt that under the provisions of article 131(4) of the Constitution, an appeal against a decision of the National House of Chiefs lies to the Supreme Court with the leave of the National House of Chiefs or the Supreme Court. Article 131(4) of the Constitution provides as follows:-

(4) An appeal from a decision of the Judicial Committee of the National House of Chiefs shall lie to the Supreme Court with the leave of that Judicial Committee or the Supreme Court

17. The Supreme Court Rules, 1996, C.I. 16 makes provisions for rules and procedures that regulate the conduct of appeals to the Supreme Court.
18. Of critical importance to the issues raised for determination in this application are Rule 7(1) and Rule 30 of C.I. 16. Notably, Rule 7(1) of C.I. 16 prescribes a 14 day limit for filing applications for leave to appeal under Article 131(1)(b) of the Constitution, whilst Rule 30 further provides that the Rules governing civil appeals apply, with necessary modifications, to appeals from the National House of Chiefs.
19. Rule 7(1) of C.I. 16 stipulates as follows:-

7. Appeals by leave

(1) An application for leave to appeal under paragraph (b) of clause (1) of article 131 of the Constitution shall be by motion on notice in the Form 2 set out in Part I of the Schedule to these Rules and shall be filed with the Registrar of the court below within fourteen days of the date of the decision against which leave to appeal is sought.

Rule 30 of C.I. 16 reads as follows:-

30. Appeals in chieftaincy matters

The provisions of these Rules relating to civil appeals shall, with such modifications as the Court may determine, apply to the hearing by the Court of an appeal from the National House of Chiefs brought to the Court under clause (4) of article 131 or clause (1) of article 273 of the Constitution.

20. The combined effect of Rules 7(1) and 30 of C.I. 16 yields a clear conclusion that the provisions governing civil appeals, including the time limit for leave applications, apply equally to appeals from both the National House of Chiefs and the Court of Appeal, a view reinforced by established judicial precedent.
21. In the case of *Imbeah v Ababio [2000] SCGLR 259*, the Applicant therein, who had failed to comply with the time limit specified in Rule 7(1) and (2) of the Supreme Court Rules, 1996 (C.I. 16) for refiling an application for leave to appeal a decision of the National House of Chiefs, attempted to invoke the Supreme Court's inherent jurisdiction to have his application considered. However, the Court unanimously dismissed the application, primarily because the Applicant had not utilized the available remedy within the prescribed time frame and could not circumvent this by relying on the Court's inherent jurisdiction.
22. The Supreme Court's decision in this case, highlights the relevance of Rules 7(1) and 30 of C.I. 16 in governing the procedural framework for appeals from the National House of Chiefs to the Supreme Court, with Bamford Addo JSC, extensively citing both Rules 7(1) and Rule 30 in determining that the application was time-barred due to non-compliance with the 14-day limit.

23. Sophia Akuffo JSC's (as she then was) cogent analysis on this point is worth citing. This is what Her Ladyship stated at page 273 of the Report:-

"The primary source of our power to grant leave to appeal against decisions of the National House of Chiefs is article 131(4) of the Constitution which reads as follows.....The exercise of this power is regulated by rules 7(1) and 30 of the Supreme Court Rules, 1996, (C.I. 16). Taking first rule 30, it stipulates thatRule 7(1) which specifically governs appeals with leave, requires thatThe time limit stipulated by the latter provisions has always been interpreted in chieftaincy matters to mean that the application to this court must be filed within fourteen days from the refusal of the National House of Chiefs to grant leave to appeal".

(emphasis)

24. It bears emphasis that the imposition of time limits for granting leave to appeal against decisions of the National House of Chiefs to the Supreme Court is not a novel approach, as a considerable weight of judicial precedent existed prior to Imbeah v Ababio (supra), emphasizing the importance of adhering to time limits set forth in our Rules of Court
25. Thus for instance, in the case of Nyantakyiwa alias Kissi v. Kissi and Others [1982-83] GLR 480, the Applicant in a chieftaincy dispute, brought an application before the Supreme Court for: (a) a waiver by the court of non-compliance with the Supreme Court Rules, 1970 (C.I. 13), rr. 7(1) and 8 (1); (b) leave to appeal against the judgment of the judicial committee of the National House of Chiefs; and (c) an extension of time within which to appeal. The

Supreme Court, applying the erstwhile Rule 7 of C.I. 13, dismissed the application on the ground that the failure to comply with the time limit governing prior applications in the National House of Chiefs for leave to appeal was fatal. At holding (3) it was held as follows:-

(3) C.I. 13 r. 7 allowed a party to a cause or matter the right to apply for leave to appeal to the Supreme Court. Since the instant case was a chieftaincy matter, rule 30 required an application to be made to the National House of Chiefs. And under rule 7, there should be a motion on notice filed with the registrar of the court below within fourteen days of the date of the decision against which leave was sought. If no such motion was filed within fourteen days then there should be no action before the Supreme Court. It was only after leave had been refused on such a motion that an application could be brought to the Supreme Court. In the instant case, no motion was filed within time and consequently, there was no action before the Supreme Court upon which an application could be founded.

26. At page 587, Crabbe JSC explained the relevance of Rule 7(1) of C.I. 13, to an appeal from a decision of the National House of Chiefs, in the following terms:-

"But rule 7 of CI 13, allows a party to a cause or matter the right to apply for leave to appeal to the Supreme Court. The present case, being a chieftaincy matter, would be governed, as already indicated, by rule 30. So there is the need for an application to be made to the National House of Chiefs. Again, rule 7 (1) requires that there "shall be [a] motion on notice .

. . which shall be filed with the registrar of the court below within fourteen days of the date of the decision against which leave to appeal is sought."

27. Again in the case of Sandema Nab v Asangalisa (1996 – 97) SCGLR 307, the National House of Chiefs' Judicial Committee overturned a decision by the Upper East Regional House of Chiefs in favor of a paramount chief, the Applicant on May 25th 1995. The Applicant then sought leave to appeal to the Supreme Court, filing a motion on February 16th 1996. However, the National House of Chiefs dismissed the motion on March 19th 1996, due to it being filed out of time, rather than on its merits. Consequently, the Applicant filed an application with the Supreme Court on April 9th 1996, requesting an extension of time to apply for leave to appeal the National House of Chiefs' May 25, 1995 decision. On these facts, the Supreme Court held, unanimously dismissing the application as follows:-

(1) the application filed on 16th February 1996 at the National House of Chiefs for leave to appeal to the Supreme Court against its decision given on 25th May 1995, had been properly dismissed as hopelessly out of time - not having been filed within fourteen days from the date of the decision complained of as required by rule 7 (1) of the Supreme Court Rules, 1970 (CI 13). The instant application for an extension of time was also filed out of time - not having been filed within fourteen days from the date the National House of Chiefs refused to grant leave as required by rule 7 (2) of CI 13.

28. In my view, the principles established in the authorities above examined are directly applicable to this case, and dispositive of the contentions urged by the Applicants on this Court to exclude the applicability of Rule 7(1) of C.I. 16 from appeals emanating from the National House of Chiefs to the Supreme Court.
29. Indeed, I must confess that I find it rather striking that learned Counsel for the Applicants, Mujeeb Rahman Ahmed Esq.'s submissions, though very well crafted, surprisingly omitted consideration of Rule 30 of C.I. 16, which is pertinent to the question of whether Rule 7(1) applies to appeals from the National House of Chiefs
30. Examining the submissions of learned Counsel for the Applicants in its entirety therefore, I have struggled to appreciate any real legal foundation for excluding Rule 7(1) of C.I. 16 from appeals emanating from the National House of Chiefs to the Supreme Court, given the plain meaning of Rule 30 of C.I. 16 which explicitly clarifies that the Supreme Court Rules, C.I. 16 apply, with necessary modifications, to appeals from the National House of Chiefs to the Supreme Court.
31. Given the legislative intent behind the combined effect of Rules 7(1) and 30 to the issues raised in this application, the conclusion becomes inescapable, upon a careful review of the record, that the Applicants' case founders on the fundamental error of ignoring Rule 30 of C.I. 16, which dispositively resolves the matter against them.

32. Under the circumstances, it becomes clear that the Applicants' contention that Rule 7(1) of C.I. 16 applies only to appeals through the Court of Appeal pursuant to Article 131(1)(b) of the Constitution, and not to appeals from the Judicial Committee of the National House of Chiefs to the Supreme Court, fails to impress and must be rejected. I therefore resolve that primary issue against the Applicants.

Argument that Article 131(4) of the 1992 Constitution, Section 4(4) of the Courts Act and Section 24(b) of the Chieftaincy Act have created a specific procedure for appeals from the decisions of the Judicial Committee of the National House of Chiefs to the Supreme Court

33. A touchstone of the Applicants' argument, as previously noted, is that this Court should recognize a distinct and separate procedure for appeals from the National House of Chiefs to the Supreme Court, independent of the procedure outlined in Rule 7(1) of C.I. 16
34. After a meticulous examination of the processes on record and a careful consideration of learned Counsel's oral submissions, I am not convinced that the Applicants have provided sufficient clarity on the precise nature of the independent procedure they contend should govern appeals from the National House of Chiefs to the Supreme Court, save for some perfunctory references to Article 131(4) of the 1992 Constitution, Section 4(4) of the Courts Act and Section 24(b) of the Chieftaincy Act.

35. Even if such an independent procedure is discernible from the record, I must confess that its precise scope and application remain unclear to me.
36. If learned Counsel's submissions are taken to mean that applications for leave to appeal decisions from the National House of Chiefs to the Supreme Court are exempt from time limits under the Rules of Court, then that would be a sweeping and extravagant proposition indeed.
37. The Respondents argued in paragraph 13 of the affidavit in opposition that exempting Rule 7(1) from governing leave applications from the National House of Chiefs to the Supreme Court would leave such appeals without time limits, allowing them to linger indefinitely to be pursued at the Appellant's leisure, thereby causing undue hardship to successful litigants and eroding the fundamental principle that litigation must have a finality.
38. This argument, in my respectful view, resonates with compelling weight, and I fully endorse it.
39. It is plain that litigation would be interminable if such a time limit rule did not prevail. It is crucial to recognize that the maxims "*interest reipublicae ut sit finis litium*" and "*vigilantibus et non dormientibus, jura subveniunt*", serve as foundational principles that litigation should have a finality and that the law will assist those who are vigilant in asserting their rights, rather than those who delay unreasonably, thereby protecting Defendants from being subjected to the prejudice of stale claims.

40. The above sound policy of the law must in my respectful view, apply with even greater urgency to chieftaincy disputes. It needs reminding that open ended chieftaincy disputes must in no way be encouraged in this country, especially given that chieftaincy disputes often involve deeply emotive and politically charged issues, and prolonged stool litigation can be a significant source of strife and instability
41. In my respectful opinion, it is considerations such as these that have consistently shaped this Court's jurisprudence in arriving at decisions like *Imbeah v Ababio*, (supra) and *Sandema Nab v Asangalisa* (supra), which learned Counsel for the Applicants now vigorously urges this Court to re-examine.
42. Contrary however, to Counsel's submissions, I am persuaded that *Imbeah v Ababio* is a decision of unimpeachable authority, and its principles are directly applicable and dispositive of the issues in the instant case, binding this Court under Article 129(3) of the Constitution.
43. It is worth noting that judicial precedents, having been consistently applied and relied upon over a significant period, should not be overturned on speculative grounds or simply due to their age or a perceived need to re-examine their underlying rationale, without compelling reasons to do so
44. As Ansah JSC rightly observed in the case of *Awuku v Tetteh [2011] 1 SCGLR 366* at page 375 as follows:-

"Where judicial authorities are so well-settled by repeated use and application and has, indeed, been followed in the courts over a long

period of time, then it is not enough to rob it of efficacy just because of its age or that time had come to question its ratio or be rejected."

45. Considering that the Supreme Court in *Imbeah v Ababio* explicitly followed the earlier precedent set in cases like *Sandema Nab v Asangalisa* (supra), it was incumbent upon Counsel for the Applicants, in inviting this Court to depart from these foundational authorities, to provide compelling and cogent reasons to support his position.
46. Having carefully considered the submissions, I am not satisfied that Counsel has demonstrated adequate grounds for overturning the precedent set in *Imbeah v Ababio* (supra), which in my respectful view, retains a vital and authoritative statement of the law
47. In the result and upon thorough review of the record and careful consideration of the statutory and procedural framework governing applications for leave to appeal decisions of the National House of Chiefs, I conclude that the Applicants were required to comply with Rule 7(1) of CI 16 and file their application for leave to appeal within 14 days of the National House of Chief's decision. Their failure to meet this initial requirement proved fatal, and this constituted a jurisdictional bar that prevents the Supreme Court from entertaining their application for leave to appeal.
48. Before concluding, I must express my views on the majority opinion, which I have had the opportunity to review, and which seeks to furnish a valid foundation for the instant application under Article 131(2) as a basis for granting special leave to appeal.

49. The majority decision in granting the reliefs prayed for by the Applicants in this application reasoned thus:-

"Having so observed it is my considered view that the application can be properly saved under Article 131(2) of the 1992 Constitution which allows this Court to grant special leave in any cause or matter, civil or criminal for an appeal to be admitted.....Consequently, a combined reading of Article 131(4) and Article 131(2) of the 1992 Constitution in my view invest this Court with the authority to grant special leave even in a chieftaincy dispute, in respect of an appeal emanating from the National House of Chiefs"

50. I have striven to find a common ground with the majority's view of the law, but unfortunately I have been unable to persuade myself to align with the reasoning and conclusions, and it is with deep regret that I voice my lone dissent.
51. The key question raised by the majority's view is whether this Court's jurisdiction to grant special leave to appeal as spelt out under Article 131(2) of the constitution extends to appeals in respect of a chieftaincy dispute emanating from the National House of Chiefs?
52. Opportunely, this question is not novel and had previously been addressed and resolved by this Court in the case of Afendza III and Others v Tenga and Others [2005-2006] SCGLR 414.
53. The facts of that case were that after the National House of Chiefs (NHC) had dismissed an appeal against a decision rendered by the Volta Regional House

of Chiefs, the Applicants were granted leave by the NHC to appeal to the Supreme Court. The Applicants failed to follow through with the appeal and it was struck out due to procedural non-compliance. Still intent on pursuing their appeal, the Applicants brought the instant application under article 131(2) of the 1992 Constitution for special leave to appeal to the Supreme Court from that decision. The application was dismissed by the Supreme Court which held as follows:-

"On construction, the provision in article 131(2) of the 1992 Constitution did not cover applications for special leave to appeal to the Supreme Court from any court other than the Court of Appeal in the exercise of its jurisdiction under article 131(1)(b). Consequently, the Supreme Court had no jurisdiction to grant the instant application brought under article 131(2) of the 1992 Constitution for special leave to appeal to the Supreme Court from the decision of the Judicial Committee of the National House of Chiefs."

54. At page 423 of the Report, Atuguba JSC, with whom Wood, Prof Ocran, Ansah and Aninakwa JJSC unanimously concurred, reasoned that given the nature of the "access" provisions in Article 131(3) and (4) of the Constitution, Article 131(2) must logically be limited to applications for special leave from decisions of the Court of Appeal and not the National House of Chiefs. This is what His Lordship said:-

"It is therefore clear that the mischief of delayed or truncated appellate access to this court, which would have arisen under article 131(1)(b), if

clause (2) permitting applications for special leave to appeal to this court had not been inserted in article 131, does not arise at all under article 131(3) and (4) aforesaid. Thus the exclusion of clauses (3) and (4) from the wording of article 131(2) which confers the right to apply for special leave to appeal in certain situations from decisions of the Court of Appeal, is understandable, reasonable, just and intentional. For these reasons the decision of this court in Dolphyne (No. 2) v. Stevedoring Co., Ltd. (1996-97) SCGLR 373 that the terminus ad quem of article 131(2) is article 131 (1) and that it does not cover applications for special leave to appeal to this court from any other court than the Court of Appeal, is right. I do not regret having followed it in Nsiah v. Amankwah (1996-97) SCGLR 453 at 464-465."

55. Atuguba JSC's allusion to the decision in Dolphyne (No. 2) v. Stevedoring Co., Ltd. (1996-97) SCGLR 373, was without doubt, in reference to the speech by Charles Hayfron Benjamin JSC at page 381 of the report, where it was stated thus:-

"It must, however, be stressed that article 131(2) only affects appeals emanating from the Court of Appeal and no other court." (emphasis)

56. On firm legal footing therefore, it is my respectful opinion that Article 131(2) does not provide a valid foundation for the Applicant's instant application, as it would constitute jurisdictional overreach, beyond this Court's authority. In my considered view, the overwhelming weight of judicial precedent clearly guides us on this issue, and I intend to adhere to it rigorously.

57. In the result, I unequivocally answer in the negative, the question of whether Article 131(2) empowers this Court to grant special leave to appeal in chieftaincy disputes emanating from the National House of Chiefs.
58. In the final analysis, having carefully reviewed the processes on the record, and considered oral submissions by learned Counsel, I am certain in my mind that the only plausible conclusion open on the facts on record is that the application's failure under Article 131(1) of the Constitution cannot be remedied by invoking Article 131(2), rendering it fundamentally and incurably flawed.
59. As the Applicants have failed to establish a valid legal foundation for the reliefs sought, I will dismiss the application.

(SGD)

**Y. DARKO ASARE
(JUSTICE OF THE SUPREME COURT)**

COUNSEL

**MUJEEB RAHMAN AHMED ESQ. FOR THE PETITIONER/RESPONDENTS/
APPLICANTS WITH HIM DR. ADOMA ADJEI ESQ. AND ACKAH HEMANS ESQ**

**JAMES MARSHALL BELIEB ESQ. FOR THE CO-PETITIONER/RESPONDENT/
RESPONDENT**