

GHANA / JUDGMENT

THE REPUBLIC VRS THE PRESIDENT (CENTRAL REGIONAL HOUSE OF CHIEFS) (J7/20/2023) [2024] GHASC 48 (29 October 2024)

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IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- AD 2024

CORAM: PWAMANG JSC (PRESIDING)

OWUSU (MS.) JSC

AMADU JSC

ACKAH-YENSU (MS.) JSC

ASIEDU JSC

GAEWU JSC

ADJEI-FRIMPONG JSC

CIVIL MOTION

NO. J7/20/2023

29TH OCTOBER, 2024

THE REPUBLIC

VRS

1. THE PRESIDENT 1ST RESPONDENT/APPELLANT/
(CENTRAL REGIONAL HOUSE OF CHIEFS) APPPELLANT/RESPONDENT2. THE PRESIDENT 2ND RESPONDENT/APPELLANT/
(NATIONAL HOUSE OF CHIEFS) APPPELLANT/RESPONDENT3. NANA OGYEEDOM OBRANU INTERESTED
PARTY/APPELLANT/

KWESI ATTA VI APPELLANT/RESPONDENT

EX-PARTE: OBREMPONG NYANFUL KRAMPAH XI APPLICANT/RESPONDENT/
RESPONDENT/APPLICANT

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RULING

AMADU JSC:

INTRODUCTION

(1) My Lords, our special jurisdiction to review decisions of this court pursuant to Article 133 of the 1992 Constitution as settled by this court must be exercised in the most exceptional circumstances within the confines of Rule 54 of the Supreme Court Rules 1996 CI. 16 (as amended). This is to ensure that, parties to a dispute finally determined by this court will not take advantage of our review jurisdiction to reargue their cases under the guise of invoking the review jurisdiction. (2) The review jurisdiction of this Court is therefore not one which is available to correct “appealable” errors as well as inconsequential or trivial matters which the Applicant urging for the review of a final decision has identified and dissatisfied with how the said matters were resolved. (3) This special jurisdiction vested in this court to review its previous decision is available in situations where, there are exceptional situations that are so materially foundational to the decision of the ordinary bench, such that, it is either contrary to statute, or it has the potency of rendering the decision so fundamentally erroneous that, its efficacy will result in consequences never envisaged by the law, thereby occasioning a miscarriage of justice to the Applicant. Page 2 of 33 (4) It is in view of this very vital essence of the court’s power to review its own decision only in very limited but exceptional circumstances that, the Rules of Court Committee grounded the conditions for the exercise of the jurisdiction under Rule 54 of C.I.16 as follows:

- a. “Exceptional circumstances which have resulted in a miscarriage of justice; or
- b. The discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the Applicant’s knowledge or could not be produced by the Applicant at the time when the decision was given.” (5) These grounds either of which must be established for a successful application for review, have been articulated in various decisions of this court. In *PENKRO VS. KUMNIPAH II* [1987-88] 1 GLR 558, this Court speaking per Sowah C.J explained inter alia that: “The review jurisdiction is a special jurisdiction to be exercised in exceptional circumstances...It is a kind of jurisdiction held in reserve, to be prayed in aid in the exceptional situation where there is a fundamental and basic error...” (6) In similar tone, this Court relying on the decision in *QUARTEY VS. CENTRAL SERVICES* [1996-97] SCGLR 398 speaking through Gertrude Sackey-Torkornoo JSC (as she then was) in the case of *THE REPUBLIC VS. HIGH COURT HO EX-PARTE: ATTORNEY GENREAL AND PROF. MARGARET KWAKU, SIMON ALAN OPOKU MINTAH, JOHN KWAME OBIMPEH & ORS. (INTERESTED PARTIES)* [2021] DLSC 10693 settled the jurisdictional position on the review jurisdiction as follows: “We would first state that, the settled position of the law that allows the Supreme Court to review its decisions under Article 133 is as stated in *QUARTEY VS. CENTRAL SERVICES* [1996-97] SCGLR 398 AT 399, “. . . A review of a judgment is a special jurisdiction and not an Appellate jurisdiction

conferred on the court; and the court would exercise that special jurisdiction in favour of an Applicant only in exceptional circumstances. This implies that, such an application should satisfy the court that, there has been some fundamental or basic error which the court inadvertently committed in the course of considering its judgment; and which fundamental error has thereby resulted in gross miscarriage of justice. Consequently, a losing party is not entitled to use the review process to prevail upon the court to have another or a second look at his case.” (7) Earlier in time, in MECHANICAL LLOYD ASSEMBLY PLANT LTD. VS. NARTEY [1987-88] 2 GLR 598 Taylor JSC gave some indicia of the exceptional circumstances for purposes of the court’s favourable exercise of its review jurisdiction as follows: i. The judgment or order must be void. Page 4 of 33 ii. The decision was given per incuriam, i.e. for failing to consider relevant state or case law or fundamental principle of practice and procedure which would have resulted in a different decision. iii. An error of law must be of exceptional character and must have resulted in a miscarriage of justice. iv. Matters discovered after delivery of judgment. (8) As can be gleaned from the consistent decisions of this court in its expatiation on the review jurisdiction, it is not one that must be invoked whenever there is an alleged failure of the court to have regard to some matter of evidence, or to a statutory provision, but there must be a compelling demonstration that, the said failure erodes the justness of the decision and the same thereby occasioned a miscarriage of justice to the Applicant. (9) As I shall demonstrate in this ruling, it is not every alleged omission, error or oversight by the ordinary bench in its decision that must necessarily result in a review of the said decision. This is so particularly as in the instant case, the application for review is anchored on an alleged failure by the ordinary bench to have regard to a statutory provision arising from the Applicant being merely punctilious in an afterthought and thus the alleged failure will have absolutely no unanticipated adverse consequences from the decision of the court within the meaning and effect of Rule 54 of C.I. 16. Page 5 of 33 (10) This observation, which guides a determination of the instant application is very germane, having regard to the policy that, the courts including this Court are the servants of the legislature. It is conceded that, the court cannot detract from the obligation to give effect and respect the requirements of statutes. In fact, the courts exist to enforce laws passed by the legislature (save situations where the said laws are pronounced unconstitutional). (11) While we are mandated to give effect to statutes, we must be very slow in disturbing otherwise sound judgments by this court which even if, there was a failure to have regard to particular procedural legislation, the alleged failure is inconsequential to the outcome of the decision arrived at. Again, where the court is invited to review its decision based on an alleged failure of the court to have regard to a subsisting procedure, there must be a demonstration that, not only did the court fail to avert its mind to the said statutory procedure, but that, the failure has occasioned a miscarriage of justice. In other words, if regard had been made to the regulating procedure, the decision arrived at would not have been the same. BACKGROUND TO APPLICATION (12) On 21st June 2023, the ordinary bench of this court dismissed an appeal in an action which first commenced from an application for judicial review in the High Court which ruling was the subject matter of appeal to the Court of Appeal. The basis of the application before the trial court which

trajected to this court was simply on ground of the absence of a formal request from the National House of Chiefs to the Central Regional House of Chiefs to Page 6 of 33 investigate a petition that had been brought by the interested party regarding the elevation of his stool to the status of a paramountcy. (13) In the unanimous decision of the ordinary bench, this court took the position and reasoned that, the Research Committee of the Central Regional House of Chiefs which deliberated over the petition and reported to the House was not an independent Committee of the House as the House could affirm or vary the decision so reached. Furthermore, the ordinary bench reasoned that, the Applicant had deliberated in the discussions at the Regional House of Chiefs concerning the Interested Party's Petition and could not now be heard to resile from the said deliberations. The ordinary bench while finding it desirable for there to have been a formal referral from the Registry of the National House of Chiefs to the Regional House of Chiefs was nevertheless of the view that, the absence of same in the peculiar facts of the case did not occasion any miscarriage of justice. THE APPLICANT'S CASE (14) The Applicant has alleged that, the ordinary bench of this court had committed a grievous error of law by failing to hold that it is the Standing Committee of the Central Regional House of Chiefs which has the statutory duty to first discuss all matters referred to the House in determining whether there has been a formal referral or and not the Research Committee of the House as the ordinary bench sought to uphold. (15) The Applicant anchors his argument on Article 54 of the Standing Orders of the Central Regional House of Chiefs which provide that: Page 7 of 33 "all matters referred to the House for advice by any person or authority charged by the constitution or any enactment or under Section 9 of the Chieftaincy Act 2008 (Act 759) shall first be discussed by the Standing Committee before presented to the House." (16) It is the Applicant's case that, the ordinary bench of this court inadvertently failed to consider the entire Standing Orders of the Central Regional House of Chiefs, specifically Article 54 on referrals, and therefore this default on the part of the ordinary bench to consider Article 54 in addition to Article 38(1) has resulted in a miscarriage of justice to the Applicant. (17) In the statement of case in support of the application, counsel submitted that, since the Standing Orders of the Central Regional House of Chiefs have provided for a Standing Committee with a pre-emptive mandate to consider referrals from the National House of Chiefs, no other Committee of the Regional House of Chiefs including the Research Committee can usurp the powers of the Standing Committee. Counsel contends therefore that, if the decision of the ordinary bench is allowed to stand "it would render the Standing Committee of the Central Regional House of Chiefs of no moment." SUMMARY OF RESPONDENTS' CASE (18) The Interested Party on his own behalf and for the other Respondents contested the instant application per an affidavit in opposition to the application filed on the 24th of October 2023. The thrust of the depositions in the affidavit is that, the Applicant has failed to satisfy the statutory Page 8 of 33 requirement for the exercise of the court's review jurisdiction. The Interested Party contended, that, in applications of this nature, the Applicant must not just point out an omission, but further demonstrate that, but for the omission or default alleged, the decision would have been different. (19) The Interested Party also took issue to this bleated point being urged on this court by the Applicant by submitting that, the Applicant was seeking to

conduct his case in piecemeal as he never at any point in time raised these issues which must be presumed to be within his knowledge. The Interested Party in essence urged this review panel to sustain the decision of the ordinary bench and dismiss the application as unmeritorious. EVALUATION (20) The rule of procedure in contestation which is central to the instant application is Article 54 of the Standing Orders of the Central Regional House of Chiefs. The Standing Orders of the House are made pursuant to Section 10 of the Chieftaincy Act, 2008 (Act 759) and are as follows: “Each Regional House may make Standing Orders for (a) the composition, tenure of office and procedures of committees appointed under Sub-section (4), (b) other provisions in respect of the committees and (c) the regulation and orderly conduct of its business”. Page 9 of 33 (21) These standing orders therefore, have the full force of law and they serve useful purposes for the operations of the Regional House of Chiefs in dealing with such important matters such as the conduct of the business of the House and the regulation of the various committees. (22) Article 54 of the Standing Orders of the Central Regional House of Chiefs provide as follows: “All matters referred to the House for advice by any person or authority charged by the constitution or any enactment or under Section 9 of the Chieftaincy Act 2008 (Act 759) shall first be discussed by the Standing Committee before presented to the House.” (23) Undubitably, the above quoted article is very clear in its import and effect. It defines the procedure in deliberating over matters referred to the House for advice by mandating same to be first discussed by the Standing Committee of the House before a formal presentation to the House in plenary. This Article, therefore provides a procedural direction in the processes of deliberation of issues before the House. (24) Though it is conceded that, the ordinary bench did not insist on the discharge of this procedural step by the Standing Committee of the Central Regional House of Chiefs, can the omission be said to have occasioned a miscarriage of justice, such that, it could have changed the decision arrived at by the ordinary bench? (25) Before answering this interrogatory, it is important to point out that, nowhere in the case presented by the Applicant from the trial court through Page 10 of 33 to the Court of Appeal and before the ordinary bench of this court has the issue that the courts determined the matter on the basis of a non-referral of the issue of advice to the Standing Committee of the Central Regional House of Chiefs. The case as put forth by the Applicant has at all times, been anchored on the absence of a formal referral from the National House of Chiefs to the Regional House of Chiefs. (26) In fact, the ordinary bench dutifully observed an anomaly with the application in the sense that the Applicant was arguing that, the deliberations ought to have been carried out by the Traditional Council and not the Regional House. The ordinary bench expressed itself at page 16 of the judgment as follows: “From the get-go therefore, the Applicant, in our respectful view, missed the point in contending that the Regional House of Chiefs were bereft of jurisdiction to render the advice as sought by the Ministry through the National House of Chiefs. Applicant has not been able to point to any legislation or practice where such advice with in the peculiar facts of the present case is rendered by the Traditional Council. In fact, it appears, the flawed posture in this line of reasoning became apparent to Applicant, hence, his attempt to now redirect the arguments to whether there was a formal referral form the National House of Chiefs to the Regional House.” (27) While

we deprecate such approach to invoking the review jurisdiction of this court, we are not by this observation encouraging a waiver or non-compliance of a statutory prescription in applications of the kind. As variously held by this court, it is not the mere inadvertence of the ordinary bench to have regard to that statutory mandate which should necessarily result in a success of the application. There must be a compelling Page 11 of 33 exceptional demonstration that, the said failure or default has occasioned a miscarriage of justice. It is conceded that, whereas this court did not consider the effect of Article 54 of the Standing Orders of the Central Regional House of Chiefs, it is presumptuous for the Applicant to assume that, the decision of the ordinary bench “would render the Standing Committee of the Central Regional House of Chiefs of no moment.” (28) We need to place on record for the avoidance of doubt that, the role of the Standing Committee of the Central Regional House of Chiefs within the mandate of Article 54 subsists but same is unaffected by the decision of the ordinary bench. It is important appreciating that, nowhere in the decision of the ordinary bench did the court clothe the Research Committee with the powers of the Standing Committee of the Central Regional House of Chiefs and neither did the court in its decision pronounce the Standing Committee of the Central Regional House of Chiefs redundant. (29) The ordinary bench in its decision rather reasoned that, while it was desirable for a formal referral to be made, the absence of such referral did not erode the efficacy of the deliberations so made. In the wisdom of the ordinary bench, finality lies with the House and not any of its committees. As succinctly stated by the ordinary bench in its judgment, “...As observed, both the National House of Chiefs and the Regional House of Chiefs are allowed to exercise some of their functions through committees they put in place. The work of these committees is the work of the respective Houses of Chiefs, and the plenary can decide to even vary the result of the committees.” Page 12 of 33 (30) Further at pages 17-18, the ordinary bench pronounced as follows: “It needs to be contextualized that, the Research Committee is not an independent committee or does not work in a vacuum. It is a committee of the Regional House of Chiefs. That is, the National House of Chiefs, or the Regional House of Chiefs as the case may be, may not even be bound by whatever report submitted to them by the Research Committee. To that extent, we find it difficult how the two lower courts could treat the issue so lightly on the basis of absence of a formal request”. Without sounding respective, it is our considered view that, within the peculiar facts of the present case, although it was desirable, that the National House of Chiefs, having decided that there ought be a new committee reconstituted by the Central Regional House of Chiefs to look into the matter, and thus formally requested the Central Regional House of Chiefs in that regard, the absence of this formal directive, cannot, operate to render, what was intended having been actualized a nullity. Instructively, the National House of Chiefs is composed of paramountcies who may advise their paramount areas decisions taken by the House without necessarily going through the formal route. We, therefore, in the special situation at hand, do not find the error committed so crucial to go to jurisdiction and thus render the exercise conducted by the Research Committee of the Central Regional House of Chiefs a nullity. Furthermore, by virtue of Section 1(21) and (2) of the Chieftaincy Act, 2008 (Act 759), the various Regional Houses of Chiefs are constituents within the National House

of Chiefs with their official representatives Page 13 of 33 forming part of the decision making process of the National House of Chiefs. Thus, pursuant to the said provision, the meetings of the Standing Committee of the National House of Chiefs held on 18th and 19th of June 2020 (Exhibits “OK2” and “OK3”) were attended by the Applicant as representative of the Central Regional House of Chiefs to the National House of Chiefs in his capacity as the then President of the Central Regional House of Chiefs. Having fully participated in the proceedings, he cannot now be seen or heard to be complaining that because no formal written communication was made to the Central Regional House of Chiefs to investigate the Petitioner from the Interested Party, the proceedings of the Research Committee of the 1st Respondent set up to deal with the said Petition was a nullity.” (31) My Lords, I have quoted in extenso the significant portions of the judgment of the ordinary bench under review for much emphasis and for the avoidance of doubt. As can be observed, the appeal before the ordinary bench did not invite that bench to deal with the issue of whether it was the Standing Committee or the Research Committee of the Central Regional House of Chiefs that ought to look into the issue of which one of the two committees had usurped the functions of the other. The key issue grounding this application for review is whether there had been a formal referral from the National House of Chiefs to the Regional House of Chiefs and its effect? (32) We need emphasize that, the review process is not an appeal. In applications for judicial review, the court is not confronted with the entire Page 14 of 33 record of proceedings and therefore, it will be erroneous for the review court to be assessing the application as if it were adjudicating an omnibus ground of appeal. (33) As aforesaid, though the ordinary bench did not consider the effect of Article 54 of the Standing Orders of the Central Regional House of Chiefs, the said omission did not, and could not have impacted on the application for judicial review and the outcome of same. From the peculiar facts before us, by inviting this court to review the ordinary bench decision, the Applicant disconnects what triggered the judicial review and is rather inviting an exercise of the appellate jurisdiction of the court which enjoins this court to exercise the power of “rehearing” of the entire dispute which is not available under the procedure under which the review jurisdiction of this court pursuant to Article 133(1) of the 1992 Constitution. (34) In consequence, we find no exceptional circumstance to reverse the conclusion reached by the ordinary bench especially as all the committees are committees of the Regional house and the Applicant having already participated in their deliberations cannot be heard to complain otherwise. (35) The application not having met the threshold for a review of the decision of the ordinary bench, it is hereby accordingly dismissed. I.O. TANKO AMADU (JUSTICE OF THE SUPREME COURT) (SGD.) Page 15 of 33 (SGD.) G. PWAMANG (JUSTICE OF THE SUPREME COURT) (SGD.) (JUSTICE OF THE SUPREME COURT) M. OWUSU (MS.) (SGD.) B.F. ACKAH-YENSU (MS.) (JUSTICE OF THE SUPREME COURT) (SGD.) E.Y. GAEWU (JUSTICE OF THE SUPREME COURT) (SGD.) R. ADJEI-FRIMPONG (JUSTICE OF THE SUPREME COURT) CONCURRING OPINION ASIEDU, JSC: [1]. By a unanimous decision, the Supreme Court delivered judgment on the 21st June 2023 and allowed an appeal against the judgment of the Court of Appeal. Subsequently, the applicant, Obrempong Nyanful Krampah XI, on the 12th July 2023, filed the instant application for review of the judgment of 21st July 2023

on the strength of depositions contained in the accompanying affidavit. The interested party herein, Nana Ogyeedom Obranu Kwesi Atta VI, is opposed to the application. Page 16 of 33 [2]. This Court's jurisdiction to entertain an application for review is given by article 133(1) of the Constitution, 1992. The said article states that: "133. Power of the Supreme Court to review its decisions

- (1) The Supreme Court may review any decision made or given by it on such grounds and subject to such conditions as may be prescribed by Rules of Court." Rule 54 of the Supreme Court Rules, 1996, CI.16 provides the grounds upon which the Court may review decisions given by it. Rule 54 states that: "54. Grounds for review The Court may review a decision made or given by it on the ground of—
 - (a) exceptional circumstances which have resulted in a miscarriage of justice; or
 - (b) the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by the applicant at the time when the decision was given." Thus, for an applicant to successfully apply for review of a judgment or decision of the Supreme Court, he must satisfy at least one of the two conditions stated in rule 54 of CI.16. That is, the applicant must show the existence of exceptional circumstances which have resulted in a miscarriage of justice or the discovery of fresh evidence which was not available to him at the time of the hearing of the original matter despite the exercise of due diligence. [3]. The instant application is grounded on rule 54(a) of CI.16. Paragraphs 4, 6, 7, 8, 9, 10 and 11 of the affidavit in support detail the grounds upon which this application is brought. These are: Page 17 of 33 "4. The ordinary bench of this Court committed a grievous error of law which error constitutes an exceptional circumstance that has resulted in a miscarriage of justice when it did not rule that the Research Committee of the Central Regional House of Chiefs.
6. That the Research Committee of the Central Regional House of Chiefs does not have the jurisdiction to consider referrals, be it formal or informal, from any person or authority charged by the Constitution or any enactment including the National House of Chiefs.
7. That the Standing Orders of the Central Regional House of Chiefs provides under Article 54 that, "all matters referred to the House for advice by any person or authority charged by the Constitution or any enactment or under section 9 of the Chieftaincy Act 2008 (Act 759) shall first be discussed by the Standing Committee before presented to the House."
8. That from the preceding paragraph, it is the Standing Committee of the Central Regional House of Chiefs that has jurisdiction to first discuss all matters referred to the House, whether there is a formal referral or not.
9. That the judgment of the ordinary bench allowing the Research Committee to sit and determine the referral from the National House of Chiefs instead of it to be considered by the Standing Committee is per incuriam making it an exceptional circumstance that warrants the intervention of the Court.

10. That the letter inviting me was from the Chairman of the Research Committee to discuss the Petition and my attendance did not in itself clothe the Research Committee with any validity and therefore creates an exceptional circumstance that if not considered, leads to miscarriage of justice.
11. That the ordinary bench inadvertently failed to consider the entire Standing Orders of the Central Regional House of Chiefs, specifically Article 54 on referrals, and therefore the failure to consider Article 54 in addition to Article 38(1) led to a miscarriage of justice". Page 18 of 33 [4]. From the depositions in the affidavit quoted above, it is clear that the main reason for which this application is brought, according to the applicant, is that the Research Committee of the Central Regional House of Chiefs "does not have the jurisdiction to consider referrals" from any authority. This, according to the applicant, is so, because of the provision of article 54 of the Standing Orders of the Central Regional House of Chiefs (CRHC). The applicant argues, therefore, that it is the Standing Committee of the Central Regional House of Chiefs that has jurisdiction to first discuss all matters referred to the House. The applicant says that the decision of the Ordinary bench was given per incuriam and that that constitutes exceptional circumstances which warrants the instant application. [5]. The applicant says at paragraph 7 of the supporting affidavit that, article 54 of the Standing Orders of the Central Regional House of Chiefs states that "all matters referred to the House for advice by any person or authority charged by the Constitution or any enactment or under section 9 of the Chieftaincy Act, 2008, Act 759, shall first be discussed by the Standing Committee before presented to the House". [6]. Section 9(2) of the Chieftaincy Act provides for the functions of the Regional Houses of Chiefs and it states that: "Functions and committees of Regional Houses of Chiefs
 - (2) Each Regional House shall,
 - (a) advise a person or an authority charged under the Constitution or any other law with responsibility for a matter relating to or affecting chieftaincy in the region,
 - (b) undertake a study and make general recommendations that are appropriate for the resolution or expeditious disposition of chieftaincy disputes in the region,
 - (c) undertake the compilation of the customary laws and lines of succession applicable to each stool or skin in the region, and Page 19 of 33
 - (d) perform other functions conferred on it by this Act or by any other enactment." These functions may be exercised by the Regional House through any committee established by the Regional House as determined under section 9(4). What this implies is that if a committee is appointed by the Regional House of Chiefs to investigate any matter and report back to the house, the final decision arising out of the subject matter of investigation is that of the Regional House and not the Committee that undertook the actual investigation. The applicant's complaint, as contained in the affidavit in support, is that the investigations carried out by the Research Committee of the CRHC in respect of the petition of the Interested Party which was referred to it by the National House of Chiefs, is impeachable

and cannot be relied upon because the said investigation was not done by the Standing Committee. This argument, in my humble opinion, flies in the face of the provisions of section 9(4) of the Chieftaincy Act which states that: “9(4) Subject to this Act, a Regional House may appoint committees comprising the persons determined by it to assist in the performance of its functions, and may delegate to any of the committees the functions it thinks fit.” Thus, section 9(4) of Act 759 does not tie down the powers of the CRHC to delegate the investigations of any petition or any matter referred to it for advice to any particular committee. The section is not expressed in mandatory language but it permits the CRHC to choose any committee to investigate any matter notwithstanding the existence of any committee created by the House for any purpose. Thus, the existence of article 54 of the Standing Orders of the CRHC notwithstanding, the House is not bound to refer the petition involving the Interested party herein to the Standing Committee for investigation. Page 20 of 33 [7]. The applicant says, in paragraph 9 of the supporting affidavit, that the decision of the ordinary bench of this Court was given per incuriam because that decision allowed the Research Committee instead of the Standing Committee to investigate the referral from the National House of Chiefs. A decision is said to have been given “per incuriam” if that decision is given in complete disregard of a binding law: whether statutory or a binding decided case by a Court of superior jurisdiction. Thus, in *Morelle Ltd. v. Wakeling* ([1955] 2 Q.B. 379 Evershed MR, stated at page 406 that: “As a general rule the only cases in which decisions should be held to have been given per incuriam are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the Court concerned: so that in such cases some part of the decision or some step in the reasoning on which it is based is found, on that account, to be demonstrably wrong.” The Standing Orders of the CRHC, including article 54 thereof, is a matter of fact which the applicant is enjoined by law to plead or depose in order to bring it to the attention or notice of the Court. As pointed out, without an existing law to the contrary, a decision, given by a Court of competent jurisdiction, cannot be said to have been given per incuriam. Article 11 of the Constitution, 1992, details the laws of Ghana. Article 11(1) provides that: “11. The Laws of Ghana

- (1) The Laws of Ghana shall comprise
 - (a) this Constitution;
 - (b) enactments made by or under the authority of the Parliament established by this Constitution;
 - (c) any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitution;
 - (d) the existing law; and Page 21 of 33
 - (e) the common law.” The Standing Orders of the Central Regional House of Chiefs does not fall under any of the categories of law stated under article 11(1) of the Constitution and not so under article 11(1)(c) because, to enable Orders, Rules or Regulations qualify as law under

article 11(1) of the Constitution the same must be laid before Parliament, be published in the gazette on the day it is laid before Parliament, and come into force at the expiration of twenty-one sitting days after being so laid. There is no evidence before this Court that the Standing Orders of the CRHC was made “under a power conferred by” the 1992 Constitution. On the contrary section 10 of the Chieftaincy Act enjoins each Regional House of Chiefs to make Standing Orders to regulate the various committees in the discharge of their functions. It states that: “10. Regional House of Chiefs to make Standing Orders Each Regional House may make Standing Orders for

- (a) the composition, tenure of office and procedures of committees appointed under subsection (4),
- (b) other provisions in respect of the committees, and
- (c) the regulation and orderly conduct of its business.” It follows, therefore, that the existence of any committee and Standing Orders are a matter of fact which ought to be pleaded, as already stated, in order to bring it to the notice of the Court. It is therefore incorrect for the applicant to measure the judgment of the ordinary bench against a matter of fact and conclude that the said judgment was given per incuriam as if the Standing Orders of the CRHC is law. A judgment of a Court cannot correctly be said to have been given per incuriam for failing to take cognizance of a matter of fact as opposed to a matter of binding law. As pointed out in their book: *Philosophical Foundations of Precedent*, Oxford (2023), edited by Timothy Endicott et al, at page 3: Page 22 of 33 “[The] ‘per incuriam’ rule is a doctrine that a decision does not have the legal effect of a precedent insofar as it was decided on a basis that was legally mistaken, if it is incontrovertible that the Court in that case would have decided differently, if the mistake had been pointed out”. [8]. The ultimate foundation of the instant application, as deposed to in paragraph 9 of the affidavit in support, is the wrong notion adopted by the applicant of the decision of the ordinary bench having been given per incuriam, which creates, in the view of the applicant, “an exceptional circumstance that warrants the intervention of the Court”. With the explosion of that wrong view taken by the applicant, as shown in the preceding paragraphs herein, the instant application becomes bereft of any leg to stand upon. As pointed out, rule 54 of the Supreme Court Rules, CI. 16, provides two bases under which an applicant may pray the Court to review any decision given by it. One of these bases is the existence of exceptional circumstances which the present application is rested upon. I must state in no uncertain terms that what the applicant describes as the basis for his application was considered by the ordinary bench before the Court came to its decision. At page 2 of the judgment, exhibit OK-1 herein, the Court laid bare the question that it was called to determine as follows: “Our invitation in this appeal, is to assess the mandate of the Research Committee of the Central Regional House of Chiefs, vis-à-vis the authority of the National House of Chiefs to determine, the Research Committee, in undertaking the activity that led to the instant appeal did exceed its authority, and if so, whether it should be amenable to judicial review”. At page 7 of the judgment, the Court observed that: Page 23 of 33 “Despite the clear basis of the application by the applicant

anchored simply on who was the appropriate body to investigate the matter: the Research Committee of the Central Regional House of Chiefs or the Gomoa Traditional Council; both the High Court and the Court of Appeal redirected their focus, on whether there was a formal referral of the decision of the National House of Chiefs to the Research Committee of the Central Regional House of Chiefs to commence investigations into the matter". At page 12 of the judgment, exhibit OK-1, the ordinary bench stated that: "As aforesaid, from the application filed, it is obvious that same is anchored on an alleged attack of want of jurisdiction of the Research Committee of the Central Regional House of Chiefs. Being a jurisdictional attack, the opponent must demonstrate that its authority has not been exceeded, or that the activity it engaged in was within the scope of its authority, lest it is amenable to the supervisory jurisdiction of the High Court." At pages 17 to 18 of the judgment, the Court stated that: "It needs to be contextualized, that the Research Committee is not an independent committee or does not work in a vacuum. It is a committee of the Regional House of Chiefs. That is, the National House of Chiefs, or the Regional House of Chiefs as the case may be, may not even be bound by whatever report that is submitted to them by the Research Committee. To that extent we find it difficult how the two lower Courts could treat the issue so lightly on the basis of absence of a formal request. Without sounding repetitive, it is our considered view that, within the peculiar facts of the present case, although it was desirable that the National House of Page 24 of 33 Chiefs, having decided, that there ought to be a new committee reconstituted by the Central Regional House of Chiefs to look into the matter, and thus formally requested the Central Regional House of Chiefs in that regard, the absence of this formal directive, cannot, operate to render, what was intended, having been actualized, a nullity. Instructively, the National House of Chiefs is composed of paramountcies who may advise their paramount areas on decisions taken by the House without necessarily going through the formal route". The ordinary bench then concluded at page 18 that: "We, therefore, in the special situation at hand, do not find the error committed so crucial to go to jurisdiction and thus render the exercise conducted by the Research Committee of the Central Regional House of Chiefs a nullity". It is very clear to me that the issue of the jurisdiction of the Research Committee to investigate the petition referred to the Central Regional House of Chiefs by the National House of Chiefs was set down by the ordinary bench of this Court and thoroughly discussed by the Court before the Court decided on the matter. It is not unusual for a losing party to be aggrieved by a judgment of the Court. Nonetheless, the fact that a party is aggrieved by the decision of the Court is not a ground for the party to re-package his case, as the applicant seeks to do in this application, and present same to this Court under the guise of a review. If that practice is encouraged, no case will ever come to an end because, at all cost, one party may be aggrieved. No one goes to Court to lose his case. [9]. In *Internal Revenue Service vs. Chapel Hill School Ltd* [2010] SCGLR 827, Date- Bah JSC made reference to *Gihoc Refrigeration & Household Properties Ltd. (No.1) vs. Hanna Assi (No.1)* [2007-2008] 1 SCGLR 1 where he stated that: Page 25 of 33 "Even if the unanimous judgment of the Supreme Court on the appeal in this case were wrong, it would not necessarily mean that the Supreme Court would be entitled to correct that error. This is an inherent incident of the finality of the judgments

of the final Court of appeal of the land. The brutal truth is that an error of law of the final Court of the land cannot ordinarily be remedied by itself, subject to the exceptions discussed below. In other words, there is no right of appeal against a judgment of the Supreme Court even if it is erroneous ...” The review jurisdiction avails an applicant where there are exceptional circumstances which, if unredressed, would perpetuate a miscarriage of justice. It is not another avenue for re-arguing or repeating or re-fashioning previous arguments as in an appeal. Nor is it an opportunity for a party to re-visit and come out with more ingenious arguments which he believes will find favour with the tribunal. Simply put, a review is not an opportunity to have another bite at the cherry ...” In *Agyekum vs. Asakum Engineering and Construction Ltd.* [1992] 2 GLR 635, this Court, speaking through Francois JSC, stated at page 651 that: “The Supreme Court has expressed the view many times before, that the review jurisdiction does not provide a platform for rehearing previous legal positions, whatever new learning and erudition are thrown into the melting pot, the acid test remains as always the existence of exceptional circumstances and the likelihood of a miscarriage of justice that should provoke the conscience to look at the matter again. I would consequently, for my part, reject the invitation to traverse known corridors, revisiting the pros and cons of argument only to conclude that a stance remains unswervingly unshaken. I am also firmly Page 26 of 33 against the attempt to turn the review jurisdiction into a further avenue of appeal. We have no Constitutional powers to do so”. [10]. Even if it could be argued that the contention about the jurisdiction of the Research Committee before the Court of Appeal was in respect of the lack of a formal referral from the National House of Chiefs but before this Court it is about the so- called article 54 of the Standing Orders of the Regional House of Chiefs, that argument does not change the colour of the fact that the authority of the Research Committee to handle the petition or referral, informal though it was, was thoroughly considered by the ordinary bench of this Court, as shown above before the Court delivered its decision. It is, therefore, not open to the applicant, as it were, to pretend to re-package the very argument presented to the Supreme Court which was unanimously rejected, in the nature of a review. The application amounts to a wanton disregard and abuse of the review jurisdiction conferred on this Court by article 133 of the Constitution. In *Amosa (No.2) vs. Korboe (No.2)* [2015-2016] 2 SCGLR 1575, Sophia Akuffo JSC (as she then was), after quoting rule 54 of the Rules of the Supreme Court, stated, among others, that: “... the jurisdiction is only available within strictly limited constraints and, particularly, in the case of an application founded on 54(a), as is the case herein, whilst the full scope of what might constitute exceptional circumstances cannot be entirely circumscribed or defined, the parameters have been enunciated by this Court on myriad occasions. In the locus classicus case of *Mechanical Lloyd Assembly Plant v Nartey* [1987-88] 2 GLR 598, SC, Adade JSC observed at page 600 of the report that: “the mere fact that a judgment can be criticized is no ground for asking that it should be reviewed. The review jurisdiction is a special jurisdiction to be exercised in exceptional circumstances. It is not an appellate jurisdiction. It is a Page 27 of 33 kind of jurisdiction held in reserve, to be prayed in aid in the exceptional situation where a fundamental and basic error must have occasioned a gross miscarriage of justice.” Furthermore, in *Internal Revenue Service v Chapel Hill*

School Ltd [2010] SCGLR 827, Date-Bah JSC referred to the views expressed by him in GIHOC Refrigeration & Household Properties Ltd (No.1) v Hanna Assi (No.1) [2007- 2008] 1 SCGLR 1 where he stated at page 12 thus: “Even if the unanimous judgment of the Supreme Court on the appeal in this case were wrong, it would not necessarily mean that the Supreme Court would be entitled to correct that error. This is an inherent incident of the finality of the judgments of the final Court of appeal of the land. The brutal truth is that an error of law by the final Court of the land cannot ordinarily be remedied by itself, subject to the exceptions discussed below. In other words, there is no right of appeal against a judgment of the Supreme Court, even if it is erroneous...” Some more recent pronouncements include Opoku & Others (No.3) v Axes Co. Ltd (No.3) [2013-2014] SCGLR 95 wherein my Revered Brother Akamba JSC stated, at p.106, thus: “The review jurisdiction avails an applicant where there are exceptional circumstances which if un-redressed would perpetuate a miscarriage of justice. It is not another avenue for re-arguing or repeating or refashioning previous arguments as in an appeal. Nor is it an opportunity for a party to revisit and come out with more ingenious arguments which he believes will find favour with the tribunal. Simply put a review is not an opportunity to have another bite at the cherry.” Page 28 of 33 Furthermore, in In the Matter of Nana Yeboah Kodie Asare II and Another v Nana Kwaku Addai and Others; (unreported Ruling in Chieftaincy Review Motion No. J7/20/2014, dated 12th February 2015), my esteemed brother Benin JSC stated that: “... review is not another appeal process whereby the Court is called upon to rehear the case even if the decision of the ordinary bench is considered wrong. Review is a special procedure so all the relevant factors to be taken into consideration, as decided in a long line of cases ... must exist in order to succeed under either sub-rule a or b of rule 54 of C.I. 16.” Thus, over the decades, the position of the Supreme Court, regarding its review jurisdiction has remained the same. In a nutshell the principle of finality of judgments of the apex Court of the land continues to operate and the review jurisdiction is not intended to alter or in any way derogate from that; rather it is purely for the purpose of correcting egregious errors which, if not corrected, has or will work great injustice”. [11]. I conclude this opinion by re-echoing the words of Wiredu JSC (as he then was) in Nyamekye vs Opoku [1999-2000] 2 GLR 220 at page 222 to 223 where the learned Judge stated that: “I will however reiterate, by way of a reminder, the words of Taylor JSC in Bisi v Kwayie [1987-88] 2 GLR 295 at 297, SC that: “in our system of adjudication, the majority view of a plural bench of a Court represents the binding judgement of the Court, even if it can be subsequently demonstrated to be vulnerable to attacks.” Page 29 of 33 By virtue of rule 54 of CI 16, what is in issue in an application for review is not a matter of head count; otherwise, why not count all the way from the trial Court or tribunal up to the Supreme Court, to ascertain what should be the right decision. Rather, the only matters this Court is permitted by the law to take into account in a review application, are those that demonstrably show that there are: (i) exceptional circumstances which have resulted in a miscarriage of justice to the applicant; or (ii) there is some new matter or evidence that have come to light after the decision, which, with all due diligence, had not been within the applicant’s knowledge or could not have been produced by him earlier. This special jurisdiction of the Court will not, cannot and must not, therefore, be

exercised merely because counsel for the applicant refines his appellate statement of case, or thinks up more ingenious arguments which, he believes, might have favoured the applicant had they been so presented in the appeal hearing. An opportunity for a second bite at the cherry is not the purpose for which this Court was given the power of review. In the case of *Quartey v Central Services Co Ltd* [1996-97] SGGLR 398 at 399, Abban CJ explained the review jurisdiction of this Court in the following terms: “A review of a judgement is a special jurisdiction and not an appellate jurisdiction conferred on the Court; and the Court would exercise that special jurisdiction in favour of an applicant only in exceptional circumstances. This implies that such an applicant should satisfy the Court that there has been some fundamental or basic error which the Court inadvertently committed in the course of considering its judgement; and which fundamental error has thereby resulted in a gross miscarriage of justice. These principles have been stated over and over again by this Court. Consequently, a losing party is not entitled to use the review process to reargue his appeal which had been dismissed or to use Page 30 of 33 the process to prevail upon the Court to have another or a second look at his case.” Although the decision in *Quartey v Central Services Co Ltd* (supra), and the greater number of decisions which sought to define the principles upon which this Court will exercise the review jurisdiction, predate the enactment of rule 54 of CI 16, there is no doubt that the rule itself is an encapsulation of these principles, and the earlier learning still holds good in determining whether an application is one worthy of the exercise of this special jurisdiction. Thus, rule 56 of CI 16 requires the applicant’s affidavit and statement of case to set out clearly and argue fully all relevant grounds on which the applicant relies. This requirement means that rather than a mere recitation of one of the grounds stipulated in rule 54, the applicant must specify the attendant circumstances which would necessarily and *prima facie*, place their case for review under one of those grounds. A mere repetition of appeal arguments is, therefore, not enough. Furthermore, as was pointed out by Adade JSC in *Ribeiro v Ribeiro (No 2)* [1989-90] 2 GLR 130 at 143, SC: “small pinpricks here and there are not enough.” Having closely examined the affidavit in support of the present application, as well as the two statements of case filed on behalf of the applicant, it is clear that the ground upon which we are being invited to review the decision of the ordinary bench of the Court is that, there are exceptional circumstances which have resulted in a miscarriage of justice. Although there can never be an exhaustive list of what situations would constitute exceptional circumstances, a criteria suggested by Taylor JSC in *Mechanical Lloyd Assembly Plant Ltd v Nartey* [1987-88] 2 GLR 598, SC Page 31 of 33 continue to provide a useful guideline as to the classes of situations envisaged under rule 54(a) of CI 16. At page 638, his lordship suggested, *inter alia*, as follows: “Another circumstance is the one falling within the principle ... so ably enunciated by that pillar of legality, Akufo-Addo CJ in *Mosi v Bagyina* [1963] 1 GLR 337 SC. A third circumstance comes within the class of cases which can legitimately be said to be decisions given *per incuriam* for failure to consider a statute or case law or fundamental principle of procedure and practice relevant to the decision and which would have resulted in a different decision. A fourth class of cases must fall within the Constitutional mandate ... by which we were enjoined to depart from our previous decisions when it appears right so to

do. This must be a sort of omnibus criterion covering all other cases not falling within the three classes I have itemised, for in the numerous conditions governing human relationships, it is impossible to formulate a priori propositions that will cover all cases without exception.” See also the opinion of Kpegah JSC in Acquah v Apaa [1999-2000] 2 GLR 17, SC. It is, therefore, incumbent upon the applicant to demonstrate that there has been some fundamental or basic error which the Court inadvertently committed in the course of considering its judgement. However, this is not all; the applicant must additionally demonstrate that as a result of such fundamental or basic error, her substantial rights in the matter have been or likely to be so prejudiced that the interest of justice and good conscience dictate that we take a second look at the judgement complained of. See also the majority ruling in In re Effiduase Stool Affairs (No 3); Republic v Numapau, President of the National House of Chiefs; Ex parte Ameyaw II (No 3) [2000] SCGLR 59 as well as the earlier decisions cited therein”. Page 32 of 33 For all the reasons stated above, the instant application for review, finds no favour with me. It is therefore dismissed. (JUSTICE OF THE SUPREME COURT) (SGD.) S. K. A. ASIEDU COUNSEL BENEDICT BOSU SIMPSON ESQ. FOR APPLICANT/RESPONDENT/ RESPONDENT/APPLICANT. ALEXANDER K. K. ABBAN ESQ. FOR 1ST & 2ND RESPONDENT/APPELLANT/ APPELLANT/RESPONDENT. ALEXANDER K. K. ABBAN ESQ. FOR INTERESTED PARTY/APPELLANT/ APPELLANT/RESPONDENT. Page 33 of 33

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