IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - AD 2024

CORAM: PWAMANG JSC (PRESIDING)
LOVELACE-JOHNSON (MS.) JSC
PROF. MENSA-BONSU (MRS.) JSC
ACKAH-YENSU (MS.) JSC
ASIEDU JSC

CHIEFTAINCY APPEAL
NO. J2/01/2021
14TH FEBRUARY, 2024

ABDULAI AMIDU NYASU ..... RESPONDENT/APPELLANT/APPELLANT

VRS

1. ALHAJI ABDULAI NANKPA
(SUBST. BY ZAKARIA NANKPA)
2. ALHAJI BAWA GBANHA
(SUBST. BY ADAMU NANKPA)
PETITIONERS/RESPONDENTS/ RESPONDENTS

JUDGMENT

PROF. MENSA-BONSU (MRS.) JSC:

This is an appeal by the respondents/appellants/appellants against the decision of the Judicial Committee of the National House of Chiefs dated 23rd May, 2019, in which they

are seeking to invoke the jurisdiction of this honourable Court under Article 131 (4) of the Constitution of Ghana, 1992 to have the decision set aside.

Facts and Background

The petitioners and the respondents both hail from the same clan though from different families within the clan, at Pulima in the Upper West Region. The respondent/appellant/appellant (hereinafter referred to as appellant) hails from the Cheberbala family, and the petitioners/respondents/respondents (hereinafter referred to as respondents), from the Gbanhaala family, both families being different branches within the Guivera Clan of Pulima

The petitioners' case is that, upon the death of Kpunia Nankpa (then Kuoro of Pulima) in the year 1998, Alhaji Abdulai Nankpa of the Gbanhanla family was selected to succeed him. According to petitioners, 1st petitioner was nominated by the Johotina (the land Priest) of Pulima and endorsed by the kingmakers after which he was introduced to the Tumu Kuoro, the overlord Chief. They say that on account of being an illiterate, Alhaji Abdulai Nankpa, decided to transfer his status as enskinned Chief of Pulima to his son, Mumuni Abdul Nankpa.

The case of the appellant is that, upon the demise of Kpunia Nankpa, he, being qualified to succeed the deceased Chief by reason of hailing from Cheberbala family also of the Ganviera Clan, expressed his interest in occupying the skin to the Johotiina of Pulima (Mumuni Bayorbor, now deceased). This Johotiina is a different person from the one who is said to have nominated the 1st petitioner. The appellant says that his Johotina summoned the Kingmakers who endorsed his nomination and had him enskinned as Kuoro of Pulima.

The petitioner/respondents, claiming that apart from Gbanhaala family no other family can ascend to the Pulima Skin, challenged the enskinment of the appellant as having been validly enskinned as successor to the late Kpunia Nankpa

They, consequently, filed a petition in the Judicial Committee of the Upper West Regional House of Chiefs. The Judicial Committee held a trial of the petition at the end of which it delivered a judgment in favour of the petitioner/respondents. The appellant appealed to the Judicial Committee of the National House of Chiefs, but the appeal was dismissed. The appellant has brought the instant appeal to this honourable Court.

The Case

The substance of petitioner/respondents' case before the Judicial Committees of the Upper West Regional House of Chiefs and National House of Chiefs was that the appellant had not been validly elected as Kuoro of Pulima. By an amended Petition filed on the 21st of August, 2003 they invoked the original jurisdiction of the Upper West Regional House of Chiefs seeking the following reliefs: -

> *i. A declaration that the 1st Respondent has not been duly elected to occupy the vacant Skin of Pulima.*
>
> *ii. A declaration that 2nd Respondent has not been at any time selected and or installed as Jantina of Pulima.*
>
> *iii. A declaration that under Pulima Customary Law the 1st Petitioner can transfer the chiefship to his son, Muniru Abdulai Nankpa.*
>
> *iv. A perpetual injunction restraining the Respondents, whether by themselves, agents, privies, etc. or whosoever from installing the 1st Respondent as Pulima Kuoro.*
>
> *v. Perpetual injunction restraining the 1st Respondent whether by himself, agents, privies or whosoever from holding himself out as the Pulima Kuoro.*

The substance of the case for the respondent/appellant was that he was validly installed by the kingmakers of Pulima upon his expression of interest in the "vacant skin" to the Johitiina, the official with power to select and install a Kuoro. The Johitiina, having summoned the Kingmakers who duly installed him, he had been validly elected and installed as Kuoro of Pulima

Upon the filing of the case before the Judicial Committee of the Upper West Regional House of Chiefs, the respondent/appellant filed an amended Statement of Defence on 14th September, 2006 to which the Petitioners filed a Reply on 26th October 2006. After the close of pleadings, the parties filed a joint memorandum of agreed issues on the 5th of September, 2007. On the joint memorandum of issues, thirty (30) issues were set down for trial.

The Judicial Committee of the Regional House of Chiefs found that the respondent was ineligible to be elected chief of Pulima as he was not a royal. The trial Judicial Committee stated that the appellant himself admitted during his testimony that he was not a Prince. The Judicial Committee was of the opinion that the evidence showed that the Pulima skin belongs exclusively to the Gbanhaa royal family as they have occupied the skin since the colonial authorities instituted Chieftaincy in Pulima over ninety years earlier. The Committee also found that the transfer of chiefly power from the 1st Respondent herein to his son was validly done by virtue of the son being a member of the royal Gbanhaa family of Pulima. The Judicial Committee therefore entered judgment on 4th October, 2017 for the petitioners on all the reliefs sought.

Dissatisfied with the decision, the appellant appealed to the Judicial Committee of the National House of Chiefs. On 23rd May, 2019, the decision of the Judicial Committee of the Upper West Regional House of Chiefs was affirmed, and the appeal was dismissed.

The appellant has brought the instant appeal against the decision of the Judicial Committee of the National House of Chiefs.

GROUNDS OF APPEAL TO THE SUPREME COURT

> *a) The Judgment of the Judicial Committee of the National House of Chiefs is against the weight of evidence adduced at trial.*
>
> *b) The Petitioners/Respondents failed to prove their case on the requisite standard of proof.*
>
> *c) The Judicial Committee of the National House of Chiefs' affirmation of the decision of the trial Judicial Committee that the Pulima Skin belongs exclusively to Gbanhaa family of Pulima is not supported by evidence on record.*
>
> *d) The Judicial Committee of the National House of Chiefs holding that the Appellant concedes he is not a candidate for contest and /choice for nomination, election and enskinment as Pulima Kuoro or Chief is not supported by evidence on record.*

The appellant argued grounds (a) - (d) all rely on the same facts. However, since the appellant presents his arguments on grounds (a) and (d) together, we shall deal with same in like manner.

> "*a) The Judgment of the Judicial Committee of the National House of Chiefs is against the weight of evidence adduced at trial.*
> *d) The Judicial Committee of the National House of Chiefs holding that the Appellant concedes he is not a candidate for contest and /choice for nomination, election and enskinment as Pulima Kuoro or Chief is not supported by evidence on record*."

Essentially, the appellant is arguing the omnibus ground that the decisions of the two Judicial Committees below are against the weight of evidence. It is trite law that when the omnibus ground is pleaded, it places a responsibility on the appellate court to review the entire record and come to its own conclusions. To this end, the appellant cites well known authorities such as ***Achoro*** v ***Akanfela*** [1996-97] SCGLR 209 to support his ground.

In well-known authorities such as ***Tuakwa*** v ***Bosom*** [2001-2002] SCGLR 61 and ***Oppong*** v ***Anarfi*** [2010-2012 GLR 159, the responsibility of an appellate court is there forcefully established. In ***Tuakwa*** v ***Bosom***, supra, at p.65, Akuffo JSC (as she then was), held that,

> *"an appeal is by way of a re-hearing particularly where the appellant, is the plaintiff in the trial in the instant case, alleges in his notice of appeal that, the decision of the trial court is against the weight of evidence. In such a case, although it is not the function of the appellate court to evaluate the veracity or otherwise of any witness, it is incumbent upon an appellate court, in a civil case, to analyse the entire record of appeal, take into account the testaments and all the documentary evidence adduced at the trial before it arrives at its decision, so as to satisfy itself that on a preponderance of the probabilities the conclusions of the trial judge are reasonably or amply supported by the evidence".*

In ***Oppong*** v ***Anarfi*** , supra, at p.167 Akoto-Bamfo JSC also stated that

> *"There is a wealth of authorities on the burden allocated to an appellant who alleges in his notice of appeal that the decision is against the weight of evidence led. Even though it is ordinarily within the province of the trial court to*

evaluate the veracity or otherwise of a witness, it is incumbent upon an appellate court in such a case, to analyse the entire record, take into account the testimonies and all documentary evidence adduced at the trial before it arrives at its decision, so as to satisfy itself that, on the preponderance of probabilities, the conclusions of the trial judge are reasonable or amply supported by the evidence."

In ***Ackah*** v ***Pergah Transport Ltd*** [2010] SCGLR 728 at p737, Adinyira JSC pointed out that

"Even if the findings of the trial court were based solely on the demeanour and credibility of the witnesses, it is still the primary duty of an appellate court in respect of a judgment based on findings of fact to examine the record of proceedings in order to be satisfied that the said findings are supported by evidence on the record."

Although the appellate court can make up its own mind about the evidence led, it is not an open sesame, for the appellant bears a burden to point out what he believes should have inured to his favour. In ***Djin*** v ***Musah Baako*** [2007-2008] SCGLR 686, the point is made by the Supreme Court, per Aninakwah JSC at p 691, that:

"*It has been held in several decided cases that where an (as in the instant case) appellant complains that a judgment is against the weight of evidence, he is implying that there were certain pieces of evidence on the record which, if applied in his favour, could have changed the decision in his favour, or certain pieces of evidence have been wrongly applied against him. The onus is on such an appellant to clearly and properly demonstrate to the appellate court the lapses in the judgment being appealed against*."

Therefore, it is not enough merely to complain that the lower court or tribunal's conclusion is against the weight of evidence. The appellant is obliged to point out the pieces of evidence which, had they been correctly applied, would have turned the tide in his favour.

It is also trite law, that when an appellant seeks to attack concurrent findings of fact by the two lower courts, then he has a heavier burden than otherwise. The Supreme Court has set down rules as to when concurrent findings of fact may be overturned by a second appellate court. The appellant herein cites ***Achoro*** v. ***Akanfela***, supra, to buttress the point that an appellate court may depart from the concurrent findings of two lower courts. Although that case does make that point, it goes further than that, because in that case, the Supreme Court, speaking through Acquah JSC (as he then was) set down the stringent grounds upon which an appellate court could depart from the concurrent findings of lower courts. At pp. 214-215 he stated the grounds thus:

> *"Now in an appeal against findings of facts to a second appellate court like this court, where the lower appellate court had concurred in the findings of the trial court, especially in a dispute, the subject matter of which is peculiarly within the bosom of the two lower courts or tribunals, this court will not interfere with the concurrent finding of the lower courts unless it is established with absolute clearness that some blunder or error resulting in a miscarriage of justice, is apparent in the way in which the lower tribunals dealt with the facts. It must be established, e.g, that the lower courts had clearly erred in the face of a crucial documentary evidence, or that a principle of evidence had not been properly applied…. In short it must be demonstrated that the judgments of the court below are clearly wrong."*

Obeng v ***Assemblies of God*** [2010] SCGLR 300 also speaks to the considerations an appellate court must take into account in deciding on appeals. At p.323, Dotse JSC stated thus:

> *"The poition can now be stated that where findings of fact such as in the instant case had been made by the trial court and concurred in the first appellate court, the second appellate court must be slow in coming to different conclusions unless it is satisfied that there are strong pieces of evidence on record which are manifestly clear that the findings of the trial court and the first appellate court are perverse."*

In all such situations, the second appellate court must feel free to interfere with the said findings of fact, in order to ensure that absolute justice was done. Therefore it is possible for the appellate court to interfere with concurrent findings, but there must be cogent evidence for it to do so.

What is the evidence on which the appellant relies to rebut the findings of the two lower tribunals? First, the appellant contends that there is no evidence on record supporting the finding that the appellant is ignorant about the customs and usages relative to Pulima Skin. He further states that even if that was a finding supported by evidence, then he might not be a choice, but that his lineage should not be stripped of its royal status. By this argument the appellant does not lay any foundation for refuting the allegation that he is ignorant of the customs pertaining to the Pulima skin. But by seeking to introduce his lineage into the equation of contenders for the Pulima skin, he is saying that one's lineage is a consideration in determining who can aspire to the skin of Pulima, yet in the same breath, he seems to be resisting the argument that lineage matters.

Grounds (b) and (c)

> *" b) The Petitioners/Respondents failed to prove their case on the requisite standard of proof.*
>
> *c) The Judicial Committee of the National House of Chiefs' affirmation of the decision of the trial Judicial Committee that the Pulima Skin belongs exclusively to Gbanhaa family of Pulima is not supported by evidence on record.*

The appellant maintains that the respondents did not lead sufficient evidence to support their claims. This is not backed by the evidence on record. The petitioner/respondents had indicated clearly their line of succession, and the fact that the only two previous Kuoros had been of the Nankpa/Gbanhaa lineage. The following exchange when appellant was cross-examined made interesting reading:

> *Q. You are not a prince of Pulima and you cannot be a chief of Pulima?*
>
> *A. I am not a prince but I was enskinned as chief.*
>
> *Q. By paragraph 6 of your statement of defence you averred that succession to Pulima skin is by contest?*
>
> *A. Those who can become chiefs contest.*
>
> *Q. Those who can contest are the princes?*
>
> *A. Yes*
>
> *Q. I put it to you that if you are not a prince you cannot take part in the contest.*
>
> *A. Yes. If you are not a prince you cannot contest, if you are not Ganvierra you cannot contest.*

Q. I put it to you that since you are not a prince you are not qualified to be a Pulima Kuoro.

A. I am a prince but because my father has never been a chief, I am not a prince.

Q. It is not only your father who was not a Pulima Kuoro but no one from your lineage has ever been a chief of Pulima.

A. None from our lineage has ever been chief but this is my turn."

From the above exchange, the appellant appears to understand the term prince to mean one whose father has been a chief before. This will mean that he admits that his father and grandfather were not chiefs, but he claims to be a royal nonetheless and eligible to contest for the vacant skin. Counsel for appellant submitted at p.6 of his statement of case thus:

> *The Appellant in his answers admitted that he is not a prince but further said that if you are not a prince you can't contest for Pulima Chief or if you are not Ganviera, you can't contest for Pulima Chief. This means that you should either be a prince or a Ganviera to contest"*

The petitioners claim that their family is the only royal family in the Ganviera Clan is premised on the fact that the only two Chiefs that Pulima has had since the introduction of Chieftaincy by the colonialists ninety years ago have come from their Nankpa/Gbanhaa family. While that fact is not disputed, the appellant insists that all families in the Ganviera Clan are eligible to mount the Pulima Skin. We must admit that only two generations of chiefs makes it difficult to resolve the issue whether the established usage is that only the Nankpa/Gbabhaa family is the sole one at Pulima customary law to ascend the skin of Pulima.

But one thing that is certain from the evidence, is that it is the Johotina, the Land Priest of Pulima who is the authority to nominate a royal for acceptance by the Kingmakers before the person can be validly enskinned as Kuoro of Pulima. From the evidence on record in this case, the person who is said to have nominated the appellant was not a Johotina meaning that the enskinment of the appellant did not conform to the process that both parties are agreed, ought to have been followed; namely nomination by a competent Johotina. On the other hand, the evidence supports the case of the petitioner/respondent that he was nominated by the proper Johotina, endorsed by the kingmakers and enskinned as Kuoro of Pulima.

Another issue is the claim by the appellant that the Pulima Skin is occupied by rotation and that it is the turn of his family to mount it. Rotation of Stool or Skin is a matter of sustained practice in any community and must be proved by evidence. As we observed earlier, this Skin has seen only two Chiefs and there is no pattern of rotation proved by the evidence.

Finally, on whether the 1st respondent herein could validly transfer the Chiefship to his son, Mumuni Abdulai Nankpa, after enskinment, the appellant relies on the judicial authority of ***Republic*** v. ***Gbi Traditional Council, Ex-parte Abaka VII*** [1995-96] 1 GLR 702. In that case Acquah J (as he then was) had held at p 712 that

> "*chieftaincy is not a private and personal property of the incumbent chief so as to enable him to choose who should take over from him. The choice of the candidate is the sole prerogative of those who are entitled under customary law to nominate, elect and install nthe appropriate candidate. The stool belongs to the family and it is the elders of the family described as kingmakers who have the right to nominate a candidate*."

The respondents, though admitting that there is no precedent supporting that practice, are equally insistent that there is no precedent against it either, and that there is no

suggestion that the practice is abominable to Pulima custom. While the statement of the customary law may be true in areas of the country where chieftaincy is a well-established traditional system, that does not appear to be the case in respect of the Pulima Skin, it having been instituted by colonial authorities to further the principle of 'Indirect Rule' in parts of the Gold Coast where chieftaincy was not the norm. Since customs are being developed around the Pulima skin, one can appreciate the posture of the respondents that there is no rule one way or the other. In any case, even if the statement in the ***Republic*** v. ***Gbi Traditional Council, Ex-parte Abaka VII***, supra, were applicable, nothing on the evidence would inure to the benefit of the appellant for he was not nominated by the competent Johotina. Article 277 of the Constitution of Ghana, 1992, provides as follows:

> *"A Chief is a person who hailing from the appropriate family and lineage, has been validly nominated, elected, selected and enstooled/enskinned or installed as a Chief or Queen Mother in accordance with relevant customary law and usage".*

The Chieftaincy Act, 2008 (Act 759) also repeats verbatim the said definition of a Chief in section 57(1) thereof. Dotse JSC in ***Yeboah-Kodie Asare II & Ors*** v. ***Kwaku Addai & Ors*** Civil Appeal No. J2/2/2013. 21 May 2014, indicates the following as the essential ingredients and pre-requisites for becoming a validly installed chief:

1.The person must qualify to be a Chief, in that, he or she must hail from the appropriate family or lineage. In other words, to qualify to be a Chief, you must first be a royal to start with.

2.The person must have been nominated as a chief.

3.The person must have been elected or selected as a Chief and finally

4.The person must have been taken through the ceremony of enstoolment, enskinment or installation as a Chief according to the relevant customary practices. If a person fails to meet any of the above conditions, he cannot be validly made a Chief.

Based on the above considerations, the appeal against the decision of the Judicial Committee of the National House of chiefs delivered on 23rd May, 2019 fails and is hereby dismissed.

PROF. H. J. A. N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

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