

IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA - GHANA
A.D. - 2022

CORAM: - G. S. SUURBAAREH, JA (Presiding)
MERLEY WOOD, JA
J. BARTELS-KODWO, JA

CIVIL APPEAL NO. H1/47/2021

THURSDAY, 7TH JULY 2022

JAMES TOWN NGLESHIE	-	1ST CLAIMANT
AMANFRO STOOL		
PAPAASE STOOL	-	2ND CLAIMANT
ODUPONG OFANKO STOOL	-	3RD CLAIMANT
GOMOA FETTEH STOOL	-	4TH CLAIMANT
AWUTU STOOL	-	5TH CLAIMANT
AND		
SENYA BREKU STOOL	-	6TH CLAIMANT

JUDGMENT

SUURBAAREH, JA

From the heading of the appeal, one may think that it is only the judgment of Mensah-Datsa J (as she then was) that is on appeal. It will also appear that James Town Ngleshie Amanfro is the only appellant against the judgment of Mensah-Datsa J (as she then was)

of 12th June 2018. A closer look at the proceedings leading to the 12th June 2018 judgment, especially at page 20 of volume 1 of the record of appeal, will however show that this judgment was a result of an order for retrial of an aspect of the dispute that went before the Stool Lands Boundaries Settlement Commissioner, resulting in the judgment of Commissioner Amarin of 9th October 1984, which order made, when that judgment was on appeal before the Stool Land Boundaries Appeal Tribunal.

The order for retrial, made on 20th January 1994, by the Stool Lands Boundaries Appeal Tribunal, in the course of its hearing of the appeal against the Amarin judgment, was in respect of the area described as Zone one, and for the insertion of 48 villages in the preliminary plan. By the order of the Appellate Tribunal, the case was to be remitted to it after the retrial, to enable it come out with its full judgment, encompassing the whole area in dispute including the areas it described as zones two and three.

The order for retrial of 20th January 1994, was made, when the Stool Lands Boundaries Appeal Tribunal, was hearing appeals filed against the Amarin judgment of 9th October 1984, by Senya Breku; James Town Ngleshie Amanfro; and, Awutu Paramountcy. Their notices of appeal can be found at pages 12 to 17 of Volume 1 of the record of appeal. They can also be found in the record of proceedings that was subsequently made part of the record of proceedings in this appeal, by order of this court, and which mostly contains the proceedings leading to the Amarin judgment of 9th October 1984. From the ruling of the Stool Lands Boundaries Appeal Tribunal of 20th January 1994, the area remitted for retrial was described in volume 1, page 20 of the record of proceedings as follows:

“... the area starting Berekuabo rocks in brackets to the south.

Then eastwards to B8, F14 through Okushibli to Kokrobite to A9 then turning north westwards to A18 and then northwards to A15 and then northwards along the water works boundary to A14, then all the way to A8 in the northwest near Ningoman. Then

Southwards to A7, then continue Southwards to A6, A5, D8 near a culvert, then South down to A4 near Kasoa, Odupong-Kpehe, then to A3 following the blue line through Berekuabo (rocks) that is back to the starting point”.

Based on the ruling and order of the Stool Lands Boundaries Appeal Tribunal of 20th January 1994, the matter was remitted to the Stool Lands Boundaries Settlement Commission, for a retrial of the area specifically remitted to it. The order directed that some 48 villages, which James Town Ngleshie Amanfro had requested to be inserted on the plan by the surveyor, which the Commissioner, had refused, be inserted. It further directed that James Town Ngleshie Amanfro be given the opportunity to adduce evidence in support of its claim to those villages.

When the matter was remitted to the Stool Lands Boundaries Settlement Commission for retrial of the specific area, the Commissioner, Osei JA, on 5th July 1994, at page 23 of Volume 1 of the record of appeal, gave directions for the 48 villages to be surveyed and inserted in the preliminary plan. At pages 25 to 27 of Volume 1 of the record of appeal, Commissioner Osei JA, referred to, and quoted extensively from the ruling of the Stool Lands Boundaries Appeal Tribunal of 20th January 1994. After referring to the 1958 Edition of the ANNUAL Practice; Vol. 1 page 1691 on “THE SECOND TRIAL”, and the decided cases cited thereunder, and what in his view this meant, however went on to state at page 27 that a retrial, *“must proceed upon the order remitting the matter for retrial; the direction of the court as the starting point”*. He then went on at page 28 of Volume 1 of the record of appeal to state that the retrial must be based on the old pleadings and the preliminary plan on which the area affected by the retrial has been defined. He also directed that the same Surveyor who carried out the initial survey, should survey the area and insert the 48 villages.

Based on Commissioner Osei JA's directives contained in his ruling of 5th July 1994, the 48 villages were surveyed and inserted on the preliminary plan, and a new plan drawn after which the surveyor went before the Commissioner to tender the new plan and also submitted his report, thereby setting in motion the retrial process.

From the Stool Lands Boundaries Appeal Tribunal order of 20th January 1994, as well as Commissioner Osei JA's ruling of 5th July 1994, the Surveyor was to survey the area specified for retrial, and have the 48 villages inserted on the preliminary plan, and a new plan drawn and presented to the Commission together with a report containing the comments of the various claimants. The retrial was also to afford James Town Ngleshie Amanfro an opportunity to adduce evidence to support its claim to the 48 villages it was laying claim to. As the claimants had already led evidence in respect of their respective claims, and upon which Amarin J gave his judgment of 9th October 1984, the retrial of an aspect of the dispute, was not therefore an opportunity for the claimants to repeat evidence about their historical movements and their boundaries, as if the retrial was in respect of the entire initial dispute. It was also not an opportunity for the claimants to adduce further or fresh evidence to buttress or strengthen their respective claims. This had already been done, and upon the evaluation of which evidence, Amarin J arrived at his decision of 9th October 1984, which was an appeal, when an order was made for an aspect of the dispute to be retried.

It is the considered view of this Court that the scope of the retrial, being limited to the area identified as zone one, and specifically described, required the Commissioner to have the 48 villages surveyed and inserted in the preliminary plan, which the Surveyor will tender together with his report or comments from the other claimants, and be subjected to cross-examination by the claimants. This will then be followed by an opportunity given to James Town Ngleshie Amanfro, to lead evidence in support of its/their claim to these villages, after which any of the claimants wishing to do so, would

be allowed to lead evidence about its claim to these 48 villages. The evidence in the retrial should therefore be limited to the area referred to the Commissioner, who after hearing and evaluating the evidence put before him, would come out with a decision in respect of the area affected by the retrial, and then forward it to the Stool Lands Boundaries Appeal Tribunal to continue with the appeal that was before it, so as to enable it come out with a comprehensive decision covering the entire area of dispute between the claimants.

Even though the scope of the work of the Commissioner regarding the retrial was well understood and defined, as can be seen from the ruling of Commissioner Osei JA of 5th July 1994, it would appear that over a period, and with the passage of time, the Commissioner lost focus and allowed the claimants to lead evidence as if the whole of the initial dispute was being retried. Matters relating to the scope of the retrial completely got lost, following the amendment of the Stool Lands Boundaries Settlement (Repeal) Act 2002, (Act 587), whereby cases that were pending before the Stool Lands Boundaries Settlement Commission, were to be heard by the High Court. The situation was further compounded by the fact that following the passage of Act 587, the matter went before two judges, and was in 2013 transferred by the order of the Chief Justice, to Ajet Nassam J, before finally being heard and determined by Mensah-Datsa J (as she then was), on 12th June 2018, a period of twenty-four years.

Following the judgment of 12th June 2018, Gomoa Fetteh, who did not appeal against the Amarin J judgment of 9th October 1984, on 15th July 2018, filed an appeal against the judgment given after the retrial, at page 750 of Volume 3 of the record of appeal. Despite this, the appeal records, per volumes 1, 2 and 3, do not reflect the fact that Gomoa Fetteh is an appellant in the matter.

James Town Ngleshie Amanfro, who had filed an appeal against the Amarin J judgment of 9th October 1984, whose claim was also dismissed after the retrial, also filed an appeal against Mensah-Datsa J's judgment of 12th June 2018, on 31st July 2018. It is the considered view of this court that having already filed an appeal against the Amarin J judgment, which appeal was pending when the order for retrial was made, leading to the judgment of Mensah-Datsa J (as she then was) of 12th June 2018, all what James Town Ngleshie Amanfro needed to do was to file additional or amended grounds of appeal. Be that as it may, it appears that their grounds of appeal encompass the earlier grounds of appeal filed in 1984 as they all relate to the evaluation of the evidence led before Commissioner Amarin, as well as that led during the retrial.

As we have demonstrated, the heading of the appeal records, especially volumes 1, 2 and 3, are really misleading. We say so because the appeal before this court is not only in respect of the area remitted for retrial leading to the judgment of 12th June 2018, but also a continuation of the appeal that was pending before the Stool Lands Boundaries Appeal Tribunal, when it referred an aspect of the initial dispute for retrial by the Stool Lands Boundaries Settlement Commissioner. By the Stool Lands Boundaries Settlement (Repeal) Act 2000 (Act 587), the High Court became seised with jurisdiction in land matters, including those pending before the Stool Lands Boundaries Settlement Commissioner, and since appeals from the decisions of the High Court go to the Court of Appeal, and also by section 3(3) of Act 587, this Court thereby stepped into the shoes of the Stool Lands Boundaries Appeal Tribunal, and became seised with jurisdiction in the appeal that was pending before it, as well as the appeal arising out of the order of retrial of 20th January 1994. This appeal can therefore be described as a consolidated appeal against the Amarin J judgment of 9th October 1984, as well as Mensah-Datsa J (as she then was) judgment of 12th June 2018.

Having put the scope of this appeal in the proper prospective, it means that this Court must have regard to the proceedings that were taken before the Amarin J judgment of 9th October 1984, as well as the proceedings taken during the retrial, as contained in volumes 1, 2 and 3 of the record of appeal. In other words, all the evidence, oral and documentary, taken before the 9th October 1984 judgment, and those taken during the retrial, resulting in Mensah-Datsa J (as she then was) judgment of 18th June 2018 must be taken into account. This court will however bear in mind that the evidence to be considered in respect of the retrial leading to Mensah-Datsa J's judgment, must be in respect of zone one, referred to the Commissioner by the Stool Lands Boundaries Appeal Tribunal by its ruling of 20th January 1994. The Court must therefore pay particular attention to the 48 villages to be inserted on the preliminary plan, exhibit A, and upon which exhibit AA was prepared.

In this appeal therefore, this court, upon its evaluation of all the evidence, will then apply the law and come out with a decision regarding the claims of the claimants in respect of the initial dispute that was on appeal, when an aspect was remitted for retrial. Put differently, our decision will set out the boundaries of all claimants that were before the Commissioner resulting in the Amarin judgment of 9th October 1984, as well as those entitled to the area that was referred for retrial, resulting in Mensah-Datsa J (as she then was), judgment of 12th June 2018. In this way, our judgment will reflect what the Stool Lands Boundaries Appeal Tribunal was to come out with, after it had received proceedings and the decision in respect of the area remitted for retrial.

We shall begin with the question of who were the claimants before the Stool Lands Boundaries Settlement Commission resulting in the Amarin judgment of 9th October 1984? This can be found in the proceedings leading to the Amarin judgment, which were made a part of the record of proceedings in this appeal, by an order of this Court of 9th February 2022, upon an application brought by James Town Ngleshie Amanfro.

These proceedings will be referred to in this judgment variously as the old or earlier proceedings, or the proceedings before the Amarin judgment. (The numbering is however not very clear or accurate and had to be renumbered).

From page 1 of the record of proceedings just referred to, the initial disputants were Nai Odupong Awushie Tetteh II, Ebla Odefey of Awutu Traditional Area and Wulomo Mensah of Amanfro; Odupong-Kpehe Market (Kasoa). For their statements of disputes, see pages 7 to 8 and 9-14, respectively in the said record of proceedings. The record of proceedings show that upon an application by one Ema Twupi of Awutu, filed on behalf of Papase, Papase was joined as a claimant and upon which it filed its statement of dispute on 27th May 1976 at pages 42 and 43.

From page 45 of the aforementioned proceedings, Gomoa Fetteh, which was served with notice of the dispute, also filed a statement of dispute before the Commissioner and its dispute was with the Ga and Awutu Traditional Areas.

By an order of 20th May 1977, the two disputes were consolidated and directions given as to the manner of hearing. (See page 54 of the said proceedings). The record also shows that Awutu sought and amended its statement of dispute. The record of proceedings further show that, whilst an application by Weija to be joined, was struck out on 25th July 1977, that of Gomoa Assin was granted and it proceeded to file its statement of dispute at page 71 of the proceedings before the Amarin judgment. Senya Breku, which was also joined on 30th May 1978, on 28th July 1978, at page 104, filed its statement of claim, thereby bringing the number of claimants at that stage to seven.

Following a survey of the area in dispute before the Commissioner, based on various plans and instructions filed by the claimants, the Surveyor, Okai Lartey, on 22nd January 1979, set in motion the enquiry/trial of the dispute, by tendering in evidence the plan

containing the description of the various boundaries of the claimants, as exhibit A, as well as exhibits A1-A6, containing the descriptions of the boundaries of the claimants submitted by them.

In the course of hearing the evidence of the various Claimants, and whilst the 3rd witness of the 4th Claimant was giving his evidence, Agona and Gomoa Assin were joined as Claimants, thereby bringing the number of Claimants to nine. Whilst Nana Nyarko Adu, on 20th April 1979, filed a statement of dispute, on behalf of Agona, the statement of dispute on behalf of Gomoa Assin was filed by Ahyinaaku Acquah IV (see pages 184 and 212 respectively of the proceedings hitherto being referred to). It is also noteworthy to mention that Gomoa Fetteh amended its statement of dispute on 3rd May 1979 and that James Town Stool also filed an answer in response to the claims made by Awutu, Gomoa Fetteh and Odupong Ofankor.

In the proceeding leading to the Amarin judgment of 9th October 1984, all the nine Claimants gave evidence through various witnesses, and tendered in evidence documents to support their various claims to the disputed area. In these proceedings, Papase, which was referred to as the 1st Claimant, gave evidence through two witnesses, from 23rd January 1979, and appearing at between pages 114 and 133 of the proceedings. Odupong Ofankor, the 2nd Claimant therein, gave evidence through five witnesses, from 19th February 1979, and appearing at pages 130 through to 143 of the proceedings. On its part, Amanfro, referred to as the 3rd Claimant, and James Town stool, called the 4th claimant, between them, called as many as fifteen witnesses. James Town Stool is the paramount stool under which Ngleshie Amanfro falls. Their combined evidence, given between 26th March 1979 and 26th April 1979, can be found at pages 145 to 196 of the proceedings before the Amarin judgment.

Awutu, which was referred to as the 5th Claimant in the Amarin judgment, called three witnesses, whilst the 6th Claimant, Gomoa Fetteh, called five witnesses, whose evidence appear at pages 208 to 215, and 215 to 246 respectively of the said proceedings. The 7th Claimant, Gomoa Assin, called thirteen witnesses in all, as shown in the proceedings at pages 246-270, and taken between 16th May 1979 and 13th June 1979. The 8th Claimant, Agona, called three witnesses, with the 9th Claimant, Senya Breku, calling four witnesses. We however note that the evidence of two of the witnesses of the 9th Claimant is missing from the record of appeal.

It was after the Commissioner had considered and evaluated all the evidence led before him by the nine Claimants that he came out with his judgment of 9th October 1984. It was in the course of hearing appeals filed against this judgment that the Stool Lands Boundaries Appeal Tribunal remitted an aspect of the claim to the Stool Lands Boundaries Settlement Commissioner for a retrial of an aspect of the dispute, before it could come out with its decision in the appeal in respect of the entire claim. It was after the retrial that Mensah-Datsa J (as she then was) came out with her judgment of 12th June 2018.

The Amarin judgment of 9th October 1984, appears at pages 1 to 11 of volume 1 of the record of appeal. It can also be found at pages 305-320 of the proceedings taken before the Amarin judgment, which were made part of the record of appeal by order of this Court of 9th February 2022, upon an application by James Town Ngleshie Amanfro. The Amarin judgment has also been exhibited to the Written Submissions filed on behalf of Gomoa Fetteh. Reference in this judgment to the Amarin judgment will be that contained in volume 1 of the record of appeal.

Commissioner Amarin, in his judgment, summarized the evidence given by the witnesses of all the Claimants. He then proceeded to evaluate the evidence, oral and

documentary, including that led by the Surveyor, and the boundaries of the Claimants as indicated in exhibit A, the plan tendered by the Surveyor, as well as the descriptions of the lands given by the Claimants in exhibits A1 to A8. In fact pages 1 to 7 of the judgment is devoted to the summary of the evidence of the Claimants. At the end of page 7, the learned Commissioner observed that even though there were nine Claimants, that the boundaries of only eight had been shown on exhibit A, as Amanfro stool was absorbed in the claim of its paramount stool, James Town.

The learned Commissioner, from page 8 of volume 1 of the record of appeal, upon his evaluation of the evidence, found against James Town Stool in respect of some farms and a new settlement and went on to set out what he felt were the boundaries of Odupong Ofankor; Gomoa Fetteh, Papaase; James Town; Awutu, Agona; and Gomoa Assin. At page 9, the learned Commissioner went on to remark that James Town Stool did not adduce "*strong evidence to warrant its incursion into other stool boundaries*". He then referred to Exhibit C4, where a linguist of James Town, one Kwame Agbator, gave evidence in favour of Gomoa Fetteh in its dispute with Odupong Ofankor, which Odupong Ofankor won, and concluded that James Town Ngleshie was thereby estopped from laying claim to that area.

The learned Commissioner, who went on to set out the various boundaries of the Claimants as found by him from his evaluation of evidence, made an order for the Surveyor to draw up a judgment plan to reflect the boundaries of the Claimants as found by him, and to make copies available to all Claimant stools.

As indicated earlier, Senya Breku, James Town Ngleshie Amanfro, and Awutu paramount stool, appealed against the judgment of 9th October 1984. Ngleshie Amanfro, who appealed on several grounds, complained about the Commissioner's refusal to allow its witness to testify, and for 48 villages to be inserted in the Survey plan, as

contained in exhibit Dd. The reliefs it sought was to set aside the judgment pertaining to its boundary with Gomoa Fetteh; Awutu; Odupong Ofankor; and Awutu Papase; and called for a retrial of the dispute between the four Claimants.

Awutu paramount stool, who appealed on three grounds, complained about the judgment being against the weight of the evidence, and about the Commissioner having misdirected himself on the law, the particulars to be filed upon receipt of the record. Its appeal related to the finding of the Commissioner in respect of areas surrounding "Ponpon stream; Nyardu Osoko well; Tetteh Gua; and Ahinsa", and prayed that the judgment in respect of those areas in favour of Gomoa Fetteh, be set aside. On its part, Senya Breku's appeal, based on two grounds, related to the evaluation of the evidence, and the Commissioner's failure to consider Justice Jackson's settlement of the boundary between Gomoa Assin; Awutu; and, Senya Breku in 1957. Its prayer was that the boundaries of Senya Breku, as found by the Commissioner, be set aside and replaced by the boundaries as claimed by it upon Justice Jackson's report.

Although all the appeals against the Amorin judgment by the various appellants directly affected Gomoa Fetteh, it did not appeal against it. It was after the Stool Lands Boundaries Appeal Tribunal, had remitted an aspect of the dispute for retrial, and the judgment delivered by Mensah-Datsa J (as she then was), dismissed its claim, that it filed an appeal against same on 25th July 2018, on the omnibus ground of appeal, but subsequently filed four additional grounds, pursuant leave granted 13th October 2020.

Following the order of retrial of 20th January 1994, the matter went back to the Stool Lands Boundaries Settlement Commissioner, which heard evidence from six of the nine Claimants that were initially before it. As indicated in this judgment, even though the order for retrial was in respect of a specific area, the Commissioner, and later the High

Court, lost focus and allowed evidence to be adduced as if the whole dispute was being retried.

The retrial began after the Surveyor had carried out a survey of the area remitted for retrial and had inserted the 48 villages contained in exhibit Dd. The Surveyor's report and comments appear at page 34 of Volume 1 of the record of appeal, whilst his evidence, given on 24th July 1995, appears at pages 84 to 92 of the same volume 1. From his report, James Town Ngleshie Amanfro pointed out twenty seven of the forty eight (48) villages which fell within the area for retrial but that as 21 villages were already on the plan it did not see the need to visit them. During his evidence, he tendered in evidence the preliminary plan, exhibit A, and exhibit AA, the plan drawn after the insertion of the 48 villages. His evidence under cross-examination show that most of the villages visited were in ruins but showed signs of having been previously inhabited, and further that some fell outside the area in dispute.

James Town Ngleshie Amanfro, which was the 1st Claimant in the retrial, gave evidence through two witnesses, which can be found between pages 109 and 165 of volume 1 of the record of appeal. It must be noted that the 2nd witness for the 1st Claimant was mistakenly being referred to in the proceedings as 3rd witness. The Commissioner overlooked the fact that the 1st Claimant's witness, Kwashie Armah, who began to testify on 29th November 1996, at page 105, was later withdrawn on 24th January 1997 at page 108 of volume 1 of the record of appeal, and in his stead, Amartei Armah was called, followed by Kwaku Botchway III, Dzasetse of Ngleshie Amanfro, who began his testimony on 9th December 1997 at page 129 of volume 1 of the record of appeal.

Odupong Ofankor, referred to as the 3rd Claimant in the retrial, who was the next to testify, gave evidence through Okyeame Kojo Nai on 8th December 1999, spanning from page 168 to 187 of volume 1 of the record of appeal, and continuing from 193 to 200, on

12th March 2001, when an order was made for the Commissioner to visit or inspect the area in dispute. Thereafter, a series of applications came before the Commissioner and the retrial only resumed on 21st October 2009, when Awutu stool, referred to as the 5th Claimant, began its evidence at page 253 of volume 2 of the record of appeal, which evidence was said to cover the 2nd and 3rd Claimants, Papase and Odupong Ofankor (see page 260 of volume 2 of the record of appeal).

Gomoa Fetteh, the 4th Claimant in the retrial, began its evidence on 29th March 2011, before Dapaah J, at page 306 of volume 2 of the record of appeal, through Kofi Mensah, followed by Inusah Abdulai on 3rd July 2012, also before Dapaa J at page 379 of the same volume 2, and then Nana Gomoaba Okuragua Tawiah II, who began his evidence on 23rd June 2016 before Mensah-Datsa J (as he then was). Gomoa Fetteh, on 31st October 2016, called a 4th witness, however referred to as 4th Claimant's 2nd witness. His testimony spans pages 412 to 421 of volume 2 of the record of appeal. From page 421 onwards, this witness was given his proper designation as the 3rd witness for the 4th Claimant. This witness was called Samuel Ahor Cofie @ Samuel Kofi Simpson. Further cross-examination of this witness continued on 11th April 2017, at page 512 of volume 3 of the record of appeal, and ending at page 524.

The 6th Claimant in the retrial, Senya Breku, on 13th June 2017 began its evidence at page 526 of Volume 3 of the record of appeal, through its stool elder Nicholas Tetteh; followed by Francis Ato Doughan, on 19th July 2017 at page 560 of Volume 3 of the record of appeal.

The records at page 583 of volume 3 of the record of appeal then shows that the 1st Claimant's witness, Kwaku Botwe, the Dzaasetse of Ngleshie Amanfro, was recalled to tender in some exhibits and was subjected to cross-examination, and this brought proceedings in the retrial to an end. The Claimants thereafter filed written addresses

upon which Mensah-Datsa J (as she then was), after an evaluation of the evidence, and the application of the law, came out with her judgment of 12th June 2018, appearing at pages 761 to 774 of volume 3 of the record of appeal.

The learned Judge, in her judgment, first summarized the evidence given by the various Claimants, as well as the submissions in the addresses filed on their behalf. This spanned from page 762 to 772 of volume 3 of the record of appeal. Thereafter, she observed that as the evidence led was mainly traditional in nature, the best way to resolve such conflicting traditional evidence was to test it against recent acts to determine which evidence was supported by the facts. Based on her evaluation of the evidence, she stated thus at page 773, concerning the 1st Claimant's claim to the 48 villages:

"The 1st Claimant made a claim for 48 villages. The 4th Claimant contended that 32 out of the 48 villages belong to the 4th Claimant. This means that only 16 out of the 48 villages are without dispute, as belonging to the 1st Claimant. The witness of the 1st Claimant could not establish its claim for the 48 villages as this was put in doubt by the 4th Claimant and the totality of the evidence adduced could not assist the court to determine with certainty the existence of the other villages and which stool owned them or presently owns them. In the circumstances, I have no option than to conclude that the 1st Claimant has established its claim in respect to the 16 villages not contested by any claimant herein. Since the 4th Claimant was not able to convince the court by cogent evidence on its ownership of the said 32 villages, the court is unable to grant their claim to them".

The trial court, then went on to state that the 2nd, 3rd and 5th Claimants, through their witnesses and exhibits, had made a convincing case in respect of their claims, which she found persuasive. She also observed that the 3rd witness of the 4th Claimant, who had made conflicting statements, and had also admitted to having an interest in the case, did not appear credible and that his evidence deserve little weight. She also referred to the

1913 judgment being relied upon by the 4th Claimant, exhibit 4A, and stated that the 6th Claimant was not a party to the matter, and further that no boundary owner corroborated its claim, unlike the 6th Claimant's boundary, which was supported by its exhibit A6. She then went on to conclude as follows, at page 774 of volume 3 of the record of appeal:

“Considering the totality of evidence adduced, the versions of the 2nd, 3rd, 5th and 6th Claimants is preferable to that of the 1st and 4th Claimants. I therefore find as a fact that the 2nd, 3rd, 5th and 6th Claimants have established their claims herein.

An evaluation of the evidence adduced indicates that the 2nd, 3rd, 5th and 6th Claimants have discharged the burden of proof on them as required by sections 11(1) and (4) of the Evidence Act 1975 (NRCD 323). Judgment is therefore entered for the 2nd, 3rd, 5th and 6th Claimants on their claims. The claims of the 1st and 4th Claimants herein was not established as required by law. Their claims are therefore dismissed”.

As indicated earlier in this judgment, the 1st and 4th Claimants, who were dissatisfied with the judgment of 12th June 2018, filed appeals against it.

Having referred to the evidence as well as the judgments given by Commissioner Amorin on 9th October 1984 on the initial dispute between the nine Claimants, as well as that given after the retrial by Mensah-Datsa J (as she then was), this court will now proceed to consider the appeals of the various Claimants, against each of these judgments, having regard to their grounds of appeal. As indicated earlier, this court stepped into the shoes of the Stool Lands Boundaries Appeal Tribunal, which was hearing the appeal against the Amorin judgment of 9th October 1984, when it remitted an aspect of the dispute to be retried, before it could proceed to deliver its judgment in the appeal. The retrial resulted in Mensah-Datsa J's judgment, against which some Claimants also appealed. As the Appellate tribunal did not have the opportunity to deliver its judgment after the retrial, following the amendment of the Stool Lands

Boundaries Settlement (Repeal) Act 2000, (Act 587), appeals pending from the decision of the Commissioner were transferred to the Court of Appeal, by virtue of Section 3(3) of the Act. This court therefore, in its duty as a court mandated to rehear the matter, must examine the entire record, spanning the period before the Amarin judgment of 9th October 1984, as well as the proceeding during the retrial resulting in Mensah-Datsa's judgment of 12th June 2018. In other words, this court is sitting on appeal over the Amarin judgment of 9th October 1984, as well as that of Mensah-Datsa J (as she then was) of 12th June 2018.

Even though James Town Ngleshie Amanfro stool filed several grounds of appeal against the Amarin judgment, their main complaint was about the Commissioner's failure to afford their material witness the opportunity to lead evidence in support of their claim, and also for refusing to have 48 villages they had listed, and were laying claim to inserted in the plan by the Surveyor. By the order of the Stool Lands Boundaries Appeal Tribunal of 20th January 1994, remitting the area described as zone one to be retried and for the 48 villages to be inserted in the plan, the complaints by James Town Ngleshie Amanfro stool, against the Amarin judgment, had thereby been upheld. This being the case, this court, will be concerned with their grounds of appeal filed against Mensa-Datsa's judgment of 12th June 2018, which dismissed their claim in its entirety, following the retrial in respect of zone one.

Awutu paramountcy filed an appeal on behalf of Papase; Odupong Ofankor; and Awutu stool who are the 2nd, 3rd and 5th Claimants in the retrial. Their complaint was in respect of the area along the Ponpon Stream, Nyardu Osoko well, Fetteh Gua and Ahinsa, and the claimant directly affected by their appeal was Gomoa Fetteh. The issue was between the three stools and Gomoa Fetteh as to who was entitled to the areas mentioned in their appeal. Their appeal was therefore in respect of only Amarin judgment of 1984. This notwithstanding, since by the order of the Stool Lands

Boundaries Appeal Tribunal the order for retrial in respect of zone one and the insertion of the 48 villages they were made claimants, this court has a duty to determine whether these areas mentioned in their notice of appeal, fall within the area remitted for retrial.

Their third ground of appeal complained about misdirection on the part of the Commissioner, with a proviso to provide the particulars thereof upon receipt of the record of proceedings. None was however given thereby rendering that ground of appeal a non-starter, as it breached Rule 8(4) of the Court of Appeal Rules, 1997, CI 19. These Claimants did not however appeal against the decision of Mensah-Datsa J (as she then was), given on 12th June 2018, which granted their claims as well as those of Senya Breku, whilst dismissing those of the 1st and 4th Claimants, James Town Ngleshie Amanfro and Gomoa Fetteh, following the remission of part of the original dispute for retrial.

In the written submissions filed on behalf of the 2nd, 3rd and 5th Claimants, after the retrial, they made reference to the Amarin judgment of 9th October 1984 and those who had appealed against it, and the fact that it was during the hearing of the appeal that the appellate tribunal remitted an aspect of the original dispute for retrial by the Stool Lands Boundaries Settlement Commissioner. They also referred to the orders made regarding the retrial. Thereafter their submission was a repetition of the evidence given by the witnesses of the various claimants during the retrial, which spanned from page 7 to 91 of their written submissions. It was then submitted on their behalf that they had no dispute with the sixth claimant in the retrial, to wit Senya Breku.

With regard to Gomoa Fetteh, they submitted that it had admitted the many grants made by Odupong Ofankor, and that in the face of these grants and the judgment Odupong Ofankor obtained against Gomoa Fetteh in respect of Kasoa market, Gomoa Fetteh could not now flag the 1913 judgment, it had ignored all these years, to lay claim

to land granted by Odupong Ofankor. It was even submitted that they were not parties to the 1913 judgment, unlike the 1910 judgment, where Gomoa Fetteh was a party.

Concerning Gomoa Fetteh's claim to 32 of the 48 villages, it was submitted on behalf of the 2nd, 3rd and 5th Claimants that, Gomoa Fetteh was being disingenuous since it never appealed against the Amarin judgment of 9th October 1984. They further contended that the 1st and 4th Claimants had admitted during the retrial before the High Court that the 2nd and 3rd Claimants had exercised acts of ownership and possession on land to the eastern side of zone one. In conclusion, they contended that the retrial went beyond the scope of the 48 villages that were to be included in the preliminary plan, and further that as the 1st Claimant's claim was based on a statutory declaration, it should be looked at with suspicion. In their view, the claims of the 1st and 4th Claimants were rightly dismissed.

The 4th Claimant in the retrial, Gomoa Fetteh, did not indeed appeal against the Amarin judgment of 9th October 1984. It however filed an appeal against the judgment of Mensah-Datsa J (as she then was) of 12th June 2018. The ground of appeal, was on the omnibus ground about the judgment being against the weight of the evidence. However, following leave granted on 13th October 2020, it filed additional grounds of appeal. These were about error on the part of the trial judge in not remitting the case to the Stool Lands Boundaries Appeal Tribunal as directed by it; error on the part of the trial judge in not directing that a survey plan be drawn based on her judgment, as a judgment plan; error on the part of the trial judge in failing to properly analyse the evidence thereby resulting in a wrong conclusion in respect of the 4th Claimant's claim; and, error on the part of the trial judge in failing to consider the 4th Claimant's documentary evidence in respect of the 32 villages it was claiming based on the 1913 judgment.

Our view is that the first and second additional grounds of appeal are not grounds of appeal properly so called. Upon the retrial, it was the duty of the registrar to forward the decision to the Court of Appeal to continue with the appeal that was pending before the Stool Lands Boundaries Appeal Tribunal when an aspect of the dispute was remitted for retrial. With regard to failure to order a judgment plan, since the appeal was to be continued after the retrial as directed, it would only be after the appellate court had heard and determined the appeal that it can order a judgment plan to be drawn based on its finding in respect of the boundaries of the claimants, including those which were not affected by the retrial. The third and fourth grounds of appeal are nothing more than a complaint about the evaluation of the evidence and can both conveniently be dealt with under the omnibus ground of appeal.

In the written submissions filed on its behalf, it was contended that having regard to the evidence led, oral and documentary, upon which Commissioner Amorin arrived at his judgment of 9th October 1984, that the trial judge, in her judgment after the retrial, completely ignored the Amorin judgment of 1984 when it held that the 1st and 4th Claimants, in the retrial, had failed to establish their claims. It was even submitted that the conclusion arrived at by the trial judge, following the retrial, amounted to setting aside the Amorin judgment as if the judge was sitting on appeal on that case. It was further submitted that as the area remitted for retrial was in respect of zone one, the trial court could not seek to set aside findings made in the Amorin judgment of 9th October 1984. In the view of the 4th Claimant, the trial court, not only failed to realize that the boundaries of the various claimants were arrived at in 1984 judgment after the Commissioner had meticulously evaluated the evidence led by the Claimants, but also that by purporting to set aside the findings made in the 1984 judgment, the trial judge had gone beyond its jurisdiction, as far as the matter remitted for retrial was concerned, since her conclusions affected zone two and three as well. In conclusion, it was

submitted that the findings and conclusion of the trial judge, made after the order for retrial, should not be allowed to stand.

The complaints of James Town Ngleshie Amanfro against the judgment of Mensah-Datsa J (as she then was) of 12th June 2018, from their grounds of appeal, are that the judgment is against the weight of the evidence; that the court erred, when after finding that the 1st claimant had established its claim to 16 of the 48 villages, it went on to dismiss its claim in its entirety; error on the part of the trial judge in holding that the 1st claimant had failed to prove its case in respect of the 48 villages inserted in the preliminary plan, when none of the other claimants challenged its claim to them; error in using the evidence of a witness of the 4th Claimant, which the court had described as not credible, to deny the 1st Claimant's claim to 32 of the 48 villages; and, failure on the part of the court to indicate the 16 villages it found the 1st Claimant had proved its ownership of, as well as which of the other claimants was entitled to the 32 villages declared in their favour.

By its ruling of 20th January 1994 remitting an aspect of the initial dispute, termed zone one, for retrial, and for the 48 villages contained in exhibit Dd, tendered by James Town Ngleshie Amanfro to be inserted in the preliminary plan, and also for it to be allowed to lead evidence in respect of its claim, the Stool Lands Boundaries Appeal Tribunal, had thereby upheld the grounds of appeal filed by James Town Ngleshie Amanfro against the Amarin judgment of 9th October 1984. We say so because the crux of the many grounds of appeal by James Town Ngleshie Amanfro was that it had been denied the opportunity to adduce evidence in support of their claim to the 48 villages and that its application to have these villages inserted in the preliminary plan was refused. It was therefore no wonder that Commissioner Amarin, in his judgment, held that James Town Ngleshie Amanfro failed to adduce "Strong" evidence in support of its claim, and also accused it of engaging in an expansionist drive into other Claimants' territories. (See

page 9 of volume 1 of the record of appeal). Earlier on at page 8, the Commissioner had dismissed James Town Ngleshie Amanfro's claim to Swiss Farms, SCOA Farms, Akom Farms, New settlement, Hilda Nettey Farms, Danquah Farms, amongst others, on the basis that these grants were made by Odupong Ofankor without any serious challenge from James Town stool.

Amorin, in his judgment, had observed that even though there were nine claimants, that the claims of only eight had been made out because Amanfro's claim was absorbed in that of its paramount stool, James Town stool. This being the case, the Commissioner in assessing the evidence in respect of the grant of these farms, should not limit it to the evidence of James Town stool alone, but consider the evidence led by Ngleshie Amanfro as well. If he had done so, he would have realized from the evidence that these grants were made between 1971 and 1975, and that in the case of Swiss Farm and Hilda Nettey Farm, Amanfro, on becoming aware, wrote protest letters, and also sought an injunction in the course of the trial before the Commissioner, which was however refused. For the protest letters, and application for injunction, see pages 82 to 88 of the proceedings before Commissioner Amorin. These protest letters are dated 11th March 1971, and 5th July 1976. The application for injunction was refused on 7th November 1977, against which an application for review was filed at page 91 with an affidavit filed by James Town, Kokrobite and Ngleshie Amanfro at page 92 of the said record of appeal.

From the above, apart from the fact that the grant of these farms were made just before the litigation between Odupong Ofankor and Ngleshie Amanfro, or when the matter was pending before the Commissioner, it is clear that Amanfro protested and sought to have an injunction placed on these grants. The Commissioner was therefore not justified in holding that no serious challenge was made to these grants. If anybody should be accused of incursions into other stool lands, it should be Odupong Ofankor, who after initiating an action of trespass against Amanfro, engaged in an aggressive

expansionist drive. In any case, how could James Town Ngleshie Amanfro lead “strong” evidence to prove their claim when they were denied the right to have their material witness testify and for the 48 villages to be inserted in the preliminary plan for consideration when it comes to the evaluation of the evidence.

With regard to their appeal against Mensah-Datsa’s judgment of 12th June 2018, it was submitted on their behalf that the trial judge had contradicted herself. According to the 1st Claimant, failure by the trial court to declare the 16 villages, which she found that 1st Claimant had proved ownership of, amounted to a miscarriage of justice. It was also submitted that the mere fact that the 4th Claimant had made claim to 32 of the 48 villages without any evidence to support its claim, was not a good reason to deny the 1st Claimant’s ownership of those villages, especially when the court observed that the witness of the 4th Claimant was not credible. The 1st Claimant even wondered why, if its claim to those 32 villages was refused, why that of the 4th Claimant was also refused. In conclusion, it was submitted that even though the scope of the retrial was limited to zone one, the judgment of 12th June 2018 was more like a judgment based on a retrial of the initial dispute that went before the Commissioner; and further that, the trial judge, in that regard, went beyond the scope of the jurisdiction conferred on her by the ruling of the Stool Lands Boundaries Appeal Tribunal of 20th January 1994.

From the grounds of appeal filed on behalf of Senya Breku against the Amarin judgment of 9th October 1984, and appearing at page 12 of volume 1 of the record of appeal, their complaint was about failure of the Commissioner to take into account the settlement of Mr. Justice Jackson of the boundary between Gomoa Assin, Awutu and Senya Breku in 1957. Their prayer was that the limits of its land as declared by the Stool Lands Boundaries Commissioner should be set aside and replaced by the boundaries as claimed by it, based on the 1957 Justice Jackson report.

From their complaint against the Amarin judgment of 9th October 1984, and relief being sought, it is clear that they had no problem as far as the claims of James Town and Ngleshie Amanfro were concerned. Following the retrial they did not appeal against the judgment of Mensah-Datsa J (as she then was). It is also pertinent to note that during the retrial, they did not cross-examine the witnesses called by James Town Ngleshie Amanfro, as far as the area for retrial, and the insertion of the 48 villages were concerned. Senya Breku did not also see the need to file any written submissions in response to those filed by James Town Ngleshie Amanfro, and Gomoa Fetteh, who had appealed against the judgment after the retrial. Be that as it may, this court will nevertheless consider if it had led any evidence during the retrial, to establish a claim to any part of the zone remitted for retrial, especially to any of the 48 villages that were inserted in the original plan.

From the Stool Lands Boundaries Appeal Tribunal ruling of 20th January 1994, it did not seem to have any problem with the rest of the Amarin judgment of 9th October 1984, as far as the areas it designated as zones two and three were concerned. It however found the conclusions of the Commissioner unsatisfactory as far as zone one was concerned and thus remitted that aspect of the dispute for retrial. Be that as it may, since this court is not in the position to know the Appellate tribunal's decision concerning the other two zones, we must examine the proceedings preceding the 1984 judgment to satisfy ourselves that the conclusions of the boundaries of the claimants as found by the Commissioner, in relation to those two zones, are amply supported by the evidence led during the enquiry.

Even though the proceedings leading to the Amarin judgment has been made part of the record of appeal in the matter, and rightly too, as this appeal is a continuation of the appeal that was pending before the Stool Lands Boundaries Appeal Tribunal, when an aspect of the original dispute was remitted for retrial, this court is a bit handicapped by

the fact that some parts of the proceedings are missing. Some documents, including judgments some Claimants tendered, have not been included and cannot be traced. Faced with such a handicap, this court is not in the position to dispute the findings made in the 9th October 1984 judgment, as far as it does not relate to zone one remitted for retrial, and in respect of the 48 villages that were to be inserted. We say so because we do not have the benefit of seeing the witnesses, and are also faced with the absence of some documents like judgments and plans tendered by the various claimants during the enquiry, as well as the submissions made before the Appellate Tribunal.

The situation is however different when it comes to the judgment given by Mensah-Datsa J (as she then was) on 12th June 2018. As the area remitted for retrial was specific, this judgment should consider and deal with the issue of which of the six Claimants concerned with the area to be retried, has been able to adduce evidence in support of its claim to the area or any part thereof, particularly to the 48 villages which were inserted at the order of the Commissioner, by the Surveyor. Despite the specific order about the area to be retried, and the limited scope of the retrial, the learned trial judge, following the retrial, not only made contradictory findings, but also made conclusions which have the effect of overturning the judgment of Amarin J, given on 9th October 1984, as far as the claims of James Town Ngleshie Amanfro; Gomoa Fetteh; Gomoa Assin; and, Agona are concerned. Her conclusion amounted to sitting as an appellate court over the Amarin judgment of 1984.

The dismissal of the claims of the 1st and 4th Claimants in the retrial, and the grant of the claims of the 2nd, 3rd, 5th and 6th Claimants, without indicating which part of the area remitted for retrial they had been declared entitled to, without more, did not resolve the dispute that was remitted for retrial. The conclusions rather threw into the melting pot of confusion, the initial dispute that went before the Commissioner resulting in the Amarin judgment of 9th October 1984. The question is, in respect of which portion of the

area remitted for retrial did the court find the 2nd, 3rd, 5th and 6th Claimants entitled to? Again, by dismissing outright the claims of the 1st and 4th Claimants in the retrial, does that mean that, they had failed to lead evidence in support of any portion of their claims to the area remitted for retrial? The court arrived at this conclusion despite its initial findings that James Town Ngleshie Amanfro had established its claim to 16 of the 48 villages and that Gomoa Fetteh had cast doubts to its claim in respect of 32 of the 48 villages.

The trial judge, in her judgment of 12th June 2018 overlooked the fact that there were initially nine claimants that appeared before the Stool Lands Boundaries Settlement Commission resulting in the Amarin judgment of 9th October 1984, and that out of the nine Claimants, only six were involved in the retrial, which was also in respect of a portion of the initial area in dispute. By her conclusion, she not only dealt a fatal blow to the claims of the 1st and 4th Claimants in the retrial, but also those of Gomoa Assin and Agona, in respect of whose claims, Amarin, in his judgment, had made specific findings regarding their boundaries. (See pages 8 to 11 of volume 1 of the record of appeal).

For the reasons given, the judgment of Mensah-Datsa J (as she then was) of 12th June 2018 will be set aside as it failed to appreciate the scope of the matter remitted for retrial. It also made contradictory findings leading to conclusions which deprived some claimants of lands that had been adjudged in their favour. Having set aside the judgment of 12th June 2018, this court, in its duty to rehear the matter, will proceed to consider the evidence led during the retrial and come out with a decision on which of the six claimants are entitled to the area remitted for retrial, or any part thereof. Thereafter, the court will set out the boundaries of all the nine claimants that went before the Stool Lands Boundaries Settlement Commissioner resulting in the 9th October 1984 judgment of Amarin.

As indicated earlier in this judgment, this court, in this appeal, is dealing with the appeal against Amarin J's judgment of 9th October 1984, which was pending before the Stool Lands Boundaries Appeal Tribunal in 1994, when it remitted an aspect of the dispute to be retried, before it could give its final judgment on the appeal against that judgment. Following the Stool Lands Boundary Settlement (Repeal) Act 2000, Act 587, cases pending before the Stool Lands Boundaries Settlement Commissioner were transferred to the High Court. By virtue of Section 3(3) of Act 587, the Court of Appeal became seised with appeals that were pending before the Stool Lands Boundaries Commissioner. By virtue of that provision, this court has stepped into the shoes of the Stool Lands Boundaries Appeal Tribunal, in respect of the appeals that were pending against the Amarin judgment of 9th October 1984. Since it was when these appeals were pending before the Appellate Tribunal that it ordered an aspect of the initial dispute to be retired, and which began under the Stool Lands Boundaries Commissioner, and later continued in the High Court following the coming into force of Act 587, and which finally resulted in the judgment of Mensah-Datsa J (as she then was) of 12th June 2018, against which judgment some claimants have also appeal, the appeal will encompass the appeals against both the 1984 judgment and 2018 judgment.

We will begin with the appeals against the Amarin judgment of 9th October 1984. The appellants therein, as indicated, were Senya Breku, James Town Ngleshie Amanfro, and Awutu paramount stool on behalf of Papase, Odupon Ofankor and Awutu. Their notices of appeal and their grounds of appeal have been referred to in this judgment. At the risk of being repetitive, the complaint of Senya Breku against the Amarin judgment of 9th October 1984, was about the failure of the Commissioner to accept as its boundary. Justice Jackson report on the boundaries that had been settled between it, Gomoa Assin, and Awutu in 1957, as contained in its statement of dispute/claim.

As indicated, this court is handicapped as many documents, including judgments, plans and reports tendered by various claimants leading to the delivery of the 9th October 1984, have not been traced and included in the record of proceedings, that was made part of the record in this appeal by order of this court. Be that as it may, from the available records of proceedings, and the judgment of 9th October 1984, the conclusions arrived at in that judgment, regarding the boundaries of the various Claimants, was done after the Commissioner had meticulously evaluated the evidence, oral and all relevant documents tendered by the Claimants, including Justice Jackson report of 1957. Senya Breku, from the relief being sought, wanted the appellate Tribunal, and for that matter this Court, to grant its claim, as described in its statement of dispute/claim. This is tantamount to asking the appellate court to grant its relief as contained in its statement of claim. The Claimants in the dispute before the Stool Lands Boundaries Settlement Commissioner, filed statement of dispute in which they described their various lands, which also included their history. This can be likened to a statement of claim containing facts upon which each claimant was relying on in support of their claims. These can therefore be termed as pleadings, and which they had to lead the relevant evidence in support, and to the decree required for the success of their claims. Since its boundary as found by the 1984 judgment was arrived at after an evaluation of the oral and documentary evidence put before the Commissioner, this court can only uphold Senya Breku's appeal against Commissioner Amorin's judgment if it is able to show that the findings about its boundary, are not supported about the evidence led at the trial. To insist that its boundary as settled by Justice Jackson in 1957, and described in its statement of dispute, without more, will not amount to discharging the evidential burden placed on it as an appellant. Courts give judgment to parties based on the evidence led in support of their claims, and not based on their pleading or their claims as described in their writ of summons.

From the record, Justice Jackson's report on the boundary settlement was in respect of the boundaries between Senya Breku, Awutu and Gomoa Assin. It did not therefore affect the boundaries of the other six claimants that were before the Commissioner. It was therefore incumbent on Senya Breku to satisfy the appellate court that part of its boundary, as settled by Justice Jackson, between it, Awutu and Gomoa Assin, has been given to the other two or any of the claimants. We do not have the benefit of the submissions filed before the Stool Lands Boundaries Appeal Tribunal, and therefore not in the position to conclude that it had discharged the burden of proof to warrant the relief being sought. With this handicap, we have no reason to disturb the findings made by Commissioner Amorin in the 9th October 1984 judgment. We say so because from the ruling of the Stool Lands Boundaries Appeal Tribunal of 20th January 1994, it did not seem to have any problem with the Amorin judgment as far as the areas described as zones two and three were concerned. For the reasons given we find no merits in the appeal filed by Senya Breku as far as the Amorin judgment of 9th October 1994 is concerned, and its appeal against that judgment is therefore accordingly dismissed.

Senya Breku, who was the 6th Claimant when the matter was remitted for the area described as zone one to be retried, did not file any appeal against Mensa Datsa's judgment of 12th June 2018. It did not also cross-examine most of the witnesses called by other Claimants during the trial. It only gave its boundaries and insisted that its boundary was that set out in Justice Jackson's report of 1957. We shall however consider the evidence led during the retrial, with a view to determining if it led evidence to entitle it to any part of the area remitted for retrial, especially any of the 48 villages.

The complaints of Awutu paramount stool against the Amorin judgment of 9th October 1984, from the grounds of appeal, are in respect of Ponpon stream, Nyardu Osoko well, Tetteh Gua and Ahinsa, which were declared in favour of Gomoa Fetteh. As observed

when dealing with the complaints of Senya Breku against the Amarin judgment of 9th October 1984, Awutu paramount stool, had to demonstrate to the satisfaction of this court that the declaration made in favour of Gomoah Fetteh, in respect of those areas, was not borne out by the evidence led before the Commissioner.

As indicated, the decision of Amarin J, was taken after a careful and meticulous evaluation of all the evidence, oral and documentary, as well as after observing the demeanour of the witnesses of the various claimants. The boundaries of the various claimants were thus arrived at after a consideration of the entire evidence, especially the description of the lands by the various claims and the evidence they led to support their claims. This court, unlike the Commissioner did not have the advantage of seeing the witnesses testify. This court is further handicapped by the fact that some documents tendered in evidence before the Commissioner could not be traced and made part of the appeal record. Faced with this handicap, we should be slow in setting aside the conclusions reached by Commissioner Amarin in his judgment concerning the boundaries of the claimants so long as they do not relate to the area remitted for retrial by the ruling of the appellate tribunal of 20th January 1994.

Despite the fact that some documents are missing and have not been included in the record of appeal, we are happy to say that the evidence of the various claimants as referred to earlier, is sufficient to assist this court in coming to a conclusion in the matter. These missing documents were also referred to sufficiently in the judgment of Commissioner Amarin of 9th October 1984, to enable this court determine the appeals against that judgment. See

Marley & Others v Apeatu [2003-2004] 2 SCGLR 1191 and **Oduro & Ors. (No. 1) v Owusu (Subst.) Baffour (No. 1) [2017-2020] SCGLR 921** on missing records.

The ruling of 20th January 1994 referred a specific area for retrial, with specific instructions as to what was to be done. From the ruling, the appellate tribunal, did not also seem to have any problem with regard to the findings made in respect of the areas described as zones two and three. Awutu paramount stool, like Senya Breku, has not been able to demonstrate from the evidence led before the Commissioner that its decision declaring those areas in favour of Gomoa Fetteh was not supported by the evidence. We have examined the evidence culminating in the 9th October 1984 judgment and are satisfied that there is no basis for interfering with the findings made by the Commissioner in respect of those areas. Accordingly, the appeal by Awutu paramount stool against the Amarin judgment of 9th October 1984 is hereby dismissed. See the case of **In Krobo Stool (No. 1) Nyamekye (No. 1) v Opoku [2000] SCGLR 347 at 350 and 384**, where Atugubah JSC and Akuffo JSC, respectively warned against interfering with finding of facts made by a trial or lower tribunal where the appellant fails to discharge the onus displacing the presumption that those findings are right, or where the totality of the evidence on record sufficient supports the conclusions reached.

With regard to the appeal by James Town Ngleshie Amanfro against the Amarin judgment of 9th October 1984, as indicated earlier in this judgment, by the ruling of the appellate tribunal of 20th January 1994 remitting an aspect of the case for retrial and for the 48 villages being claimed by James Town Ngleshie Amanfro to be inserted, the appellate tribunal had thereby upheld their appeal and granted the relief they were seeking.

The Court will next tackle the judgment of 12th June 2018, delivered after the retrial, by Mensa-Datsa J (as she then was). We have in this judgment referred to the claimants who appealed against that judgment and their grounds of appeal, and the fact that these grounds related to the decision of the trial court therein, in dismissing their claims in their entirety. Their complaints were about the trial judge's evaluation of the evidence

led during the retrial. Reference has also been made to the findings by the trial judge and the conclusions she eventually arrived at, and have stated that her findings and conclusions were not only contradictory, but also that her judgment was not helpful, as far as the matter remitted for trial is concerned, since it did not indicate which of the 48 villages the claimants she had decreed title in, have been able to prove ownership of. In the end this court had no option that to set aside the judgment of Mensa-Datsa J (as she then was) and to proceed to evaluate the evidence led during the trial, with the view to determining which of the six claimants concerned with the retrial, had been able to lead evidence to prove its claim to any part of the area remitted for retrial, particularly the 48 villages.

As indicated earlier, the Commissioner, and later the High Court, lost focus as far as the area remitted for retrial was concerned, with the passage of time, and allowed the claimants therein to lead evidence as if the whole of the initial dispute was being retried. We have also observed that some of these claimants, during the retrial tried to adduce further or fresh evidence, including documentary evidence, to buttress their claims. A case in point is Gomoa Fetteh, which through one of its witnesses, tendered in judgment plan of its 1913 judgment, made in 2013, and said to be based on grid lines, for the reason that the earlier judgment plan was drawn without grid lines. In allowing such evidence, the Commissioner or High Court, lost sight of the fact that only six of the nine claimants involved in the initial dispute, were concerned with the area remitted for retrial. The trial judge however found this witness not to be credible and the judgment plan a self-serving document.

Bearing the above facts in mind, the court will proceed to consider the appeals filed by James Town Ngleshie Amanfro, and Gomoa Fetteh, against Mensah-Datsa's judgment of 12th June 2018, following the order for retrial. It is pertinent to note that even though her judgment granting the reliefs of the 2nd, 3rd, 5th and 6th Claimants, did not specify

which portion of the area remitted for retrial they were declared as entitled to, these claimants did not appeal against the judgment or seek clarification as to what had been declared in their favour.

From the evidence led during the retrial, the Surveyor gave evidence about the villages pointed out by James Town Ngleshie Amanfro and stated that even though most of these villages were in ruins, there were signs, in the form of snail shells and milk bush tress, showing that they had once been inhabited. Even though he stated that some claimants made comments when these villages were being pointed out by James Town Ngleshie Amanfro, these comments were however not captured in the proceedings. Under cross-examination, he was emphatic that the ruined villages showed signs of human settlement. None of the other claimants specifically cross-examined him to show their interest in the 48 villages. As for Senya Breku, the 6th Claimant in the retrial, it did not cross-examine the Surveyor.

James Town Ngleshie Amanfro, the 1st Claimant in the retrial, called two witnesses who testified about how they were able to point out the 48 villages and went on to insist that the ruined villages were once inhabited by their people or grantees. They also gave evidence about their boundary with the other claimants, especially Odupong Ofankor and Gomoa Fetteh. In cross-examination they denied that Amanfro was occupying land belonging to Odupon Ofankor and further that Asabahan, Owulabu, Okoman, Obeneman and Agban was on Domiabra land. Gomoa Fetteh, in cross-examining the witnesses for James Town Ngleshie Amanfro, tried to lay claim to five of the 48 villages, contending that they were declared in their favour in the 1913 judgment. These villages were Kobina Adarwu, Kobina Pintin, Kodomanu, Ayi Nkrumah and Odoitse Badu. This was however denied by James Town Ngleshie Amanfro.

Cross-examination of the witnesses of the 1st Claimant in the retrial, by Counsel for the 2nd, 3rd and 5th Claimants, was to show that most of the 48 villages being in ruins with no signs of human habitation. They also disputed the boundary of the 1st Claimant, as given by it, tried to say that some villages being claimed by James Town Ngleshie Amanfro as falling within land belonging to Domiabra, but this was hotly denied. Their claim that Odupong Ofankor had made grants of the areas being claimed by James Town Ngleshie Amanfro, without any challenge was also denied.

The cross-examination of the witnesses of James Town Ngleshie Amanfro, by Senya Breku, was to show its historical movements and its boundaries, but did not touch on the area remitted for retrial or lay claim to any of the 48 villages that were inserted.

As indicated, the evidence of the other claimants in the retrial, was a repetition of their history and boundaries, as if the whole of the initial dispute was being retried. Apart from Gomoa Fetteh, the evidence of these claimants did not touch on the area remitted for retrial, especially the 48 villages. In the case of Gomoa Fetteh, even though in its cross-examination of the witnesses of the 1st Claimant, James Town Ngleshie Amanfro, in 1997 it was laying claim to only 5 of the 48 villages, from pages 122-123 of volume 1 of the record of appeal, when testifying in the retrial in 2013, it tried to lay claim to 32 of the 48 villages, after one of its witnesses had tendered in evidence a judgment plan, said to be based on the 1913 judgment in its favour, and said to be drawn with grid lines. This document, exhibit 4A6, was drawn without reference to any of the Claimants or even the Court. It was also drawn in 2013 and tendered in evidence in 2016 when the 3rd witness for the 4th Claimant was testifying on 1st November 2016, at page 417 of volume 2 of the record of appeal. It is worthy to note that Mensah-Datsa J (as she then was) in her judgment, described this witness of the 4th Claimant as not credit worthy and one who had an interest in the matter. Even though this court has set aside the judgment given on 12th June 2018, after the retrial, we agree with the observation made by the trial

judge concerning the evidence of this witness. It is also interesting to note that Gomoa Fetteh, did not mention the names of these 32 villages it was laying claim to.

Senya Breku, in its evidence during the retrial, as indicated, repeated its evidence about its history and boundary, and tendered documents including judgments to support its claim to its land. It relied particularly on exhibit C5, a dispute it had with Gomoa Fetteh in which one Kwame Djator, a linguist of James Town stool, testified in favour of Gomoa Fetteh, which case Gomoa Fetteh lost. Even though during the trial leading to the Amarin judgment, as well as the retrial, James Town Ngleshie Amanfro denied that it had any linguist by that name, and further that it never authorized any linguist to testify in that dispute, this was lost on both Commissioner Amarin and the trial High Court during the retrial. Commissioner Amarin in his judgment had held that both Gomoa Fetteh and James Town Ngleshie Amanfro were estopped by virtue of that judgment from claiming any area affected by it.

A linguist is the mouthpiece or spokesman of the chief and he only says what the chief has authorized him to say. He has no authority on his own to say anything on behalf of the chief or stool. As James Town Ngleshie Amanfro had denied the existence of any linguist by the name Kwame Djator, or having authorized such a person to testify on behalf of Gomoa Fetteh in that suit, it was incumbent upon Senya Breku to go further to adduce evidence to show that Kwame Djator was infact a linguist of James Town Ngleshie Amanfro, and further that he was authorized by the chief to testify in the matter. This further evidence was not adduced by Senya Breku, yet the Commissioner went on to hold that James Town Ngleshie Amanfro was estopped from laying claim to land affected by a Judgment in which it was never a party.

As indicated in this judgment, when dealing with the appeal against the Amarin judgment of 9th October 1984, James Town Ngleshie Amanfro had protested the grants

made by Odupong Ofankor in respect of certain lands and sought to have those grants injuncted, though unsuccessfully.

These grants from the evidence, fall within the area remitted for retrial. By the order of 20th January 1994, the Appellate tribunal granted James Town Ngleshie Amanfro all its reliefs and upon which it led evidence in respect of the 48 villages and why it was laying claim to them. As indicated, apart from Gomoa Fetteh, none of the other claimants specifically challenged or laid claim to these 48 villages. Even in the case of Gomoa Fetteh, it was only being disingenuous, as submitted on behalf of Awutu paramount stool, when it tried to lay claim to 32 villages when during the trial before Amarin, it was only laying claim to five villages, and also failed to appeal against the Amarin judgment even though its claim to these villages was refused. In any case, and as pointed out earlier, it was after it had caused exhibit 4A6 to be drawn in 2013, and had these 32 villages inserted on it that it laid claim to them. The retrial was not an opportunity to lead further or fresh evidence, or to make new claims.

From our evaluation of the evidence led during the retrial there, Gomoa Fetteh failed to adduce evidence in support of its claim to either the 5 villages or the 32 that it tried to lay claim to, based on exhibit 4A6. Its claim to those villages is therefore without any basis and would be rejected.

With regard to the claims of Awutu paramount stool, comprising Odupong Ofankor, Papase and Awutu stool, from our evaluation of the evidence, we do not think that they led any evidence to support their claim to any of the 48 villages. Infact they did not point out which of the 48 villages they were laying claim, apart from saying that most of the villages pointed out by James Town Ngleshie Amanfro were in ruins. The fact that the 1st Claimant in the retrial was able to point out these ruined villages even goes to buttress its claim to them, and the fact that these villages are no longer inhabited did not

mean that they did not form part of their stool land. We are therefore satisfied, from the evidence led by James Town Ngleshie Amanfro that, it has proved its stool ownership to the 48 villages. We also find from the evidence that having regard to the fact that the 1st Claimant protested the grants by Odupong Ofankor of certain lands and further that these grants were made just before the litigation in the initial suit and others when the litigation was ongoing, show that it was rather Odupon Ofankor who had embarked on an expansionist drive. Amanfro immediately challenged these grants and led evidence to show that the lands pointed out by its representatives, fell under its stool land. We therefore find James Town Ngleshie Amanfro entitled, not only to the 48 villages it identified during the retrial, but also to the areas granted by Odupong Ofankor and in respect of which it wrote letters of protest, but unsuccessfully sought an injunction, during the trial before Commissioner Amarin.

Gomoa Fetteh, which did not appeal against the Amarin judgment of 9th October 1984, however appealed against Mensah-Datsa J (as she then was) judgment of 12th June 2018 when its entire claim was dismissed together with that of James Town Ngleshie Amanfro. As indicated, the boundaries of the nine claimants that appeared before the Stool Lands Boundaries Settlement Commissioner, resulting in the Amarin judgment of 9th October 1984, was arrived at after a meticulous evaluation of fall the evidence that was led before the Commissioner. The Commissioner from the evidence, had found that Gomoa Fetteh had led evidence to prove its ownership of part of the land that was being litigated. It even tendered in evidence a judgment in its favour given in 1913 together with a judgment plan. In the face of this evidence, there was no basis for the 12th June 2018 judgment to completely dismiss its claim. The manner its claim was dismissed, amounted to setting aside its claim, as found in the 9th October 1984 judgment.

Senya Breku, 6th Claimant in the retrial, in its evidence tried to show that Gomoa Fetteh were refugees whom they found on their land and allowed them to stay on a portion. See pages 526 to 528 of volume 3 of the record of appeal. The evidence does not however show that Gomoa Fetteh were allowed to settle on Senya Breku land on any terms or conditions. There is also no evidence, led before Commissioner Amarin, or during the retrial, to show that Gomoa Fetteh pay any tolls to Senya Breku for staying on the land. Having been allowed onto the land without any condition, Senya Breku cannot now say that Gomoa Fetteh has no land. This is even more so, when Gomoa Fetteh, in 1913, obtained a judgment in respect of the portion of the land it was staying on. They cannot therefore be denied claim to the land on which they had lived for over 100 years and in respect of part of which they had obtained judgment in 1913. In this regard, their boundary as found by Amarin judgment of 9th October 1984 would be maintained to the extent that it does not include zone one remitted for retrial, especially the 48 villages, which this court has found that James Town Ngleshie Amanfro has sufficiently led evidence in respect of its ownership. Their boundary will not also affect the grants made by Odupong Ofankor, which this court has also found that James Town Ngleshie Amanfro had successfully proved its ownership to.

As indicated earlier in this judgment, the appellate tribunal in its ruling remitting part of the dispute for retrial, did not find any problem with Amarin judgment of 9th October 1984 as far as zones two and three were concerned. We have also examined the evidence and come to the conclusion that we have no reason to disturb the boundaries of the nine claimants that appear before the Stool Lands Boundaries Settlement Commissioner resulting in the 9th October 1984 judgment. We will therefore uphold these boundaries as found, in as far as the boundaries of these other Claimants do not extend to the area that was remitted for retrial, particularly the 48 villages, which this court has found to belong to James Town Ngleshie Amanfro.

The order of the Stool Lands Boundaries Appeal Tribunal of 20th January 1994 went on to state that upon the retrial it will proceed to give its final judgment covering the entire area in dispute, including zones two and three. Having stepped into the shoes of the Stool Lands Boundaries Appeal Tribunal by virtue of section 3(3) of Act 578, we shall proceed to set out the boundaries of the claimants that went before the Stool Lands Boundaries Settlement Commissioner resulting in Amarin judgment of 9th October 1984. In coming out with their various boundaries, this court took into consideration the proceedings culminating in the Amarin judgment of 9th October 1984, as well as the evidence led during the retrial resulting in Mensah Datsa's judgment of 12th June 2018. The evidence led by the parties before Commissioner Amarin, as well as during the retrial, consisted of oral as well as documentary evidence. Most of the oral evidence consisted of traditional evidence about their movements and settlements, as well as acts of occupation. In coming out with the boundaries of the various claimants, we take note of the fact that Commissioner Amarin, in his judgment of 9th October 1984, at page 7 of volume of the record of appeal observed that even though there were nine claimants, only the boundaries of eight had been shown because Amanfro Stool's claim was absorbed in that of its paramount stool, James Town.

From our evaluation of the evidence led by the parties, we proceed to set out the boundaries of the claimants, as found by this court, beginning with James Town Ngleshie Amanfro. Its boundary begins from A/8 in the north, and continues eastwards to A/9 and south eastwards to A/10, through A/11, A/12, to A/13 and thence to A/14. The boundary then turns southwards down to A/15 and then eastwards to A/16 and Southwards to A/17. From A/17 the boundary moves westwards to A/18 and then southwards to A/19. From A/19, the boundary continues westwards to F/14 and B/8 near Awuade and Berekuabo northwards to A/1, where there is an Onyina tree and then straight up to D/6, and the old bridge, and passing by two Onyina trees to the east and

then northwards to A/4, Akwele Nkwanta and thence to F/11 through D/8 to A/5, A/6, A/7 and back to A/8.

The boundary of Awutu Breku will begin from Akropon near a point marked as K, and continues southwards to Obreyeko, Awuanum, thence to Bontrase and then to S/2 through S/3, S/4 through Odolokrom to S/5 and downwards to B1, Kwashi Amanbo village, Awutu Amanfoso, Ahinsa thence to F/5 near Osimpo Amanfoso. From there, it continues to F4, B3 and then north-eastwards to B/4 and then southwards to B/5 and further south-eastwards to B/6, then eastwards to B/7 where there is a date palm tree and Dawa Lagoon. The boundary then moves north-eastwards to Nyanyano and then to Berekuabo (rocks) where it shares boundary with James Town Ngleshie Amanfro. Its boundary then continues northwards to A/1, then to D/6 and continues to A/4, A/11, D/9, P/5, P/4, P/3 and then to A/7 and A/8.

We find the boundary of Odupong Ofankor to begin from a point known as Cement Pillar from where the boundary continues southwards to F10, passes by an Odum tree and continues to Buduburam, thence to D/3, D/4, D/5, D/6, then to two Onyina trees. From there the boundary continues northwards to A/4 up to F/11, D/9, P5, P4 and then back to the Cement Pillar.

For Gomoa Fetteh, we find from our evaluation of the evidence that its boundary begins from the point marked F/1 from where it continues eastwards to Little Breku and then north-eastwards to B/6, B/7, where there is a date palm tree, and thence to Nyanyano and Berekuabo (rocks). From Berekuabo, the boundary goes northwards to A/1, D/6 and then westwards to D/5 through D/4. The boundary continues north-westwards to D/3, Buduburam and then westwards to Fetteh Kakraba village, and then to F/7. From F/7 the boundary continues southwards to F/6, F/5 then through Asimpo Amanfro

village and continues southwards to F/4, B/3, F/3 near Akraman fetish grove and then south-eastwards to Akrama Hill and then back to F/1.

From our evaluation of the evidence, the boundary of Awutu Papase will begin at the point marked P/3 from where it continues eastwards to P/2 then crosses the Gyei river up to Opanto pond, Papase No. 2, then southwards to A/5, D/8 and then westwards to D/9 from where it continues northwards to P/5, P4 and then back to P/3.

The boundary of Senya Breku, from our findings, will begin from Berekuabo (rocks), its boundary with James Town Ngleshie Amanfro, from where it continues northwards to A/1, D/6 and then south-westwards to D/5 and continues westwards to D/4 and then north-westwards to D/3. From D/3 it continues westward to S/7 near Fetteh Kakraba, then to S/6 from where it continues northwards to Bereku village and then to S/5. From S/5, the boundary continues northwards to Odolokrom thence to S/4, S/3, S/2, and S/1. The boundary from this point continues north-westward to Atwere village and then Southwards to Kwanyako and goes along the Ayensu river southwards to Ayensuadze, Nsuaye and Panfokrom villages. The boundary continues southwards to Adukrom village and then to Pump station to a point marked S from where the boundary continues eastwards to F/1, B/6, B/7 and to Berekuabo (rocks).

From our evaluation of the evidence, we find the following to be the boundary of Agona Traditional area: Beginning from point F/10, its boundary continues eastwards to F/11 where it turns southwards to A/4 and continues to D/6 after passing the old bridge, and then to Berekuabo. From this point the boundary turns south-westwards to B/7, B/6 and then southwards to Abeka grove, Little Breku (in ruins), where it continues south-westwards to F/1 through Akaba hill to F/2 and then westwards F/3. From F/3, the boundary moves northwards to F/4 and F/5 at a place called Kwashi Amandze. From here the boundary continues north-eastwards to F/6 up to Ahinsa near F/7 and then F/8

and F/9. The boundary then turns southwards to D/3, D/4 and then eastwards to D/5 and D/6 and then southwards to Berekuabo.

The boundary of Gomoa Assin has been found from our evaluation of the evidence to be the following: Beginning from the point marked T/1, the boundary continues north-eastwards to T/2 and thence to T/3, T/4, T/5, T/6, T/7 and T/8 and then eastwards to Ahinsa. From Ahinsa, the boundary continues southwards to S/3, S/4, S/5 and through to B/1. It then continues north-eastwards to F/5 from where it turns southwards through Kwadwo Ayisa village to Akwanso No. 2, then south-westwards to the point marked S, where the boundary of Senya Breku began.

The boundaries of the claimants as set out above is based on the Stool Lands Boundaries Settlement Commission's Enquiry No. 10/76 and 14/75 consolidated preliminary Survey Plan, (plus the 48 villages) dated 19/9/94, prepared by Okai Lartey and appearing at page 83A of volume 1 of the record of appeal. This plan which has been enlarged and exhibited to the 1st Claimant/Appellant's motion of 14th December 2021 seeking to have the proceedings taken before the Stool Lands Boundaries Settlement Commission added to the record of appeal, is marked as exhibit "F", with the proceedings leading to the 9th October 1984 judgment, marked as exhibit "E" and which was also adopted as part of the record of appeal. The application of the 1st Claimant/Appellant was granted by this court on 9th February 2022.

From the judgment of the court, the appeals of Senya Breku and Awutu paramount stools against the Amarin judgment have been dismissed, as they failed to demonstrate that the findings made therein about their respective boundaries were not supported by the evidence led before the Commissioner. They also failed to show that they were entitled to the reliefs they are seeking in their appeals. As for the appeal of James Town Ngleshie Amanfro, as indicated in this judgment, the Stool Lands Boundaries Appeal

Tribunal, by its order remitting an aspect of the dispute for retrial and for the 48 villages being claimed by it to be inserted and for it to be allowed to lead evidence in proof thereof, had thereby upheld their appeal and granted the relief they were seeking against the Amarin judgment.

With regard to the appeals by James Town Ngleshie Amanfro and Gomoa Fetteh against the judgment of Mensah-Datsa J (as she then was) of 12th June 2018, given after the retrial, by setting aside that judgment, as not only being contradictory, but also unhelpful as far as the area remitted for retrial is concerned, their appeals complaining about the dismissal of their entire claims, have also thereby been upheld. This court, however went on to evaluate the evidence led during the retrial, in its duty to rehear the matter, and found that James Town Ngleshie Amanfro was able to adduce sufficient evidence to support its claim to the 48 villages ordered to be inserted. Gomoa Fetteh could however not prove its case in respect of five of these villages it was initially laying claim to. We also found that it only made claim to 32 of the 48 villages, after it had prepared a plan alleged to be based on its 1913 judgment in 2013, and was prepared without the knowledge of other claimants. We therefore found that it was not entitled to any of the 48 villages inserted.

With regard to the other Claimants involved in the retrial, we have also found from our evaluation of the evidence that they did not seriously challenge James Town Ngleshie Amanfro's claim to these villages, and further that they failed to lead evidence to show that any of them was entitled to any of these 48 villages, which Mensah-Datsa J, in her judgment of 12th June 2018, had decreed in their favour, without even specifying the villages to which each of them was entitled to.

The Claimants are to liaise with the registrar to have their boundaries, as found by this court, drawn up as a judgment plan within one month and for copies to be given to each

Claimant. The Claimants are to collectively bear the cost that will be involved in drawing up the judgment plan.

POST SCRIPT

It has been stated in this judgment that Senya Breku, the 6th Claimant in the retrial, did not cross-examine the Surveyor and the witnesses of the 1st Claimant, James Town Ngleshie Amanfro, and further that it did not file any written submissions. It was also noted that it did not file an appeal against the judgment of Mensa-Datsa J (as she then was) of 12th June 2018, but that it had filed an appeal against the judgment of Amarin J, of 9th October 1984, at page 12 of Volume 1 of the record of appeal. Its complaint, from its grounds of appeal, was about its boundary, as found by Commissioner Amarin in his judgment, and the relief it was seeking was to have its boundary as found by Commissioner Amarin set aside, and substitute for it, its boundary as found by Justice Jackson in his report in 1957, that settled its boundary with Awutu and Gomoa Assin, as contained in its statement of dispute or claim.

The court, after its evaluation of the evidence adduced before Commissioner Amarin, as well as during the retrial, however came to the conclusion that it had failed to demonstrate that its boundary as found by Commissioner Amarin in his judgment, was not supported by the evidence led before him. This court then went on to set out the boundaries of all the claimants that initially went before the Stool Lands Boundaries Settlement Commission, based on all the available evidence.

After a draft judgment had been circulated and comments and inputs received from other panel members, upon which the judgment was written, we received on 5th July 2022 at 1.35pm, written submissions filed on behalf of the 6th Claimant, Senya Breku, on 29th June 2022 pursuant to leave granted on 27th June, 2022.

Even though these written submissions filed by the 6th Claimant in the retrial came to our attention some 48 hours before the time scheduled for delivery of the judgment, we have been able to go through these submissions, and are of the view that they do not in any way affect the boundary of the 6th Claimant, as found by this Court, after a thorough evaluation of evidence taken before Commissioner Amorin, resulting in his judgment of 9th October 1984, as well as that taken during the retrial, culminating in the judgment of Mensah-Datsa J (as she then was) of 12th June, 2018.

From the submissions filed on behalf of Senya Breku, being referred to, contrary to what is contained at page 7 at point 5, that the 6th Claimant did not file an appeal against the judgment of the Stool Lands Boundaries Settlement Commission, nor file any appeal against the High Court judgment, the records clearly show that it did file an appeal against the judgment of the Stool Lands Boundaries Settlement Commission of 9th October 1984.

The submissions filed on behalf of the 6th Claimant in the retrial, was devoted to the citing of cases about an appeal being a rehearing; what was expected of the appellate court; and the burden placed on the appellants. Reference was also made to the ruling of the Stool Lands Boundaries Appeal Tribunal of 20th January 1994, which remitted an aspect of the dispute for retrial, as well as the ruling of Commissioner Osei JA of 5th July 1994, which set out the perimeters for the retrial. The rest of the submissions, like that of Awutu paramount stool, was a recap of the evidence led during the retrial, and thereafter, it was submitted on its behalf that the claims of the 1st and 4th Claimants/Appellants in the retrial, were rightly dismissed, even if the judge went beyond its jurisdiction. It then called upon this Court to evaluate the evidence in its entirety and come out with its findings on the boundaries of the Claimants, which is exactly what this Court did, in coming out with the boundaries of the Claimants that all

appeared before the Stool Lands Boundaries Settlement Commission, as set out in the judgment.

Before we end, we note with concern that this dispute began in 1972 over a dispute between Odupong Ofankor and Ngleshie Amanfro. Other Claimants, as can be seen from the judgment were added along the line, bringing the total number of Claimants to nine. Judgment was delivered by the Stool Lands Boundaries Settlement Commission in the dispute on 9th October 1984. It was while an appeal was being heard in the matter, based on appeals filed by Senya Breku, James Town Ngleshie Amanfro, and Awutu paramount Stool that the Stool Lands Boundaries Appeal Tribunal, on 20th January 1994, remitted an aspect of the dispute for retrial, before it could deliver its judgment in the appeal. The retrial took twenty-four years with judgment being delivered on 12th June 2018, against which the 1st and 4th Claimants in the retrial, appealed. One would have thought that the Claimants would have been anxious to see this dispute come to an early end, by personally following up on processes being filed at the registry of this Court. This was however not the case, and this resulted in the 6th Claimant applying for leave to file written submissions out of time in late June 2022, in a case which was heard in April 2022, and adjourned to 7th July, 2022 for judgment. The desire of courts for speedy and less expensive trials cannot be achieved without cooperation from litigants and their Counsel, but most particularly the litigants.

(SGD.)

G. S. SUURBAAREH

[JUSTICE OF APPEAL]

MERLEY A. WOOD (MRS.), JA, I agree

(SGD.)

MERLEY A. WOOD
[JUSTICE OF APPEAL]

J. BARTELS-KODWO (MRS.), (JA), I also agree *(SGD.)*

JANANPARE BARTELS-KODWO
[JUSTICE OF APPEAL]

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