IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: YEBOAH CJ (PRESIDING)
PROF. KOTEY JSC
AMADU JSC
PROF. MENSA-BONSU (MRS.) JSC
KULENDI JSC

CIVIL APPEAL
NO. J4/26/2020

1ST FEBRUARY, 2023

KWADWO FOSU PLAINTIFF/APPELLANT/RESPONDENT

VS

NANA OSEI AKOTO VI DEFENDANT/RESPONDENT/APPELLANT

JUDGMENT

KULENDI JSC:-

INTRODUCTION:

This is an appeal against the judgment of the Court of Appeal, Kumasi dated 29th October, 2019. By the said judgment, the Court of Appeal set aside the High Court judgment of 18th April, 2018 which dismissed Plaintiff/Appellant/Respondent's (hereinafter called the "the

Respondent") action on the ground that the course of action constituted a cause or matter affecting chieftaincy and entered judgment for the Respondent in respect of the reliefs endorsed on his writ of summons.

BACKGROUND:

The Respondent issued a Writ of Summons and Statement of Claim against the Defendant/Respondent/Appellant (hereinafter called "the Appellant") on 15th October, 2014 for the following reliefs:

a. *Declaration of title to Plot No. 1 which is situate on the Bomso stool land and bordering on the Akosua Nsowaa Avenue and Plots No. 2 and 3 which are also situate on the Bomso Stool land and bordering on Adwoa Maanu Avenue all in the Afigya Kwabre District in the Ashanti Region.*
b. *Recovery of possession*
c. *Perpetual injunction.*

In his thirteen (13) paragraph Statement of Claim, the Respondent contended that sometime in 2001, he acquired plots numbered 1, 2 and 3 forming part of Bomso Stool land from Nana Kofi Krah, the then Odikro of Bomso.

The Respondent averred further that at the time of acquiring the land, the Appellant had not been enstooled as chief of Bomso. In proof of these foundational assertions the Respondent adduced evidence proving that all necessary and relevant title documents of the land had been duly executed by the said Nana Kofi Krah and Obaapanin Yaa Achiaa in his favour.

The Respondent stated that even though he acquired the plots in 2001, he only managed to procure the title documents in 2012 because the title documents were not ready in 2001.

Subsequent to obtaining the relevant title documents, the Respondent registered the land and obtained the necessary permit to develop the land. The Respondent contended that notwithstanding the grant of the permits, the Appellant, the current chief of Bomso, had made it almost impossible for him to develop the land by procuring the services of thugs to harass the Respondent. It is against this background that the Respondent resorted to the High Court seeking the reliefs above against the Appellant.

The Appellant, on the other hand filed a defence to the action on 18th November, 2014, wherein he contended that said Nana Kofi Krah, never conveyed the land in dispute to the Respondent and in any event that Nana Kofi Krah had no right to convey any interest in the land to the Respondent, or any other person for that matter. The Appellant averred further that the disputed land forms part of the Bomso Stool lands which had never been granted or transferred by the stool to the Respondent. It was contended that the said Nana Kofi Krah and the Obaapanin who purported to transfer the land to the Respondent had never occupied the Bomso Stool before and therefore whatever he purported to transfer was a nullity.

The trial of this suit commenced on 8th May, 2017 and ended on 23rd February, 2018. The trial Court, in its final judgment delivered on 18th April, 2018, dismissed the Respondent's case for want of jurisdiction and held that the Court lacked jurisdiction to entertain the suit since in the opinion of the court, the case bordered on a cause or matter affecting Chieftaincy. The High Court held at page 254 of the Record of Appeal as follows:

> *"Having held that the present suit though a land matter cannot be divorced from a cause or matter affecting chieftaincy, it follows naturally that, this court has no jurisdiction to determine this suit and I so hold. The plaintiff's action is therefore dismissed for want of jurisdiction."*

Aggrieved with the decision of the High Court, the Respondent appealed to the Court of Appeal by a notice of appeal filed on 4th May, 2018. In its judgment of 29th October, 2019,

the Court of Appeal set aside the judgment of the High Court and granted the Respondent the reliefs endorsed on his Writ of Summons and Statement of Claim.

The Appellant has lodged this present appeal and prays this Court to reverse the judgment of the Court of Appeal and in its stead, enter judgment for the Appellant.

GROUNDS OF APPEAL:

The Appellant's notice of appeal filed on 8th November, 2019 had the omnibus ground of appeal as the sole ground.

However, additional grounds of appeal were filed on 3rd June, 2020 by the Appellant as follows:

a. The learned trial judges erred because the Plaintiff/Respondent's grantor lacks the requisite capacity to grant land at Bomso between the period of 1995 and 2009.
b. The learned trial judge erred in holding that although it is a stool land matter, it does not amount to a cause or a matter affecting chieftaincy"

It must be noted that the above additional grounds alleged errors of law. These errors of law alleged were however not particularized in sufficient detail to meet the legal standard set out in Rule 6(2)(f) of the Supreme Court Rules, 1996 (C.I. 16).

The said rule states as follows:

"A notice of civil appeal shall set forth the grounds of appeal and shall state the particulars of any misdirection or error in law, if so alleged."

Furthermore, upon careful scrutiny of the processes on record, we have observed that there is no indication to suggest that leave was sought and obtained by the Appellant to file the additional grounds of appeal out of time.

It is trite law that a Notice of Appeal is an originating process and like any such process, the Rules of Court prescribe the time frame for filing same. Therefore, an Appellant may

file a Notice of Appeal setting out all the grounds of appeal within the legislatively prescribed time frame to properly invoke our appellate jurisdiction. Any process that seeks to amend any part of the Notice of Appeal, either an addition or deletion of grounds of appeal or even to correct clerical errors must be done exclusively with leave of the court.

The filing of additional grounds of appeal, may be permitted under Rule 6(7) of C.I. 16. The said rule permits the amendment of grounds of appeal upon such terms as the court may deem fit.

Rule 6(7) of C.I. 16 however calls for the exercise of the discretion of the court. An appellant cannot therefore file additional grounds of appeal as of right as doing so will deny the court the opportunity to exercise the discretion granted it by the rules. Therefore, a failure, neglect or omission to seek leave of the court and the filing of additional grounds of appeal as of right is not warranted by the rules of Court. Consequently the said additional grounds having been filed in contravention of the rules are accordingly struck out.

We are cognizant of the fact that in substance, the omnibus ground stated in the Notice of Appeal filed on the 8th of November 2019, effectively deals with the additional grounds struck out above. This is because, the grounds canvassed as additional grounds, by their nature, require an examination of the evidence on record, which examination we are mandated to do under the omnibus ground of appeal.

In resolving this appeal, we are also mindful of the fact that the judgment of the Court of Appeal is not a concurrent one. Consequently, this court is at liberty to affirm either the findings of the High Court or Court of Appeal or in the alternative make its own findings where we are satisfied that it is in the interest of justice to do so. This position of the law is supported by a plethora of judicial decisions including the decision of Wood CJ in the case of CONTINENTAL PLASTICS ENGINEERING CO LTD V. IMC INDUSTRIES-TECHNIK GMBH [2009] SCGLR 298 at 307 wherein she stated as follows:

"An appeal being by way of rehearing, the second appellate court is bound to choose the finding which is consistent with the evidence on the [page 308] record. In effect, the court may affirm either of the two findings or make an altogether different finding based on the record."

We note that the High Court dismissed the suit and held that the case concerned a cause or matter affecting chieftaincy. The Court of Appeal disagreed with the said holding of the High Court and consequently held otherwise and granted the reliefs sought by the Respondent.

We must reiterate the view that of this Court that a cause or matter will amount to one affecting chieftaincy "if evidence on how the party was nominated, elected, selected, enstooled or enskinned, deposed or abdicated has to be adduced before the issue raised in the case can be determined."

[See IN RE NUNGUA CHIEFTAINCY AFFAIRS, NII ODAI AYIKU IV VS. ATTORNEY GENERAL & WOR NII BORTELABI BORKETEY LAWEH XIV [2010] SCGLR 413, The Law of Chieftaincy in Ghana by the learned author, Brobbey J.S.C.]

This Court set the boundaries of what may constitute a cause or matter affecting chieftaincy in In Re Oguaa Paramount Stool; Garbrah & Others v Central Regional House of Chiefs & Haizel [2005-2006] SCGLR 193 where it held at page 214 as follows:

"It appears from the language of the Chieftaincy Act, 1971, that the litmus test for determining whether an issue is a cause or matter affecting chieftaincy is the existence of a question or dispute or contested matter, or a cause in the sense of a justiciable controversy with respect to any of the matters listed therein and not literally in respect of every matter bearing on chieftaincy. I hold that in the instant complaint even though relating to a chief and bearing upon the formalities for the public acknowledgment of a chief, does not constitute a cause or matter affecting chieftaincy within the meaning of section 66 of Act

370 because it did not raise an actual challenge to the nomination, election, appointment and installation of a person as a chief, or his/her destoolment or the right of participation in such decision-making or ceremony."

See also AMONOO V CENTRAL REGIONAL HOUSE OF CHIEFS (2003-2005) 1 GLR 577, Akuffo JSC

Section 76 of the Chieftaincy Act, 2008 defines a cause or matter affecting chieftaincy as follows:

> "cause or matter affecting chieftaincy" means a cause, matter, question or dispute relating to any of the following
>
> *(a)* the nomination, election, selection or installation of a person as a chief or the claim of a person to be nominated, elected, selected or installed as a chief, *(b)* the deposition or abdication of a chief,
>
> *(c)* the right of a person to take part in the nomination, election, selection or installation of a person as a chief or in the deposition of a chief,
>
> *(d)* the recovery or delivery of stool property in connection with the nomination, election, selection, installation, deposition or abdication of a chief, and
>
> *(e)* the constitutional relations under customary law between chiefs;

The above definition is in pari materia with the definition of a cause or mater affecting chieftaincy in section 117 of the Courts Act, 1993 (Act 459).

Case law on the issue is well settled, and it is clear that the mere fact that a matter concerns a chief or stool land does not of itself qualify it as a cause or matter affecting chieftaincy unless it is apparent that the matters before a court entails an enquiry into the criteria outlined under section 76 of Act 459 above. A court should therefore be hesitant in

foreclosing the rights of litigants to be heard on the merits of their claims simply because their dispute may in some measure relate a chief, stool and/or stool land.

In the instant case, the Respondent alleged in his Writ of Summons that he had purchased the land in dispute from Nana Kofi Krah who was the Odikro of Bomso. The Respondent was therefore seeking reliefs for the recovery of possession and a perpetual injunction against the Appellant who was a trespasser to his land.

Allegations of whether or not the Respondent had obtained a valid grant of the land in dispute did not in and of themselves characterize the Respondent's action as a cause or matter affecting chieftaincy. This is because the claim of the Respondent did not require the trial High court to determine whether anyone had been validly nominated, elected, selected or installed as a chief.

Significantly, the claim by the Appellant in his Statement of Defence that the grantor of the Respondent has never occupied the Bomso Stool was not denied by the Respondent. In paragraph 5 of the Reply filed on 8th December, 2014 Respondent admitted as follows:

> 5.**The Plaintiff admits that Nana Kofi Krah has never occupied the Bomso Stool.** Plaintiff however says that at a time when Bomso had no Chief, Nana Kofi Krah in his capacity as Bomso Dikro instituted actions against trespassers on Bomso land and won those actions. Nana Kofi Krah had at all material times in his capacity as Bomso Dikro protected Bomso land. He had powers to allocate Bomso land at the time when there was no substantive Chief.

From the above, it is evident that the Respondent did not allege that his grantor was the chief of Bomso or alienated the land to the Respondent in his capacity as chief of Bomso. Therefore, clearly, no issue was joined as to whether or not the Respondent's grantor, Nana Kofi Krah, was the chief of Bomso.

The relevant pleadings required the trial judge to resolve whether the said Nana Kofi Krah had the capacity to alienate lands at Bomso at the time he purported to make such alienations.

Therefore, the High Court in engaging in an inquest to purportedly answer questions on the validity of the nomination, election, installation, destoolment or abdication of a chief and thereby holding the suit to be a cause or matter affecting chieftaincy, amounted to embarking on an unwarranted excursion to consider matters it ought not to have considered and failed to consider matters it ought to have considered.

It has been emphasized that the pleadings of a party form the nucleus around which a case revolves. Therefore, in setting down issues for determination, a court must be guided by the pleadings of the parties and avoid using the scarce judicial resources to adjudicate on matters which are not in controversy between the parties.

In this instant case, the trial court had no business to venture into and resolve claims regarding the nomination, election, selection or installation of the Respondent's grantor as chief but rather to merely inquire as to whether or not the grant made to the Respondent was valid.

From the foregoing, it is evident that the trial judge's holding that the case was one which involved a cause or matter affecting chieftaincy is legally unsustainable. In our opinion, the Court of Appeal was consequently right in arriving at the conclusion that the matter placed before the trial High Court was not a cause or matter affecting chieftaincy, and that the trial court had jurisdiction to hear it.

Having affirmed that the trial Court had jurisdiction to hear the matter, we shall now examine the evidence led at trial to determine which of the respective claims of the parties was sufficiently proven to the requisite standard.

In civil matters such as the instant case, the burden of persuasion requires proof on the preponderance of probabilities. **Section 12 (1) of the Evidence Act, 1975 Act 323** provides that:

"Except as provided by law, the burden of persuasion requires proof by a preponderance of probabilities".

Section 12 (2) of Act 323 also provides that;

"Preponderance of probabilities means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence"

Section 10(1) of Act 323 defines burden of persuasion as follows;

> *"For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court"*

Section 11 (1) of Act 323 further provides that;

> *"For the purposes of this decree, the burden of producing evidence means an obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue".*

For a party in a civil case to succeed, that party must adduce sufficient evidence such that on the preponderance of probabilities, the existence of the facts upon which his claim is premised is more probable than its non-existence.

Section 14 of the Evidence Act provides that:

> *"except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting"*

The standard of proof required in Civil Cases found judicial expression in the Supreme Court case of **Bisi Vrs. Tabiri Alias Asare [1987-1988] 1 GLR at page 361** as follows;

> *"the standard of proof required of a plaintiff in a civil action was to lead such evidence as would tilt in his favour the balance of probabilities on the particular issue. The demand for strict proof of pleadings had however never been taken to a call for an inflexible proof either beyond reasonable doubt or with mathematical exactitude or with such precision as would fit a jig-saw puzzle. Preponderance of evidence became the trier's belief in the preponderance of probability. But "probability" denoted an element of doubt or uncertainty and recognised that where there were two choices it was sufficient if the choice selected was more probable than the choice rejected..."*

In assessing the balance of probabilities, the evidence adduced at trial by all parties must be assessed and the party in whose favour the balance tilts is the person whose case is more probable than the rival. See ***Tarkoradi Mills Vrs. Samira Faris 2005-2006 SCGLR 882 @ page 900".***

Indeed, at the heart of the case was the determination of whether or not the Plaintiff obtained a valid alienation of the land in dispute. The Appellant strenuously contended that the Respondent's alleged grantor did not make a grant of the land in dispute to the respondent have any right to alienate the land to the Respondent and that any purported alienation is null and void.

From the pleadings, the following allegations are made by the Appellant in his statement of defence:

> *"2. The Defendant states that Nana Kofi Krah has never transferred the disputed land to the Plaintiff.*
>
> *3. The Defendant says that under customary law, the said Odikro, Nana Kofi Krah, had no conveyancing powers to grant/transfer any interest in the land as alleged.*

4. The Defendant says that any purported grant of the disputed land by Nana Kofi Krah to the Plaintiff as alleged was a nullity and void on account of the nemo dat quod non habet maxim."

However, per the record, not only did the Appellant fail to adduce any evidence in discharge of his burden of persuasion as required under the Evidence Act in respect of paragraph 2, but the evidence was to the contrary: that Odikro Nana Kofi Krah admitted to transferring the disputed land to the Plaintiff and executing the documents in respect of the grant together with Obaapanyin Yaa Achiaa.

Under cross-examination of Odikro Nana Kofi Krah who testified as PW1, and which may be found at page 174 of the record, the following brief but significant testimony was adduced;

"*Q: You issued this allocation note on 29/06/2012 to the Plaintiff in this matter?*
A: Yes"

On the question of Odikro Nana Kofi Krah's authority to validly alienate Bomso Stool land and the validity of such alienations, the following appears in Exhibit J, arbitration proceedings at the Manhyia Palace on 28th June, 2011 before Otumfuor Osei Tutu II Asantehene which was tendered in evidence by the Respondent and may be found at pages 51-56 of the Record, specifically at page 54:

"Otumfuor told Nana Osei Akoto (Sasamohene) to live in harmony with Odikro Kofi Krah so that there would be peace and tranquility at home. He emphasised that it is the customary responsibility of the Odikro to allocate plots of land to tenants for and on behalf of the Chief. Otumfuor said, traditionally, Odikro Kofi Krah is responsible for making errands on behalf of Nana Sasamohene.

Therefore on the preponderance of this evidence, it was clearly established that Odikro Kofi Krah alienated the land contrary to the Appellant's allegation that he did not.

Similarly, from the very authoritative enunciation of the applicable customary law and practice by the Otumfuor himself, it is the "*responsibility of the Odikro to allocate plots of land for and on behalf of the Chief*".

Further, the evidence in the arbitration proceedings shows that it is the Odikro who is the frontliner in the execution of land allocations and related "errands" for and on behalf of the Chief, and for that matter, the Appellant.

In view of the foregoing evidence at the trial, we are of the considered opinion that the Respondent sufficiently discharged his burden of producing evidence to avoid a ruling against him on the issues of whether or not the Odikro made a grant in his favour and whether or not the Odikro had the authority to make allocations or grants of Bomso stool land. In contrast, the Appellant, in our view, failed to adduce any evidence as to the existence of the facts, essential to the defence that he asserted, let alone to a standard that can be said to be more probable than the case of the Respondent. Consequently, on our assessment of the evidence on the record, it is our considered view that the case of the Respondent is more probable than the Appellant's. The Court of Appeal was therefore right in reversing the trial High Court's decision and we hereby affirm the findings of the Court of Appeal with respect to all the material facts in issue.

The Appellant further alleged that the Respondent failed to conduct the necessary due diligence prior to his acquisition of the land.

In this regard, the said grantor of the Respondent PW1, testified that he is the former Odikro of Bomso in the Kwabre West District of the Ashanti Region. He further testified that as Odikro, he was in charge of all the Bomso Land and was the one alienating the Bomso Land to prospective developers. He stated that the Appellant is the Chief of Bomso

but at the time the Appellant became Chief of Bomso, he was already the Odikro and had already alienated the land to the Respondent.

Again during cross-examination of PW1, at page 170,172 and 173 of the Record of Appeal he testified to his tenure as Odikro as follows:

Q:In paragraph 1 of your witness statement you stated that you are a former Odikro of Bomso?

A: Yes.

Q: When did you cease to be the Odikro of Bomso?

A: In the year 2013.

Q: When were you installed as Odikro of Bomso?

A: 27/07/1990.

Q: During the days of Nana Asumadu, he was ordered by the Kumasi Traditional Council to destool you as Odikro of Bomso in 1995?

A: It is not true."

…

Q: Did you swear before the current chief (defendant) as Odikro?

A: Yes.

Q: In which year did you do that?

A: I have forgotten the year.

Q: I am putting it to you that when the defendant was enstooled in 2003, it took you six years to swear before him?

A: I cannot remember the years it took, but I did swear before him. Otumfour caused me to swear before the defendant as chief.

Q: I am putting it to you that you never recognized the defendant as your overlord, that was why it was the Otumfour who persistently asked you to swear before him?
A: It is not true. I recognize him because he is my nephew and he was rather compelled by Otumfour to permit me to swear before him.

Q: You said in your evidence under cross examination, that Otumfour compelled the defendant to permit you swear before him, you swore before defendant as what?
A: As Odikro of Bomso.

Q: Is it the case that as Odikro, you swear before a new chief who is enstooled?
A: Yes. The swearing is necessary because it means you are prepared to work with the new chief.

It is to be noted that the evidence of swearing of PW1 before the Defendant as Odikro of Bomso was one which was independently solicited by counsel for Appellant. The said evidence was not provoked by the Evidence in Chief of PW1. The said evidence of the swearing of PW1 before the Appellant is adverse to the pleading of the Appellant that PW1 has never been the Odikro of Bomso.

In addition to the above, the incontrovertible evidence in Exhibit J also goes to prove that indeed PW1 was Odikro of Bomso and was vested with the authority to alienate Bomso lands. It is significant that the content of Exhibit J was never challenged under cross-examination.

The summary of the relevant proceedings of Exhibit J are as follows:

*"Otumfuo told Nana Osei Akoto (Sasamohene) to live in harmony with Odikro Kofi Kra so that there would be peace and tranquillity at home. **…** He told Nana Osei Akoto to ensure that Odikro Kofi Krah always benefits from his fair share of the land proceeds without any impediments whatsoever. Otumfuo, on the other hand, told Odikro Kofi Krah of Bomso to*

serve Nana Osei Akoto as his overlord with the needed humility, respect and cooperation. He ordered them to withdraw all court suits in connection with tie land in dispute…

Odikro Koft Krah was permitted by His Majesty to continue with his position as Odikro and for that matter according to Otumfour, he should use his position to serve Nana Osei Akoto (Sasamohene) as customarily expected. He also ordered Nana Osei Akoto to give the confiscated piece of land back to the woman Maame Afua Nyantakyiwaa"

The content of Exhibit J is undisputed evidence that Nana Kofi Krah was indeed the Odikro of Bomso at all material times contrary to assertions by the Appellant. Therefore on the preponderance of the evidence, the Respondent's version on the status of Nana Kofi Krah as Odikro of Bomso at all material times is more probable than that of the Appellant.

Indeed, we note that the Appellant alleges that the Respondent did not acquire the land in dispute in 2001. The Appellant sought to create the impression that the Respondent acquired the land in 2012 and backdated the documents on the land to 2001.

However, the evidence leads to an inference that this position of the Appellant is more misconceived than not. At page 153 of the record of proceedings, Appellant's counsel solicited the following testimony from the Respondent by way of cross-examination.

Q. Your Exhibit A is supposed to be an allocation of the plot to you?

A. Yes.

Q. Exhibit A bears two dates?

A. Yes.

Q. The first date is 09/01/2001.

A. Yes.

Q. The second date is 29/07/2012?

A. Yes.

Q. Can you explain why these two dates in respect of one transaction?

A. I bought the land in 2001 and each time I went to the odikro, for the documents over the land, he told me there was an issue at the chief palace at Manhyia and that I should wait. Some time in 2011 I heard that the issue before Manhyia was resolved, so I went to the Odikro for the documents covering the land. In 2012, I was issued the allocation letter- Exhibit A and I insisted that the date of issue which was in 2012 should be captured in the document.

Q. If that were the case what was the relevance of the date

09/01/2001?

A. The Odikro insisted that the date I bought the land is the date he will use, which is 09/01/2001 and I also insisted on the 2012 date I was issued with the document.

In a similar fashion, counsel for the Appellant provoked evidence from PW1 which corroborated and lent further and better particular to the evidence of the Respondent above in respect of the time of the acquisition of the land in dispute. At page 177 of the record of proceedings, it was put to PW1 that the documents issued to the Respondent were intentionally backdated to 2001 but the said land was not granted in 2001. We deem this a matter worth considering especially as the truth of the contention would taint the case of the Respondent with fraud and deceit of the Court. Specifically, the following transpired

Q: *Why does Exhibit A have two dates- 9th January, 2001 and date of issue 29th June, 2012?*
A: The issuance date of the allocation paper is 9th January, 2001 but there was a dispute regarding the land, so when the said dispute was resolved I called the plaintiff to come for his allocation letter but the plaintiff insisted that since the allocation letter was given to him in 2012 and by the terms of their agreement he should have developed the land in two years, if he accepts the first date of 9/01/01 (which was the date the land was granted) it will go against him, so I should put the date he is being given the allocation letter on the paper as well which is the 29/06/12.

Q: Plot Nos. 1, 2 and 3 what are their sizes?

A: Plots 1, 2 and 3 have 20 building plots in them but I can't remember the number of building plots in each and the measurement of each plot.

From the above, the explanation of the Respondent in respect of the date of acquisition vis-a-vis the date on the allocation note is reasonable and plausible. Obviously, no reasonable purchaser of land will accept an allocation note in 2012 but which is backdated to 2001 and yet expressly state that the grantee must develop the land within two or be in default. An acceptance of such an allocation note without the arguments and explanations in the testimony above, would have been unrealistic and surprising. We therefore prefer the testimony of the Respondent which is consistent with that of PW1 as more probable and persuasive than the less probable inference of a deliberate falsification of the allocation note which the Appellant subtly urges on us.

We note also that the Appellant called witnesses who came to testify on behalf of the Appellant and stated that PW1 had attempted to sell off portions of Bomso land to them in 2012 and intentionally backdated their acquisition to 2001. Whilst the said testimonies and contentions of backdating are telling, we do not think the veracity or otherwise of it may change our decision in favour of the Appellant. This is because, from the Appellant's own testimony, PW1 was only destooled as Odikro of Bomso in 2013. This can found at page 183 and 186 of the Record of appeal as follows:

Q: Kofi Krah became Bomso odikro from 27/07/90 to

2013?

A.No. He became odikro of Bomso on 19/02/09 when he swore the oath of allegiance before me.

Q. Your Exhibit 3 was in respect of a matter between you and PW1-Kofi Krah?

A. Yes.

Q. The arbitration to resolve your dispute with PWI according to Exhibit 3 is dated 18/07/13?

A. Yes.

Q. As at 18/07/13, PW1 was referred to as Bomso odikro?

A. Yes.

Q. At the time you became chief of Bomso, some lands had already been sold by your predecessors?

A. It is not true.

…

Q. In 2011 there was a Bomso stool land dispute between you and PW1 at the Manhyia palace?

A. Yes.

Q. The minutes of the said matter is captured in Exhibit J?

A. Yes. I petitioned against Exhibit J on grounds that it is not a true reflection of what the Otumfour said at the said meeting. As a result of my petition, Manhyia sat on the case and as a result ***PW1 was destooled in 2013.***

Q. I am putting it to you that what you just said is incorrect?

A. It is true.

From the above testimony, it is apparent that as at 2012 when the documentation was issued to Respondent, PW1 was still Odikro and with authority to alienate Bomso lands. Therefore, even if the Appellant's assertion that Respondent did not acquire the land in 2001 but in 2012, it would still be a valid grant since in 2012, PW1 was still clothed with capacity as Odikro to alienate lands at Bomso.

The evidence that PW1 could alienate lands at Bomso is also supported by Exhibit H which is evidence of proceedings between PW1 and the predecessor of the Appellant in suit no. LC/87/94 entitled Kofi Krah & Anor. v. Nana Kweku Assumadu before the Circuit Court, Kumasi in 1995 which was tendered as exhibitS H and H1. Indeed, the said suit was settled amicably and terms of settlement filed. In the terms of settlement, it was conceded by the Appellant's predecessor that it was PW1 who was to alienate the Bomso Stool land albeit in conjunction with the Bomso Stool Lands allocation committee.

Exhibits H and H1 may be found at page 49 as well as page 97-98 of the Record of Appeal. It is of significant evidentiary import that the Appellant did not deny the dispute between PW1 and his (the Appellant's) predecessor and/or the content of Exhibits 'H' and 'H1'. During cross-examination of Appellant, the following evidence was solicited and can be found at page 184 as follows:

Q. And by virtue of PW1 being in charge of the Bomso stool lands as Odikro, he brought an action against your predecessor Nana Asumadu in the 1990s in suit No. [C87/94] in respect of Bomso stool lands?

A.Yes. When Nana Asumadu was demarcating the land, PW1 caused some people to beat him and the case was reported before Kodie Police station and that brought about the said suit.

Q. PW1 and your predecessor filed terms of settlement in the said suit?

A. I don't know.

Q.Have a look at Exhibit H and HI, that is the terms filed in the said suit?

A.If they settled it, let us take it so.

Q.As part of the settlement it was agreed that the demarcation and allocation of Bomso stool land shall be undertaken by PW1?

A.I don't know.

Q:These terms of settlement was entered as judgment of the Court dated 07/07/97?

A. It is a matter of the Court. In 1995 Kumasi Traditional Council allowed Nana Asumadu to destool Nana Kofi Krah.

Also, the evidence on record shows that to the knowledge of the Appellant, PW1 has been instituting or defending actions in respect of Bomso Stool Lands as Odikro as far back as 2004.

This is evident from page 185 of the record of appeal where Appellant testified as follows:

Q. There is a matter between PW1 and one Kwame Amoako in suit No. L$3/01 in respect of the Bomso stool lands?

A. ***When I became a chief I heard of that case.***

Q. Judgment was given in suit No. LS3/01 in favour of PW1 in his capacity as odikro on 29/01/04?

A. I can't challenge the Court, but if he went to Court in his capacity as odikro then misrepresented his capacity to his Court.

Q. The judgment was given in 2004 when you were the chief, yet you did not challenge PW1's capacity?

A. I was not aware the matter was before the Court?

The evidence that PW1 was at all material times the Odikro of Bomso and vested with the authority to lead the alienation of Bomso Stool Lands is overwhelming, persuasive and preferable. Therefore, the Appellant's contention that PW1 is not the Odikro with capacity to alienate lands at Bomso is implausible, improbable, unsupported by the evidence on record and consequently, completely untenable.

In light of the foregoing, we are of the considered view that the evidence on record is overwhelmingly in support of Respondent's case. It is for these reasons that we unanimously dismissed the appeal against the judgement of the Court of appeal as without merit. Accordingly, the judgment of the Court of Appeal in favour of the Respondent was affirmed on the 1st day of February, 2023 and cost of five thousand Ghana cedis (Ghs5000.00) awarded against the Respondent.

E. YONNY KULENDI

(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH

(CHIEF JUSTICE)

PROF. N. A. KOTEY

(JUSTICE OF THE SUPREME COURT)

I.O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)

(JUSTICE OF THE SUPREME COURT)

COUNSEL

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