

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2024

CORAM: SACEY TORKORNOO (MRS.) CJ (PRESIDING)
AMADU JSC
PROF. MENSA-BONSU (MRS.) JSC
KULENDI JSC
ASIEDU JSC

CIVIL APPEAL

NO. J4/27/2023

28TH FEBRUARY, 2024

- 1. NUUMO NYAKOMLE (DECEASED)**
- 2. NARH SANDEY (DECEASED)**
- 3. NOYE NORTEY**
- 4. LOLEBI TETTEH**
- 5. YOODON BI TAWIAH**
- 6. NOYE GA TSEBI ANNANG**
- 7. GLEBU BI NUERTEY**
- 8. MICHAEL MENSAH**

**PLAINTIFFS/RESPONDENTS/
APPELLANTS**

VS.

NII TETTEH ASHONG

**..... DEFENDANT/APPELLANT/
RESPONDENT**

JUDGMENT

AMADU JSC:

INTRODUCTION

- (1) The key legal question for determination in the instant appeal is whether the Trial High Court Tema, had jurisdiction to adjudicate over the matter brought before it. For the Respondent, the action commenced by the Appellants was a cause or matter affecting chieftaincy, hence, the trial court was bereft of

jurisdiction. The Appellants have contested this assertion, contending that, since a Chief Fisherman is not a chief properly so-called, their action is not a cause or matter affecting chieftaincy. In this appeal, we shall introspect these varying legal contentions and examine the interrogatory whether the Court of Appeal was right in setting aside the judgment of the Trial Court on the ground that the Appellants' action is **"a cause or matter affecting chieftaincy"**.

BACKGROUND

- (2) On the 29th of December 2015, the Plaintiffs/ Respondents/Appellants (*hereinafter referred to as the "Appellants"*) issued out a writ of summons against the Defendant/Appellant/Respondent (*hereinafter referred to as the "Respondent"*) claiming the following reliefs:
- (a) ***"A declaration that the Defendant had validly been removed from the office as the Chief Fisherman of Kpone Traditional Area.***
 - (b) ***An order of account of all monies, items and such other materials and logistics received by the Defendant on behalf of the fisher-folks of Kpone Traditional area during his tenure of office.***
 - (c) ***An order directed at the Defendant to return all items and regalia (sic) his custody pertaining to the office and given to him by the Plaintiffs on assumption of office.***
 - (d) ***An order of perpetual injunction restraining the Defendant from acting or showing up as Chief Fisherman of Kpone Traditional Area."***
- (3) The facts as alleged in the statement of claim are that, the Appellants are the constituent body who install the Chief Fishermen of Kpone from the three constituent families of Kpone Traditional Area and by customary law and

practice can also depose the Chief Fisherman. The Appellants averred in paragraph 1 of the statement of claim that, the 1st Appellant (*now deceased*) was the Chief Priest of the Kpone Traditional Area, whereas the other Appellants are the principal members of the Fishermen Council of Kpone. The Respondent is the current Chief Fisherman of Kpone.

- (4) According to the Appellants, since the Respondent was appointed as the Chief Fisherman, he severed all cordial relations with the Appellants and the larger population of fisher folks and arrogated himself functions, practices and ritual performances that are the sole preserve of the 1st Appellant (*now deceased*) and the body of the traditional priests and priestesses.

- (5) The Appellants contend that, the Respondent is rude and disrespectful to his fisher-folks and refuses to account for his stewardship. In view of his unacceptable conduct, the Appellant met together with other interested parties and removed the Respondent from office in accordance with the prevailing practices for removal of such persons.

THE MOTION TO DISMISS THE SUIT

- (6) Upon service of the writ of summons and statement of claim, the Respondent entered conditional appearance to the suit on the 8th day of January, 2016. On the 21st of January 2016, the Respondent applied to the trial court to dismiss the suit. In the affidavit in support of the motion, the Respondent contended that, he is the "**Woleatse**" or Chief Fisherman of Kpone, a position he had occupied since 1992 duly gazetted and his name entered in the National Register of Chiefs. He claimed that, he had not been destooled in accordance with customary law, yet some persons including the Appellants attempted to install a new person as the Chief Fisherman. He contended further that, following the acts of these persons, the Head of the Nii Dun We Clan of Kpone, Nii Addeifio Noye commenced an action at the Judicial Committee of the Kpone

Traditional Council against these persons and others which action was pending. He deposed further that, since the Appellants' action was a cause or matter affecting chieftaincy, the court ought to dismiss same.

- (7) That motion to dismiss the suit was opposed by the Appellants on the basis that, the suit was not a cause or matter affecting chieftaincy. They contended that, the Respondent was not a chief within the true meaning of the Chieftaincy Act, 2008 (Act 759). The Appellants asserted that the Respondent as a Chief Fisherman, holds a ceremonial office which is more of a status symbol.

RULING ON THE MOTION TO DISMISS SUIT

- (8) In a ruling delivered on the 12th day of April 2016, the trial court dismissed the application to dismiss the Appellants' action. The trial court referred to Section 76 of the Chieftaincy Act, 2008 (Act 759) and judicial decisions which have determined the question of what constitutes "***a cause or matter affecting chieftaincy***" and who a chief is. The cases referred to by the Trial Court include **IN RE: OGUAA PARAMOUNT STOOL; BARAL VS. CENTRAL REGIONAL HOUSE OF CHIEFS [2005-2006] SCGLR 193** and **EKU ALIAS CONDUA III VS. ACQUAA (1968) GLR 412.**

- (9) The trial court referred to the definition of "***Chief***" under Article 277 of the 1992 Constitution and said as follows:

"Does the position of the chief fisherman of Kpone fit into the constitutional jacket of this definition? Is he, coming from the appropriate family or lineage nominated, elected or selected and installed as chief? And were those acts performed in accordance with relevant customary law and usage? I suppose these are critical questions for the Defendant to answer."

(10) Relying on the **Condua case (supra)**, the trial court emphasised that; **"a clear distinction is drawn between the head of the aboriginal community who occupied a stool and owns the land and the head of the fishing community who only heads the fisher-folks and holds license to fish in the waters."** The trial court proceeded to hold that, the Respondent failed to satisfy the court that, he has the status of an occupant of a stool and thus concluded by holding that:

"My considered view is that, the position in question does not qualify for a chieftaincy status within the meaning of Article 277 of the 1992 Constitution and Section 57(1) of the Chieftaincy Act... As proof of his status as chief, the Defendant/Applicant has attached an extract form the National Register of Chiefs which contains his position as Woleiatse (Chief Fisherman). It has been held that the entry in the National Register of Chiefs is recognition by the National House of Chief that the fellow has been installed a chief. The recognition is however only prima facie of the claim. See Ex-Parte Abubakari ... I believe however that the prima facie claim flies in the face of the provisions in Article 277 and Section 57(1) of the Chieftaincy Act which properly construed will exclude the position of the Defendant/Applicant from the revered institution. I hold therefore that, this court has jurisdiction to entertain the matter and shall proceed to determine same."

(11) Significantly, the Respondent did not appeal against the ruling of the trial court. He filed a defence to the action as ordered by the trial court and participated in the trial. On the 26th of October 2018, the trial court delivered judgment in favour of the Appellants by declaring that, the Respondent Nii Tetteh Ashong has been validly and properly removed from office as the Chief Fisherman of the Kpone Traditional Area.

(12) The trial court further ordered the Respondent to render account of all monies items, and logistics received by him on behalf of the fisherfolks of Kpone Traditional Area and that a statement of account and inventory in respect of same be filed in the registry of the court within thirty (30) days from the date of delivery of the judgment. The trial court further ordered that, the Respondent returned all properties pertaining to his office to the Fisherman’s Council to be held by the Council and delivered to the appropriate person or authority in accordance with custom and usage of the Kpone Traditional Area. This order was to be complied with within fourteen (14) days. Finally, the trial court granted perpetual injunction restraining the Respondent from acting, describing or introducing or parading himself as the Chief Fisherman of the Kpone Traditional Area. The trial court awarded costs of GH¢5000 in faovur of the Appellants against the Respondent.

APPEAL TO THE COURT OF APPEAL

(13) Aggrieved by the judgment of the trial court, the Respondent appealed to the Court of Appeal per a Notice of Appeal dated the 8th of November 2018 on grounds including the jurisdictional ground that; ***"the trial court had no jurisdiction to have determined the suit herein; the same being a cause or matter affecting Chieftaincy."***

JUDGMENT OF THE COURT OF APPEAL

(14) On the 14th day of July 2022, the Court of Appeal delivered its judgment and set aside the judgment of the trial court. The Learned Justices as of the Court of Appeal reasoned that, the action and proceedings in the trial High Court was null, void and of no legal effect for want of jurisdiction. The Court of Appeal held that, the dispute was a cause or matter affecting chieftaincy, hence, the trial court lacked jurisdiction to deal with the matter. The Court of Appeal consequently set aside all orders made by the trial court. By virtue of

the position taken by the Court of Appeal aforesaid, the court rightly did not deal with the merit of the action.

(15) In the said judgment of the Court of Appeal, the court, relied on the definition of a Chief under Article 277 of the 1992 Constitution and the meaning of a *cause or matter affecting chieftaincy* under Section 117(1) of the Courts Act, 1993 (Act 459) as well as the categories of chiefs under Section 58 of the Chieftaincy Act. The Court of Appeal then concluded that, the Respondent is a Chief having proved that, he came from the appropriate family. Further, the Court of Appeal was swayed by the admission of the Respondent to the Kpone Traditional Council as a member as well as the entry of his name in the National Register of Chiefs. In line with existing judicial authorities, the Court of Appeal held that, the entry of the Respondent's name into the National Register of Chiefs did constitute *prima facie* evidence of the Respondent's status as a Chief. Consequently, the burden was on the Appellants to rebut the presumption, but they failed in discharging that obligation.

APPEAL TO THE SUPREME COURT

(16) On the 22nd July 2022, the Appellants appealed against the judgment of the Court of Appeal per a Notice of Appeal filed on 22nd July 2022 on the following grounds:

a. "Judgment is against the weight of evidence adduced at the trial.

b. The Learned Justices erred in their conclusions that the suit was a cause or matter affecting chieftaincy.

c. The Learned Justices again erred in holding that the High Court, Tema as constituted lacked jurisdiction to try the matter.

d. Further grounds of appeal would be filed upon receipt of the record of proceedings/Judgment.”

(17) **WHO IS A CHIEF AND WHAT CONSTITUTES A CAUSE OR MATTER AFFECTING CHIEFTAINCY?**

The questions; *who is a Chief?* and *what constitutes a cause or matter affecting chieftaincy?* Are central to the determination of the instant present appeal. It is settled law, that not every question incidental to chieftaincy constitutes a cause or matter affecting chieftaincy. But will this definition include an office masqueraded as a chieftaincy position within the proper meaning of the regulating statutes? As settled in a number of judicial decisions it is not every dispute surrounding a "**Chief**" which makes same "**a cause or matter affecting Chieftaincy**". A chieftaincy dispute has been statutorily defined in Section 76 of the Chieftaincy Act, 2008 (Act 798), as "**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.*

See also **Section 117 of the Courts Act, 1993 (Act 459).**

- (18) The provision in Section 76 of Act 759 defines "**deposition**" to mean "**destoolment or deskinment**". Clearly, what constitutes a cause or matter affecting chieftaincy is explained in terms of a certain event or series of events happening in relation to a chief. These events may pertain to the processes of nomination, election, selection or installation of a person as a chief. It also includes the removal or abdication of a chief, recovery or delivery of a stool or skin property in relation to the nomination, election, installation or removal or abdication of a chief or such constitutional relationships under customary law between chiefs.
- (19) Therefore, where a person is not a chief or the event in question does not relate to a chief, then, the matter cannot be said to be a cause or matter affecting chieftaincy. For instance, where there is contestation regarding the nomination of a person or the right of a person to partake in the nomination of a person to be the head of the royal family, same will not constitute a chieftaincy dispute. However, if that nomination pertained to a chief, it qualifies as a chieftaincy cause or matter.
- (20) It is important to note that, despite that the person of the "**Chief**" is instrumental in classifying a dispute as a chieftaincy dispute, it is not every incident that relates directly or indirectly to a chief that makes that incident a chieftaincy dispute. For instance, a chief may commence an action for the recovery of property personal to him. Such an action obviously will not meet the test of a chieftaincy dispute notwithstanding the fact that the claimant is a Chief. Moreover, even regarding disputes relating to the recovery or delivery of a stool property, unless it is in connection with the nomination, election, selection, installation, deposition or abdication of a chief, it cannot qualify as a cause or matter affecting chieftaincy. Each case must therefore, be carefully scrutinised in ascertaining whether or not same falls within the definitional purview under our statutes. This court had emphasized this point in the case of **IN RE OSU STOOL; ARKO NORTEI II (MANKRALO OF OSU) VS. NORTEY OWUO III (INTEREVENER) [2005-2006] SCGLR 628** where it

was held that, in determining whether or not there is a genuine cause or matter affecting chieftaincy same would depend on the peculiar facts of each case.

(21) Indeed, our courts have had occasion to elaborate on the implication of what constitutes a cause or matter affecting chieftaincy even prior to the passage of the Chieftaincy Act, 2008 (Act 759). The settled jurisprudence which was consistent with the Chieftaincy Act, 1971 (Act 360) is also in consonance with the current Chieftaincy Act 2008 (Act 759). The definition of a cause or matter affecting chieftaincy under our present law is in *pari materia* with what existed under the old statutory regime in Act 360.

(22) In **AMONOO VS. CENTRAL REGIONAL HOUSE OF CHIEFS [2003-2005] 1 GLR 577**, this court held that, the test for determining whether an issue was a cause or matter affecting chieftaincy was the existence of a "**question**" or "**dispute**", or a contested matter, or cause in the sense of a justiciable controversy, with respect to an actual challenge to the nomination, election, appointment, installation of a person as a chief, or his or her destoolment. See also **IN RE: OGUAA PARAMOUNT STOOL; GARBRAH & OTHERS VS. CENTRAL REGIONAL HOUSE OF CHIEFS & HAIZEL [2005-2006] SCGLR 193; THE REPUBLIC VRS THE HIGH COURT (GENREAL JURSIDICTION) ACCRA, EX-PARTE: NII AGYEMANKESE III AND ORS. (2019) JELR 65946.**

(23) As aforesaid, the answer to the question of who a chief is legally speaking, is crucial in determining whether a dispute is "**a cause or matter affecting chieftaincy**". However, as decided in the case of **REPUBLIC VS. HIGH COURT, KOFORIDUA ; EX-PARTE BEDIAKO II [1998-99] SCGLR 91**, the mere fact that the issue of whether or not a person is a chief has arisen in the course of judicial proceedings does not necessarily qualify the matter as one affecting chieftaincy.

(24) Under Article 295(1) of the 1992 Constitution, the definition of a chief is referenced to that provided under Article 277, which defines a "**chief**" as "**a person who, hailing from the appropriate family and lineage has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage.**" This definition is reflected in various legislations including Section 57(1) of the extant statute, that is, the **Chieftaincy Act, 2008 (Act 759)**.

(25) From the above constitutional definition of a chief, it is important to appreciate that, the mere reference to a person as a **Chief; Ohene; King; Nana; Nii** or such like attributes does not qualify the person as a chief under our laws. By the same parity, the absence of usages of these attributes will not necessarily disqualify one from being a chief. In our customary and traditional communities, we are accustomed to such practices and references to demonstrate respect, express courtesies or command prestige by adopting certain traditional accolades normally revered for chiefs as statutorily defined.

(26) Under Section 58 of the Chieftaincy Act (2008) Act 759, the categories of chiefs is provided as follows:

- (a) **the Asantehene and Paramount Chiefs,**
- (b) **Divisional Chiefs,**
- (c) **Sub-divisional Chiefs**
- (d) **Adikrofo, and**
- (e) **Other chiefs recognised by the National House**

(27) Therefore, where a person falls within any of these categories, it can hardly be contested that, that person is not a chief. In the judgment on appeal before us, the Learned Justices of the Court of Appeal were of the view that, the Respondent's position lies within Section 58(e), having regard to the entry

of his name in the National Register of Chiefs. The correctness of otherwise of that holding will be revisited shortly.

(28) In our jurisprudence, the adjudication of a chieftaincy cause or matter has been statutorily preserved for judicial committees of the respective Traditional Councils, Regional Houses of Chiefs or the National House of Chiefs. The only court of competent jurisdiction to deal with any chieftaincy matter is the Supreme Court in the exercise of it's appellate jurisdiction on the decisions of the National House of Chiefs pursuant to Article 273(1) of the 1992 Constitution. Therefore all other courts are statute barred from determining any cause or matter affecting chieftaincy.

(29) It is however important to point out that, the High Court's supervisory jurisdiction over lower courts and other adjudicating bodies such as Chieftaincy Tribunals provided under Article 141 of the 1992 Constitution, is not ousted by any statute. Therefore as provided further under Section 43 of Act 759, "***the High Court has supervisory jurisdiction over an adjudicating chieftaincy body***" established under Act 759.

(30) In the instant appeal, should we conclude that, the dispute at the trial court was a cause or matter affecting chieftaincy, then, in accordance with Section 57 of the Courts Act, 1993 (Act 459), the trial high court will be bereft of jurisdiction to have adjudicated over same and thus, the judgment of the Court of Appeal cannot be faulted.

ANALYSIS

(31) Both counsel in their respective submissions to this court discussed the appeal under the principal issue of whether the trial court had jurisdiction to adjudicate the matter brought before it. Put differently, did the suit commenced by the Appellants before the High Court constitute a ***cause or matter***

affecting chieftaincy? We are equally of the view that, a determination of the issue of jurisdiction will dispose of grounds 'b' and 'c' and indeed the entire appeal. The said grounds are formulated as follows :

(b) The Learned Justices erred in their conclusions

that the suit was a cause or matter affecting chieftaincy.

(c) The Learned Justices again erred in holding

that the High Court, Tema as constituted lacked jurisdiction to try the matter.

(32) It is important to note for the avoidance of doubt that, the suit at the trial court sought a confirmation that the Respondent had been validly removed as the Chief Fisherman of Kpone and thus consequential orders of accounts and delivery of properties associated with his office were made to be deemed a chieftaincy cause or matter therefore, it is crucial to find out, whether the Respondent is a Chief as defined under Article 277 of the 1992 Constitution. This is because, once it is concluded that, the Respondent is a Chief, it logically follows that, the suit commenced in relation to his removal as a Chief Fisherman and recovery of properties pertaining to his status as a chief is a chieftaincy dispute.

(33) In respect of this issue, the Court of Appeal expressed itself as follows:
"The evidence adduced before the trial Judge in relation to this issue clearly demonstrates that the Appellant belongs to one of the three (3) appropriate families in Kpone (that is, the Nii Dune We) from which a Woleiatse can be selected and installed. There is also evidence on record that the Appellant was selected and installed as the Woleiaste of Kpone. Now, the record shows that the Kpone Traditional Council, which is the custodian of the customary law and usages of the people of Kpone Traditional Area, had accepted and inducted the Appellant as member of the Traditional Council. Furthermore, the National House of Chiefs, who are the custodian of customary law and usages in

the country accepted and listed the name of the Appellant on the list of Chiefs in the country.

It is our view that, if the trial(sic) had given adequate consideration to the evidence put before him by the Appellant vis-à-vis the provisions of Section 58 of Act 759, he would not have arrived at the decision that, the High Court had jurisdiction to determine the matter, as the status of the Appellant fell under Section 58(e) of Act 759.

It is further to be noted that, the trial judge rightly stated that, the entry of a person's name in the National Register of Chiefs is prima facie evidence.

The trial judge, instead of critically examining the evidence before him rather sought refuge under the decision in Ex- parte Abubakari No.3 (supra). It is observed that, when it comes to the custom and usages of a people, differences or variations exist from place to place. In some communities, a chief fisherman may not be a chief properly so called. In some communities also, the position of chief fisherman (Woleiast) may be a chief and such chiefs fall under category (e) of Section 58 of Act 759. Each Traditional Area has its own unique customs and usages. It is this fact that the trial judge failed to appreciate and thereby fell into the error of assuming jurisdiction in the matter. The appellant, having established a prima facie case, the onus was on the Respondents to have led evidence in rebuttal, but he failed to do."

- (34) Undoubtedly, what informed the position of the Court of Appeal is the fact that, the Respondent belongs to one of the three "***appropriate*** families in ***Kpone***", and secondly, the entry of the Respondent's name in the National Register of Chiefs. However, we notice that, the Court of Appeal itself conceded

that, the entry of the Respondent's name in the Register of Chiefs, as decided in **REPUBLIC VS. HIGH COURT, KUMASI; EX-PARTE ABUBAKARI (NO.3) [2000] SCGLR 45** is only *prima facie* evidence of the fact that, the registrar is a Chief. For purposes of argument, can it be assumed that, the fact that the Respondent belongs to a royal family per se, makes him a chief within the constitutional and statutory definitions of the status? Put differently, does one qualify as a chief under Article 277 of the 1992 Constitution if, he is a **Chief Fisherman** or **Chief Butcher** because the person belongs to the **Royal family** or "**appropriate family**"?

(35) From the record of appeal, the statement of defence filed by the Respondent at the trial court gives an indication of the status or the role of the Chief Fisherman which, is distinctly different from that of a chief within the meaning of the Chieftaincy Act, Act 759. The crucial averments in the statement of defence is reproduced *in extenso* as follows:-

1. "Save that the Defendant is the current Chief Fisherman of Kpone, paragraph 1 of the statement of claim is denied.

2. Paragraph 2 of the statement of claim is denied and the Defendant says that the Plaintiffs do not have the capacity to install or depose the Chief Fisherman of Kpone.

3. Save that the Defendant was sworn into office as Chief Fisherman since 23 years ago, paragraph 3 of the statement of claim is denied.

6. The Defendant in further answer says he constantly holds meetings with the fisher-folks in the area but the 1st to 8th Defendant refused to attend these meetings.

7. The Defendant further says that the 8th Plaintiff is

not even a fisherman.”

(36) In his evidence-in-chief at the trial the Respondent maintained this same line of defence. Significantly, the Respondent’s pleadings and evidence alone reveal that, he concedes that, his authority is limited only to the fisherfolks of the traditional area. Thus, for one to come under his authority, the person must be a fisherman or engaged in the Fishing Industry within the fishing community.

(37) Instructively, the Respondent was consistent in his admissions, that he is ***“Chief Fisherman”*** and not a chief as defined by the Chieftaincy Act 2008, (Act 759). Although as already indicated, those ascriptions can sometimes be misleading in recognising the actual status of a chief, from the peculiar facts of this case, the Respondent failed to discharge the burden that he is a chief within the meaning of the constitutional and statutory definition of a chief. In our view, the Respondent’s position is one of a trustee in which case he is in a fiducial relationship with the Appellants and other persons who have a community of interest with the Appellants and Respondent. The legal effect is that the Respondent can be held to account for his trusteeship and could be removed from office where appropriate.

(38) We are persuaded by the judgment of the Court of Appeal in **EKU ALIAS CONDUA III VRS ACQUAA (1968) GLR 412** which was extensively discussed by the trial court in it’s ruling on the motion to dismiss the suit. In that case, the dispute concerned the jurisdiction of the court to deal with disputes concerning the appointment and dismissal of the headman of the fishing community. In resolving the issue, the court took time to consider the status of a headman of a fishing community. In determining the issue, Azu Crabbe JA (*as he then was*) pronounced as follows:

“There can be no doubt, therefore, that the fishing community of Aboasi to which both parties in this appeal belong have no proprietary interest whatsoever in any piece of land in the village called Aboasi. They are

*strangers and licensees on that part of a land which they occupy within the Shama Stte. **It seems to me that a distinction must be drawn between the headman of the Fishing community of Aboasi village and the headman of Aboasi village who is the Odikro or Penin of the village. The former has no constitutional status, and is therefore not entitled to a seat on the state Council, whilst the latter is the aboriginal head of the entire people of the village...Surely, it is the latter type of headman who has a stool that can have constitutional right and obligations in the aboriginal state and could take his place at the council.***

- (39) In line with this reasoning, we are in agreement with the Court of Appeal in observing as follows:- ***“when it comes to the custom and usages of a people, differences or variations exists from place to place. In some communities, a chief fisherman may not be a chief properly so called. In some communities also, the position of chief fisherman (Woleiaste) may be a chief and such chiefs fall under category (e) of Section 58 of Act 759. Each Traditional Area has its own unique customs and usages”***. We note that the Learned Trial Judge had also observed that: ***“By this decision a clear distinction is drawn between the head of the aboriginal community who occupied a stool and owns the land and the head of the fishing community who only heads the fisher-folks and holds licence to fish in the waters.”*** However, the Court of Appeal failed to appreciate from the Respondent’s own pleadings and testimony at the trial that, his position was one of a trusteeship of a particular vocation and the scope of the relationship is only the limited to the fishing community. The position being one of a vocational trusteeship, same will not qualify him as a chief within the meanings of Article 277 of the 1992 Constitution and the Chieftaincy Act, Act 759.

(40) With much deference to the Court of Appeal, we disagree with the conclusion that, the Respondent was a chief within the meaning of Article 277 of the 1992 Constitution. Not being a chief, the dispute regarding his removal from office, and recovery of properties following the said removal cannot be justified as a **"cause or matter affecting chieftaincy"** within the true meaning of Section 76 of the Chieftaincy Act, 2008 (Act 759). We therefore hold, that the trial High Court did not lack jurisdiction to adjudicate over the matter.

**THE JUDGMENT IS AGAINST THE WEIGHT OF EVIDENCE ADDUCED
AT THE TRIAL**

(41) We find from the record that, the Respondent did not contest the appeal on the merits having limited his statement of case to the jurisdictional issue only. In his statement of case, Learned Counsel for the Respondent submitted as follows:

"[t]he Respondent, with great respect, does not find it necessary to respond to the arguments under the omnibus ground of appeal, numbered (a) in the notice of appeal. This is because in the highly probable event of their Lordships affirming the decision of the Court of Appeal on the jurisdictional issue, the arguments relating to that first ground of appeal, would have become wholly irrelevant in the scheme of things."

(42) We need place on record that, this approach to contesting appeals particularly in the highest court of the land is risky and undesirable and must not be encouraged. In the instant case, the jurisdictional ground upon which the Respondent's arguments is anchored has failed while, the substantive merits stand uncontested. The attitude of the Respondent to the appeal notwithstanding, an appeal is by way of re-hearing, and as this court has

decided in several cases, we have a duty to carefully examine the entire record of appeal and correct any erroneous evaluation of the evidence adduced at the trial as well as any misapplication of the relevant law to the facts and evidence. In **OPPONG VS. ANARFI (2011) 1 SCGLR 556** this Court, speaking through Akoto-Bamfo (Mrs.) JSC (*as she then was*) reiterated the approach of the court at page 565 that:

"There is a wealth of authorities on the burden allocated to an appellant who alleges in his notice of appeal that the decision is against the weight of evidence led. Even though it is ordinarily within the province of the trial court to evaluate the veracity or otherwise of a witness, it is incumbent upon an appellate court in such a case, to analyse the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before it arrives at its decision, so as to satisfy itself that, on the preponderance of the probabilities, the conclusions of the trial judge are reasonably or amply supported by the evidence."

(43) In the instant appeal, the Appellants' evidence surrounding the facts alleged against the Respondent stood unchallenged at the trial by the Respondent. As observed by the Learned Trial Judge in his judgment:

"On record, when the witness statement of the 1st Plaintiff, PW1, PW3 and PW4 were received in evidence, they were not cross-examined on the substantive of their testimonies. This was apparently because of the view that without the jurat the documents were without any probative value. It turns out that this is not the case. The defence in my mind took a risk in failing to cross-examine on the material allegation made in the testimonies."

To (sic) mind, the technical position should have been taken along with cross-examination on the substance so that if the

argument failed as it did in this case, the defence would be covered...”

(44) Upon our examination of the judgment of the trial court, which has not been challenged on its merit by the Respondent herein, and the merits of this case not having been considered by the Court of Appeal because of the issue of jurisdiction which it erroneously upheld, we do not find any reason to disturb the findings of facts contained in the judgment of the trial court. We endorse the findings and observations made by the trial court some of which are reproduced *in extenso* as follows :

"Under cross examination, the Defendant seems to have shifted from his earlier position. He admitted that he was inducted to office as chief fisherman by the Traditional Priests and priestesses. He had disputed the 1st Plaintiff's position as the Chief Priest. One Numo Tetteh Leno had been mentioned as the Chief Priest. The man was not produced to give evidence even though he is alive, lives in Kpone and must be aware of the dispute. On the evidence I make a finding that the Plaintiffs by custom and tradition are the people with authority to install and remove the chief fisherman.

I can see from the evidence that the Defendant had sought largely to rely on the Traditional Council to make the case that he had not been removed. The Traditional Council was however not shown to have the power to determine who the Chief Fisherman is. Indeed, by the ruling of this court, the position of Chief Fishman is not of chieftaincy status. The defendant has not appealed against the said ruling. That the Defendant sits in the Traditional Council does not make him a chief in the legal sense. He himself admits that he represents the interest of the fisher folks at the Traditional Council. It is fair to say therefore that it is not the traditional council that will make or unmake

the Chief Fisherman. For this reason, the testimonies of DW1 and DW2 pushing support of the Council as well as the letters emanating from the council hailing the Defendant as the substantive Chief Fisherman should carry little weight as far as the removal of the Defendant is concerned.”

(45) Undoubtedly, the 1st Appellant chronologically detailed the events that led to the removal of the Respondent. There were over hundred signatories and thumbprints affirming the approach. Although DW1 had denied participating in the process per Exhibit 'B', a disclaimer, we agree with the trial court, that his alleged lack of consent will not invalidate the removal of the Respondent. We therefore affirm the holding of the trial court that, the Respondent was validly and properly removed from the office of Chief fisherman of the Kpone Traditional Area.

(46) After our re-examination of the entire record and the application of the relevant law, we are of the considered view that, this appeal must succeed. We hold that, as demonstrated from the peculiar facts of this case, the Respondent, a Chief Fisherman of Kpone Traditional Area is not a chief within the meaning and effect of Article 277 of the 1992 Constitution and the Chieftaincy Act 2008 (Act 759). As aforesaid, the Respondent's position is one of trusteeship with the consequence that he can be subjected to account, for his stewardship to the Appellants and may be removed from office through due process. Not being a chief, the dispute surrounding his removal does not qualify as a cause or matter affecting chieftaincy. The trial High Court was therefore competent to assume jurisdiction and adjudicate over the matter. In the result the appeal succeeds. The judgment of the Court of Appeal is reversed. The judgment of the trial High Court is hereby restored.

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

**G. SACEY TORKORNOO (MRS.)
(CHIEF JUSTICE)**

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

**E. YONNY KULENDI
(JUSTICE OF THE SUPREME COURT)**

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

COUNSEL

**EMMANUEL ARTHUR ESQ. FOR THE PLAINTIFFS/RESPONDENTS/
APPELLANTS.**

**CHARLES HAYIBOR ESQ. FOR THE DEFENDANT/APPELLANT/ RESPONDENT
WITH HIM, RANDY BRAFO.**