

IN THE EASTERN CIRCUIT COURT HELD AT ODUMASE KROBO BEFORE HIS HONOUR FRANK Y. GBEDDY, ESQ. CIRCUIT COURT JUDGE.

SUIT NO. A11/29/2019

**EMMANUEL BAYITEY KWABLAH SUING IN HIS CAPACITY AS PER
SUBSTANTIVE**

ZUGBANY ADALOR OF APO-KODJO VILLAGE VIA, AKOSOMBO-OSU KWAO

VRS

1 DADEMATSE AYERTEY AKUFFO OF OSU-KWAO

2 ABADJI DANIEL OF OSU-KWAO

JUDGEMENT DELIVERED ON 5TH DECEMBER, 2022

The claims of plaintiff against the defendants are;

- a) A declaration that the plaintiff is still the Zugbanyadolor of Apo Kodjo Village Community
- b) An order of court directed for re-demarcation of Apo Kodjo and Abam landed property between the two Village with the assistance of the Manya Krobo Traditional Council and the Akosombo police.
- c) General Damages of GHC3,000.00 against the 1st and 2nd defendants for the taboo committed when the 1st and 2nd defendants erected Black and Red ban on the said landed property.
- d) Incidental expenses of GHC1,000.00

PLEADINGS OF PLAINTIFF

The plea of plaintiff is that he succeeded his father Jacob Narh Kwabla as the Zugbanyadolor of Apo-Kodjo community when he died 16 years ago, until the 2nd defendant on the 18th February 2018 put up the challenge against the plaintiff as the substantive Zugbanyadolor. The plaintiff's averment is that the 2nd defendant in quest to bring down the plaintiff from the customary office tired and erect Black and Red bands at the boundaries between Apo Kodjo Village and Abon community. Plaintiff further

stated that he summoned the 2nd defendant to the arbitration panel of Nene Sackitey due to 2nd defendant's confrontation on the 13th March 2018 but 2nd defendant refused to cooperate. The plaintiff alleged that the Zugbanyadolor of Abom and he planned to re-demarcate the Apo Kodjo land and that of Abom but the 2nd defendant made the exercise impossible. Plaintiff further alleged that it amount to customary taboo when the defendants tired black and red bands on the community land.

PLEADINGS OF 1ST DEFENDANT

The 1st defendant pleaded that the Apo Kodjo is a community but not a village on itself. He averred that Apo Kodjo is a Suburb of Osukwao. He further pleaded that the office of a zugbanyadolor is not acquired by inheritance and that the plaintiff was not appointed to that office. 1st defendant claimed that he was appointed as the Zugbanyadolor of the said community. He further alleged that in 2012, the 2nd defendant was sent by Nene Ayertey Doler of Snisi to invite the plaintiff for his destruction of the boundary features in Osukwao Village. The 1st defendant agreed that the red and black bands were tired on the litigated land --P.T.O to ward off prospective encroachers.

PROOF: The proof is on plaintiff to establish against the defendant on the balance of probabilities.

ISSUES:

1. Whether or not plaintiff or 1st defendant is the Zugbanyadolor of Apo Kodjo
2. Whether or not the office of Zugbanyadolor is acquire through successive inheritance.
3. Whether or not the Zugbanyadolor position is acquired through appointment by the community.

EVIDENCE OF PLAINTIFF

He is called Emmanuel Bayitey Kwabla. He stated that he is the substantive Zugbanyadolor of Apo Kodjo Village which shares boundary with three (3) communities as such the Apo-kodjo

Village is between two such communities. The three (3) communities are; Osukwao, Abom and Kyease. Plaintiff further stated that in each of the communities, the current zugbanyadolor as at the time of this case for the Osukwao and Abom were people who inherited their fathers as

Zugbanyadalors. He stressed it that in Osukwao, one Nyarko Teyetsu succeeded his late father Nyarko as the substantive zugbanyadolor. Plaintiff further stated that one Tetteh Dugbatey also succeeded his late father Kwesitse Dugbatey as Zugbanyadolor of Abon community. Plaintiff hence made the analysis that his father Jacob Narh Kwabla died in 2005 at the age of 105 and he plaintiff succeeded his as the Zugbanyadolor of Apo-kodjo. The plaintiff made an illustration that when the people of Kyease trespassed on Apo-kodjo landed property, he as the Zugbanyadolor of Apo-kodjo called for re-demarcation within the communities. Plaintiff also made it known that when his father was at age, he assisted him to function as Zugbanyadolor until he died when he plaintiff succeeded him without any challenge from where so ever. He further illustrated that in 2004, he as the Zugbanyadolor of Apo-kodjo ordered for a re-demarcation exercise with the people of Osukwao Village community and that the 1st defendant in 2015 reported to him as the Zugbanyadolor of Apo kodjo that the Zugbanyadolor of Abom Tetteh Dugbatey was constructing a track in the Apo kodjo land. Plaintiff stated that he immediately refrained the trespass.

The plaintiff also stated that as the Zugbanyadolor he arranged for the nomination, installation and the swearing in of the substantive Dadematse Anati of Apo-kodjo and further, the plaintiff went on that he was the one who led the delegation of boundaries of Apo-kodjo to them. He said that in the 04/08/2016 the 1st defendant and the substantive Dadematse of Apo-kodjo were served with the judgment of Konor which gave autonomy to the people of Apo-kodjo. The plaintiff stated that as the Zugbanyadolor he also carried out the following in

Apo-kodjo;

- a) The re-erection of the billboards that the 1st defendant destroyed on the 3rd August 2017 by the Elders of Konor. As the Zugbanyadolor, plaintiff stated that he was instrumental in his matter.
- b) That even though the 2nd defendant in 2018 was against the plaintiff as he was even summoned before the Arbitration Court of Konor, the plaintiff jointly

carried out the role as Zugbanyadolor of Apo-kodjo with the Abom Zugbanyadolor and the Dadematse of Apo-kodjo Anati

Kwabla in organizing the land lords of Apo-kodjo and Abom to re-demarcate the boundary between Apo-kodjo and Abom with the assistance of the police. The plaintiff further stated that he summoned the 1st and 2nd defendant before the Arbitration Court of Konor on the 9th October 2018 for reasons including their hanging of black and red band on the land of Apo-kodjo but when both failed to cooperate, plaintiff brought them before court. See Exhibit 'A' series letters from Many Krobo Traditional Counsel.

CROSS EXAMINATION BY 1ST DEFENDANT.

The plaintiff stated that he succeeded his father called Jacob Narh Kwabena of Narh Kwabena family whp died 15 years ago as the Zugbanyadolor of Apo-kodjo. The 1st defendant stated that after the death of his grandfather called Nene Abadji, the family the late father of plaintiff was made the community head. Plaintiff vehemently denies same and strongly stated that his late father was the Zugbanyadolor but not community leader.

Q: After the death of my grandfather your father was made the community Head.

A: No, he was a Syndicate (Zugbanyadolor) but not the head of the community.

The 1st defendant stated that it was the late father of plaintiff who appointed him as the Dadematse.

Q: Your father was the one who chaired my appointment as Dadematse.

A: Yes.

The 1st defendant also stated that he was the one who officiated the appointment of plaintiff by the community elders as the most elders in the Village. But the plaintiff stated that he succeeded his father as the Zugbanyadolor.

Q: You are the elder of the Village but not Zugbanyadolor.

A: I am the Zugbanyadolor.

The 1st defendant stated that after the demised of the father of plaintiff, the plaintiff re-demarcated the Apo-kodjo village land into two thereby calling for autonomy from my community. Hence the plaintiff installed his own chief who was gazetted.

Q: You cut down the Village Buna tree dividing the Village into two (2) claiming you are not under contract.

A: It is not true

Q: You also installed your own chief who was gazetted?

A: Yes.

The 1st defendant stated that for the sake of the family settlement of the unpass, the plaintiff was invited by the family but he refused to attend same and he sent the matter to the Konor arbitration. 1st defendant also stated that at Konor's arbitration, the questioned came up why the plaintiff rejected the invitation of the Konor's.

Q: At Konor's arbitration you were asked why you refused to honour the invitation of the family.

A: It is not true.

Q: You were asked to honour the family invitation A: It is not true.

EVIDENCE OF PW1

He is called Dadematse Anati Kopoanya Daniel the substantive Dadematse of Akosombo Apo-kodjo Village. He stated that it was the late father of plaintiff who was the zugbanyadolor of the Apo-kodjo Village and upon his death the plaintiff succeeded him as the Zugbanyadolor. The PW1 stated that the succession to the office of Zugbanyadolor is requirement of the Krobo tradition. He went on that the plaintiff as an elder has become the Zugbanyadolor since 2002. PW1 stated that the plaintiff as the Zugbanyadolor stood for the re-demarcation of the boundary between Apo-kodjo and Osukwao and the redemarcation of the land between Apo-kodjo and Tiase people in 2004. Finally, PW1 stated that the plaintiff as the Zugbanyadolor nominated and appointed him as the substantive Dadematse of Apo-kodjo.

CROSS EXAMINATION BY 1ST DEFENDANT.

The 1st defendant stated that he as the plaintiff are from Snisi Lartey and same people later settle at Osukwao. But PW1 stated that he belongs to Manya Kpongonor Konopien. PW1 also stated that the Apo-kodjo land belongs to individuals and it was the late father of plaintiff that plaintiff succeeded. The 1st defendant stated that it was the 2nd defendant Abadji Daniel that the people of Suisi appointed as the caretaker of the litigated Apo-kodjo land.

A: It is not true stated the PW1.

EVIDENCE OF PW2

He is called Theodora Tetteh Dugbatey. He stated that when his father Kwesitse Dugbatey died about 36 years ago, he the PW2 took possession of his land at Abom a Village near Apo-kodjo. PW2 stated that his late father's land shares a common boundary with the Apo-kodjo land. He also mentioned that he is the substantive Zugbanyadolor of the Abom community for more than 36 years now. He also stated that since the death of the father of the plaintiff same became the Zugbanyadolor of the Apo-kodjo land till now and same is recognized by the Manya Krobo Traditional Authorities. The PW2 went further on that the plaintiff carried out the appointment and nomination of the PW1 as the substantive Dadematse of the Apo-kodjo community. He also stated that he as the Zugbanyadolor of Abom community reported series of trespass issues on Abom community to 1st defendant but he failed to assist until he reported to plaintiff as the Zugbanyadolor. He further stated that plaintiff was the one who used his position/office as the Zugbanyadolor to spear head the re-demarcation of Apo-kodjo land in connection with the

CROSS EXAMINATION OF 1ST DEFENDANT.

The 1st defendant is of the view that the plaintiff is not the Zugbanyadolor of Apo-kodjo since plaintiff was not appointed as such by the people of Suisi. The 1st defendant also stated that it was the plaintiff's late father who installed him as the Dadematse of Apo-kodjo. The 1st defendant also stated that the plaintiff is under him since he the 1st defendant is the Dadematse.

Q: Do you know the plaintiff is under me since I am the Dadematse?

A: Yes.

The PW2 stated that even though the 1st defendant is the Dadematse of the Apo-kodjo community the substantive Dadematse who the PW1 is installed since the 1st defendant is not proactive as the Dadematse. The 1st defendant stated that per the custom, the one who first settles on the land has the office of the Zugbanyador. The 1st defendant whp already accepted that fact plaintiff's late father was the Zugbanyador now also stated that it was one Nene Abadji who was his great grandfather was the 1st to settle on the Apo-kodjo land. The 1st defendant also stated that the plaintiff is an Ewe hence a stranger. But 1st defendant went on that since plaintiff came to stay with 1st defendant grandfathers, plaintiff is now a family member with 1st defendant.

DEFENCE OF 1ST DEFENDANT.

He is called Dadematse Ayertey Akuffo of Osukwao. He stated that he is the substantive Dadematse of Osukwao. He stated that the plaintiff is not the Zugbanyador since he was not appointed by any one. He also stated that plaintiff's late father was a Maner of Osukwao but not the Zugbanyador. The 1st defendant also stated that this matter was sent to the arbitration of Nene Konor for settlement but it was advised that the parties should settle same at the family level before the plaintiff brought the case to court.

CROSS EXAMINATION BY PLAINTIFF.

There is a corroboration here that the 1st defendant is the Dadematse of Osukwao.

Q: You are the Dadematse of Osukwao community?

A: Yes.

It is also a corroboration that the Apo-kodjo community has a different Dadematse called Anati Opoku Ware (PW1).

Q: The Apo-kodjo community also has a different Dadematse called Anati Opokuware?

A: Yes.

But the 1st defendant quickly added that the community called Apo-kodjo is under Osukwao hence he is the Dadematse for the jurisdiction but out of the mechanism of plaintiff he has alleged to separate Apo-kodjo from Osukwao. The 1st defendant stated that even though a document from Konor's palace in 2016 suggested a separate jurisdiction, he refuted same since members of the two communities are living together. See Exhibit.

The plaintiff also stated that in 2018, the 1st and 2nd defendant went to tie black and red bands on the land claiming all to be for Osukwao. But when the litigation was heard at Konor's palace in August 2019 the Konors arbitration ordered for separation hence the raising of a new sign Board. The 1st defendant further stated that even though the arbitrators called for separation, the people of Osukwao and Apo-kodjo are living together. The 1st defendant is on the strong view that there is no separate communities but both Osukwao and Apokodjo are still under him as the Dadematse and there is other Dadematse.

Q: The litigated land is within the jurisdiction of the new Dadematse (PW1)?

A: It is not true.

The 1st defendant stated that the separation order is not practicable since the people of Osukwao and Apo-kodjo are the same. 1st defendant stated that he as the Dadematse of Osukwao has his house where Apo-kodjo community is.

EVIDENCE OF DW1

His name is Nene Ayertey Doler 11. He told court that as a traditional ruler and Djotsohe Matse of Manya Krobo

Traditional area, and as a fact that he is a traditional ruler at Nnaso-Larteh, the parties involved are his subjects. He further stated that this case of Zugbanyadolor of Osukwao and Apokodjo was arraigned before him but the plaintiff refused to honour the invitation. The DW1 stated that a Zugbanyadolor should be appointed by the entire family headed by the late Abadji's family and only the family of the plaintiff. He finally stated that it is wrong procedure for the plaintiff to succeed his father as a Zugbanyadolor.

CROSS EXAMINATION BY PLAINTIFF.

The PW1 stated that he was among the Konor's delegate but they went to Osukwao not Apo-kodjo. PW1 also stated that he had no copy of the 2016 judgment of the Konor. (Exhibit 'A')

The DW1 also stated that he was not one of the arbitrators of the Konor.

A: I was not a member of Konor's arbitration.

The DW1 stated the creation of Apo-kodjo is a very new thing. He further stated the original jurisdiction is Osukwao of which he knows as the Chief of Djortsohe.

Q: On the Exhibit 'A' we have Apo-kodjo?

A: Yes but in creating a new jurisdiction as Apo-kodjo, I should have been informed.

The DW1 also stated that he knows the 1st defendant as the Dadematse of the Osukwao community and he was surprised of another Dadematse of in person of Dadematse Anati Kopoanya.

He also went on that the Dadematse installed by culture required his present as the Chief of Djortsohe and it is not the duty of the Konor to installed same.

Q: Did you see the order in Exhibit 'A'?

A: I am supposed to be in charge of the installation of the alleged Dadematse Anati but not the Konor Nene Sackitey 11.

The DW1 also stated that if a boundary is to re-demarcated to creat a new jurisdiction or territory like Apo-kodjo, it is by cultural required that the demarcation be done in his presence.

EVIDENCE OF DW2

He is called Michael Tetteh Kodjiku. He mentioned that it is the decendant of the late Abadji who acquired the litigated land that are supposed to occupy the position of the Zugbanyadolor but not the plaintiff. He further stated that the plaintiff is not neither the Zugbanyadolor for Apo-kodjo or Osukwao.

CROSS EXAMINATION BY PLAINTIFF.

The DW2 answered that he has a land at Osukwao. The plaintiff stated that defendants tied red and black bands on the land to prevent the Apo-kodjo people of re-demarcation of their boundary. The DW2 stated that the whole community originally is called Osukwao and that the notion of re-demarcation of an Apo-kodjo land is never popular.

ANALYSIS OF FACTS/LAWS

The plaintiff and his witness are in corroboration that the plaintiff have succeeded his late father Jacob Narh Kwabena as the Zugbanyadolor originally of Osukwao but now as the Zugbanyadolor of Apo-kodjo. The plaintiff and his witness also corroborated that in the creation of Apo-kodjo out of the territory of Osukwao, another Dadematse was installed called Damatse Anati Kopoanya. The 1st defendant and his witness also collaborated that the plaintiff is not the Zugbanyadolor of the Apo-kodjo or Osukwao because the 1st settler on the land of Osukwao hence Apo-kodjo was their late grandfather Abadji. The defendant fought against the demarcation that was giving birth to the new territory of the Apo-kodjo. This is the reason why defendants put red and black bands on the land to prevent any demarcation. The DW1 Nene Ayertey Doler 11 stated that he is the ruler of Djotsohe Matse of Manya Krobo Traditional Area and that if there is any demarcation of the Osukwao land to create a new territory as Apo-kodjo, he is the first person to be told but not the office of the Konor. The DW1 stated that this case of re-demarcation, the tying of red and black bands and the destruction of board accusations was brought to him for settlement but the plaintiff turned down his invitation for defendant is known but the Osukwao as the Dadematse of Osukwao. To the defendant and their witness, there is none as Apo-kodjo. Hence the agitation is that the Dadematse Anati Kopoanya is not popular as Dadematse since there is no Apokodjo. The defendants also stated that the alleged Exhibit 'A' an order to create Apo-kodjo is out of cultural since the DW2 Nene Ayertey Doler 11 is not informed of the whole creation of the new settlement.

SGD
H/H FRANK GBEDDY
CIRCUIT COURT

