

IN THE CIRCUIT COURT HELD AT AGONA SWEDRU ON
THURSDAY THE 19TH DAY OF MAY 2023 BEFORE HIS. HON.
JONATHAN D. NUNOO ESQ. CIRCUIT JUDGE.

SUIT NO; A1/02/2021

EBUSUAPANYIN KOFI APPIAH KUBI PLAINTIFF

VS.

OPANYIN KOW ATTA DEFENDANT

JUDGMENT

Parties present.

Emmanuel Agyir with Freda O. Darko for the Plaintiff.

Patrick Asamoah for the Defendant

Plaintiff seeks the following reliefs against the defendants in his amended statement of claim:-

- i) A declaration that H/No 12/3 KOJO BEDU Winneba is the property of Essonko Kwame Anona Family of Winneba.
- ii) A declaration that the Plaintiff being the Head of the aforesaid Essonko Kwame Anona Family is the rightful person to manage the affairs of the said house.

- iii) An order declaring notices given by the Defendant to tenants in the said house to vacate as null and void and without legal authority.
- iv) General damages for trespass
- v) Perpetual injunction to restrain the Defendant, his assigns, privies, heirs any person (s) claiming title through him or on trust for the Defendant from laying adverse claim to and or having anything to do with the said house and or from interfering with Plaintiff's control over the said house
- vi) Cost including legal cost.

Plaintiff testified and called two witnesses and tendered Exhibits A, A1, A2, B and C in evidence to support his case.

Defendant called one witness and tendered Exhibits 1 and 1A in support of his case.

The gist of plaintiff's case is simply that he is the head of family of Essonko Kwame Anona Family of Winneba and that H/No 12/D3 KOJO BEDU Winneba is the property of the said family and being the head of family, he is the one to manage and control the affairs of the said property

Whereas the nucleus of Defendant's case is that the Plaintiff lacks capacity to bring this action because he has been removed as the head of the family and he has been put in place of the Plaintiff as head of family as such he is the rightful person to steer the affairs of the family including the property in issue.

The issues set out for determination after the proceedings are as follows:-

1. Whether or not the plaintiff is substantive head of family of the Esounko Kwame Anona family of Winneba
2. Whether or not the Plaintiff has capacity to institute the instant action
3. Whether or not the Defendant and some members of Plaintiff's family have broken away to form a new family.
4. Whether the Defendant has legal authority to collect rent from the tenants in the disputed house.
5. Whether or not the Plaintiff is the rightful person to manage the affairs of the disputed house.
6. Whether or not the Plaintiff is entitled to his claim
7. Any other issues (s) that may arise out of the pleadings and evidence at the trial.

The issue added is Whether or not the defendant is the substantive head of family of Esounko Kwame Anano family of Winneba?

The law is that to enable a court to decide a case one way or the other, each party to the suit must adduce evidence on the issues to the prescribed standard as provided by statute. This position is buttressed by various provisions of the evidence Act 1975 (NRCD 323).

Section 14 of the 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 burden of providing evidence as well as burden of persuasion is on both parties and the standard required to discharge the burden of persuasion is “preponderance of probabilities” see Section 12 (1) of the Act.

Section 12 (2) of the same Act defines “preponderance of probabilities” to mean degree of certainty of belief in 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 11 (4) of evidence Act (NRCD323) provides that a burden of providing evidence is discharge when a party provides sufficient evidence, so that on all the evidence a reasonable mind could conclude that the existence of a fact is more probable than its non-existence.

The position of the Defendant had been more appropriately described by Brobbey JSC in the case of IN RE ASHALLEY BOTWE LANDS: ADJETEY AGBOSU & ORS. VRS. KOTEY & ORS. [2003 – 2004] SCGLR 420. In his supporting opinion Brobbey JSC stated of a Defendant at a trial in Holding 5 as follows:

“The effect of Sections 11(1) and 14 and similar Sections in the Evidence Decree 1975 may be described as follows:

A litigant who is a Defendant in a civil case does not need to prove anything. The Plaintiff who took the Defendant to court has to prove what he claims he is entitled to from the Defendant. At the same time if the court has to make a determination of a fact or of an issue, and that determination depends on evaluation of facts and evidence, the Defendant must realize that the determination cannot be made on

nothing. If the Defendant desires the determination to be made in his favour then he has the duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour. The logical sequel to this is that if he leads no such facts or evidence, the court will be left with no choice but to evaluate the entire case on the basis of the evidence before the court, which may turn out to be only the evidence of the Plaintiff. If the court chooses to believe the only evidence on record, the Plaintiff may win and the Defendant may lose...”

The Plaintiff has stated that he is the head of family and no one has removed him and he performs his duty as the head of the Esounko Kwame Anano family and he has presided over the funeral arrangements of deceased family members.

The Defendant has asserted in his evidence in chief that the Plaintiff had been the head of their family until 25th July 2017 when charges to remove him were made against him by all the six gates making up the Esounko Kwame Anano family of Winneba and that the plaintiff was unable to provide cogent answers to the charge particularly on Plaintiff stewardship as head of family and was on 25th July 2017 removed as the head of family in accordance with customary practice and usage pertaining to Effutu people of Winneba.

The Defendant added that when the Plaintiff was removed, the Six gates making the Esounko Kwame Anano family of Winneba with the consent and concurrence of the principal members of the said family appointed him as the substantive head of Esounko Kwame Anano family of winneba in

consonance with customary practices of Effutu of winneba and contingent upon that appointment as head of family and in that capacity had organised funeral rites of numerous members of the said family without any encumbrances whatsoever from whomsoever including the plaintiff and mentioned some family members who have passed and he has presided over their funerals.

Determination of the issues will be done as following manner.

Issue 1 and 2 that is whether or not the plaintiff is substantive head of the Esounko Kwame Anona family of Winneba and Whether or not the Plaintiff has capacity to institute the instant action will be taken together.

Issue one can also be formulated as whether or not the Plaintiff has been removed as head of Esounko Kwame Anano family of Winneba. I must hasten to add that this is the main issue that this court is confronted with in this case.

If the above question is answered in the affirmative then the all other issues becomes otiose, this is because if the Plaintiff has been removed he will not have the authority sue and to steer the affairs of the family which includes the family properties such as the house in dispute.

In *Kwan v Nyieni* [1959] GLR 67 -74, it was stated in the head notes as follow-:

(1) as a general rule the head of a family, as representative of the family, is the proper person to institute a suit for recovery of family land;

(2) to this general rule there are exceptions in certain special circumstances, such as:

...

(i) where family property is in danger of being lost to the family, and it is shown that the head, either out of personal interest or otherwise, will not make a move to save or preserve it; or

(ii) where, owing to a division in the family, the head and some of the principal members will not take any steps; or

(iii) where the head and the principal members are deliberately disposing of the family property in their personal interest, to the detriment of the family as a whole.

In any such special circumstances the Courts will entertain an action by any member of the family, either upon proof that he has been authorised by other members of the family to sue, or upon proof of necessity, provided that the Court is satisfied that the action is instituted in order to preserve the family character of the property;

Order 4 r 9 of Civil Procedure Rules 2004 (CI 47) provides as follow:-

(1) The occupant of a stool or skin or, where the stool or skin is vacant, the regent or caretaker of that stool or skin may sue and be sued on behalf of or as representing the stool or skin

(2) The head of a family in accordance with customary law may sue and be sued on behalf of or as representing the family.

(3) If for any good reason the head of a family is unable to act or if the head of a family refuses or fails to take action to protect the interest of

the family any member of the family may subject to this rule sue on behalf of the family.

(4) Where any member of the family sues under sub rule (3) a copy of the writ shall be served on the head of family.

(5) A head of family served under sub rule (4) may within three days of service of the writ apply to the Court to object to the writ or to be substituted as plaintiff or be joined as plaintiff.

(6) If the head of a family is sued as representing the family but it appears that he or she is not properly protecting the interests of the family, any member of the family may apply to the Court to be joined as a defendant in addition to or in substitution for the said head.

(7) An application under sub rule (5) or (6) shall be made on notice to the parties in the action and shall be supported by an affidavit verifying the identity of the applicant and the grounds on which the applicant relies.

In *Agyeman v Anane* [2013 -2015] 1GLR at 148 the Supreme Court reemphasized the above stated position thus:

“In the same vein, we find the appellate court’s findings and conclusions on the issue of whether the respondent had the capacity to sue, supportive on both the facts and the law. As rightly found by the court, the respondent’s case fell within the exceptions created under *Kwan v Nyieni & Anor* [1959] 1GLR 67 CA which principles have been dutifully followed in a number of decisions of this court including the more recent case of *In re Ashalley Botwe land ; Adjetey Agbosu v Kotei* [2003-2004] SCGLR 420.

The respondent was faced with the case where the head of family who ought to institute the action to preserve the subject family properties was himself a beneficiary under the will of Hwirie with regard to the same properties. Definitely, at law appellant has the legal right and capacity to sue in protection of those family properties.”

See also *Lamprey v Neequaye* [1968] GLR 357

The decision to remove the head of family must be taken at a family meeting. All the principal members must be invited to attend the meeting. See *Quagraine v Edu* [1966] GLR 406 *Abaka v Ambradu* [1963] 1GLR456 SC

The head could be removed by a decision of a majority of the principal members. The head of the family must be served with the notice to attend. The purpose of the meeting however need not be stated in the notice, and where the head of family fails to attend without good reason, the meeting may proceed and he could be removed in absentia. *Abaka v Ambradu* [1963] 1GLR456 SC.

The law on removal of head of family is that generally a court will not interfere with the merits of decision of the family’s meetings unless it can be proven conclusively that the tenets of natural justice were not manifestly complied with and such non-compliance had occasioned a substantial miscarriage of justice. The burden of proving specific grounds of invalidity of either the appointment or removal of the head of family lies with the particular member seeking to avoid the decision of the family;

In *Abaka v Ambradu* supra the Court stated as follows:-

“Dealing first with learned counsel's submission that the meeting held on the 16th July, 1961, was properly constituted and therefore the learned trial judge's finding that four elders of the family were absent at that meeting because they were not notified, I would refer to the principle of customary law enunciated by Sarbah in his Fanti National Constitution (1906 ed.), p. 42:

"The right of removing a ruler belongs to the people immediately connected with the stool; in the case of the head of a family the right is in the senior members, and the act of the majority is binding on the rest."

Applying this principle to the instant case, the right of removing the defendant from office was vested in the principal heads of the family and the act of the majority would be binding on the rest. The crucial matter for consideration therefore is whether the meeting of the 16th July, 1961, was attended by all or by a majority of the principal heads.

There is no dispute that the property in issue has been that of the property of the Esounko Kwame Anano family of Wineba and all the parties are claiming to be from the same family which is made up of six gates coming together to form the Esounko Kwame Anano family of Winneba though the plaintiff alleges that the Defendant and some members of the family has broken away to form their own family which the defendant has denied and also alleged that it was the plaintiff who has defected to form his own family

The evidence in chief of Plaintiff is that he has not been removed by anyone and he is still the substantive head of the Esounko Kwame Anano family

and that two years ago the Defendant who was the secretary of the family and one Kofi Aquah instigated some members of the family and they broke away with them to form their own family which they named "Jully" a name of a branch of his family and appointed the Defendant as their head of family.

Plaintiff asserted that after breaking from the family Defendant's family have been performing the funerals of their deceased members without involving him and other members of his family and after they had left his family his family has also been performing funerals of its deceased members without their involvement.

Plaintiff stated that after their separation from his family he has been presiding over their family meetings and funerals of deceased members as the head of family without a challenge from any person(s) including the defendant.

Plaintiff stated that he has not been removed as head of family during any ceremony and no one has taken from him the family staff which signify the authority of the family and his authority as well and the staff is still in his possession and he is still recognized by the Efutu Traditional Council as the head of Esounko Kwame Anona family even after the Defendant's break away.

This was the excerpts of evidence elicited from the Plaintiff when he was cross examined by counsel for defendant.

Q: You are an uncle to the defendant, correct.

A: Not real uncle but family uncle.

Q: Because the defendant is your nephew you also belong to July Gate of Esounkor Kwame Anona Family of Winneba, correct?

A: We were all members of the said family that was before.

Q: And you said July Gate has broken away to form another family, correct?

A: That is correct, they said they cannot be members of our family any longer so they broke away.

Q: So given that you belong to the July Gate; can it be also said that you have also broken away from Esounko Kwame Anona family of Winneba.

A: We have not broken away, the defendant said they cannot belong to my family again so they have broken away and formed another family and they have created their own staff and the stool and other linguist are with me they claim the stool is an idol they said they cannot be part of a family of idol worshipers.

Q: The defendant has not broken away from Esounko Kwame Anano family as he has described himself as the family head and legal representative of Esounko Kwame Anano family of Winneba, I suggest that to you.

A: That is not true the reason is that we went to an arbitration over a matter at "Church Counsel" as committee formed at Winneba that arbitrates on matters brought to them. At the said arbitration the defendant were told that they have rather broken away since the old

linguist are all with me as the head of family so base on that they went and ordered a new staff as their symbol.

Q: At the said arbitration from the said committee meeting you were removed as the head of family and you had your name cancelled, I suggest that to you.

A: That is not true. they are not the ones who made me the head of family so they cannot removed me, when the misunderstanding arose, they were told that they have broken away because of that they have also been registered, and I have also registered I have documents to that effect.

Q. Can you show the certificate of registration to the Court?

A. My lawyer has it.

Q. I suggest to you that you do not have any certificate and no one has registered you as any head of family.

A. The document that shows that I am head of family is with my lawyer as I speak.

Q. Having your name cancelled at the said arbitration Committee meetings the Esounko Kwame Anano family of Winneba further preferred charges against you and removed you accordingly, I suggest that to you.

A. That is not true, the one who is our elder is there so I cannot be removed.

Q. The said removal from office as head of family was done with the consent and concurrence of the principal members of the family.

A. That is not true the overall head of the family was not part of the family members which purports to have removed me as the head of family I am referring to the principal members you are talking about, the overall head of our family was not part of them.

Q. You came to this Court as a head of Esonkor Kwame Anona family of Winneba and that under normal circumstances there could be no one as the overall head of family, I suggest that to you.

A. The person I am referring to is called Kweku Abeka and if I am not there he deputizes for me.

Q. I am suggesting to you that the said Opanyin Kweku Abeka is one of the members who has broken away from the family with you.

A. That is not true, the elders of the defendants side are those who said they cannot be part of my family and those with me including Kweku Abeka.

Q. Since your removal and as a result of your brake away you have been adamant to release some of the property belonging to the Esoukor Kwame Anona family, I suggest that to you.

A. That is not true, they said those items are idols and that they cannot worship the idols so the items are with me.

Q. Again you have decline to render accounts to the family since you were removed as head of family, I suggest that to you.

A. That is not true we have accountants who take care of money.

Q. Have you rendered accounts to the family when you were removed.

A. I do not have any accounts to render because I am not in charge of their money.

Q. You are not in charge of their money because you are no longer the head of family.

A. When the issues arose and they broke away, they took me to Court claiming that I have embezzled their funds and after the case I was found not to be liable and they were ordered to pay me GH¢1,000.00 which they have not paid.

Q. The Court case you have just referred to was instituted against you by one B. K. Acquah who is principal member of the Esounkor Kwame Anona family of Winneba, correct?

A. The court said I was not liable.

Q. Is it true or not that B. K. Acquah took you to Court.

A. Yes he did.

Q. The case was dismissed on grounds of capacity.

A. Why did he take the action against me if he has no capacity.

Q. And the Court said the right person to institute the action on behalf of the Esounkor Kwame Anona family of Winneba is the defendant herein for he is the head of family.

A. He said he is the head of family, what shows he is the head of family.

Q. You will agree with me that House No. RP 83/14 Mary Street Winneba is not your self acquired property.

A. I disagree with you because the building is part of the items left to me by my elders to take care of.

...

Q. The Esounkor Kwame Anona Family of Winneba appoints head of family from three (3) gates?

A. I do not know.

Q. And you do not know this because you are no more the head of family, if you are the head of family, you would have known this?

A. If you are saying I should know, what you are saying that is not true because they are not members of my family, their members are distinct and different from my family.

Q. You told this Court at the last time that the defendant is your family member that Esounkor Kwame Anona family and by the virtue of this defendant being a member of your family, that is why he refers to you as his uncle?

A. That is not true, I explained to the Court that previously we belong to the same family but now we are not of the same family we have parted ways.

Q. Do you know one Obaapayin Ama Donkor who is a member of Esounkor Kwame Anona family of Winneba?

A. I do not know her in my family.

Q. What about Justice Kwabena Bondzie alias Gbeigbee, do you know him?

A. The name you have just mentioned is a news to me I do not know him.

Q. The names I have mentioned are all members of the Esunkor Kwame Anona family of Winneba whose head of family is defendant, I suggest that to you?

A. I do not know, we have two families so I do not know about that.

Q. And Ama Ayensua also belongs to the Esunkor Kwame Anona family of Winneba I suggest that to you?

A. The family that I belong to my mother is a member of that family including all my nephews.

Q. If you belong to your mother's family then you belong also to the Esunkor Kwame Anona family of Winneba whose head is the defendant?

A. That is not true.

Q. Do you know that Justice Kwabena Bondzie alias Gbeigbee is now deceased?

A. I do not know this Justice Kwabena Bondzie alias Gbeigbee.

Q. The said Justice Kwabena Bondzie's funeral was organized under the auspices of Esounkor Kwame Anona family of Winneba with its head as the defendant?

A. I do not know about that.

Q. You do not know because you broke away having been removed as the head of family?

A. They are not my family members we do not belong to the same family so how can they tell whether I been removed or not.

Q. The defendant has among his ancestors Opanyin Kwaku Ahor, Opanyin Kobina Botsi, Opanyin Gyankuma, Opanyin Kobena Amissah and all these elders together put up the House No. RP 83/14 Mary Street Winneba that is the disputed property, I suggest that to you?

A. That is not true, the elders you have mentioned are rather my elders not the defendant.

Q. These ancestors I have mentioned are from the Juley Gate whose head is the defendant?

A. That is not true, every family and its Gate.

Q. The position of family head is rotational between the gates in the Esounkor Kwame Anona family?

A. I have mentioned that every family has its own gate.

Q. Do you agree that the head of family rotates among the 3 gates?

A. That is correct, I agree with you.

Q. Before you were removed as a family head, which of the gates do you hail from?

A. Abowie Gate of the Esoukor Kwame Anona family.

Q. If you are from Abowie Gate, you cannot lay claim to the disputed house No. RP 83/14 Mary street which belongs to the Juley Gate which the defendant is head?

A. That is not true.

Q. I am suggesting to you that there is no Gate called Abowie Gate in the Osonkor Kwame Anona family of Winneba?

A. That is not true I am from Abowie Gate.

Q. If there is a Gate as such then you are not being truthful to Court when you say the defendant belongs to a different family?

A. The defendant is not a member of my family, how do I say he is a member of my family.

Q. In respect of this matter, you have filed a witness statement of one Kweku Abeka, correct?

A. Yes.

Q. Have a look at paragraph 5 of the witness statement of Kweku Abeka?

Q. Can you read what is there?

A. I cannot read.

Q. The said paragraph 5 Kweku Abeka said that "I am from Awo Neenyi fie and the defendant and plaintiff are from Juley fie (Fie means Gate) so I suggest to you that you are not being truthful to the Court when you say that the defendant is not from your family?

A. I have told the Court that previously we were from this same family which we are no more together.

Q. So you got separated before the witness statement of Kweku Abeka was filed?

A. That is so.

Q: And you again separated before you also filed your own witness statement?

A: Correct.

Q: Have a look again at paragraph 6 of the witness statement of Kwaku Abeka?

..

Q: How many years now since you broke away from the defendants' family.

A: About (3) three years now.

Q: Have a look at paragraph 7 of your own witness statement.

...You have said at paragraph 7 that about 2 years ago the defendant was the secretary of the family so you are not being truthful to the Court if you say he broke away about three (3) years ago.

A: What I am saying is true because the issue started about three (3) years that is why I said the breakaway will be about three (3) years ago.

Q: When you broke away, there has been happenings, among the happenings is the appointment of the defendant as the head of Esounko Kwame Anano family of Winneba.

A: I do not belong to the same family so if the defendant has been appointed as head of family I do not know.

Q: I am suggesting to you that the defendant is the legal representative and the head of the Esounko Kwame Anano family of Winneba presently.

A: The defendant is not a member of my family so I would not know if he is appointed head of family.

Q: The said disputed house as assumed a family character that is what Kwaku Abaka has said and since the disputed house has assumed a family character, it is the defendant who is entitled to manage the disputed house.

A: That is not true, the building that Kwaku Abeka is referring, if that is the disputed house if anyone is seeking room there, it is Kwaku

Abeka and I who puts our head together to give the room in the disputed house to the tenant.

Q: Kwaku Abeka has mentioned the (6) six gates which makes up the Esounko Kwame Anano family excluding your own Abowie gate that you belong to, I suggest that you.

A: I have told the Court I am from Abowie, but Awo Nenyi fie represents us and that is where all my elders hail from.

Q: So you will agree with me that the Abowie gate is not a gate which forms a part of the Esounko Kwame Anona family.

A: It is a gate which is embedded in the Awo Nanyi gate some of the members of Awo Nenyi gate are also living in the property called Abowie.

Q: Because you have rightly told the Court that you do not belong to the defendant's Esounko Kwame Anano family and the defendant being the head of family, then you cannot lay claim to any property including the disputed house, I suggest that to you.

A: I can claim the property because all the deceased elders you have mentioned are my predecessors.

Q: Because you do not belong to the Esounko Kwame Anano family of Winneba with the defendant as its head, you lack capacity to bring this action against the defendant.

A: I am clothed with capacity because if someone want to rent a room in the disputed house, my uncle invites me and we put our heads together and rent the room, we have been receiving rents in house without the defendant.

Q: You had the power to receive rent when you were the head of family but since you were removed and you broke away, the defendant has assume the role of receiving rents and maintaining the house.

A; That is not true because the disputed house belongs to my predecessors so I have power to rent the house out together with my uncle Kwaku Abeka.

Q: Is this Kwaku Abaka your witness?

A: Yes, he had travel to Apam and I heard that the defendant has issued letters to the tenants that was the reason why I brought him to Court.

Q: How did you become the nephew of Kwaku Abeka?

A: He is my mother's brother.

Q: Would you be surprised to hear that Kwaku Abaka said he is from Awo Nenyi gate which is separate and distinct from your Abowie gate.

A: The Abowie is embedded in the Awo Nenyi gate, Abowie is from Awo Nenyi, it was from Awo Nenyi gate that Abowie house was put up so Abowie is part of AwoNenyi

Pw1 said he is over eighty years old from Awo Neenyi gate or fie and Plaintiff and himself are members of the Essounko Kwame Anano family of Winneba and knows the defendant who use to be a member of the same family but has left to form his own family. He said the Plaintiff is the head of family.

He said he has not been invited to a family meeting where customary rites have been performed to remove the plaintiff as the head of family.

Pw1 also stated that plaintiff still presides over their family meetings and also funeral meetings except those who have broken away.

According to Pw1 the Plaintiff is still having custody of the symbol of authority which is the family Staff and stool This was further evidence by Pw1 under cross examination

Q: You would agree with me that the Esuonko Kwame Anano family of Winneba is made up of six (6) gates.

A: That is so I agree with you.

Q: And that the said gates are Awo Nanyi fie, fantifanti fie, Epow Ano fie, Jully fie, Kow Kwaa fie or Aba Akowa fie, correct?

A: That is correct.

Q: You are from Awo Naayi fie correct?

A: Correct.

Q: The plaintiff and the defendant are from Jully gate, correct.

A: Correct.

Q: So will you be surprised to hear in Court that the plaintiff said he is not from the July gate with the defendant?

A: I will be surprised when they say they do not come from July gate, the reason why I will say they are from the July gate is that the plaintiff has been the head of the whole family for over twenty years, we attended a funeral at the July gate (fie), after the funeral rites, there was some issues and the plaintiff wanted to resolve the issue, as soon as the plaintiff said he want to resolve the matter the members of the July fie said he should keep quiet because he is not a member of the July gate so he should leave. They told the plaintiff that he cannot interfere with July fie matters. They further told him that whatever he has that he uses as symbol for being the head of Esounko Kwame Anano family is fetish and idol worship and that in the night, the gods make noise so he should come and remove those things away. The plaintiff told them then if they said he is not from July fie then he wants them to understand that he was not born at July fie but he was born at Abowie, the plaintiff then collected his things and said he is taking them to where he was born at Abowie.

Q: You would agree with me that the properties of Esounko Kwame Anano family of Winneba belongs to the six (6) gates that makes one of family.

A: That is not correct there is a specific gate for each property.

Q: When Opanyin Kwaku Anor, Opanyin Gyankuma, Amissah Kobina Botsie jointly put up a house and upon their death the building

assumed a family character though according to you those mentioned above were from Awo Nenyi fie, this property will be for the entire family namely Esounko Kwame Anano family though these individuals are from Awo Nenyi fie (gate).

A: That is correct.

Q: The house put up by these elders that you have mentioned which you have agreed to have assumed a family character is H/No. 83/14 Mary Street Winneba, correct?

A: That is correct.

Q: And that is the house in dispute correct?

A: That is so.

Q: In your answer to my question, did you say that at a meeting at July fie, the members of the July fie described the plaintiff as a slave and that he is not from the family?

A: Yes, they did.

Q: Would you be surprised to know that the plaintiff himself never said that he was described as a slave at meeting at the July gate and that he is not from the family.

A: I would be surprised because they said he was a slave and that the stool he occupies and all properties that he takes care of is fetish so he should take them away.

Q: Who are Ama Fenyiwa and Ama Ayesua, do you know them?

A: I do not know Ama Afenyiwa but Ama Ayesua is my sister.

Q: At your claim showing at paragraph 4 of your witness statement, Abowie is not a gate (fie) of Esounko Kwame Anano family of Winneba, plaintiff cannot be a family head of that family, I suggest that to you.

A: Abowie is part of Osunko Anano family and the plaintiff has the right to be the head of family which he has been for more than 20 years.

Q: Will you be surprised that the plaintiff has intimated to this Court that he does not belong to defendant Esounko Kwame Anona family of Winneba.

A: I will not be surprised at all.

Q: And that because the property in dispute, H/No. RP 83/14 is a family property of Esounko Kwame Anano family of Winnbea of which the defendant is the family head, the plaintiff cannot lay claim to it.

A: That is why we are in Court so that the Court will determine who owns the property.

Q: Then I am suggesting to you that the defendant is the legal representative and head of Esounko Kwame Anano family of Winneba, he (defendant) has the power to control the property.

A: The plaintiff is the head of the Osouko Kwame Anano family of Winneba for over 20 years and he has not been removed by anyone.

So he owns the disputed house the defendant does not come near the properties.

Q: Of the six (6) gates which comprises the Osounko Kwame Anano family of Winneba which you mentioned in paragraph 4 of your witness statement, you never mentioned Abowie gate which plaintiff claims he belongs, did you?

A: I did not mention Abowie in the said paragraph, the reason why Abowie came into when our predecessors built the house at Abowie , the predecessors sent some of the family members from Awo Nenyi to go and live in the house they built at Abowie so they are all one people.

Q: You also agree with me that the plaintiff is not from Awo Nenyi gate of Esounko Kwame Anano family.

A: I disagree with you.

Q: So is it your case that the plaintiff is from Awoneeyi gate (fie).

A: Yes, the plaintiff is from Awonenyi gate (fie).

Q; Take a look at paragraph 5 of your own witness statement.

Q: So you are not being truthful to the Court if you now say plaintiff is from Awoneeyi fie because in the said paragraph read to you, you said the plaintiff and the defendant are both from Jully fie and you from Awoneeyi fie.

A: I am telling the Court the truth.

Q: I am suggesting to you again that there is no gate called Abowie gate that belong to the Esounko Kwame Anano family.

A: I want the Court to know that Abowie is part of the Esounko Kwame Anano family and the plaintiff is the head of the family.

Q: I am suggesting to you that the defendant is the current head of Esounko Kwame Anano family of Winneba and legal representative.

A: The plaintiff is the head of the Esounko Kwame Anano family of Winneba and no one has removed him and it has even been written on the staff of the family.

Q: I am suggesting to you that since the plaintiff has been removed he has not presided over any of the family meetings.

A: We have not had a meeting where there is a need for the head of family to speak with the family members.

Q: Again charges were preferred against the plaintiff by the entire family and as a result he was removed I suggest that to you.

A: That is not true, no charge has been preferred against the plaintiff.

Q: Where were you on 25th July 2017 at about 9:00 a.m.?

A: I was at Winneba.

Q: I am suggesting to you that if you were then in the family house, you would have noticed that charges were preferred against the plaintiff

by all the (6) six gates that constitute the Esounko Kwame Anano family of Winneba.

A: That is not true the plaintiff is the head of family as we speak he has not been removed and he has been the head of the family for the past 20 years.

Q: After the charges brought against the plaintiff he was then removed as the head of family I suggest that to you.

A: That is not true.

Q: The six (6) gates appointed the defendant as the head of Esounko Kwame Anano family?

A: That is not true, the plaintiff is the head of family and in charge of the property of the Esounko Kwame Anano family.

Q: The defendant has presided over the burial and funeral rites of the members of the family notably, Kwesi Bodua, Kakra Kokodo, Neeyi Hanson, Kwame Amoah, Kofi Nkran, Efua Atta, Justice Kwame Bondzie @ Gbegbee among others when he became the head of family, I suggest that to you.

A: Those you have mentioned has gone away from the Esonnko Kwame Anano family so they perform their funeral and we perform ours so I do not know anything about the funerals you have mentioned.

Q: The defendant presided over these funerals I have mentioned as the head of the Esounko Kwame Anano family of Winneba.

A: They have by then separated from the Esounko Kwame Anano family and they are no more part of the Esounko Kwame Anano family of Winneba so they perform their functions differently and we also perform our functions without them.

Q: I am suggesting to you that if anyone has broken away from the Esounko Kwame Anano family of Winneba, it is the plaintiff who felt uncomfortable to be with the family after he was deposed.

A: I am saying that the head of the Esounko Kwame Anano family is the plaintiff and he has not been removed by any one as we speak.

Q: Would you be surprised that the plaintiff himself has told the Court that he does not belong to the defendant Esounko Kwame Anano family of Winneba?

A: I will not be surprised, the plaintiff is the head of family of Esounko Kwame Anano family of Winneba and he is the one in charge of all the family properties, I do not know the defendant as the head of family.

Q: I am suggesting to you that when the plaintiff was removed as the head of family of Esounko Kwame Anano family, the customary rites in line with Efutu customs was performed accordingly.

A: That is not true.

Pw2 stated that she comes from the Juley section of the Essounko Kwame Anano family and leader of the members of the family who are mandated to prepare a corpse -*of family members for burial and that

defendant and his group has broken away from the family.

This was also further evidence that was elicited from Pw2

Q: Where exactly were you on 25th July 2017?

A: I was at Winneba.

Q: I am suggesting to you that if you were at the family home of Esunko Anano's family prior to the fact that customary rites were performed to remove the plaintiff as head of family?

A: That is not true.

Q: Would you be surprised to know that the plaintiff himself said he belong to the Abowie gate which is different and distinct from the Esunko Kwame Anano family which the defendant is the head.

A: That is not true, the Abowie family was found from Awo Neeyi family so Abowie gate and Awo Neenyi gate are the same.

Q: How many gates constitute the Osoko Kwame Anano family?

A: 6 gates.

Q: I am suggesting to you that Abowie gate is not part of those six gates that form the Esunko Kwame Anano family.

A: Abowie family is from Awo Neenyi gate so they form part of the six gates.

Q: You agree with me that H/No. 120/3 located at Winneba is not the self-acquired property of the plaintiff that is the disputed property.

A: The predecessors place him as a caretaker.

Q: He had control of the said property because he was then the head of family.

A; He is still the head of family.

Q: It is because he is the head of family that was why he had to control the said property.

A: Yes, he is the head of family and the predecessors placed him as custodian of the property.

Q: When the defendant became the head of family, he has held and organized funeral of the family members of Esounko Anano family I suggest that to you.

A: It is the plaintiff as the head of family, the defendant has broken away from the family.

Q: I am suggesting to you that the funeral rites of Kwesi Bodua Kakra Kokodu Neenyi Hansen, Kwame Amoah, Kofi Nkran, Efua Atta among others were organized by the defendant as a head of Osonko Akwame Anano family of Winneba.

A: That is not true.

Q: I am suggesting to you that since the plaintiff claim to be member of Abo wee gate, it presupposed that he is not the head of Esounko Kwame Anano family of Winneba.

A: The plaintiff is the head of family and this is known to all and sundry at Winneba.

Q; I am suggesting to you that at that family meeting held on 25th July 2017, charges were preferred against the plaintiff and subsequently removed as head of family.

A: That is not true.

Q: Would you be surprised to know that the Plaintiff has said that he does not belong the defendant's Esounko Kwame Anano family?

A: The defendant has broken away from the family that is why but the Plaintiff is still the head of family.

In relation to the removal of the Plaintiff from office in the instant case the evidence in chief is that defendant is that the plaintiff was the head of their family until 25th July 2017 when some charges were proffered against him by all the six gates making 11111`up the Esounko Kwame Anano family of Winneba and that the plaintiff was unable to provide cogent answers to the charge particularly on Plaintiff stewardship as head of family and was on 25th July removed as the head of family in accordance with customary practice and usage pertaining to Effutu people of Winneba.

This was further evidence adduced by the defendant under cross

examination

Q: How many families do you have with the same name, Esounko Kwame Anano family.

A: Only one family.

Q: Look at your paragraph 3 of your witness statement, you have stated that the defendant's Esounko Kwame Anano family which indicates that there are more than one family.

A: We only have one family.

Q: When did you become a pensioner?

A: 5th May 2015 Cape Coast.

Q: According to your witness statement, you are the head of the Esounko Kwame Anano family of Winneba, Correct?

A; Correct.

Q: When were you elected as the head of that family?

A: 17th October 2017.

Q: According to paragraph 4 of your witness statement, the plaintiff was the head of that family until 25th July 2017, correct.

A: He was removed on 25th July 2017.

Q; Who and who removed the plaintiff as head of family?

A: The elders behind him including D.K. Acquah together with the members of the six gates.

Q: Who was the most senior member of your family by July 2017 in terms of age.

A: B.K. Acquah was the eldest then.

Q: Do you know Opanyin Kwaku Abaka.

A: Yes.

Q: Who was he in your family by July 2017.

A: He was the Obaaten in the family. He was also removed together with the plaintiff so he is no more with us.

Q: Are you aware that by the custom and practices of the people of Winneba, the Obaatan is the second important person after the head of the family?

A: I am not aware.

Q: That Obaatan testified in this Court that he was not aware of any family meeting where charges were preferred against the plaintiff.

A: He is aware.

Q: He also said that he has not attended any family meeting with known principal members where the plaintiff was removed as the head of family.

A: There was such meeting.

Q: I am suggesting to you that because you have no basis to remove the plaintiff as head of family due to the resistance of the Obaaten and other principal members of the family, you organized some members of the Esounko Kwame Anano family of Winneba.

A: That is not true.

Q: And since 2017, when you claim to have removed the Plaintiff as the head of family, he has been presiding of funeral of members of Esounko Kwame Anano family from 2017 till date.

A: That is not true.

Q: Where you serve with the witness statement and exhibits attached?

A: Yes.

Q: And did you not see any funeral posters that was tendered as exhibits where he presided over funerals from 2017 till date.

A: That is not true.

Q: Look at Exhibit A, A1 and A2

A: Those in the posters are not members of our family.

Q: I am suggesting to you that, they are not part of your family because they did not join you to break away from the family.

A: We have not broken away from the family, it is the plaintiff and co who has gone away from the family.

Q: I am suggesting to you that the deceased persons whose pictures are in Exhibit A series remained members of the original family that you break away from till their death.

A: That is not true.

Q: I am suggesting to you that the original staff symbol of authority is still with the plaintiff but you rather went and calve another staff as symbol of your family.

A: That is not true.

Q: Which section of the family do you belong to?

A: Jully section.

Q: Because you belong to the Jully section of the family, when you broke away you name your family as Jully Esounko Anano family of Winneba.

A: That is not true.

Q: And you presided over the deceased members of your Jully Esounko family from 2017 till 2020 when the matter came to Court that you changed or converted the name back to Esounko Kwame Anano family.

A: That is not true, we use the Esounko Kwame Anona family long ago we have not changed it.

Q: can you tell the Court the number of your members of family who has died since 2017 since you said you were made of head of your family.

A: About 20 twenty and over.

Q; And during the celebration of their funerals, funeral posters were made, correct?

A: Yes.

Q: I am suggesting to you that you could not Exhibit any between 2017 and 2019 because by that time you were using the Jully Anano family and not Esounko Kwame Anona family.

A: That is not true, it is Esounko Kwame Anano family and not Jully Anano family.

Q: The only funeral poster you exhibit one is for a member of your family who died in 2021 when the matter was in Court and you have switched from Jully Anano family to Esounko Kwame Anano family.

A; What you are saying is not true at all.

Q; I am suggesting to you that, you are not the head of family of the original Esounko Kwame Anano family of Winneba.

A: That is not true, I am the head of family.

Q: The plaintiff remains the substantive head of the original Esounko Kwame Anano family of Winneba.

A: That is not true, he is not the head family.

Q: He has never been removed as head of family at a meeting organized by any principal members of the family.

A: What you are saying is not true.

Q: The plaintiff has never been invited to any meeting at all by the family of which charges were preferred against the plaintiff and subsequently removed, I suggest to you.

A: All the six sections came together and he was removed so he has been removed.

Q: You just parading yourself unlawfully as the head of your nonexistent Esounko Kwame Anano family.

A: That is not true

Q: You do you have any authority whatsoever to interfere with the plaintiff management of the original Esounko Kwame Anano family of Winneba.

A: I have authority to do that.

Dw1 who described himself as the secretary to the said family stated in his evidence in chief that Plaintiff is the deposed head of family of Esounko Kwame Anano family of Winneba and the defendant is the is currently the head and legal representative of the said family.

This was what Dw1 said under cross examination

Q: How old are you?

A: I am 61 years.

Q: You said you know the Plaintiff very well, correct?

A: Correct.

Q: And you have stated that he used to be the head of family of Esounko Kwame Anano family, correct?

A: Correct.

Q: When was the Plaintiff made the head of family?

A: I cannot tell the date he was made the head of family but I recall the date he was removed as head of family.

Q: Can you tell the Court how the plaintiff was allegedly removed.

A: The Plaintiff was removed as head on 25th July 2017 the day was Tuesday.

Q: My question was how was he removed.

A: In Awutu State when a family want to remove its head, the head will be invited to the family house, on that day we invited the plaintiff and we preferred the charges against him. We told him what he has done which was why we have invited him. On that day on behalf of the six gates I read all the charges to the plaintiff. After reading the

charges, he was asked whether he has any response to the charges I have read to him and he said he has nothing to say.

Q: How was the plaintiff invited to the alleged meeting?

A: We informed him that the family want to meet him and he came to the family house.

Q: I am suggesting to you that you are not being truthful to the Court.

A: I am speaking the truth the plaintiff knows that what I am saying is true.

Q: No one has ever invited the plaintiff to any such meeting.

A: It is not true, we invited the plaintiff and he came to the family house where the meeting took place the plaintiff sat on my left hand side.

Q: You cannot tell the Court how the plaintiff was invited because you are not being truthful.

A: What I am saying is true, the plaintiff came to the family house so he knows that I am speaking the truth.

Q: Who were those present on the said date and at that meeting.

A: The six gates were all at the meeting Jully, Awofie, Awonehefie Fantefante, Pawano and Opanyin Kow Annan fie were present.

Q: The six entities you have mentioned are legal entities and they cannot be present at the meeting.

A: When the family meet, we use the gates as the representatives and we make sure that the gates are represented.

Q: You know Opanyin Kwaku Abeka.

A: Yes, I know him.

Q: Who is he in the family?

A: I know he is an elder from Awonenyi fie.

Q: Was he present at the said meeting?

A: If I recall he was not present.

Q: Would you be surprised to note that he has told the Court that no such meeting was held on 25th July 2017.

A: That is not true, where Opanyin Kweku Abeka lives or stays is far from the family house so if he did not attend the meeting how can he say that there was no such meeting.

Q: You deliberately refuse to invite Opanyin Kwaku Abeka because when you earlier on approached him he told you he was in full support of the plaintiff being the head of Esounkor Kwame Anano family.

A: It is not true that we deliberately refused to invite Opanyin Kweku Abaka.

Q: Would you also be surprised to hear that Opanyin Abaka told the Court that it is the defendant and some disgruntled member of the family such as you who broke away from the family.

A: That is not true, the six gates are still intact from 25th July 2017 till date, no one has broken away.

Q: Do you also know one Efua Kakara also known as Efua Titiba?

A: I know her she is my Auntie.

Q: What position does she own in the original Esounko Kwame Anano family?

A: She does not own any position in the family but the stool that the plaintiff has calve for himself when he is attending any function Afua Tsitiba is the one who carries the said stool to and fro for the plaintiff. So far as I am concerned she does not hold any position in the family.

Q: From which of the six gates does Afua Tsitsiba (Afua Kakra) comes from.

A: She is from Jully gate.

Q: And Afua Tsitsiba is not a member of your so called family.

A: It is not true that she is not a member of my family she is my Auntie and her grandmother comes before my great grandmother so she cannot belong to another family, she is a member of my family.

Q: Would you be surprised to hear that Efua Kakra told the Court that she was not invited and she was not present at any meeting where the plaintiff was allegedly removed as head of family?

A: The plaintiff was the one who was invited the said Efua Kakra could not have been invited in person because the invitation was extended to all the six gates.

Q: Would you be surprised to know that both Opanyin Kweku Abaka and Efua Kakra have told the Court that they are still members of Esounko Kwame Anano family whose head is still the plaintiff.

A: This person are from Jully and Awoneihe fie and they are part of the six gates that forms part of Esounko Kwame Anano family so what you are saying does not arise one cannot claim to be the head of family, it is the members of the family that appoints and make one a head of family. Before the plaintiff became the head of family, his brother Kwaku Numah was the head, this Kwaku Numah was not active so the family removed him and put plaintiff as head. When the plaintiff became the head he called himself a landlord and collects money from the tenants. He misappropriates the money he collects when there is an issue in the family he either reports the matter to police or comes to Court these are some of the charges that led to his removal.

Q: My statement to you was that Opanyin Kweku Abaka and Efua Kakra has told the Court then they belong to the plaintiff's family and the plaintiff is their head of family, simple.

A: We only have only one Esounko Kwame Anano family Winneba not two.

Q: They also told the Court that the plaintiff still presides over funerals of members of Esounko Kwame Anano family of those who did not break away like you.

A: It is not true that at the moment the plaintiff is the head of family of Esounko Kwame Anano family, he is not the head of family because the head of Esounko Kwame Anano of family is appointed from three gates, Julle, Awoneifie and Epowanu. It is the turn of July gate to appoint the head of family for the Esounko Anano family, the present head of family who is the defendant whilst alive the headship will not move to any other gate if Ekow Atta (defendant) does not perform his duties as expected, he will also be removed and another person appointed from the same July gate.

Q: I am suggesting to you that in spite of being a Reverend Minister you have not been truthful to the Court you have been evasive to all the questions I asked you.

A: I am speaking the truth; it is rather the plaintiff who did not tell you his lawyer the truth.

Q: Currently the plaintiff presides over funerals of the family members of Esounko Kwame Anano family of Winneba of those family members who did not break away from that family.

A: That is not true, the defendant is the one who presides over. I have a card which we pay our monthly contributions to the defendant.

Q: You pay your monthly contributions to the defendant because you are part of the members who have break away.

A: It is not true that we have broken away because the Abowee that the plaintiff has mentioned is not part of the six gates that forms the Esonko Anano family and further Abowee is not among the three (3) gates that a head of family is selected from.

Q: I am suggesting to you that the plaintiff family is among the six that constitute the Esounko Kwame Anano family of Winneba.

A: The plaintiff is not the head of the family because we have removed him as head of family because of his conduct.

Q: You claim to be the secretary of your family, correct?

A: Correct.

Q: Before you wrote down your witness statement, did the defendant show you the witness statement of the Plaintiff and exhibits attached?

A: Yes, I read it.

Q: Did you see the documents including deceased members of the Esonko Kwame Anano family?

A: Yes I did, when I read the document, there is no family head who holds the family staff, it is the Okyeame (linguist) who hold the staff of the family and the head of family sits back, so looking at the poster's tendered, the plaintiff can be seen in a picture holding the staff himself without the linguist but the picture that the defendant

tendered he can be seen sitting down with a red cloth around his neck with the family members sitting around him with the linguist holding the family staff.

Q: You have come to Court to deliberately churn out untruth because I only asked you about the poster and none of the posters have any pictures that has either the plaintiff or the defendant holding any staff.

A: The plaintiff is not the head of family of Esounko Anano family so I do not know how he came by the funeral posters, the posters are for previous funerals, the plaintiff has been embezzling the family funds and he is no longer the head of family.

Q: These posters were part of the evidence tendered by the plaintiff when the defendant was in Court but he did not object to any of the posters being tendered I suggest that to you.

A: I am the one in the witness box and I am giving evidence, I know the plaintiff very well he is my uncle and classmate so I am telling the Court the truth about all the issues that has cropped up.

Q: When the posters were tendered, the defendant was in Court and he never objected to the tendering of the posters he never said that the deceased persons in the posters were not members of the Esounko Kwame Anano family.

A: I have said that the plaintiff wants to remain as head of family so he has put these documents together. Because he is my uncle and also I go to his house to advise him about his conduct but he does not

listen so I use to tell him that he is hanging himself by the conduct he has been exhibiting and that is where we are today.

Q: Did you read through your witness statement before it was filed?

A: Yes.

Q: And as Osofo you are literate, I suppose.

A: That is so.

Q: Kindly look at your paragraph 8 of your own witness statement and read it to the hearing of the Court.

...

Q: When as the defendant ever removed from any position and reappointed.

A: That portion which reads defendant should have read plaintiff I believe it's a typographical mistake.

Q: I am suggesting to you that you are so confused about the matter between the parties that was why you are telling untruth in your own witness statement.

A: I am not confused, because the defendant has indicated in the paragraph 8 of the witness statement should read plaintiff.

Q: I am suggesting to you that the plaintiff is still the head of family of Esounko Kwame Anano family of Winneba and your family which

you claim to be the secretary and the defendant being the head is a break away family.

A: That is not true, the plaintiff is not the head of family. He was removed on 17th July 1917 no sorry 2017 it was Tuesday. I read the charges preferred against the plaintiff at July house.

From the evidence adduced, the Plaintiff cannot be said to have been removed in accordance with law.

The parties all agree that there are six gates that comes together to form the Esouko Kwame Anano family which presupposes that all the sections or gates or divisions however so described must have sectional heads and then the sections come together to select the head for the entire family called the Esouko Kwame Anano family.

The Plaintiff denied any meeting that he was summoned or invited for the purposes of his removal and no one has removed him from office.

The defendant who claim to be the new head of family did not say anywhere in his evidence in chief that the all principal elders of the six gates where invited to a meeting and any charges were read to the Plaintiff which he said he had nothing to say. At such an important meeting is the Defendant saying that no recording was done for such purpose?

Dw1 said he the secretary and the one who read the charges but did not allude to this crucial fact in either the statement of defence or in his evidence in chief but tried hard to proffer such evidence under cross examination to

suggest that the plaintiff has embezzled the family funds and he has been giving Plaintiff advise but he does not take that has landed him in this trouble.

It is clear from the evidence of Dw1 that he and defendant want to control the property that was why they want to hunt Plaintiff out of office. If there was any charges preferred against the plaintiff which Dw1 read at the alleged meeting to remove the plaintiff, why could he state it in the statement of defence and their evidence in chief because the plaintiff should have been given opportunity to know the case he was coming to face in Court

Is Dw1 saying that defendant did not know of these alleged charges to plead them?

Again the supposed principal members of the family that met to deliberate on the alleged misconduct of the Plaintiff were not given but all that Dw1 said was that the Six (6) gates were invited.

Granted that there was such a meeting and the alleged charges were read to the Plaintiff and he said he has nothing to say can this answer suggest a plea of guilty to warrant the removal of the plaintiff as head of family without any proof?

The plaintiff said similar case was brought against him by the defendant led by DK Acqua and they lost on grounds of capacity but in the removal charges allegedly preferred against the plaintiff has alluded to by Dw1

includes embezzlement but the plaintiff said he does not keep family money, so was the accountant called to come testify against the plaintiff at that alleged meeting or they pronounce the plaintiff guilty simply because as DW1 he has nothing to say. Embezzlement is criminal offence akin to stealing and as such it must be establish beyond reasonable doubt. Can we say that is what happen in the so called meeting that the defendant spoke about? I think not.

Interestingly defendant said in his evidence that DK Acquah was part of the people at the meeting called to remove the plaintiff but was not called to testify in this matter,

Counsel suggested to Dw1 that the gates are entities and they cannot act by themselves except to act by their heads or principal members.

To lay emphases on this point I will repeat what transpired when Dw1 was quizzed.

Q: Who were present on the said date at that meeting?

A: The six gates were all at the meeting, Jully Awofie Awonyeni fie, Fante Fante Pawanno and Opanyin Kow Annan fie were present,

Q: The six entities you have mentioned are legal entities and they cannot be present at the meeting.

A: When the family meet, we use the gates as the representatives and we make sure that the gates are represented.

The question is who are those who represented these gates or fie at such an important family meeting if Dw1 is saying when they meet they use the gates an make sure gates are represented.

Defendant and Dw1 could not give one name of the out of the six gates that was present at the meeting held to remove the plaintiff from office and this is serious indictment on their case.

As stated there are groups of people that makes up each of the six gates or fie. For example, July gate or fie would comprise of members of July gate or fie and its leader and this leader of July gate must be invited to attend such an august meeting and that person must have name which is not July and so should it be for the rest of the other five gates or fie.

Is the defendant saying that the entire members of each fie or gate came together on that date to act together to remove the Plaintiff?

Even if all the members came together the law says that the principal members of the family are those who are mandated to perform such a task and they would do so on behalf of members of various gates or fie. No one stops any member of the gate or fie to be present at such a meeting to witness what will go on and the defendant per their evidence has failed woefully demonstrated that the Plaintiff was removed by the principal members of the family.

When Dw1 was asked whether he knows one Opayin Kwaku

Abaka, this was what the excerpts of the evidence he gave which has already been captured supra

Q; Do you know Opanyin Kwaku Abaka?

A: Yes I know him.

Q: Who is he in the family?

A: I know he is an elder from Awonenyi fie.

Q: Was he present at the meeting?

A: If I recall he was not present.

Q: Would you be surprised to know that he has told the Court that no such meeting was held on 25th July 2017.

A; That is not true, where Opanyin Kwaku Abeka lives or stays as far from the family house so if he did not attend the meeting how can he say that there was no such meeting.

Q: You deliberately refused to invite Opanyin Kwaku Abeka because when you earlier on approached him he told you he was in full support of the plaintiff being head of family of Esounko Kwame Anano family.

A: It is not true that we deliberately refused to invite Opanyin Kwame Abeka,

Kwaku Abeka is said to be the Obatan of the family so the question is was he invited or not, the answer from Dw1 shows that he was not

invited.

Opanyin Kwaku Abaka is said to be the Obaatan of the family but Dw1 described him as ordinary elder by virtue of his age and Defendant also feigned ignorance of the position of Obaatan in among the Efutu people.

Dw1 said Pw2 does not hold any position in the family but she said she is the leader of the people in the family responsible for preparation of the corpse of members of the family for burial which in my view will be very important because in law a corpse belongs to the family and those who ensure that deceased members of family are given a befitting burrier play very important position in the family but typically of Dw1 he gave Pw2 another role which is carrying the stool of the plaintiff when they attends any functions.

Assuming that this is the role performed by Pw2, can it be said that she does not play any important role in the family and therefore not qualify to be said to be a principal member of her family hold?, In the circumstance of this case, I think that role is not trivial as Dw1 wants this court to believe. In any case Dw1 did not say Pw2 is not a principal member of the family.

Pw2 Efua Tsitsiba Auntie of Dw1 is from Julley fie or gate where Dw1 also hails from and an Auntie of Dw1 and she denies defendant and Dw1 claim that Plaintiff has been removed. Dw1 said Pw2 great grandmother comes before his grandmother so if the plaintiff has been

removed and the Defendant who also hails from the gate has been replaced why would she say that Plaintiff has not been removed Pw1 Obaatan from Nenyi fie also said Plaintiff has not been removed as head of Esounko Kwame Anano family.

No mention was made by the defendants as to those who represented the other gates as well as their gates meaning the two of them might have represented their gates which will be Julley gate since both Defendant and Dw1 comes from the same gate so representatives of five gates are missing from this all important meet called for the purposes of removing the plaintiff.

At least Plaintiff mentioned two important personalities whose presence is vital for the purpose for which the meeting was called though Dw1 tried to whittle down their importance in the family but the evidence suggest otherwise which I have tried to demonstrate in this opinion.

Unlike the Plaintiff, the defendant and his witness were the only persons who knows the representatives of the principal members of the various gates or fie who according to them were present at the meeting and participated in the removal of the plaintiff and they failed neglect or refused to share the names to the court and they also did not tell the Court what rites was performed to signify plaintiff's removal according to the customs and traditions of Efutu people.

The defendant and Dw1 were the only names that featured as those who participated in the removal of the plaintiff and the rest were made up of gates or fie. Defendant said under cross examination that the Obaatan Kwaku Abaka was removed together with the plaintiff.

DW1 failed to acknowledge the status or the position of Kwaku Abaka (Pw1) as the Obaatan of the family, he described Pw1 simply as an as I have said as ordinary aged person in the family without any position.

Interestingly, Dw1 did not also say Pw1 has been removed as Obaatan of the family. This sharp contrast in the evidence of defendant and Dw1 further hurts their case. If Pw1 has been removed as Defendant want the Court to believe and Dw1 has no clue of this removal and Pw1's position in the family and for that matter PW1 presence or absence at that meeting is not significant to perform the task for which they gathered, why did Dw1 say they did not deliberately refused to invite him and that if he did not attend the meeting Pw1 cannot say there was no such meeting.

The import of that piece of evidence of Dw1 is that Pw1 should have been invited to attended the meeting though he was not invited meaning as Plaintiff said Pw1 is a principal member of the family whose presence is necessary for the purpose of such meeting granted that the meeting took place.

Was Dw1 unaware that Pw1 has also been relieved of his position as Obaatan? How could the Obaatan Kwaku Abaka also be remove what

and what was his charges. Could it be as counsel suggested that when he was approached or consulted about the removal of Plaintiff he refused to give his consent, that was why Dw1 failed to recognize his position of Pw1 and only for Defendant to say he has been removed and to feign ignorance of the custom and practices of the people of Winneba in respect of the role of Obaatan as the next most important person after the head of family.

If Kwaku Abeka is not the next most influential or important persons after the head of family per the custom and traditions of the people of Winneba (Effutu), why did he say he has been removed together with the head of family?

Defendant claimed he was appointed on 15th October 2017 after the removal of the Plaintiff. The question is who appointed him and where was this appointment done? Defendant did not lead an iota of evidence to that effect maybe the same gates that removed the plaintiff appointed him.

From what defendant is saying if the plaintiff was indeed removed in July 2017 and he was appointed in October 2017 there was no even a care taker head of family till he was appointed?

As usual the defendant did not tell the court those who were present when he was appointed as head of Esounko Kwame Anano family of Winneba and no evidence was given as to how he was appointed and the custom and practice pertaining to Efutu which that was followed.

It was held in *Boakye v Asamoah* [1974] 1GLR 38, the plaintiffs and the defendant jointly raised a loan of ₦3,000.00 for which each party mortgaged his cocoa farm to the common creditor. The loan was equally shared and they became jointly liable for its repayment. Sometime later, the creditor accepted from the parties ₦2,920.00 in full satisfaction of the loan.

The plaintiffs contending that the defendant had paid only ₦120.00 of the repayments whilst they had paid the defendant's due share of ₦800.00, sued claiming that amount by way of indemnity. At the trial, the plaintiffs merely rested on the evidence of the common creditor who averred that the defendant had paid to him only ₦120.00 being the proceeds from the defendant's mortgaged farm. In proof, the creditor tendered receipts covering only ₦68.60. The evidence also showed that ₦710.00 out of the money being claimed represented the commuted monetary value of labour services rendered by the plaintiffs on behalf of the common creditor, without the knowledge of the defendant. After the plaintiffs had closed their case, the defendant made a submission of no case on the grounds that the evidence was unsatisfactory and unreliable. In his ruling, the trial magistrate overruled the submission, denied to the defendant his right to call further evidence even though he had not been put to his election, held that the onus was on him to prove that he had paid more than ₦120.00 and therefore gave judgment for the plaintiffs. On appeal,

Held, allowing the appeal at holding:

(4) The well-known legal or persuasive burden of proof was the burden borne by the party who would lose the issue unless he satisfied the tribunal of fact to the appropriate degree of conviction. The plaintiffs therefore had

the burden of producing sufficient evidence to justify a finding that the defendant paid only ₦120.00; their reliance on the bare evidence of the creditor was insufficient. Consequently, the trial magistrate had palpably erred in ruling that the onus was on the defendant to prove that he had paid more than ₦120.00 because it amounted to calling on the defendant to prove a negative fact which was peculiarly within the knowledge of the plaintiffs' witness.

See Ollenu J. in *Majolagbe v. Larbi* [1959] G.L.R. 190 at p. 192 where Ollenu J held follows:-

“... a person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden”

The demeanor of Dw1 especially couple with his evidence suggests a witness bereft of any credit who not be believed as such no premium was placed on his evidence.

This is why I took Dw1's demeanor into serious consideration in this judgment. He is priest and he said he will not swear by the Bible.

The Court asks him why and this was his response was that “There is no need to swear since I know what I am coming to say is the truth”.

Then the court alerted Him that the reason he has provided not to swear is not acceptable, if it is against his faith then that is alright.

The Dw1 quickly said it is against his faith so he affirmed.

If Dw1 has said swearing was against his faith immediately he entered the box when he was ask whether he will swear, I will not have any qualms and will focus on his evidence alone but I believe he knew he was not going to be truthful to the court that was why he failed to swear and his evidence as I have tried to show exposed him.

The defendant did a family coup which they have not succeeded because no principal members of the family was present for the removal of the plaintiff. In essence they did not follow the legal procedure for removal of head of family.

On the totality of the evidence adduced and in applying the law to the facts of the case, I am of the firm believe that the plaintiff has not been removed from office and he is still the substantive head of family the attempt made up the defendants to remove him failed.

I hold that the defendants were not able to establish their claim that the plaintiff has been removed as head of family. The sequel is that it is the plaintiff who is cloth with capacity to sue in matters affecting the family property unless he has failed in his duties to protect the family property which is not the situation in this case. Since the Court has held

that the plaintiff has not been validly removed. He is the proper person to administer the affairs of the family including the house in dispute. Which of the parties have defected from the Esouko Kwame Anano family to form his own family?

I am touching on this matter because it is evidence that both parties have been presiding over funerals of the members of the Essouko Kwame Anano family and parties made considerable efforts to prove that point. It is my considered opinion that from the evidence adduced if any person or group of persons have broken away from the Esouko Kwame Anano family it will be the defendant and his group because they are the ones alleging that the Plaintiff has been removed as head of family which they have failed to establish that point so it is the defendant and his group who are just failing to recognize the plaintiff as their head of family and not the entire Essouko Kwame Anano family. In the result the plaintiff claim succeeds H/No. 12 Kojo Bedu Street Winneba is the property of the Esouko Kwame Anano family of Winneba. The plaintiff is the rightful person to administer the affairs of the family including H/No. 12/3 Kojo Bedu Street, Winneba. The notices issues by the defendant to the tenants is in the said house null and void and if no legal effect since he is not the head of family.

General damages of GHC5,000.00 against the defendant.

Perpetual Injunction granted restraining the defendant, agents, assigns, privies their and persons (s) or in trust for the defendant from laying

adverse claim or interfering with plaintiff's control over the said house.

Cost of GHC10,000.00 against the defendant.

Emmanuel Agyir for the Plaintiff.

Patrick Asamoah for the Defendant.

(SGD)

H/H JONATHAN D. NUNOO ESQ.

CIRCUIT JUDGE