IN THE HIGH COURT OF JUSTICE, WESTERN REGION HELD AT SEKONDI ON THE 28TH DAY OF JULY, 2023, BEFORE HER LADYSHIP DR. BRIDGET KAFUI ANTHONIO – APEDZI (MRS.) J.

SUIT NO. E12/58/20

1. **NANA OHYEAWORA BIAN NYONWAH PANYIN IV**
   (SUING IN HIS CAPACITY AS CHIEF OF DOMPIM – PEPEASA)
   DOMPIM – PEPEAS, WESTERN REGION.

2. **EBUSUAPANYIN KWAW NKRUMAH KYI III**
   DOMPIM – PEPEAS, WESTERN REGION : PLAINTIFFS

VRS:

1. **EMMANUEL ASSOUA NYAMINI**
   STYLING HIMSELF AS KATAKYIE NTSIFUL ESSEL V.
   WESTERN REGION
2. **NANA KOJO GYENIN AMPIM II**
   CHIEF OF EKUTUASE
   EKUTUASE PALACE, WESTERN REGION
3. **NANA AKWASI AKROSAH II**
   CHIEF OF BONTOWARE
   BONTOWARE PALACE, WESTERN REGION
4. **NANA KWAMENA ENEMIL II**
   CHIEF OF DIMPIM NO. 1
   DOMPIM NO. 1 PALACE, WESTERN REGION
5. **NANA KWAMENA DANSO II**

CHIEF OF ENYINAAM, WESTERN REGION

6. **NATHANIEL DEKY**

STYLING HIMSELF AS NANA NYOWAH PANYIN

7. **WASSA FIASE TRADITIONAL COUNCIL**

WESTERN REGION : DEFENDANTS

JUDGMENT

A. INTRODUCTION

The Plaintiffs instituted this action on 10th July 2020 for the following reliefs:

a. ***Declaration that it was the 1st Defendant, under whose express instruction and direction the 2nd, 3rd, 4th, and 5th Defendants were empanelled, acted on behalf of the 7th Defendant, unlawfully,***

b. ***Declaration that the arbitration body comprising 2nd, 3rd, 4th, and 5th Defendants who acted on the express instruction and direction of the 1st Defendant had no such authority to act for and on behalf of the 7th Defendant.***

c. ***Declaration that the decision of the arbitration panel comprising 2nd, 3rd and 4th and 5th Defendants who had no such authority to act for and on behalf of the 7th Defendant, was null and void.***

d. ***An order restraining the Defendants, their agents, privies and assigns from making use of any decision of any form from the unlawful customary arbitration organised by 2nd, 3rd, 4th and 5th against Plaintiffs.***

e. ***Cost***

B. BRIEF FACTS

The Plaintiffs herein instituted this action, seeking to set aside an arbitration award dated 24th day of January 2020. The Plaintiffs fully participated in the arbitration process and after the award was made, they sought to challenge same. They therefore instituted certiorari proceedings in the High Court to quash the said arbitration award. They argued that there could be no arbitration process regarding chieftaincy matters and that the panel had no jurisdiction to make a determination in a cause or matter affecting chieftaincy. The Plaintiffs also raised the issue that they attended the arbitration against their free will. They alleged that they were forced by the 1st Defendant and that the initial deposit of the arbitration fee, which signifies their consent to the arbitration, was paid by the 1st Defendant himself. On 30th April 2020, the High Court ruled (**Exhibit 1**) and held that once the panel of arbiters consisted of chiefs, it had jurisdiction to hold an arbitration into the matter.

The court also ruled that the Plaintiffs submitted voluntarily to the arbitration by paying the deposit fee of GHS, 2000, a condition precedent to voluntary attendance.

Thereafter, on 12th March 2020, the Plaintiffs again instituted another action (Exhibit 2) to challenge the arbitration award and sought an injunction to restrain the Registrars of the Western Regional House of Chiefs (WRHC) and the Wassa Fiase Traditional Council (WFTC) from processing and facilitating the registration of the successful party in the arbitration (6th Defendant) in the National Register of Chiefs (i.e. gazetting). The court dismissed the injunction and also ruled that the discretionary remedy of an interlocutory injunction cannot be used to override the 3rd Defendant's (6th Defendant herein) legal right to enforce a subsisting, valid award.

The Plaintiffs are now back in court, again. This time, the gravamen of the present action is that the said arbitration was set up by the 1st Defendant, in his capacity as the paramount chief of the Wassa Fiase Traditional area, which he was not. Thus, the arbitration was tainted with fraud.

C. PLAINTIFF'S CASE

The Plaintiffs state that the 1st Defendant styled himself as Katakyie Ntsiful Essel V, the paramount chief of the Wiassa Fiase Traditional Area. He then fraudulently constituted a four-member arbitration panel comprising of the 2nd Defendant, Nana Gyenim Ampim II, 3rd Defendant, Nana Akwasi Akrosah II, 4th Defendant, Nana Kwamena Enemil II and 5th Defendant, Nana Kwamena Danso II. This was to resolve the chieftaincy matter between the Plaintiffs and the family of the Nathaniel Dekyi (who, according to the Plaintiffs, was styled as Nana Nyowah Panin) and the 6th Defendant's family. Also stated was that the 4th Defendant is aware that the 1st Defendant had no such authority.

According to the Plaintiffs, the 1st Defendant convened such a meeting without the lawful authority of the WFTC and purported to be acting on behalf of the institution. Plaintiffs further stated that they were under the mistaken belief that the 1st Defendant had the lawful authority to instruct the organs of the WFTC.

Issues of fraud particularised are that:

a. That the 2nd, 3rd, 4th, and 5th Defendants, who constituted the customary arbitration panel falsely represented that the 1st Defendant had authority from the WFTC when they or ought to have known that it was not so.
b. That Plaintiffs relied on that false information to engage the said arbitration panel when Plaintiffs did not know that the said panel was not constituted under lawful authority of the Wassa Fiase Traditional Area (WFTA)

D. DEFENDANT'S CASE

The Defendants entered appearance to the Plaintiffs' Writ on 2nd February 2021. They applied unsuccessfully for the Writ to be struck out on grounds of gross abuse of the

judicial process. Again, they applied to have the suit dismissed before the High Court, differently constituted, on the grounds that the Writ/suit discloses no reasonable cause of action - they were not successful. The Defendants then filed a Statement of Defence on 18th February 2022. The 1st, 6th, and 7th Defendants filed separate Statement of Defence whilst the 2nd, 3rd, 4th and 5th filed a common Statement of Defence.

The 1st Defendant avers that he is the paramount chief of the WFTA; that, he was not gazetted despite a mandamus order procured against the Registrar of Chiefs. He continues to play traditional and customary roles as the said paramountcy. That; the arbitration was one of his bids upon assuming the reigns over the paramountcy, to resolve the numerous chieftaincy disputes among the divisional chiefs within the traditional area. He reiterates that he only advised the feuding families to resort to customary arbitration and they (including Plaintiffs) willingly submitted to the arbitration process.

The 6th Defendant avers that he is the recognised chief of Dompim-pepase. He states that both his family and that of the Plaintiffs voluntarily submitted to the customary arbitration to resolve the Dompim-Pepase chieftaincy dispute. They paid the arbitration deposits, attended hearing and called witnesses. The 6th Defendant states that the 1st Defendant made it clear to them he was only attempting to have all chieftaincy disputes resolved and anyone who still desires to continue his or her dispute in court had the right to do so.

The 7th Defendant states that they (Wassa Fiase Traditional Council) only provides administrative support when parties submit voluntarily to customary arbitration. That, the 1st Defendant could not have been the President of the Traditional Council by statute because only gazetted chiefs can be members of the Council. Accordingly, 1st Defendant could not have instructed the Traditional Council in any manner or form. They aver that it is the Registrar who constitutes/fixes the panel of arbiters from members of the Council, for the customary arbitration, in consultation with the parties.

The 2nd, 3rd, 4th, and 5th, Defendants reiterate that both parties, by their conduct, expressed their willingness to have the matter resolved by customary arbitration. This is entirely different from the process under the judicial committee (JC) of the Traditional Council (TC). They emphasised that the TC only assist by way of providing a venue and administration materials.

E. **ISSUES**

At the close of pleadings, Plaintiffs applied for directions on 5th April 2022 for the following issues set down for trial to be adopted by the court.

a. ***Whether or not the arbitration hearing held between the Plaintiffs' family and the 6th Defendant family under the instructions of the 1st Defendant on behalf of the 7th Defendant was fraudulent.***

b. ***Whether or not 1st Defendant deliberately put false info on/in his Chieftaincy Declaration form CD Form with the connivance of the 7th Defendant to deceive the National House of Chiefs to register the name of Katakyie Ntsiful Essel V in the National House of chiefs to benefit 1st Defendant as President and member of 7th Defendant.***

c. ***Whether or not 4th Defendant was aware that 1st Defendant had no lawful authority to appoint him as a panel member to sit on that arbitration hearing between Plaintiffs' Family and the 6th Defendant Family on behalf of the 7th Defendant and /or the Wassa Fiase Paramount Stool.***

d. ***Whether or not 1st Defendant had any lawful authority to instruct 2nd, 3rd, 4th, and 5th Defendants to sit as arbitrators to settle that Dompim Pepesa Chieftaincy dispute between Plaintiffs' Family and the 6th Defendant's Family.***

e. ***Whether or not that arbitration hearing between Plaintiffs' Family and the 6th Defendant's family was conducted by that arbitration panel without lawful authority***

The Defendants also filed additional issues on 5th April 2022 as follows:

1. ***Whether or not the Plaintiffs voluntarily submitted themselves to a customary arbitration.***

2. ***Whether or not the arbitration proceedings were held in accordance with laid principles governing the conduct of arbitration hearings.***

3. ***Whether issues (1) & (2) of the additional issues have already been determined by a court of competent jurisdiction and thus are subject to the principle of issue estoppel.***

4. ***Whether it was the 1st defendant who appointed the panel members for the customary arbitration held.***

F. THE LAW

Preliminary Legal point

It can be gleaned from the pleadings that this present suit is primarily founded on fraud. This suit is maintainable, if only for the fraud to be unravelled. A party certainly has a right to apply to set aside a judgment, however so obtained, either by default, upon admissions or after a trial, if the said judgment is tainted by fraud. See ANSONG AND ANOTHER V GHANA AIRPORTS COMPANY (J4/24/2012) 2013] Unreported, SC (23 January 2013) Sophia Adinyira (Mrs) JSC.

In NANA ASUMADU II (DECEASED) (SUBSTITUTED BY NANA DARKU AMPEM (DECEASED) (SUBSTITUTED BY EBUSUAPAYIN AMGO MENSAH) and NANA

DANYI QUARM IV (DECEASED) (SUBSTITUTED BY SAMUEL EKOBO ACQUAYE) VRS AGYA AMEYAW (J4/01/2018) [2019] Unreported SC 15th May 2019) Apau JSC (as he then was), citing BRUTUW v AFERIBA [1984-86] 1 GLR 25 states as follows:

> "*In a suit charging fraud, it would be a clear impropriety for a plaintiff to re-open his case. Where a judgment was attacked for fraud, fraud only must be in issue for it was not a rehearing of the whole case*".

Again, in JONESCO v BEARD [1930] AC 298, @ 300-301 the House of Lords stated: "*where a judgment is attacked for fraud, fraud only must be in issue and that it is not a rehearing of the whole case*".

In LAZARUS ESTATES V BEASLEY [1956]1QB 702, 712 Denning LJ (as he then was) states as follows:

> *No Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud.*
>
> *Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever.*

The issue of *res judicata* does not arise when the judgment is tainted with fraud. *Estoppel res judicata,* if grounded, prohibits the court from enquiring into the matter already adjudicated upon. In the suit herein, the court is not enquiring into the issues that arose in the previous suits/proceedings, unless the Plaintiffs seek to open those up - then, they will be confronted with *Estoppel, etc.* Accordingly, the only issue herein is to focus on the allegation of fraud and to prove fraud or otherwise.

Giving the above finding, this court's initial focus shall relate to issue "b" of the directions and additional issue No 4.

Fraud defined.

Fraud, as a civil wrong, is generally considered to be the intentional misrepresentation of important facts or deceptive action, designed to provide the perpetrator with an unlawful gain or to deny a right to a victim. Fraud involves deceit with the intention to gain at the expense of another, illegally or unethically.

In **DZOTEPE V HAHORMENE III [1984-86] GLR 294, (CA)** it was held that fraud in all cases is an implied willful act on the part of anyone, whereby another was sought to be deprived, by illegal or inadequate means of what he was entitled to.

Proof of Fraud in Civil matters

A party alleging fraud must prove it beyond reasonable doubt. See Section 13 (1) of the *Evidence Act* 1975 (Act 323) and also MARGARET ACHIAMPONG V STATE HOUSING COMPANY LTD [2022] DLSC11675, per Lovelace-Johnson (MS.) JSC; **GHANA COMMERCIAL BANK LTD V COMMISSIONER OF HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE** [2003-2004] 1 SCGLR 91

The Burden of Proof in Civil Suits Generally

Per the general rule in civil suits, the burden of proof is on the party who asserts the existence of facts in issue. Depending on the admissions made, the party on whom the burden of proof lies is enjoined by the provisions of sections 10, 11(4), 12 and 14 of the *Evidence Act*, 1975 (NRCD 323), to lead cogent evidence. This must be such that, on the totality of the evidence on record, the trier of facts will find that party's version to be more probable than its non-existence, in relation to the rival accounts.

But, the general civil procedure rule is subject to the rule where fraud (*quasi-criminal*) is alleged. In this case, the party who alleges fraud must provide that allegation beyond reasonable doubt. But, I shall address this confluence later for, at times, the element of fraud is a subset/embedded in the general civil action.

What makes this case challenging is the nebulous pleadings and submissions of the Plaintiffs, which make it tedious to isolate which is what. One gets the impression that any misrepresentation is synonymous to fraud. Or that the lack of authority by a person who clothes himself with an apparent authority constitutes fraud.

This basic principle of proof in civil suits, is expounded in **ZAMBRAMA V SEGBEDZIE (1991) 2 GLR 221.** The same has been applied in numerous cases, including **TAKORADI FLOOR MILLS V SAMIR FARIS (2005/06) SCGLR 882; CONTINENTAL PLASTICS LTD V IMC INDUSTRIES (2009) SCGLR 298** at pages 306 to 307; **ABBEY V ANTWI (2010) SCGLR 17** at 19 (holding 2); and **ACKAH V. PERGAH TRANSPORT LIMITED AND OTHERS [2010] SCGLR 728**.

In **ACKAH V. PERGAH TRANSPORT LIMITED AND OTHERS [2010] SCGLR 728** at page 736, ~~by~~ Adinyira, JSC stated as follows:

> *"It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail…It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under section 10 (1) and (2) and 11 (1) and (4) of the Evidence Act, 1975 (NRCD 323*)."

Also, in the Supreme Court case of **BISI AND OTHERS V. TABIRI ALIAS ASARE [1987-88] 1 GLR 372,** Osei-Hwere JA (as he then was) held that:

> *"The standard of proof required of a plaintiff in a civil action is to lead such evidence as will tilt in his favour the balance of probabilities on the particular issue. The rampant encounter with the pleader's demand for strict proof has never been taken to call for an inflexible proof either beyond reasonable doubt or with mathematical exactitude or with such precision as would fit a jig-saw puzzle. With the definition supplied, preponderance of evidence, in short,*

becomes the trier's belief in the preponderance of probability. An American decision Norton v. Futrell, 149 Cal App. 2d 586 (1957) has explained that: 'The term 'probability' denotes an element of doubt or uncertainty and recognizes that where there are two choices, it is not necessary that the jury be absolutely certain or doubtless, but that it is sufficient if the choice selected is more probable than the choice rejected'."

Further, there is the distinction between the legal burden of proof and evidential burden of proof. Whereas the legal burden of proof is mostly borne by a plaintiff or whoever makes an assertion, the evidential burden requires the production of evidence in support of either an assertion or a tactic, tactical onus to contradict or weaken an adversary's evidence. Thus, at the trial, the Plaintiff bore the burden of producing evidence and the burden of persuasion on the issues set down for trial. The Defendant is also at liberty to introduce evidence to contradict the Plaintiff's case.

This principle is also stated in Section 14 and 17 of NRCD 323. Commenting on the principle, Pwamang JSC, in delivering the majority decision in **AMIDU AND ANOTHER V ALAWIYE AND OTHERS (J4/54/2018) [2019] Unreported SC, (24 July 2019),** had this to say: "*It is the party who stands to lose on an issue, if no evidence is led on it, that bears the burden of proof as far as that issue is concerned."*

G. TESTIMONY/EVIDENCE

1. ***Plaintiffs' Testimony***

The 1st Plaintiff testified on 16th January, 2023. They did not call any witness. The following exhibits tendered:

Exhibit A, A1 – A5'). Evidencing arrest of persons who posed as police and military officer to carry out a rival installation of the 6th defendant, as chief of Dompim Pepesa on the 6th February, 2019.

Exhibit 'B' series (B, B1 –B4') an extract of the 2017 Diary of the Wassa Fiase Traditional Council portraying 1st defendant as a member of the Wassa Fiase Traditional Council.

Exhibit 'C' series (C, C1-C4'). Exhibit 'C' – Chieftaincy vacation form for Osagyefo Kwamina Enimil VI.

Exhibit 'C1' – An enstoolment form for Osagyefo Katakyia Ntsiful V.

Exhibit 'C2' – CV of Katakyia Ntsiful V.

Exhibit 'C3' – An extract from the National Register of chiefs showing the registration of Osagyefo Kwamina Enimil and Katakyia Ntsiful V.

Exhibit 'C4' – Judgment of the High Court in suit No. E9/4/18 in favour of Katakyia Ntsiful V.

Exhibit 'D' – A notice of discontinuance by the 4th defendant and others of a petition to destool Odeneho Akrofa on 17th October, 2016.

Exhibit 'D1' – Destoolment petition filed on 22nd September, 2015 by the 4th defendant and others to destool Odeneho Akrofa Krukoko as Omanhene of Wassa Fiase.

Exhibit 'E' series (E1 – E3) series

Exhibit 'E' – a judgment of 10th October, 2016 by the Judicial Committee of the Western Regional House of Chiefs declaring the claim of Osagyefo Kwamina Enimil, to have been enstooled of Wassa Fiase, a nullity.

Exhibit 'E1' – Court notes dated 17th September, 2020 by the Judicial Committee of the National House of Chiefs affirming the 10th October, 2016 judgment of the Western Regional House of Chiefs declaring Osagyefo Kwamina Enimil V enstoolment as nullity.

Exhibit 'E2' – Is the 19th August, 2015 reasoning of the Judicial committee of Western Region State of chiefs declaring the procedure used to enstool Osagyefo Enimil, and destool Odeneho Akrofa Krukoko II to fall short of all customary any legal requirement.

Exhibit 'E3' - Court notes from the Supreme Court dated 26th January, 2021 issuing a warning.

Exhibit 'F' series ('F' and 'F2')

Exhibit 'F' is an affidavit by Peter Arkoful.

Exhibit 'F1' – is a judgment of the arbitration panel.

Exhibit 'F2' – The 18th March 2022 ruling of the Circuit Court, Tarkwa.

Exhibit 'G' series ('G'-G1')

Exhibit 'G' – evidence of Ammunition fired by Ghana Police.

Exhibit 'G1' – Pictures – police officer in Dompim Pepesa Palace.

Exhibit 'H' – Photographs of injured visitor or plaintiffs supporter.

Exhibit 'J – A picture of Yaw Attah injured.

2. ***Defendants' Testimony***

The Defendants did not testify but called one witness, Mr Seth Opoku, the Registrar at the Wassa Fiase Traditional Council, to testify on their behalf. They also called the Registrar of the High Court Sekondi, Mr Ernest Kwame Sovor, by subpoena *duces tecum* to tender the judgments mentioned as follows:

Exhibit '1' - Suit No. E9/13/20: THE REPUBLIC VRS: NANA KOJO GYENIN AMPEM II & 3 OTHERS; EX-PARTE: NANA OHYEAWURA BIAM NYANWAH PANYIN IV.

Exhibit '2' - Suit No. E1/31/20: NANA O. B. N. PANYIN & OTHERS VRS: THE REGISTRAR, WASSA FIASE TRADITIONAL COUNCIL & OTHERS as

H. EVALUATION OF EVIDENCE

Issue 'b' of the directions will be considered foremost since it revolves around the issue of fraud and all other issues culminates into the validity of the action of the status of the 1st Defendant.

b. ***Whether or not 1st Defendant deliberately put false info on in his Chieftaincy Declaration form CD Form with the connivance of the 7th Defendant to deceive the National House of Chiefs to register the name of Katakyie Ntsiful Essel V in the National House of chiefs to benefit 1st Defendant as President and member of 7th Defendant.***

To substantiate the allegation of fraud, the Plaintiff narrated instances where the purported fraud was committed in his evidence-in-chief.

The crux of the fraud allegedly perpetrated by the 1st Defendant was that he made false representations in his Chieftaincy Declaration (CD) forms with the connivance of the Wassa Fiase Traditional Council to facilitate the process towards his registration "gazetting" at National Register of Chiefs. Some of the alleged misrepresentations complained of are:

1. That 7th Defendant stated falsely on the CD forms of 1st Defendant that the Wassa Fiase Paramount Stool was vacant
2. That at the time the 1st Defendant purported to act as the Omanhene of WFTA and the President of WFTC, Odeneho Akrofa Krukoko II had not vacated the paramount stool.
3. The Judicial Committee Ruling of the Western Region House of Chiefs in Suit No. P1/2010 destooled Osagyefo Kwamena Enimil VI whereas his chieftaincy was rather declared a nullity

The Plaintiffs' whole issue about fraud is that the 1st Defendant represented that the then Paramount Chief of the Wiasa Fiase Traditional Area, Odeneho Akrofa Krukoko II,

vacated his stool. He then used this information to enable him to process his chieftaincy forms. Again, that the 1st Defendant is not the successor of the Odeneho Akrofa Krukoko II. Put differently, he is not the president of the WFTC (the 7th Defendant). Therefore, the Plaintiffs' submits that the element of fraud and mistake evolves around these two misrepresentations.

However, under cross-examination the 1st Plaintiff admitted that the 1st Defendant has now been gazetted:

Q. *Regarding the status of the 1st defendant as Omanhene, you have tendered a judgment of the High Court which judgment endorses the status of the 1st defendant, that is Exhibit 'C4' as Omanhene of traditional area and makes an order that the chieftaincy declaration form should be processed and transmitted to the National House of Chiefs. Isn't it so.*

A. Yes my lady.

Q. Now, this Exhibit 'C4', are you aware if there is any judgment which has been set aside.

A. Please no.

Q. Are you also aware that there is an order of Mandamus by the High Court compelling the National House of Chiefs to insert the name of the 1st defendant in the National Register of chiefs as the Omanhene.

A. I am not aware.

Q. Are you also aware that some other person too went to the Supreme Court to try to quash that order of Mandamus.

A. I am not aware.

Q. Are you also aware that the order of the Kumasi High Court has been carried out by the National House of Chiefs.

A. I am aware.

The process of registration was systematically outlined by the SETH OPOKU (DW1), the Registrar of the 7th Defendant. This was under cross-examination, as follows:

Q. Tell the court briefly how the Traditional Council processes chieftaincy application before they are forwarded to the National House of Chiefs.

A. Upon application for a registration, information about the applicant has been taken and completed by the Registrar of the Traditional Council and same signed by the President of the Council. Thereafter, it is forwarded to the research Committee of the Traditional Council for vetting. When same is approved, it is forwarded to Standing Committee of the Traditional Council for another vetting. Thereafter, at a general meeting of a Traditional Council, the vetted chieftaincy declaration form of the applicants are brought to the notice of the members of the Traditional Council. When same are approved excerpts of minutes of meeting of the Traditional Council in respect of the chieftaincy declaration forms with a covering letter signed by the Registrar with an approval fee is forwarded to the Regional House of Chiefs. Same processes as in the Traditional Council is carried out at the Regional House of Chiefs. Thereafter, all approved chieftaincy declaration forms at the Regional House of Chiefs are forwarded to the National House of Chiefs by the Research Office of the Regional House of Chiefs. Same processes are carried out at the National House of Chiefs. Approved forms at the National House of Chiefs are entered into the National Register of Chiefs of the National House of Chiefs.

Q. So the processes you have described is what you referred to as the processing of a chieftaincy form declaration Application form (referred to as the CD forms) before the name is put into the National Register of Chiefs, correct?

A. That is correct.

Q. As a result of the successful registration, the applicant is given a chieftaincy extract, showing his or her statutory recognition.

A. That is correct my lady.

The learned author, S. A. Brobbery, a retired Justice of the Supreme Court of Ghana, in his book *"The Law of Chieftaincy in Ghana", reiterated* the process. Also, the book emphasises the importance of attaching a Vacation Form, at page 198 as follows:

> *"Ideally, the application should be accompanied by a Vacation Form. That Form will show how the stool which the chief is now beginning to occupy was made vacant – whether by death, abdication or destoolment. …..Some application forms contain particulars of the vacation and therefore are not accompanied by a separate Vacation Form".*

The "sin" of the 7th Defendant, which the Plaintiffs cited is gleaned from the evidence was that first, it recorded in its diary of action as far back in 2017 name of the 1st Defendant as a the paramount chief of the WFTA and member of the standing committee of the Council; Then it aided in the processing of the 1st Defendant's registration, by attaching to the CD forms, an information that the 1st Defendant's "predecessor" was destooled. The Plaintiffs assert that, instead, the alleged predecessor Osagyefo Kwamina Enimil VI was not destooled but rather his chieftaincy was declared a nullity by the Ruling of the Judicial Committee Ruling of the Western Region House of Chiefs in Suit No. P1/2010. Further, that, after the successful registration of the 1st Defendant, the 7th Defendant wrote to the various institutions as is the practice announcing his gazetted status and in that letter the 7th Defendant attached an extract of the National Register of Chiefs which recorded the Osagyefo Kwamina Enimil VI as destooled.

I find that, whether destooled or annulled, there was a vacant stool, which needed to be filled. Destoolment is a process by which a chief cease to be a chief through the appropriate custom of the traditional area in question. Destoolment connotes the existence of a chief, enstooled by custom and now destooled or removed by the same custom. Nullity, on the other hand, means that there was never a chief, in the first place. The two are not the same; however, the effect of either of the two is that it creates a stool vacancy.

The weight the Plaintiffs' Counsel invites this court to put on destoolment status is not borne out. There was a purpose for attaching a destoolment judgment, the vacant status or the declaration of the chieftaincy status to the CD form, during the process of registration. It is to ensure that the stool is evinced as vacant. It is a proof that will justify the existence of vacancy. *The application for registration is often based on destoolment, deskinment abdication, death or improper installation (nullity).*

Also, by the approach adopted by the Plaintiffs, they innocuously invite the court to stray into matters of chieftaincy, such as the processes of the Wassa Fiase Traditional Council. If the Plaintiffs had a problem with the registration process, they should have rather 'attacked' this at the appropriate forum (WFTC). The Court has no jurisdiction to pry into the remit of the WFTC.

Again, the Plaintiffs argue that, at the time of processing the CD forms for 1st Defendant, the stool was not vacant and that Odeneho Akrofa Krukoko II had not vacated the paramount stool as the 7th Defendant stated in the forms. The Plaintiffs tendered Exhibit D. Part of Exhibit reads:

> *NOTICE OF DISCONTINUANCE*
>
> *TAKE NOTICE THAT the above petitioners hereby discontinue the above petition against the respondent who has since vacated the paramount stool of WASSA FIASE*
>
> *DATED AT…….THIS 15 DAY OF SEPTEMBER 2016*

Instead of leading evidence or cross examining to refute Exhibit D, Counsel for Plaintiffs rather spent considerable time quizzing DW1 on inconsistencies in the dates recorded on the CD form, in respect of the status of Osagyefo Kwamina Enimil VI

Q. Take a look at Exhibit 'C', it is a chieftaincy vacation form for Osagyefo Kwamina Enimil VI. Correct?

A. That is correct on the face of record.

Q. And on Exhibit 'C1' is the chieftaincy enstoolment of the 1st defendant.

A. That is correct on the face of the record.

Q. On both forms, there is a date of changes. Can you please explain to the court what the date of change means?

A. The very best of my knowledge, the date of change connote when there was a vacancy, in terms of the stool.

Q. So, are you saying that on 19th August, 2015, there was a vacancy as well as 19th of October, 2016.

A. Respectfully, I cannot confirm to the court whether there were two vacancies that is on the 19th August, 2015 and 19th October, 2016.

Q. Now tell the court about the dates of report on 20th October, 2016 on both Exhibits 'C' and 'C1'.

A. The date of report denote when the officer is informed of the vacancy which has been created and the subsequent completion of the chieftaincy declaration forms.

Q. Take a look at Exhibit 'C3', the date of change 19th August, 2015 and 19th October, 2016. They are the same dates on Exhibits 'c' and 'C1'. Do you agree.

A. Yes I agree.

Q. I am putting it to you that the date 20th October, 2016 on Exhibits 'C' and 'C1' is the date the 7th defendant submitted 1st defendant's CD forms to the western Regional House of Chiefs.

A. Respectfully, my lady, I cannot confirm that.

Holding 1: The court is being invited to establish that the registration process was fraught with fraud. The Plaintiffs have failed to discharge the burden of proving beyond reasonable doubt, the alleged fraud perpetrated by the 1st or the 7th Defendant.

The Court finds no issue of fraud against the 1st Defendant. Fraud in the hackneyed expression vitiates all. But, *"Fraud is not fraud merely because it has been so stated in a writ to excite the feelings of the courts"* ***OSEI ANSONG V GHANA AIRPORTS CO LTD [2013-2014] 1 SCGLR 25,***

Besides, the court has no jurisdiction to interfere in the registration procedure of the House of Chiefs, a distinct institution under our Constitution. At best the court can only probe a judicial process of this institution to the extent that its probe is supervisory. The mode applied by the Plaintiff is wrong.

I must comment on the way Counsel for the Plaintiff couched the Reliefs to the action. It was strenuous to find a clear statement of fraud in Reliefs/Declarations (a) – (d). Declaration (b) was on an allegation of "want of authority" to constitute a panel - how does that ripen to fraud? Besides, given the history of litigation of the issues, they open up concepts of *res judicata,* etc.

Counsel will do well to note that, to properly ground civil fraud, the offending conduct must rise to the nature of criminality. Should this avail, then a Writ can be brought to determine only the element of fraud and to set aside a decision allegedly tainted by it. JONESCO v BEARD [supra].

In any case, given the fate of the case presented by the Plaintiffs, the collateral issue of the status of the customary arbitration which was also allegedly tainted by fraud due to the deceit of 1st 2nd, 3rd, 4th, 5th, and 7th Defendants must be determined.

Thus, issues a, d, and e will be discussed together.

a. Whether or not the arbitration panel held between the Plaintiffs' family and the 6th Defendant family under the instructions of the 1st Defendant on behalf of the 7th Defendant was fraudulent.

d. Whether or not 1st Defendant had any lawful authority to instruct 2nd, 3rd, 4th, and 5th Defendants to sit as arbitrators to settle that Dompim Pepesa Chieftaincy dispute between Plaintiffs' Family and the 6th Defendant's Family.

e. Whether or not that arbitration hearing between Plaintiffs' Family and the 6th Defendant's family was conducted by that arbitration panel without lawful authority

Section 30 Chieftaincy Act, 2008 (Act 759) provides:

> *The power of a chief to act as an arbitrator in customary arbitration in any dispute where the parties consent to the arbitration is guaranteed.*

S. A. Brobbey at page 241 states as follows:

> *By section 30 of Act 759, the law now recognises the power of chiefs to settle disputes by customary arbitration subject to the conditions that the person prising at the arbitration is a chief, that the parties consent to the chief settling the dispute in his capacity as a customary arbitrator and that the dispute can be settled by applying customary law……*

The case of the Plaintiffs is based on the query they cite against the arbitration panel. Therefore, the onus was on the Plaintiffs to lead evidence to prove this fact or to satisfy an evidentiary burden, in cross examination of DW1, in rebuttal. See **BISI AND OTHERS V. TABIRI ALIAS ASARE [supra]**

The 1st Plaintiff testified thus:

"My family and I were deceived by the 1st, 2nd, 3rd, 4th and 5th Defendants to believe that 1st Defendant was clothed with the authority as member and president of the 7th Defendant and/or validly registered Omanhene of Wassa Fiase Traditional Area by virtue of the purported CD Form to lawfully appoint 2nd, 3rd, 4th, and 5th Defendants to hear disagreements when in fact that was not the case".

The allegation that it was the 1st Defendant who constituted the panel of arbiters was vehemently denied. The DW1 states in paragraph 3 as follows:

"At the Traditional Council, though we have the Judicial Committee which formally adjudicates Chieftaincy disputes we also encourage settlement of disputes through customary arbitration".

And at paragraph 10, it continued, as follows:

"It is not the Omanhene who sets up the panel of arbiters when the parties submit themselves for customary arbitration. This is administratively done by the Registrar and the parties pay the arbitration fee to signify their consent to the arbitration".

Incidentally, the Plaintiffs in this case had deposed to an earlier affidavit in support of Judicial review (Exhibit 1) that it was the 2nd, 3rd, 4th, and 5th Defendants herein, who invited them.

They argued during that Judicial review that the matter was within the exclusive jurisdiction of a properly constituted Judicial Committee of the WFTC. They further stated then that the 2nd, 3rd, 4th and 5th Defendants herein were not a constituted Judicial Committee of the Traditional Council, and therefore had no jurisdiction to hear and determine the matter in question. The Court held (at pg 21 of Exhibit 1) that the Respondents therein (panel) had jurisdiction to hear the matter. The court specifically held at pg 20 of Exhibit 1 thus:

"From the foregoing analysis, I think I must reject the argument by Counsel for the Applicants that the Respondents did not have jurisdiction to hear and determine the dispute between the parties by a customary arbitration. They did if two key conditions were met

namely, that the respondents were chiefs and the parties voluntarily submitted or as it were contended to submit to the arbitral process."

The Court also found that the panel were chiefs and that the Applicants paid the GHS 2,000.00, which signified their consent to submit to arbitration.

Holding 2: This court holds that the rest of the issues had already been dealt extensively with by His Lordship Justice Richard Adjei Frimpong J (as he then was). That was a court of coordinate jurisdiction in **Suit No. E9/13/20: THE REPUBLIC VRS: NANA KOJO GYENIN AMPEM II & 3 OTHERS; EX-PARTE: NANA OHYEAWURA BIAM NYANWAH PANYIN IV.** That decision was not appealed against and thus cannot be disturbed, by this court.

I. CONCLUSION

Judgment is entered for the Defendants. I offer no direction as to what the Plaintiffs should have done. I am however concerned with the penchant of waving of the wand of fraud, anytime litigants want to persist in chronic litigation. This must be discouraged.

Cost of GHS 15,000 awarded against each Plaintiff. This is to be paid fully before any of the Plaintiffs take any further step in this case or a related matter.

(SGD)

DR BRIDGET KAFUI ANTHONIO-APEDZI

JUSTICE OF THE HIGH COURT

COUNSEL

1. **ISRAEL ACKAH FOR PLAINTIFFS**
2. **E. K. AMUA SEKYI WITH CEPHAS ATO ETSEAKOBA AND EMMANUEL ESSUMAN DENISON FOR THE DEFENDANTS.**