

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE,
HOHOE, HELD ON FRIDAY THE 30TH DAY OF JULY 2023 BEFORE HIS LORDSHIP
AYITEY ARMAH-TETTEH J.

SUIT NO E1/34/2021

PHILIP KWAKU ABABIO
SUING AS CLAN HEAD OF YAFOOAES
OF BANDA

- PLAINTIFF

V

NANA KWESI OMANKOMANTEY II
CHIEF OF BANDA

- DEFENDANT

PARTIES: PLAINTIFF PRESENT
DEFENDANT PRESENT

COUNSEL: MR GODWIN KPORBLE FOR PLAINTIFF
MR. ERNEST DELA AKATEY FOR DEFENDANT

J U D G M E N T

By his writ of summons dated 24 May 2021, the Plaintiff as clan head of Yafoaes of Banda claims against the defendant as Chief of Banda as follows: -

1. A declaration that the Banda lands are owned by the Plaintiff's family, and which is bounded as follows:

On one side by the property of Chokes

On another side by property of Wiae

On another side by property of Nawure

On the last side by properties of Chonkes and Nawure

2. An order directed at the defendant to render accounts of his stewardship for the period he became chief till date.
3. An order that, the way and manner the proceeds and the lands were managed before the defendant was installed as chief be reinstated and which is in a democratic, transparent and open manner.
4. An order directed at the defendant not to manage the lands or deal with same in a way whatsoever without consulting the Plaintiff.
5. An order for Perpetual injunction directed at the defendant, his assigns, privies, agents, workmen, servants and anybody at his behest from alienating disposing or dealing with any portion of the land whatsoever.
6. Costs.
7. Any other reliefs/orders that the court deems fit and appropriate.

The plaintiff's writ was accompanied with a 25-paragraph statement of claim. Upon service of the Plaintiff's writ of summons and statement of claim on the defendant, he entered appearance and filed a defence denying the claim of the Plaintiff but did not counter claim.

CASE FOR THE PLAINTIFF

The Plaintiff's case is that he is the Clan head of Yafoae of Banda in the Krachi-Nchumuru District. The clan is made up of the following families: Ntebrese, Yaw Panni

and Dabone families. According to plaintiff the Banda lands belong to his Yafoae clan. Plaintiff contends that he is the custodian of the Yafoae lands and any chief of Banda has no role in the administration of Yafoae lands. It is the case of the Plaintiff that till the defendant was installed as chief, there was proper arrangement put in place which involved his family as to how the lands and the proceeds from sale were shared mainly among two clans being Yafoae and Tekpan. According to Plaintiff since the defendant ascended the Banda stool in 1988, he has sidelined and formed his own committee to superintend over the Banda lands and that the defendant and the said land committee has since engaged in reckless sale of land without any form of accountability to the Yafoae clan.

CASE FOR THE DEFENDANT

The case of the defendant is that it is the occupant of the Banda stool who has control over Banda Lands. According to Defendant, Yafoae and Banda are two distinct towns and Yafoae belongs to Wiaa whiles Banda belongs to Tekpan. The defendant contends that there is a committee which handles proceeds from the sale of Banda stool land and the members of the committee include a member of Plaintiff's Yafoae Clan.

When pleadings closed the following issues were set down for determination of the suit:

1. Whether or not the plaintiff has capacity to institute the action.
2. Whether or not the defendant sold and leased lands being portions of the Banda land to third parties.
3. Whether the Defendant has been using Banda Lands for other purposes.
4. Whether or not the defendant has been accountable to the plaintiff and other beneficiaries.
5. Whether or not the Banda land belongs the plaintiff's Yafoae Clan or Banda stool

Before I proceed any further, I would want to make this point clear. There is an issue that arose out of the pleadings and the evidence. The issue is whether or not Yafoeas can ascend or have ever ascended the Banda stool. Whiles the plaintiff claim Yafoeas have once been chiefs of Banda and are entitled to be chiefs of Banda, the Defendant vehemently denies this claim. I am not going to be drawn into this issue as in my view it borders on a cause or mater affecting chieftaincy and I am not cloth with jurisdiction to make any determination on that. My task is to determine whether or not Banda lands are owned by Yafoaes clan or the Banda Tekpang stool. I will 'stay in my lane' as the saying goes. I do not want this issue to becloud the other issues that are in this case within my jurisdiction to determine.

The Plaintiff testified through his attorney Anthony Kwabla Nsiah and called two witnesses. The defendant testified by himself and called two witnesses.

I will deal with the first issue which is to do with the capacity of the Plaintiff to mount this action against the Defendant. The Defendant challenged the Plaintiff's capacity in mounting this action. The law is that if the capacity of a party to mount an action is challenged or put in issue, he must prove his capacity before the merits of the case could be gone into. Capacity goes to root of every action and a party needs to prove his capacity if same is challenged and if he is unable to prove his capacity the case will not proceed to trial on the merits.

In the case of **Sarkodie I v Boateng II** (1977) 2 GLR 343 the full Bench of the Court of Appeal held at page 346 as follows:

"It is now trite learning that where the capacity of a plaintiff or complainant or petitioner is put in issue, he must, if he is to succeed, first establish his capacity by the clearest

evidence."

In paragraphs 1 and 12 of his statement of defence, the defendant pleaded as follows:

1. Paragraphs 1, 2 and 3 of the Statement of claim are admitted. Save that Plaintiff has no locus standi or capacity to commence [the] instant action.

12. Defendant still contends that Plaintiff lacks capacity and locus standi to commence [the] instant action and defendant says Plaintiff's writ do no[t] disclose any reasonable cause of against him.

In proof of the Plaintiff's capacity to institute this action against the Defendant, The attorney of the plaintiff testified per his witness statement at paragraph 6, 9, 28, 29 and 30 as follows:

6. The Plaintiff is the Clan head of Yafoae of Banda in the Krachi-Nchumuru District and a retired Civil Servant.

8. The Banda land belongs to the people of Yafoae and the Plaintiff as the clan head, remains the custodian of the land on his own behalf and that of his subjects.

28. Yafoea clan is the clan of Amakrado. As there is no substantive Amakrado after the death of Nana Kwadjo Kuma. Plaintiff is the head of Yafoae clan, as well as the acting Amankrado, also an indigene of Banda therefore has the locus standi or capacity to take legal action.

29. The Plaintiff is the landlord of Banda lands and owner of Banda stool as it was scarved by Yafoaes and all necessary customary rites performed by Yafoaes and Installed Nana Gyarkron as the first chief in his appreciation of hs services rendered to our forefathers.....”

30. As owner of Banda land and stool it is the Yafoaes clan that has control over Banda stool and land.....”

I will set out the evidence of the Defendant and his second witness which were elicited through cross examination on the capacity of plaintiff.

Cross examination of defendant:

Q. You claim that Kwadwo Kuma alias Kidibo was from the Plaintiff’s Yafoae clan, and he came to testify for you.

A. Yes.

Q. And you said that the Plaintiff is the head of the Yafoea clan for which the said Kadibo is from?

A. Yes

Cross examination of the defendant’s second witness:

Q. Until today you claim the Plaintiff has a list of people to make Mankrado but the defendant has been stalling the process.

A. **It is the Plaintiff who is the head of family who has to appoint new one** but he brought a Konkomba and we objected so if he brings the rightful person we will agree.

Q. From nowhere the Defendant appointed you to represent the Yafoae clan on the land committee.

A. I was appointed by the Plaintiff.

It is the case of the Plaintiff that he is the head of the Yafoae Clan and has capacity to mount this action against the Defendant. From the testimonies of defendant and his witness they seem to corroborate the evidence of Plaintiff that Plaintiff is the head of the Yafoae clan.

The law is that where the evidence of an opponent corroborates the evidence of the opposite party, and that opponent's remain uncorroborated on an issue, the court is bound to accept the corroborated evidence unless there are compelling reasons to the contrary. See **Chou Sen Lin v. Tonado Enterprise Ltd** [2007-2008] 1 SCGLR 135 at 140 per Brobbey JSC

“ On the point that devastated the case of the defendants was the evidence given by their own witness, the second defendant witness. His testimony was clearly against them to the extent that he even described the acquisition of the third plot as an error. Rather, his testimony supported the case of the plaintiff. The law on the issue is settled and it is this: when the evidence of a party remains uncorroborated but that of his opponent is corroborated even by the witness of his opponent, the court ought not to accept the uncorroborated version in preference to the corroborated one. The only exception to this rule is where the

court has or finds reason to reject the corroborated evidence.”

In his address counsel for the Defendant submitted that Plaintiff sued in his capacity as clan head of the Yafoae whereas in his relief (1) plaintiff is seeking a declaration that the Banda lands are owned by Plaintiffs family, and this is at variance with the capacity in which plaintiff is suing. I do not think the difference in clan and family matters. Clan is a larger form of a family and the Plaintiff explained that the Yafoae clan is made up of three families, namely Ntebrese Yaw Panin and Dabone families. It is these families that make up the clan. When it was put to first defendant witness under cross examination that from nowhere the Defendant put him on the land committee to represent the Yafoae Clan, his answer was that it was Plaintiff who appointed him. If it was plaintiff who appointed him to represent the Yafoea clan on the land committee, why can't the plaintiff sued to protect the clan property?

In the instant case the evidence of the Defendant and his witness corroborates the evidence of the Plaintiff that Plaintiff is the head of the Yafoae clan, and I am satisfied that the Plaintiff is the head of the Yafoaes Clan representing three families.

It is trite that it is the head of family who can sue and be sued in respect of a family property.

Order 4 rule 9 (2) of High Court (Civil Procedure) Rules, 2004 provides as follows:

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

See **Kwan v Nyieni and Anor** [1959] GLR 67 it was held as follows:

“As a general rule the head of a family, as a representative of the family, is the proper person to institute suits for recovery of family land.”

Defendant’s first witness who happens to be a paternal cousin of Plaintiff in his evidence also said the Plaintiff instituted this action on his own behalf because the Yafoaes have never met and elected him to institute this action on their behalf. The law does not require that a head of family should hold a general meeting to seek the consent of all members of the family before he can take an action to protect family property. The authority of a family head to take action to protect family property is vested in him upon assumption of his office as a head of family does not need the express consent of all members of the family when the family property is in danger. It might be prudent to consult principal members of the family, but it is not a legal requirement. If the rules permit an ordinary member of the family to institute an action to protect a family property when the said property is in danger without the consent of the other members of the family, how much more the head of family.

In the instant case I am satisfied that the Plaintiff is the head of the Yafoae Clan and as such head he has the capacity to mount this action against the Defendant without the consent or approval of the general membership of the clan. The Plaintiff has the capacity to institute this action against the Defendant.

I will now deal with issue 5 which is;

5. *Whether or not the Banda land belongs the plaintiff’s Yafoae Clan or Banda stool*

The Plaintiff's reliefs include declaration of title and the law is that for a family or stool to succeed in an action for declaration of title to properties, it must prove its root of title and method of acquisition beyond doubt either by traditional evidence, documents of title or by overt acts of ownership exercised over the properties .

See **Odoi v Hammond** [1971] 1GLR 375 Per Azu Crabbe J.A (as he then was) held as follows:

'For a stool or family to succeed in an action for a declaration of title it must prove its method of acquisition conclusively, either by traditional evidence, or by overt acts of ownership exercised in respect of the land in dispute.'

It is the case of the Plaintiff that Banda lands belong to the Yafoae clan and that the occupant of the Banda stool has no authority or control over the Banda lands.

The Plaintiff at paragraphs 4 and 5 of his statement of claim pleaded as follows:

4. The plaintiff says that, the Banda land belongs to the people of Yafoae and as a Clan head, he remains the custodian of the land on his own behalf and that of his subjects.
5. The Plaintiff says that, any chief occupying the Banda stool has no stake in the land administration of Banda.

In proof of the above claims the Plaintiff through his attorney testified as follows:

"The Banda land belongs to the people of Yafoae and the plaintiff as the clan head, remains the custodian of the land on his own behalf and that of his subjects. Any chief occupying the Banda stool has no stake in the land administration of Banda..... The plaintiff is the landlord of Banda lands and owner of Banda stool as it was scarved by Yafoaes and all necessary customary rites performed by Yafoaes and installed Nana Gyarko as the first chief in appreciation for his services

rendered to our forefathers... As owners of Banda land and stool it is the Yafoaes clan that has control over the Banda stool and land... The Banda land and stool belongs to the Yafoeas. The defendant is a native of Kumdi in Northern region and therefore has no right to Banda lands and property without the consent of Yafoaes.... The defendant as a chief is not a land owner..... therefore he has no right to deal with stool property. Our ancestors from the Yafoaes clan championed the sale of lands and transfer of houses in the past before the defendant disrupted all those things.”

In further prove of the Yafoeas ownership to Banda lands the Plaintiff’s attorney tendered exhibits K and L series. Exhibit K series are receipts of the sale of properties built on lands allocated by the Yafoae Clan. Exhibit K series were witnessed by members of Plaintiff’s family as landlords. Exhibit L series are application for purchase or acquisition of plots addressed to members of Plaintiff’s family and same approved by them. I will reproduce a couple of them.

Exhibit L1 is application for land to build a house and it is dated 6th February 63

Tarrimu Basare,
Banda-Krachi
6th Feb. 63

Sir,

Application for land to build a house

I have this honour most respectfully (sic) to beg you and your elders a piece of Land on which to build a house.

The land is behind the Bangalo.

I shall be very grateful if you will grand (sic) my humble request.

I have the honour to be.

Sir,

Your faithful servant,

Tarrimu Basare

Nana Kwaku Okyeame

Banda-Krachi

Exhibit L2

Kwaku Kegyingyi

c/o Morocco Canteen

Banda

5th November, 1963

Sir,

Application for a plot of land

I beg to apply for a plot of land lying on the Eastern part of the Banda town and Tairu Tailor Kotokoli's compound to put up a compound house.

I have the honour to be

Sir,

Yours faithfully,

Kwasi Kegyingyi

w/m/w

sign

F.O.C

Mr. Kwaku Mensah,

C/o Bandahene

Banda

Exhibit L3

Banda ,

Via Kate-Krachi

28th Nov. 1964

Dear Sir,

Application for building Plot- Banda

I should be very thankful if you could give me a plot to put up a house.

I should like the size to be 80 x 80 sq. ft.

Site: the said plot lies on Banda -Wia road and it is on the western direction of the town.

It situates on left hand side of the road just opposite Isifu Kusasi's premises. On the east is Moshiman's plot and on the South-West there is no buildings.

Yours faithfully,

Massi Hudu

Kotokoli

Applicant

Mr Kwaku Mensah

Landlord

Copy to:

The Health Inspector

Banda

Exhibit L 4

E.P. CHURCH

c/o The Catechist

Banda

19th Feb. 1964

Sir,

APPLICATION FOR A LAND

The Evangelical Presbyterian Church has the honour respectively to ask for land at the edge of the twon between Basares and L.A. Primary 'C' school. When going to Nandikrom at the left side.

The church wants to build a chapel there.

We would kindly be very grateful indeed to you, if you would kindly grant our request.

Thank you very much indeed.

Hoping for an early and favourable reply.

I remain.

Sir

Yours faithfully

E.K. Okyere

The c/i

Copies to

The Village overseer

Banda

The Chairman

Town Development Commit, Banda

Exhibit L5

Banda

Via Kete-Krachi

18th June 1965

Dear Sir,

A plot to build market-stall Banda

I should be very grateful if you would give me a plot at Banda market square.

The said plot is adjacent to Mr. Lambi Lagos market -stall which lies on the western end of the market on the slaughter- house.

The size of the plot should be 15 x 13 sq. ft

I shall according to any regulations laid down in the building of such house

I pray that my fervent application would receive your candid approval.

Yours faithfully

Mallam Dauda Gonja

Mr Kwaku Mensah

Landlord

Banda

Approved 25/6/65

Kwaku Mensah

L.L

Copies to

The Chairman

T.D.C. Banda

The Heath Inspector

Banda

It must be remarked that there were a lot of these applications but the court at the application for directions stage decided to take a few as exhibits as all of them sought to prove the one fact that the Plaintiff's ancestors have made grants of Banda lands to prospective developments in the past.

Exhibits L series were application for lands at Banda by prospective developers. These applications were addressed to Kwaku Mensah as the landlord and the said Kwaku Mensah approved the applications as landlord. Some of the application for building plots were addressed to Opanying Kwadwo Kumah in his capacity as landlord of Banda. I will reproduce a couple of them.

EXHIBIT K

Banda

Via Kete-Krachi

19th Sept. 1986

TRANSFER OF HOUSE- BANDA

I, the undersigned from Saki Nigeria now residing at Banda within Kete-Krachi jurisdiction within the Volta Region; agreed to transfer my house situated on the southern part of Banda. The house is bordered on the north by Mr. Kwame Krachi's house on the north by Mr. Moses Lagos House on the west by Mr Asira Baki's house and on the east by Kotokoliman's premises.

As from today's date 19th Sept 1968, the said house belongs to Mr. Adjimah Ladebo from Nigeria now living at Banda.

This transfer is made in the presence of Lagos Chief and Paning Kwaku Mensah, the landlord.

Asia Saki
Transferor
Present owner-Adjimah lagos

w/w
sgd

witnessed by
Kyeame Kwaku Mensah
Landlord
19/9/68

EXHIBIT K1'

Receipt on house No. C/29 at Banda

Received from Gariba Hausa, at Bandan within Kete Krachi jurisdiction, the sum of sixty cedis (60.00) being a house No. c/29 sold to the said Gariba Huasa.

This House No. C/29 comprises of seven(7) bedrooms roofed with thatch.

That from today's date 11th day of march, 1973, the said house No. C/29 belongs to Gariba Hausa and his heirs, on no account any of my relatives come to claim this house from Gariba Hausa.

The said amount mentioned above has been paid in presence of Issah Hausa who bears witness.

Receiver
Moses Akamu
For; pays & fasis
Copy to;
Nana Kwaku Mensah
Landlord at Banda
2.Health inspector c/c

At Banda

Exhibits K series were transfers of houses at Banda and these transfers were witnessed by Kyeame Kwaku in his capacity as the landlord.

So who are these two men who were referred to as landlords of Band and whom applications for lands at Banda were addressed to ?

The defendant did not deny that Kwaku Mensah was from Yafoae and he sold lands in his capacity as landlord of Banda.

Under cross examination of Plaintiff's Attorney the following ensued;

Q. In 1971 a plot of land was sold to one Kwami Gidesu and the said document was signed by Kwasi Poku II, the then Bandahene.

A. Kwesi Poku signed as a chief and Nana Kwaku Mensah signed as landlord. Kweku Mensah is from Yafoae.

This piece of evidence of Plaintiff's attorney that Kwaku Mensah from Yafoae signed as landlord was not denied by the Defendant's lawyer when he cross examined Plaintiff's attorney. He is deemed to have admitted same. Indeed the Defendant did not deny any of the exhibit L and K series. The defendant did not deny any of the exhibits Kand L series when he cross examined Plaintiff's attorney. The effect is that the defendant admits the content of those exhibits.

The law is that when a party had given evidence of a material fact and was not cross-examined upon, he need not call further evidence of that fact and the material facts will

be deemed to have been admitted. See **Danielli Construction Ltd v. Mabey & Johnson Ltd** [2007-2008] 1 SCGLR where it was held as follows:

“The Plaintiff company did not cross-examine the witness of the defendant company in the witness box when he gave that evidence; the plaintiff company did not also tender any evidence to challenge the veracity of the evidence in exhibit 2 and the inference was that it admitted the import of the evidence.”

In the instant case the defendant would be deemed to have admitted that the contents of the exhibits K and L series. In fact under cross examination of the defendant he made a tacit admission of exhibit K series but only said they were done without his knowledge and consent.

Q. The receipts Exhibit ‘K’ series are receipts in respect of allocation of lands to people by Yafoaes in Banda.

A. If they gave receipts in respect of lands at Banda they did so without my knowledge and consent.

Q. Did you have a look at the receipts ?

A. No

Q. Those receipts were done before you became a chief.

A. I have not seen them.

I find and hold that Kwaku Mensah was a member of the Plaintiff’s Yafoae clan and he sold or granted Banda lands in his capacity and the landlord of Banda lands.

Nana Kwadwo Kumah a member of Plaintiff's Yafoae Clan of Banda also sold some of the lands at Banda in his capacity as Landlord. This Kwadwo Kumah was the late Amankrado of Banda .

The plaintiff's attorney testified as follows:

Yafoae clan is the clan of Amankrado. As there is no substantive Amankrado after the death of Nana Kwadjo Kumah. Plaintiff is the head of Yafoaes clan, as well as the acting Amankrado, also an (in) indigene of Banda therefore he has the locus standi or capacity to take legal action.

This material piece of evidence was not denied by the defendant when plaintiff's attorney was cross examined by Lawyer for the Defendant. Defendant is deemed to have admitted same , that Kwadwo Kumah was a Amankrado.

In fact under cross examination of defendant he admitted that Kwadwo Kuma was Mankrado and was from Yafoae clan.

This is what ensued when defendant was cross examined.

Q. I put it to you that you did not give the Mankrado position to the Yafoea , it was there before you became the chief.

A. I was the one who gave the Mankrado Position. They swear oath to me and slaughtered a ram in my presence and he was Nana Kwadwo Kuma I of Yafoae. Some of the applications for building plots at Banda were addressed to Kwadwo Kumah as the landlord. This Kwadwo Kumah signed some of the exhibit as landlord

I find and hold that Kwadwo Kumah a member of plaintiff's Yafoae clan sold or granted Banda lands in his capacity as landlord.

In further proof of their ownership of the Banda lands, the Plaintiff called one of their boundary owners, the third plaintiff witness. The third Plaintiff witness testified that they are the Nawure people, and they share boundary with Plaintiff's Yafoae clan. The third Plaintiff witness further testified that the Yafoea people offered their great grandfather Nana Onyapoenye the clan head of Kabon of Kanbonwole, and his subjects place to settle during the second world war.

Third plaintiff witness testified in part as follows:

"However, the very clan that we share boundary with is the Yafoae clan of Banda. We are also the Nawure section as it is sometimes called by others as regards our boundary with the Yafoae, it is alternatively used. The Yafoae people offered our great grandfather, Nana Onyapoenye the clan head of Kabon of Kabonwole, and his subjects place to settle during the second world war after they captured the brother to the war front. So the very clan that we know as owners that we perform rituals with along our boundaries are the Yafoae clan of Banda, they are the people we know we share boundary with.

This piece of evidence was also not challenged by the defendant lawyer when he cross examined third plaintiff witness. The lawyer for the Defendant asked this witness only two questions and I would want to reproduce them here for its full effect.

Q. By paragraph 7 of your witness statement you said your clan Kabon shares boundary with Yafoae clan of Banda.

A. we share boundary with Yafoae clan of Banda. That is traditional boundary.

Q. I put it to you that the land you are talking about does not belong to the people

of Yafoae but it belongs to the people of Banda.

A. That is not true.

From the line of question by the defendant, they admit that the land in dispute shares boundary with the Nawure but contends that it belongs to the people of Banda and not the Yafoae clan.

The fact of the Yafoae clan granted land to the great grandfather of the witness was not challenged by Defendant. The fact that the Yafoae Clan perform rituals with the Nawure clan on their common boundary was also not challenged by the Defendant. Granting of land to another family and performing rituals on a common boundary by boundary owners are overt acts of ownership that a landowner exercise. These are material pieces of evidence which are indication of the exercise of overt acts of ownership exercised by the Yafoae clan over the disputed land. These serious material pieces of evidence were not deny by defendant. Defendant is deemed to have admitted same that the Yafoae Clan granted lands to third plaintiff witness' great grandfather and the Yafoaes perform rituals with the Nawruess on their common boundary..

From the evidence the Plaintiff's Yafoae clan has exercised overt acts ownership over Banda lands by granting portions of Banda lands to prospective developers without any opposition and they have also been exercising overt acts of ownership on their boundaries. Whiles the defendant has not been able to provide any credible evidence that the Banda lands belong to the Banda Tekpang stool. On the balance of the probabilities I am satisfied that the Plaintiff's Yafoae Clan are the owners of Banda Lands.

Even though Banda lands are owned by the Plaintiff's Yafoae Clan, over the years there have a practice has developed the Chief of Banda in involved is the administration and management of Banda lands. Some of exhibits K series was copied to the Bandahene as

was admitted by Plaintiff's attorney under cross examination that a sale of land in 1971 to one Kwami Gidisu, Nana Kwaku Mensah signed as the landlord , Nana Kwesi II also signed as Bandahene .The Plaintiff admits that there was a committee that was overseeing the managing and administration of the Banda lands.

I will discuss issues 2,3 and 4 together.

1. Whether or not the defendant sold and leased lands being portions of the Banda land to third parties.
2. Whether the Defendant has been using Banda Lands for other purposes.
3. Whether or not the defendant has been accountable to the plaintiff and other beneficiaries.

It is the case of the Plaintiff that the defendant has sold portions of Banda lands and have not accounted to the Plaintiff's Yafoae clan.

The defendant does not deny that he has been selling and disposing of Banda lands . His contention has been he is the Chief of Banda and he does not have to account to anyone. The plaintiff in his statement of claim averred that the defendant has sold Banda to prospective developers. The defendant admitted making those grants but said he did so in his capacity as chief of Banda and has the right to deal with the lands.

In his statement of defence paragraphs 7 and 8 defendant pleaded as follows:

7. Paragraphs 10 and 11 of the Plaintiff's statement are admitted. In further response thereto defendant says the land given to 1st Sky Limited is a Banda stool land and as the occupant of the stool he did that with the consent and concurrence of other elders of Banda.
8. Paragraphs 12, 13, 14, 15 and 16 of plaintiff's statement of claim are admitted save that Plaintiff says I dealt with Banda land but Yafoae land as the occupant of Banda stool land I have the right to deal with stool property.

The law is that if an averment of a party is admitted by his opponent , that party needs not call and evidence to substantiate that averment.

Order 11 rule 13(1) of the High Court (Civil Procedure) Rules C.I. 47 provides as follows:

“Subject to subrule(4) of this rule, any allegation of fact made by a party in the party’s pleading shall be deemed to be admitted by the opposite party unless it is traversed by that party in pleading or a joinder of issue under rule 14 operates as denial of it.”

The Plaintiff also tendered exhibit C series as evidence of grants of Banda lands made by the Defendant. The defendant under cross examination admitted making the grants in exhibit C series.

This is what ensued when Defendant was cross examined:

Q. Exhibit C series being the lease and sale of land. are you denying that the ever took place?

A. I do not deny. All of us know that we have made those grants.

In **Kusi & Kusi v. Bonsu** [2010] SCGLR 60 AT 78-79 Wood CJ had this to say on nature and effect of admission:

It is elementary principle of law that in civil litigation, where no issue was joined a between parties on a specific question, issue or fact, no duty was cast on the party asserting it to lead evidence in proof of that fact or issue..... In *Fori v. Ayerebi* 1966 2 GLR 627, a most direct and helpful authority on the point about undenied averments, this court held: “ When a party had made an averment and that averment was not denied, no issue was joined, and no evidence be led on that

avertment. Similarly, when a party had given evidence of a material fact and was not cross-examined upon it, he need not call further evidence of that fact.”

I am satisfied and find that the defendant has made grants of Banda lands and these were made without the involvement of the Yafoae clan and he must account for the sale of those lands.

Again, the Defendant under cross examination made an admission that when the Banda lands are sold the Yafoae clan has a share:

Q. I put it to you that as recognized land owners they always have share in any transaction that brings in money at Banda.

A. Any money that comes out of any transaction to the palace we give them their share.

Q. If you say you give them , how is it done?

A. We share it according to position at Banda i.e. Chief, Mankrado etc. and the rest is given to the Yafoae.

The defendant in his own evidence said the Yafoae Clan is entitled to proceeds of any transaction that comes to the Palace. He is therefore to account to the yafoae Clan of Banda lands sold or granted by him.

In conclusion, I find that there is overwhelmed evidence that the Yafoaes have been granting or alienating Banda lands as landlords as evidenced by exhibits K and L series. Nana Kwadwo Kumah I and Nana Yaw Mensah all from the Yafoae clan signed and approved application for Banda lands as landlords and the chief of Banda signed as chief of Banda. The defendants and his witnesses merely came to repeat the averments of the

defendant's pleading that the Banda lands are for the Banda Tekpang stool. The defendant did not lead any evidence to show the Banda chief has exercised any acts of ownership over Banda lands. The evidence of second plaintiff witness, a first cousin of Plaintiff and a member of the Yafoae clan, is suspect. He has been put on the committee set up by Defendant to manage the Banda lands and he stands to gain if the status quo is maintained. In fact I find him as a sellout.

I hold that the Yafoaes are owners of the Banda lands. However from over the time there have been a practice where the Chief of Banda has a say in the administration and management of the Banda lands. I therefore enter judgment for the Plaintiff as follows:

1. A declaration that Banda lands are owned by the Yafoaes of Banda but as has been the practice over the years ,the Banda Chief has a role to play in the administration and management of the lands
2. I make an order the defendant to account to the Plaintiff for the sale of for the past ten years.
3. I make an order the setting up of a committee to include a lawful representative of the Yafoaes within 30 days from today to oversee the administration of management of Banda lands.
4. The defendant his assigns, privies, agents, workmen, servants and anybody claiming through him is hereby restrained from administering, managing, alienating, disposing or in any manner dealing with the Banda Lands without the Yafoae clan.

5. With the agreement of parties and Counsel there will be no order as to costs.

(Sgd)

Ayitey Armah-Tetteh J.

(Justice of the High Court)