

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (GENERAL JURISDICTION DIVISION) SITTING IN ACCRA, ON FRIDAY THE 14TH DAY OF JULY, 2023.

SUIT NO: BMISC 738/2012

DANIEL NII MENSAH ABLORH-ADJEI

*(Suing as Head of Ablorh-Adjei We
of Teshie-Agbawe)*

PLAINTIFF

VERSUS

ABLORH ABDUL-GAFAR ABORDO

DEFENDANT

PARTIES:

Plaintiff – Present

Defendant – Present

COUNSEL:

Edward Sam CRABBE with Gloria Amanda DOVE for the Plaintiff -

Present

Ben SEVOR for the Defendant – *Present*

JUDGMENT

Ackaah-Boafo, JA

i. Introduction:

[1] To many people, this may appear to be an unnecessary matter as it relates to the headship of a family, but to good old Daniel Nii Mensah Ablorh-Adjei, who has been around for over eight decades it is very important because he sees it as his customary duty to his forebears. He is an indigene of Teshie and was part of a suit which has semblance to this action litigated over thirty years ago. Also, for him, he is the chosen head of family of Nii Ablorh Adjei and anyone who claims the same position is an imposter. To the Plaintiff, this suit is about the heart and soul of Numo Ablorh Adjei We of Teshie and therefore worth litigating over. The question here to be decided is whether the Defendant is part of the same family Nii Ablorh Adjei or a descendant of a branch called Osei Bonsu, a servant of Nii Ablade Adjei. This Court is charged with determining the legal issues surrounding the membership of the parties including a declaration as to who is the substantive head of *Numo Ablorh Adjei We* between the Plaintiff and the Defendant.

[2] As I stated in a previous decision¹ with similar facts, this Court's judgment may likely not resolve the internal conflict over the membership of the parties and the entire membership of the Numo Ablorh Adjei We family of Teshie. Ultimately, in my opinion, it is only the members of the Numo Ablorh Adjei We Family themselves who collectively, must resolve to settle their conflict by working within the framework of their history, custom and this judgment to let peace prevail, as members of the same family, because as was observed many years ago by a distinguished English jurist² "Litigation is not an activity that has contributed markedly to the happiness of mankind".

[3] I need to state that it is unfortunate that this simple case involving the membership of a family has taken over a decade since it was first filed on May 23, 2012

¹ Nii Boye John & Others v. Nii Boye Kumah & Others - Suit No: BFA 20/2012 – Delivered – March 27, 2019.

² Lord Edmund-Davies.

due to numerous adjournments requests of former counsel for the Plaintiff and many other reasons the both parties and the court can be blamed for. Indeed, this case has taken many years with twists and turns to reach its final destination today. In the Court's opinion, litigants like the parties herein ought to know that the timely and expeditious disposition of any matter is a fundamental right and same ought to be adhered to at all times. The long delay in the adjudication of this matter is unacceptable and indeed unwarranted.

ii. The Claims:

[4] Per the writ of summons issued together with the statement of claim, the Plaintiff is seeking a formal statement/pronouncement by way of 13 declaratory orders, the first of which is "a declaration that Ablorh Adjei We of Agbawe-Teshie consists of 2 different branches, namely Ablorh Adjei Section and Osei Section". Apart from the 13 declaratory orders, the Plaintiff further seeks the following orders:

- (n) "An order that only direct lineal descendants of Plaintiff's section of Ablorh Adjei We are eligible for appointment to the headship of that branch of Ablorh Adjei We.
- (o) A further order that only direct descendants of Osei Bonsu, founder of Osei We, are the proper persons for appointment to headship of that branch of Numo Ablorh Adjei We of Teshie-Agbawe.
- (p) Perpetual injunction restraining defendant and all members of Osei We, lineal descendants of Numo Ablorh Adjei's servant, Osei Bonsu, from holding themselves out as proper lineal descendants of Numo Ablorh Adjei, the founder of Numo Ablorh Adjei We of Teshie-Agbawe".

[5] After the service of the writ of summons and its accompanying statement of claim on the Defendant, he entered appearance by his appointed Counsel and later filed a statement of defence and counterclaim. The Defendant also counterclaimed for ten (10) declaratory reliefs. They included the following;

- a. “A declaration that Nii Ablorh Adjei We is one family and/or House and has no two sections, to wit, Nii Ablorh Adjei We and Osei We.
- b. A declaration that Nii Ablorh Adjei We was or used to be called Osei We, and that both names refer to the same House or family, and are not distinct and separate.
- c. A declaration that Plaintiff is not a direct male descendant of Nii Ablorh Adjei.
- d. A declaration that Nii Ablorh Adjei We of Agbawe, Teshie is also known as Osei We of Agbawe, Teshie and refer to one and the same Family of House”.

[6] Counsel for the Plaintiff filed a reply and defence to counterclaim. At the close of pleadings, the parties agreed on many issues, many of which the Court found to be irrelevant. After the Plaintiff retained new Counsel, the Court further reviewed the process on file with the parties and counsel and implored the parties to file joint issues. The parties complied and agreed with the court’s direction. On June 7th, 2021 the following issues were filed jointly by the parties as issues for trial;

- i. Whether or not the judgment of the High Court, Accra presided over by his Lordship Arthur Dove J, in **Suit No. 2260/88** and entitled **Nii Adjei Akuerteh & Ors vs Abordo Kwaku & Ors**. operates as estoppel per res judicata against the Defendant herein.
- ii. Whether or not the male and female line descendants of Numo Ablorh Adjei a.k.a. Numo Ablade Adjei have been appointed to the headship of the Ablorh Adjei section of the larger Ablorh Adjei We of Teshie Agbawe Quarter.
- iii. Whether or not the Plaintiff is the head of Nii Ablorh Adjei family.
- iv. Whether Nii Ablorh Adjei We consists of two branches, namely the Ablorh Adjei section and the Osei section and each section appoints its own head.
- v. Whether Osei Bonsu founded Osei We and/or where is the Osei We house.
- vi. Whether or not Plaintiff is entitled to its claims.

- vii. Whether or not Defendant is entitled to his counterclaim.
- viii. Any other issues arising from the pleadings.

iii. The Evidence Received by the Court:

The Plaintiff's Case:

[7] The Plaintiff, Mr. Danial Nii Mensah Ablorh Adjei, testified himself and called a witness, Mr. Joseph Okoe Ashong. The case of the Plaintiff is not different from the statement of claim filed. He testified per the witness statement filed on June 4, 2021 and adopted at trial as his evidence in chief that he is a direct male descendant of Numo Ablorh Adjei and instituted this action in his capacity as the head of Ablorh Adjei Family. His case, the confirmation of his status as the Head of Family was by a letter dated 20th April 2009 and signed or thumb-printed by all the principal members of the family. A copy of the letter was tendered at trial as Exhibit "A".

[8] He further testified that the Secretary of Nii Ablorh Adjei We by a letter dated 23rd April 2012 informed the Teshie Traditional Council of his status as the head of family. A copy of that letter was also tendered as Exhibit "B". According to the Plaintiff, his position as head of family of the Ablorh Adjei Family has been confirmed in numerous obituaries prepared at the passing of "members of the Teshie Agbawe Quarter particularly from the Ablorh Adjei Family" during his tenure as the head of family. About four of such obituaries were tendered at trial and marked as Exhibit "C Series".

[9] The Plaintiff further testified that by a letter dated 19th August 2019, and addressed to the Regional Stool Lands Officer, Greater Accra Region, the Teshie Agbawe Quarter of Nuumo Nmashie Family introduced the heads of families including the head of Teshie Agbawe Quarter and he was named as the head of family of the Ablorh Adjei We. Again, a copy of the said letter was tendered as Exhibit 'D' at trial.

[10] It is the case of the Plaintiff that the Defendant, Mr. Ablorh Abdul-Gafar Abordo is a lineal descendant of one Osei Bonsu, a servant of Nii Ablade Adjei and also a member of the Osei Bonsu branch of Ablorh Adjei We of Teshie Agbawe. According to the Plaintiff, the Ablorh Adjei We is one of the families that constitutes the Teshie Agbawe Quarter and that the headship of Ablorh Adjei of Teshie Agbawe has always been chosen from the direct lineal male descendants of Numo Ablorh Adjei. The further case of the Plaintiff is that the lineal female descendants are only considered for election where there is no suitable candidate from the direct male descendants. Mr. Nii Mensah Ablorh-Adjei further testified that members of the Defendant's family have always described themselves as being direct lineal descendants of Osei Bonsu and therefore part of Osei We of Teshie Agbawe.

[11] According to the Plaintiff, the Defendant as well as his lineage are not proper lineal descendants of Numo Ablorh Adjei and therefore they are illegitimate members of Plaintiff's family and therefore none can hold himself out as the head of the Ablorh Adjei We. The Plaintiff further testified that the Osei branch of Ablorh Adjei We of which Defendant hails descends from Numo Ablorh Adjei's servant known as Osei Bonsu. This section, according to the Plaintiff, has persistently fabricated the history of their origins and membership of the so called Nii Osei Section of Ablorh Adjei We of Teshie Agbawe in order to show that they are proper lineal descendants of Numo Ablorh Adjei even though a court of competent jurisdiction has ruled on that.

[12] According to the Plaintiff., what triggered the instant action is that following the death of one Rev. Dr. Emmanuel Nee Adjetei Abordo on Wednesday, 9th November, 2011, at Lekma Hospital, Teshie, the Defendant caused to be published an Obituary Notice in which he held and described himself as the head of Nii Ablor Adjei We, Teshie-Agbawe. According to the Plaintiff, in the said publication, the Defendant listed members of the Osei Bonsu branch being Osei We, all of whom are lineal

descendants of Numo Ablorh Adjei's servant, Osei Bonsu. It is the case of the Plaintiff that being a lineal descendant of Osei Bonsu, Numo Ablorh Adjei's servant, the Defendant lacks the requisite capacity for headship of Numo Ablorh Adjei We of Teshie-Agbawe which recognizes only lineal descendants of Numo Ablorh Adjei.

[13] The Plaintiff further testified that the Defendant, as the head of Osei We can neither be the head nor claim the headship of Ablorh Adjei We because the two families are separate and distinct sections of Ablorh Adjei We. Nii Mensah Ablorh-Adjei further testified that he is a direct male descendant of Numo Ablorh Adjei who has been appointed the Head and lawful representative of Numo Ablorh Adjei We of Teshie-Agbawe, while Defendant is the head of the Osei Section and therefore the publication he made was baseless as the issue has long been settled judicially.

[14] According to the Plaintiff, over 30 years ago, four members of the Ablorh Adjei family, including himself brought an action against Defendant's branch of Nii Osei We in 1988 in *Suit No. 2260/1988 entitled Nii Adjei Akuetteh & 3 Others vs Abordo Kwaku & 2 Others*. In that case, according to the Plaintiff, Judgment was entered in favour of the Plaintiffs on 27th day of June, 1990. It is the case of the Plaintiff that the Court granted the Plaintiffs' reliefs and dismissed the counterclaim of the Defendants in that suit. A copy of the judgment was tendered as Exhibit "E". The Plaintiff therefore contends that all the issues raised by the Defendant in his statement of defence and counterclaim in this suit were dealt with by the court in the judgment as per Exhibit "E", and the Defendant cannot now re-litigate the same issues dealt with involving his lineal descendants.

Joseph Okoe Ashong's Evidence:

[15] In support of his case, the Plaintiff called Mr. Joseph Okoe Ashong who is the secretary of the Teshie Agbawe Quarter and Agbawe Welfare Committee as a witness. He testified that his position as the secretary was confirmed by the various heads of

families constituting the Agbawe Quarter in a letter dated 10th July 2010. A copy of the letter was tendered as Exhibit 'F'. He told the court that the Plaintiff was nominated and appointed the head of family for Nii Ablorh Adjei Family by the principal members of the family on April 18, 2009.

[16] He further testified that in the judgement tendered as Exhibit "E", the court accepted a certificate of Plaintiff's grandfather, the late Daniel Ablorh Adjei as a member of the Ablorh Adjei family who was baptized at Abokobi Presbyterian Church on 25th December 1919 as a document made in the course of record keeping at the church and that document proves the "Plaintiff's direct male lineage of Numo Ablor Adjei". He further testified that the claim by the Nii Osei Bonsu section of Ablorh Adjei We, which the Defendant is a direct descendant, that they are direct lineal descendants of Nii Ablorh Adjei through one Adjei Okunkor and Asafoatse Sowah (a.k.a. Asafoatse Osei Bonsu) was rejected by the High Court in the 1990 Judgment, therefore the Defendant is estopped from making the same claim in this suit.

[17] The further testimony of the witness was that the Defendant is not a lineal descendant of Numo Ablorh Adjei but rather that of Osei Bonsu of Nii Osei We and therefore he is not a proper lineal descendant of Numo Ablorh Adjei and any attempt by him to make such claim "will only be described as a fabrication and suppressing the truth as per the judgment" tendered as Exhibit "E".

[18] According to Mr. Okoe Ashong since time immemorial "only proper lineal descendants of Numo Ablorh Adjei of the male and female lines have been appointed to the headship of the Ablorh Adjei section of the larger Ablorh Adjei We of Teshie Agbawe". He also stated that the Defendant is not credible even to be a head of a family as he defended an action against a grantee of Agbawe Quarter Land, a family Defendant hails, in *Suit No. G/AC/DG2/A1/15/06 entitled Ashalley Amarah*

(Substituted by Adjetey Nii Fio) vs Kai Aboma. He tendered a copy of the said judgment as Exhibit "G". Based on all of the above, the Plaintiff prayed the court to enter judgment in his favour. Both the Plaintiff and his witness were cross-examined by the Defendant. The Plaintiff closed his case without calling further evidence.

The Defendant's Evidence:

[19] The Defendant, who is a lawyer by profession, testified by himself and called no evidence to close his case. His evidence was that the Plaintiff is not the head of Nii Ablorh Adjei Family of Teshie Agbawe and also not a direct male lineal descendant of Numo Ablorh Adjei. According to the Defendant, the Plaintiff is related to Ablorh Adjei Family in the matrilineal line but he the Defendant, "is a direct male descendant of Nii Ablorh Adjei through his second son Sowah who was also known as Asafoatse Sowah or Asafoatse Osei Bonsu". The Defendant contended that "Nii Ablorh Adjei gave birth to two sons namely; Adjei Okunkor and Sowah whose descendants constitute the unitary Ablorh Adjei Family".

[20] The further testimony of the Defendant was that "there is no Osei Bonsu branch of Nii Ablorh Adjei Family. The Nii Ablorh Adjei Family is one of the four families of Agbawe Quarter of Teshie, the others being Nii Adjetey Okpey Family, Torsutse Akpor (alias Torsu Family or Nii Akpor Adjei Family, and Kotoko Family (alias Naa Adjeitsoo Nkromah Family)". He further stated that the "headship of Nii Ablorh Adjei Family of Teshie Agbawe has always been chosen from the direct male lineal descendants of Nii Ablorh Adjei". According to the Defendant, "in July 1949 my grandfather, Captain Osei Bonsu (also known as Asafoatse Adjetey Abordo) was the head of Nii Ablorh Adjei Family of Teshie Agbawe". He tendered as Exhibit "1" a letter he said introduced the late Nii Adjei Obadzen as Shikitele of Agbawe Teshie to the Chief of Teshie dated July 20, 1949.

[21] The Defendant further testified that in 1967, his grand-uncle Evans Lawrence Adjei as the head of the Ablorh Adjei family signed an indenture made by the late Nii Adjei Obazden in respect of Teshie Agbawe Quarter lands, and another one belonging to the said Evans Lawrence Adjei. Two old indentures were tendered as Exhibits '2' and '3' to support the contention. The Defendant further testified that in the year 1979 his grand-uncle Nii Abordo Kwaku as head of Nii Ablorh Adjei Family and one of the kingmakers installed the late Nii Akpor Adjei II as Shikitele of Agbawe Teshie.

[22] The Defendant tendered Exhibits 4, 5, 6 and 7 being the obituary notice of the late Nii Adjei Obazden by which the said Abordo Kwaku was named as a chief mourner and the judgment of the Judicial Committee which also named the late Abordo Kwaku as head of Nii Ablorh Adjei Family and one of the kingmakers who installed the late Nii Akpor Adjei II as Shikitele. Other obituary notices of people the Defendant stated were members of the Nii Ablorh Adjei family were tendered as Exhibits 8, 9 and 10 by the Defendants. The Defendant also tendered Exhibit '11' a letter from the lawyer for the Teshie Traditional council introducing Seth Adjei Sowah as regent Shikitele to the Ga Traditional Council.

[23] The Defendant's further evidence was that the late Numo Mallam Issah Ahia succeeded Nii Aadey Boi Atswaa, and he, the Defendant was appointed the Head of Nii Ablorh Adjei Family in the year 2010, when Mallam Issah Ahia became weak and was customarily removed. Defendant tendered in evidence a letter dated July 22, 2010 as Exhibit "12" by the elders of Nii Ablorh Adjei Family to the then Acting Shikitele, Seth Adjei Sowah to introduce him as head of Nii Ablorh Adjei Family of Teshie Agbawe. The Defendant again tendered Exhibit "13" which is a letter from the lawyer for the Teshie Traditional Council to the Greater Accra Regional Minister to introduce Nii Adjetey Okpey III as a Shikitele. It is dated July 6, 2012. The letter also served as a notice of enstoolment of Nii Adjetey Okpey III. According to the Defendant he signed the notice in his capacity as Head of Nii Ablorh Adjei Family of Teshie Agbabwe.

[24] The Defendant tendered other exhibits numbered 14 to 22 to support his case. According to him, he tendered Exhibit “14” because it is a copy of a judgment of an action which was instituted against a self-styled Shikitele, called John Adjei Adjetey for the removal of his name from the National Register of Chiefs. He also tendered Exhibit “15 series” which are photographs the Defendant contends show him “with his elders, performing customary rites at the ancestral home, Nii Ablorh Adjei We, H/No. 85/1, Teshie”. Exhibit “16 series” are more obituary notices of persons the Defendant says were members of Nii Ablorh Adjei Family whose funerals he “superintended as Head of Nii Ablorh Adjei Family”.

[25] The further testimony of the Defendant was that his family members, being, the Nii Ablorh Adjei Family members, are direct male descendants of the two sons of Nii Ablorh Adjei, namely Adjei Okunkor and Asafoatse Sowah (also known as Asafoatse Osei Bonsu), and that Ablorh Adjei We is also known as Osei We. He tendered Exhibit “17” a copy of document he said introduced the late Nii Adjei Obadzen.

[26] The Defendant’s case is also that the “Nii Ablorh Adjei We is the same as Osei We, the two names refer to one and the same House or Family, and as has been the custom of the four aboriginal or original Teshie Agbawe Families namely Nii Adjetey Okpey We, Nii Ablorh Adjei We (alias Osei We), Torsutse Akpor We (alias Torsu We or Nii Akpor Adjei We), and Kotoko We (alias Naa Adjeitsoo Nkroma We), the sword of office or customary name of an Asafoatse is also used to refer to his ancestral house or family”.

[27] The other aspect of the Defendant’s evidence captured at paragraph 16 of the witness statement was that “Exhibited and marked as Exhibit “18” is a letter written by the Plaintiff in which he acknowledges that Naa Adjeitsoo Nkrumah We is also

called Kotoko We, Nii Akpor Adjei We is also called Torsutse Akpor We. Exhibited and marked as Exhibit “19” is a copy of letter written by the Acting Head of Kotoko We, acknowledging that Kotoko We is also called Adjeitsoo Nkrumaa We. Exhibited and marked as Exhibit “20” is a copy of self-styled secretary (who is also a nephew of the Plaintiff) of Agbawe in which letter he acknowledges that Kotoko We is the same as Naa Adjeitsoo We. Exhibited and marked as Exhibits “21 series” are copies of obituary notices in which the people of Naa Adjeitsoo Nkroma We also accept that they are called Kotoko We”.

[28] The Defendant reiterated that he is a direct male descendant of Nii Ablorh Adjei through his son Asafoatse Sowah and his grandfather was the head of Nii Ablorh Adjei Family who in the year 1949 wrote to introduce the late Nii Adjei Obadzen to the Teshie Chief. According to him, he was properly appointed as Head of Nii Ablorh Adjei Family of Teshie Agbawe, and has since performed his duties as such. He tendered Exhibit “22”, a copy of a letter tendered in the proceedings before the Judicial Committee. He also said “he is a direct male descendant of Nuumo Ablorh Adjei’s son Asafoatse Sowah (alias Asafoatse Osei Bonsu) and my grandfather Nii Asafoatse Adjetey Abordo (Captain Osei Bonsu) had ever been the head of the Ablorh Adjei family as borne out by correspondence from the Agbawe quarter and rulings from the traditional councils”.

[29] The Defendant further stated that “The Nii Ablorh Adjei Family have been in undisturbed possession of our ancestral home, the Nii Ablorh Adjei We H/No. 85/1, Teshie, where all customary and traditional rites of the Nii Ablorh Adjei We are performed. My ancestors and/ or predecessors have been installed or appointed to customary offices of the Nii Ablorh Adjei Family as well as that of the Agbawe Quarter”.

[30] The Defendant contended that the Plaintiff has distorted the history of the Ablorh Adjei Family and his own lineage because “Asafoatse Sowah, also known as Asafoatse Osei Bonsu was never a servant of Nuumo Ablade Adjei but a son of Nii Ablorh Adjei whose father was Nuumo Ablade Adjei and therefore his grandfather. Osei Bonsu was the name of the sword of office or title of office or appellation of Asafoatse Sowah, the second son of Nii Ablorh Adjei”.

[31] According to the Defendant all the acts he has performed since his appointment as the head of family are lawful and legal because he performed them in his capacity as “head and lawful representative of Nii Ablorh We”. He said, the Nii Ablorh Adjei We is not made up of branches and the descendants of Asafoatse alias Asafoatse Osei Bonsu are an integral part of the Nii Ablorh Adjei We which is the same as Osei We. He repeated his material allegation that Plaintiff is not a direct male descendant of Nii Ablorh Adjei Family and he has not been appointed or installed as head of Nii Ablorh Adjei Family of Teshie, Agbawe. He therefore prayed the court to dismiss the claim and grant his counterclaim.

iv. The Court’s Evaluation & Analysis of the Evidence:

[32] Now, in resolving the dispute among the parties, I am of the opinion that the issues to be determined are both legal and factual. The factual issues are to be determined by credible evidence adduced before the court. However, in the determination of the factual issues the court applies tests based on legal principles to arrive at a conclusion as to whether or not any of the parties has proved his case to the standard required by law. This is because the law is trite and same supported by statute that for a court to decide a case one way or the other, each party to the suit must adduce evidence on the issues to be determined by the court to the standard prescribed by law.

[33] The above legal position is supported by various provisions of the Evidence Act 1975 (NRCD 323). Section 14 of the Act for instance provides:

“(14). 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”.

[34] The burden of producing evidence by both sides in the suit as well as the burden of persuasion is one to be determined on the preponderance of probabilities as defined by Section 12(2) of the Evidence Act 1975 (NRCD 323). The Defendant having endorsed in his pleadings with a counterclaim also carries the burden of proving the facts alleged in his Defence and Counterclaim to the same degree as the burden the Plaintiff carries in proving his claim against the Defendant.

[35] It is also trite law that for every case there is a burden of proof to be discharged and the party who bears the burden will be determined by the nature and circumstances of the case; **See** Sections 10 – 17 of the Evidence Act 1975 (NRCD 323). I note that there is no paucity of case law interpreting the provisions of NRCD 323. In **Ababio v Akwasi III [1994-95] Ghana Bar Report, Part 11, 74** the court stated that a party whose pleadings raise an issue essential to the success of the case assumes the burden of proving such issue. I shall now proceed to examine the evidence adduced in support of the Plaintiff’s case and will relate same in the context of the standard of proof I have already set out in this judgment.

[36] From the evidence of the parties set out above, it is clear that the Plaintiff’s evidence on whether the family is one unit or two branches is different from that of the Defendant. It is a clear case of oath against oath. While the Plaintiff is older than the Defendant, both of them do not purport to provide direct evidence of how the Nii Ablorh Adjei family was created, because they were both not alive. Their evidence is thus based on traditional history that has been handed down by word of mouth from

their forebears. As a result, though there might not be any intent of dishonest motive, it is possible that there may be instances of blatant falsehood, pure misrepresentation, distortion, or even simply naïve misrepresentation of the historical facts in the course of the transmission of the oral history from one generation to the other.

[37] In **Adjei v. Acquah [1991] 1 GLR 13**, the Supreme Court stated how courts must assess the probative value and credibility of contrasting traditional and historical evidence. As captured in the headnotes, the court stated that:

“..... What the authorities required was that traditional evidence had to be weighed along with recent facts to see which of the two rival stories appeared more probable. Facts established by matters and events within living [recent] memory.”

I will have the above in mind as I assess the evidence proffered by the parties in this case.

[38] From the joint issues filed, which is reproduced at paragraph 6 of this judgment, the parties set down the issue “*Whether or not the judgment of the High Court, Accra presided over by his Lordship Arthur Dove J, in Suit No. 2260/88 and entitled Nii Adjei Akuerteh & Others vs Abordo Kwaku & Others operates as estoppel per res judicata against the Defendant herein*”. Being a legal issue, it is important that this court first deals with it because it is the fulcrum of the Plaintiff’s case as he is of the view that if same is sustained, then there will be no need for further evaluation of the evidence.

[39] Counsel for the Plaintiff, in his written submission filed, referred to the pleadings and stated that the “Plaintiff rightfully pleaded *estoppel per res judicata* in his reply and defence to counterclaim”. He referred to the case of *Attorney-General vs Sweater and Socks Factory Limited [2014] 74 GMJ 1 @ pages 32 to 33*, by which the

Supreme Court referred to the case of *Karikari v Ababio II [2001-2002] SCGLR 515*, and stated at page 530 that:

“The doctrine or principle of estoppel is founded on the maxim interest reipublicae ut sit finis litium meaning, ‘it concerns the State that lawsuits be not protracted’. Also, ‘no man ought to be twice vexed, if it be found to the court that it be for one and the same cause’ (nemo debet bis vexari, si constat veritatem quod sit pro una et eadem causa). If an action is brought, and the merits of the question are determined between the parties, and a final judgment is obtained by either, the parties are precluded, and cannot canvas the same question again in another action, although, perhaps, some objection or argument [pages 33] might have been urged the first trial which would have led to a different judgment’.

[40] Counsel further stated that “The Defendants in Suit No. 2260/1988 mounted a defence that they are real descendants of Nii Ablorh Adjei through the patrilineal line and that the Plaintiffs therein are linked to the Ablorh Adjei family matrilineally. The Defendant in the present suit who is a successor in title has mounted the same defence and repeatedly stated that he is a direct male descendant of Nii Ablorh Adjei through his second son Sowah who was also known as Asafoatse Sowah or Asafoatse Osei Bonsu. The Court in Suit No. 2260/1988 rejected the contention of the Defendants and stated that Defendants in the said suit have suppressed evidence which does not support their position and fabricated evidence to show that they are proper lineal descendants of Numo Ablorh Adjei”. Counsel then referred to the cross-examination evidence of the Defendant in which he admitted that the Plaintiff herein was the 4th Plaintiff in the earlier case and he is related to the 1st and 2nd Defendants in the earlier case say that the parties are the same because the Defendant herein is privy to the earlier Defendants and their successor in title.

[41] Learned Counsel further submitted that the Court in the earlier suit made the finding that the Defendants in that case are not proper lineal descendants of Nii

Ablorh Adjei We. Consequently, Counsel submitted that “the matter in relation to which party is a proper lineal descendant of Numo Ablorh Adjei has been determined by a Court of competent jurisdiction and the parties and their privies cannot subsequently re-litigate the same claims or issues. Both Plaintiff and Defendant do not have the requisite power to re-litigate this matter. Defendant herein counterclaimed against the Plaintiff”.

[42] Defendant counsel on his part cited the case of **Gariba Dintie v. Kanton IV [2008] 2GMJ 168 SC at pages 178-179 per Ansah JSC**, and submitted that the Supreme Court set out the law on how *estoppel per rem judicata* is established and indicated four conditions. Counsel then submitted that for the earlier judgment to be relied on, the Plaintiff ought to satisfy all the four conditions. Referencing the third element/condition to be proved, Counsel submitted that for the doctrine to be applicable, the same question in the present case must be the question which was previously determined. In this case, Counsel submitted that “the questions sought to be determined and decided by this Court are not the same as those determined and decided by the High Court, Accra in Suit No. 2260/88”, because in Suit No, 2260/88, the reliefs sought by the Plaintiffs therein (which includes the Plaintiff herein who was 4th Plaintiff) was among other reliefs for: “A declaration that the demolished H/No. H65/1.situated at Agbawe Gonnon, Teshie, near the chief’s palace and the now vacant land is property of the Ablorh Adjei family of Teshie”.

[43] Counsel further submitted that “In the case of **Jacob Kwaku Acheampong v. Sekyereduamse Stool 2019 130 GMJ 147 CA** at pages 158 to 159; **Aduama Osei JA** (as he then was), pronounced on the necessity of a party, pleading estoppels, to exhibit the record of the earlier proceedings before the court as follows; “**In Apeah and Another v Asamoah [2003-2003) SCGLR 225 (234-235)**, the Supreme Court per Bamford-Addo JSC observed that where estoppel has been pleaded if it is necessary

the record of proceedings should be exhibited so that the judge can determine the nature of the estoppels pleaded" (Emphasis added)".

[44] Based on the above, Counsel submitted that "the law as stated by the Supreme Court in the above-stated case is that as a matter of necessity, for a party who pleads estoppel to succeed, that party must bring before the Court, the proceedings in the earlier suit. This obligation placed on the Plaintiff in this suit has not been discharged. The Plaintiff did not tender the proceedings in Suit No. 2260/88 and as such this court has nothing to compare the instant pleadings with, to conclude that the plea of estoppel has been substantiated". Counsel therefore submitted that the Plaintiff has failed to discharge the statutory duties placed on him by Sections 10 and 11 of the Evidence Act and therefore, the Plaintiff has not made out a case for the plea of estoppel per res judicata to be upheld.

[45] Counsel for the Defendant further submitted that the estoppel per rem judicatam is not applicable in this case because the judgment in Suit No. 2260/88 was obtained by fraud. The Defendant's allegation of fraud, according to him, is because the Plaintiff concealed certain facts from the court which delivered the 1990 judgment. According to the Defendant the

"The Plaintiff at all material times is aware that the Ablorh Adjei who founded or created Nii Ablorh Adjei We is not the same as his grandfather. Daniel Ablorh Adjei. The Plaintiff in Suit Flo, 2260/88 did not bring to the notice of the court, or deliberately concealed from the court the fact that his grandfather is not the same as Nii Ablorh Adjei whose house. H/No. I-185/1, Agbawe Gonno was in issue. The Plaintiff also concealed from the court the fact that his great grandfather, Ablarh Kwarn is not the same as Nii Abalde Adjei father of Nii Ablorh Adjei who created Nii Ablorh Adjei We H/No. H85/1, Agbawe. Having concealed these facts from the court, the Plaintiff used his grandfather's birth certificate to make the court believe that because he is descended from Daniel Ablorh Adjei, then he is descended from Nii Ablorh Adjei and for that

matter he, the Plaintiff, is a member of Nii Ablorh Adjei We H/No.H85/1, Agbawe. The reason the court in Suit No. 2260/88 gave judgment for the Plaintiff is because the Plaintiff traces his roots to Daniel Ablorh Adjei born in 1854 and baptised in 1919, but not because the Plaintiff traces his roots to Nii Ablorh Adjei, founder of Nii Ablorh Adjei We H/No. H85/1, Agbawe”.

Consequently, Counsel prayed that the plea of *estoppel per rem judicatam* be dismissed.

[46] With respect to the Defendant and Counsel, I am of the respectful view that it is without merit. It is trite that fraud must be pleaded, particularized and proved at trial. This was confirmed by the Supreme Court in the case of **Kangbere v. Mohammed (2012) 51 GMJ @179**. Dotse JSC (as he then was) stated as follows: “...*for anyone to succeed with a serious allegation like fraud which has the tendency to vitiate acts done regularly, the particulars which must be pleaded, must also be proven*”. In this case, the Defendant in his statement of defence and counterclaim filed did not find it necessary to do so. To therefore raise fraud in his written submission is with respect without any basis.

[47] From the authorities, an allegation of fraud must be proved to the extent that a person against whom the charge of fraud is levelled against acted in a dishonest manner. For that was the scope of the definition of fraud in the case of **Brown v Quarshie [2003-2004] 2 SCGLR 930** and at 946 stated as follows:

‘[A]t common law a charge of fraud is such a terrible thing to bring against a man that it cannot be maintained in any court unless it is shown that he had a wicked mind... in short fraud is dishonesty’

The same position of how serious fraud is and not to be found lightly was underscored by the Court of Appeal in the case of **Aikins v Dakwa [2013] 58 GMJ 187 @ 209** when the court held that;

“Fraud is a serious crime to be charged against another. That is why the law in Section 13(1) of NRCD 323 states that if fraud is alleged even in a civil suit it must be proved beyond reasonable doubt as pertains in normal criminal cases. The trial Judge considered these particulars of fraud in the light of the evidence placed on record. He came to the conclusion that the defendant herein committed no fraud in obtaining the circuit court judgment because in all cases he acted in good faith based on professional advice given him”

[48] It is not left for the court to infer fraud. Indeed, the general position of the law is that the Court is careful not to find fraud unless particulars thereof has been distinctly pleaded and proved strictly, for a finding of fraud is not to be made without clear and cogent evidence upon the subject³. As a general rule, a party who alleges fraud carries the burden of proof of that assertion. As stated in the *Aikins v Dakwa case supra*, that requirement of law is housed in **Section 13(1) of the Evidence Act, 1975 (NRCD 323)**. In the considered opinion of this court, a party can only be fixed with crime of fraud if his guilt was proved with that degree of certainty. In the court’s opinion the Defendant’s position of fraud is an afterthought and without merit and same is dismissed.

[49] With the arguments traded by counsel set out above out of the way, I now look at the main issue set out in this case. The case of the Plaintiff is that the Defendant’s main defence which is the basis for the counterclaim has already been determined by a court of competent jurisdiction therefore the Defendant is *estopped per rem judicatem* by the decision of the High Court, Accra per *Arthur Dove J, in Suit No. 2260/88* from re-litigating same. It is the contention of the Plaintiff that a court of competent jurisdiction has determined that the descendants of the Defendant herein are not proper lineal descendants of Nii Ablorh Adjei and therefore he is estopped from raising the same issue and re-litigating same in this suit. A copy of the judgment dated

³ Thomson v Eastword (1874-77) 2 AC 215 HL @ 233 per Lord Cairns L.C.

June 20, 1990 in Suit No. 2260/88 was tendered without objection as **Exhibit E** in these proceedings.

[50] On April 11, 2022 when the Defendant was cross-examined by Counsel for the Plaintiff, the following evidence was elicited in regards to the earlier suit;

“Q: The Plaintiff was the 4th Plaintiff in Suit No. 2260/1988 tendered as Exhibit ‘E’ attached to Plaintiff’s witness statement. Correct?”

A: My lord that is correct, the Plaintiff is the 4th Plaintiff.

Q: Your granduncle was the 1st Defendant in Suit No. 2260/1988. Correct?”

A: That is correct.

Q: What is your relationship with Abordo Mensah, the 2nd Defendant in Suit No. 2260/1988 tendered as Exhibit ‘E’ attached to the Plaintiff’s witness statement?”

A: He was my uncle?

Q: Maternal or Paternal Uncle?”

A: Paternal Uncle.

Q: A judgment was given for the Plaintiffs in Suit No. 2260/1988 on 20th June 1990 and the reasons for the judgment deferred to 27th June 1990 as per Exhibit ‘E’. Correct?”

A: Yes, that is correct.

Q: In Exhibit ‘E’ particularly page 15 of Plaintiff’s witness statement, the Court in Suit No. 2260/1988 state emphatically at the last but one paragraph that the main issue that arises for determination is whether or not the Plaintiffs are members of the Ablorh Adjei family in the patrilineal line. Is that correct?”

A: My Lord that is correct. But also, at page 16 of the same Exhibit ‘E’ paragraph 2, the Court also stated that the ‘matter before me which I have to decide is the status of ...’ (witness reads). From the reliefs sought, which are captured at page 14 of exhibit ‘E’, the main matter before the Court is the status of House No. H85/1 as captured at page 16 of exhibit ‘E’.”

[51] “The doctrine of *res judicata* was summarised by retired justice of the English Supreme Court Lord Sumption in *Virgin Atlantic Airways Limited v Zodiac Seats UK Limited*,⁴ when he stated:

“Res judicata is a portmanteau term which is used to describe a number of different legal principles with different juridical origins. As with other such expressions, the label tends to distract attention from the contents of the bottle”.

[52] In my opinion the doctrine of *res judicata* prevents re-litigation of matters that have already been determined by a court of competent jurisdiction. Note that the doctrine of *res judicata* is a common law doctrine. There are two branches of the doctrine: *cause of action estoppel* and *issue estoppel*. Both branches are founded on the twin principles that the same party shall not be harassed twice for the same complaint and that there is societal value in the finality and conclusiveness of judicial decisions. See *Conca Engineering v. Moses* [1984-86] 2 GLR 319 (Holding 1) per *Apaloo C.J., Mensa Boison & Abban JJ.A.*

[53] It is also to be noted that the doctrine is founded on the principle that it is in the interest of the Republic that litigation must come to an end. In *Akyem v. Adu & Others; Adu and Others v. Brantuo and Another (Consolidated)* [1976] 2 GLR 63, it was held that:

The principles, underlying the doctrine of estoppel by record are interest *rei publicae ut sit tinis litium* (it is for the common good that there should be an end of litigation) and *nemo debet bis vexari pro eadem causam* (no one should be sued twice on the same ground)⁵.

It is clear then, that where a court of competent jurisdiction⁶ has decided a case between two parties, the judgment in that case is binding not only as between the

⁴ [2013] UKSC 46, [2014] AC 160

⁵ *ibid*

⁶ *Ababio and Others v Karikari and Another* [2001-2002] 1 GLR 381

parties but their successors in title. The judgment of the court is binding in so far as the cause of action and the issues⁷ flowing from it have been determined and or could have been determined between the parties and thereafter the losing party may not be permitted, in another or different action to raise the matter already determined for fresh litigation.

[54] Ghanaian courts have long recognized and applied the doctrine and stated that a person cannot bring an action where the cause of his claim or the issues he seeks to have determined have already been disposed of or could have been disposed of between the parties or their privies by a court of competent jurisdiction. See the case of **In Re: Speedline Stevedoring Co. Ltd; Republic v. High Court Accra, Ex Parte Brenya [2001-2002] SCGLR 775.**

[55] Since the Plaintiff has raised the issue of *estoppel per rem judicatam*, it is important to state that for the doctrine to be properly founded in law, the authorities agree that the parties in the case and the facts or legal issues raised in the earlier case ought to be the same as the present. The Court of Appeal laid out the pre-conditions for the application of the doctrine in the old case of **Robertson v. Reindorf [1971] 2 GLR 289-307**, where Azu Crabbe J.A. had this to say about establishment of estoppel per rem judicatam:

“A party who relies on an earlier judgment as estoppel per rem judicatam, must, if he is to succeed, establish:

- i. That there has already been a judicial decision by a court or tribunal of competent jurisdiction.
- ii. That the decision is final.
- iii. That the same question as that sought to be put in issue by the plea in respect of which the estoppel is claimed was decided in the earlier proceedings.

⁷ Conca Engineering (Ghana) Ltd. v. Moses [1984-86] 2 GLR 319

iv. That the case was between the same parties or their privies, as the parties between whom the question is now sought to be put in issue”.

[56] Also, in **In Re: Sekyere Dumase Stool: Nyame v. Kese Alias Konto [1998-99]** SCGLR 476 the Supreme Court per Acquah JSC (as he then was) after discussing the general principle stated @ page 241 thus:

In summary cause of action estoppel should properly be confined to cases where the cause of action and the parties (or their privies) are the same in both current and previous proceedings...the plea can be invoked in respect of any final judgment delivered by a judicial tribunal of competent jurisdiction.

[57] Now, to determine whether the doctrine is applicable in this case, it is important to set out *in extenso* what the court said in the judgment tendered as Exhibit “E” in these proceedings. First and foremost, it cannot be denied that the reliefs the Plaintiffs in that case went to court for was for a declaration of title to “the demolished H/No.H85/1 situated at Agbawe Gonno, Teshie near the Chief’s Palace” and a declaration that the land in dispute was the property of “Ablorh Adjei Family” and damages. To make the determination, the Court set out the respective case of the parties. For instance, at page 2 of the judgment the learned judge stated:

“The Plaintiffs say that they are descendants of Ablorh Adjei whose father Nii Ablade Adjei constructed the house in dispute and lived in it with his son Ablorh Adjei. They claim that the house is their ancestral house and that they should have been consulted before the house was demolished.

The Defendants for their part say that they are the real descendants of Nii Ablorh Adjei through the patrilineal line and that the Plaintiffs are linked to the Ablorh Adjei Family matrilineally, as Teshie is a patrilineal society the

Plaintiff cannot claim membership of the Ablorh Adjei Family or have a proprietary interest in their family property.

The Plaintiffs accept that the Defendants are members of the Ablorh Adjei Family but belong to another section of it and that they are descendants of one Osei Bonsu a servant of Nii Ablade Adjei whom he accompanied to a Civil War at Labadi. Osei Bonsu distinguished himself in the war and had the title Asofoatse or Captain conferred on him.

The Defendants deny this and claim to be descendants of Asafoatse Sowah, a grandson of Nii Ablade Adjei through his son Ablor Adjei, they claim that the name Osei Bonsu was not the name of their ancestor but that of the Staff of office of Asafoatse Sowah”.

[58] At page 3 of the judgment the judge further stated:

“The matter before me which I have to decide is the status of House No. H85/1, Teshie and in the process, whether or not the Plaintiffs have any proprietary interest in the house, which is admitted by both sides in this action is the Family property of the Ablorh Adjei Family...

There is evidence that Nii Adjei Obadzen II Shikitele of Teshie was a member of the Ablorh Adjei Family in the female line yet, he became Shikitele of Teshie and put forward by Ablorh Adjei We”.

The Learned judge at page 4 of the judgment again stated as follows:

The evidence lead on behalf of the Plaintiff show that the 2nd, 3rd and 4th Plaintiffs are children of a brethren of Adjorkor Pantang (P.t.2) who was a granddaughter of Ablorh Kwami, her father being Ablorh Adjei. There has been put in evidence Exhibit “B” a baptismal certificate of Daniel Ablorh Adjei

said to be born in or about the year 1854 and baptized at Abokobi Presbyterian Church of Christmas day 1919. His parents are said to be Ablorh Kwamsi and Amerley. I accept this Exhibit "B" as a document made in the ordinary course of keeping records at the Church.

[59] At pages 4 to 5 of the judgment, the judge further delivered himself as follows: The Defendants' chief witness Cofie Kwantreng Michael Aborde has prepared genealogical tables which have been put in evidence as exhibit "5" and "6". These were prepared in the course of the trial for this case. I do not accept them in proof of the 2nd, 3rd and 4th Defendants' lineage.

The case for the Defendants is that they are direct male lineal descendants of the founder of Ablorh Adjei We. They say they are descended from Asafoatse Sowah, son of Numo Ablorh Adjei and that Asafoatse Sowah's sword of office was called by Osei Bonsu. Their evidence in support of their claim is tradition and they have urged the Court to reject the tradition put forward by the Plaintiffs....

[60] The learned judge, after considering the positions of the parties, rejected the Defendants position and said it was more likely that the Plaintiffs position was right. He concluded that in his view, *"All the parties to this action are members of Ablorh Adjei We and they are all entitled to discuss the notice issued by the Accra City Council in 1983 about the demolition"*, of the house which was the subject matter of the suit. He concluded by allowing the Plaintiffs claims and dismissing the Defendants counterclaim.

[61] I have chosen to basically, reproduce parts of the entire judgment because it cannot be denied that the story line presented in these proceedings bear a semblance to the narrative in the earlier decision. The question though is, what effect, if any, does

that judgment have on this case? Before, answering the question, I wish to state that the Defendant's Counsel's submission that because the proceedings of the 1988 case, *Suit No. 2260/1988* was not tendered as exhibit, the doctrine of *estoppel per rem judicatam* is not applicable is with respect simplistic and without any basis. This is because, Counsel will note that the Supreme Court was clear in **In Apeah and Another v Asamoah Supra** that "...if it is necessary for the record to be exhibited", it ought to be exhibited. In this case, at trial the Defendant did not raise any issue about the fact that the judgment alone does not reflect what transpired in the trial and requested that the proceedings be produced. He cross-examined the Plaintiff on the judgment and informed the court that he had no further questions. To turn round now to make such a submission, in my view is disingenuous and an afterthought and I reject same.

[62] As indicated above, it is true that the reliefs before the judge were to do with the demolished building and who owns the land. The judge however, dealt with the lineal succession issue based on the pleadings. With that in mind, the question I ask myself is do the findings made by the judge in the earlier suit, which the Plaintiff herein was the 4th Plaintiff and the Defendant has admitted knowing and been a descendant of the 1st and 2nd Defendants have any nexus to this case before me?

[63] In this case, to reiterate, it is the contention of the Plaintiff that he is a direct male descendant of Numo Ablorh Adjei. It is also the Plaintiff's case that the Defendant is lineal descendant of one Osei Bonsu a servant of Nii Ablade Adjei and also a member of the Osei Bonsu branch of Ablorh Adjei We of Teshie Agbawe. It is also the case of the Plaintiff that the headship of the Ablorh Adjei family of Teshie Agbawe is chosen from the *direct lineal male descendants* of Numo Ablorh Adjei but, where there is no suitable candidate then a suitable substitute from the *lineal female descendants* of Numo Ablorh Adjei is considered for election. I understand the Plaintiff's case therefore, to be that there are two wings of the Numo Ablorh Adjei We family.

[64] The Defendant on the other hand holds a different view. He contends that he rather is a male descendant of Nii Ablorh Adjei. He said, the Plaintiff is related to the Ablorh Adjei family in the matrilineal line. The Defendant's case is that he is related to Nii Ablorh Adjei "through his second son Sowah who was also known as Asafoatse Sowah or Asafoatse Osei Bonsu". To the Defendant, there is no Osei Bonsu branch of Nii Ablorh Adjei family.

[65] As stated above in **Robertson v. Reindorf Supra**, for the doctrine of estoppel to apply, four conditions must be established. I shall therefore, look at the conditions based on the facts in this case. **First**, going by the facts and the evidence and pleadings in the instant case before the court it is not in any serious contention that the parties who litigated the earlier suit include the present Plaintiff, who was the 4th Plaintiff and even though the Defendant was not a party, he has acknowledged that he is a grandnephew of the 1st Defendant and a nephew of the 2nd Defendant, that makes him a privy of the Defendants in the earlier case. **Second**, the Defendant has conceded that the judgment was entered in favour of the Plaintiffs and it was a final judgment as no appeal was launched against same even though he has made some arguments in this case ostensibly for this court to ignore the decision which was final.

[66] **Third**, the matter was adjudicated upon on its merits and a judgment was pronounced by a court of competent jurisdiction; **Fourth**, it is noted that in that case, as in this case the Defendants contended that: "they are the real descendants of Nii Ablorh Adjei through the patrilineal line and that the Plaintiffs are linked to the Ablorh Adjei Family matrilineally, as Teshie is a patrilineal society the Plaintiff cannot claim membership of the Ablorh Adjei Family. Again, the Defendants' position was that they are "*descendants of Asafoatse Sowah, a grandson of Nii Ablade Adjei through his son Ablor Adjei, and they claim that the name Osei Bonsu was not the name of their ancestor but that of the Staff of office of Asafoatse Sowah*".

[67] The Court in the earlier case determined the above contentions of the Defendants therein when it stated at page 5 of the judgment as follows;

“The Plaintiffs have described Osei Bonsu as a servant of Ablade Adjei and that he was made an Asafoatse because he distinguished himself in the war, so that he became Asafoatse or Captain Osei Bonsu. They say that this accounts for the two sections of Ablorh Adjei We, Ablorh Adjei Section and Osei Section.

It was suggested that the name Osei is used in the Osei Section but this was denied vigorously on behalf of the Defendants.

A member of the Defendants section of the family called Evans Lawrence Adjei died in 1977 and it was suggested to D.W.2, that his father was called Osei Adjei but D.W.2 denied this, saying that he was simply called Adjei. A programme prepared for the funeral of the said Evans Lawrence Adjei who died in 1977 was tendered in evidence as Exhibit “B”. In the portion recounting his life history, his father’s name was given as Nii Osei Adjei of Nii Osei We, Teshie Agbawe. This was prepared when no litigation was in contemplation”.

The court rejected the document the Defendants tendered to support their story as a self-serving document and therefore rejected their position and ruled that their story was based on suppressed information.

[68] Mr. Justice Dove in responding to the Defendants’ position, and rejecting the document as self-serving because it was prepared in the course of the litigation emphatically stated and I reiterate as follows:

“I would say that the Defendants have suppressed evidence which does not support their position and fabricated evidence to show that they are proper lineal descendants of Numo Ablorh Adjei. I reject the same.

I find it more likely that the descendants of Osei Bonsu would be named after him rather than that they would be named after a staff of office as D.W.1 tried to make the Court believe”.

[69] In my view therefore, the court determined the core issue of whether the Ablorh Adjei family has a branch known as the “Osei Branch”, to exist, even though the Defendant herein insists it does not exist. It is also noted that in *Suit No. 2260/1988*, the court rejected the Defendant’s predecessor’s contention that they descended from Asafoatse Sowah, through his son of Numo Ablorh Adjei and that Asafoatse Sowah’s sword of office was called by Osei Bonsu. In the same vein, contrary to the position of the Defendant that the Plaintiff is not related to the Ablorh Adjei family in the patrilineal line, the court made that determination when it accepted the baptismal certificate of Daniel Ablorh Adjei who is the grandfather and a descendant of the Plaintiff herein. Based on the above, in my opinion the Defendant herein is just rehashing the same story which was dismissed by a court of competent jurisdiction over thirty years ago.

[70] As a matter of law, issue estoppel precludes a party from re-litigating an issue that was decided by a court of competent jurisdiction. Based on the evidence therefore, I interpret the decision of the High Court, Accra as pronouncing with finality on the very issue of whether there is an Osei Bonsu branch of the Nii Ablorh Adjei family and the contention of the Defendant that he is a descendant of Nii Ablorh Adjei through his second son Sowah who was also known as Asafoatse Sowah or Asafoatse Osei Bonsu raised before me in this suit. Consequently, based on the law and the evidence before me, it is my holding that the doctrine of *estoppel per rem judicatam* has been properly invoked and I agree with the Plaintiff that the Defendant is estopped from re-litigating the issue whether there is an Osei Bonsu branch of the Nii Ablorh Adjei family. I also hold that the Defendant’s continuing position that he is a male descendant of the Nii Ablorh Adjei family through a second son called Sowah also known as Asafoatse Sowah or Asafoatse Osei Bonsu was rejected by a court of competent jurisdiction as fabricated and same cannot be re-litigated.

[71] With the above determination, I am of the view that issues **iv** and **v** being;

iv. Whether Nii Ablorh Adjei We consists of two branches, namely the Ablorh Adjei section and the Osei section and each section appoints its own head; *and*

v. Whether Osei Bonsu founded Osei We and/or where is the Osei We house

are moot because it has long been determined from the earlier decision that there are two branches of the Nii Ablorh Adjei family. As well, the court recognized that there is an Osei Bonsu branch and therefore it can be inferred that the said Osei Bonsu founded that section of the Nii Ablorh Adjei We. Consequently, I do not find it necessary to embark on a voyage when the issue has already been resolved.

[72] I now turn to the next issue which is “Whether or not the Plaintiff is the head of Nii Ablorh Adjei family”. The Plaintiff’s testimony was that he was nominated and appointed as head of family of the Nii Ablorh Adjei family. He tendered Exhibits, Exhibit “**A**”, a document signed by the principal members of the family to confirm the nomination and the appointment. He also tendered Exhibit “**B**”, a letter to the President of the Teshie Traditional Council signed by the Secretary of the Nii Ablorh Adjei We family.

[73] In opposing the position of the Plaintiff, the Defendant stated the Plaintiff is not the head of the Nii Ablorh Adjei We of Teshie and he is also not a direct male lineal descendant of Numo Ablorh Adjei. The Defendant then went on to state that the headship of Nii Ablorh Adjei We of Teshie Agbawe has always been chosen from the direct male descendants. The Defendants went on to narrate how in “July 1949 his grandfather Captain Osei Bonsu (also known as Asafoatse Adjetey Abordo) was the head of family of the Nii Ablorh Adjei Family of Teshie”. The Defendant further

narrated past individuals including his grand-uncle, Evans Lawrence Adjei who also became a head and executed indentures in that capacity, etc.

[74] In support of the Defendant's position, Counsel for the Defendant wrote as follows:

The Defendant contested the Plaintiff's capacity. The Defendant says the Plaintiff has no such capacity. The Defendant says he is the head of Nii Ablorh Adjei We. Where the capacity of a person to sue is challenged he has to establish it before his case is considered on its merits. See the case of **Asante-Appiah v. Amponsah Alias Mansah [2009] SCGLR 90 @ 92 holding 2.**

Counsel also submitted that the law is that where a party's capacity is challenged, he must prove same and cited the Supreme Court case of **Nii Kpobi Tettey Tsuru III, SFA Limited & FODAS Estates Ltd. vs. Agric Cattle & Others [2020] DLSC 8742** and the dictum of Marful-Sau JSC (of blessed memory) to support his contention.

Counsel for the Defendant further stated that *"The Plaintiff tendered Exhibits "C series" which are obituary notices of persons he claims are members of Nii Ablorh Adjei We, and whose funeral he superintended over. All the deceased persons whose obituary Plaintiff tendered are not members of Nii Ablorh Adjei We"*.

[75] Having reviewed the evidence and considered the findings made above that a court of competent jurisdiction has already determined that there exists an Osei Bonsu Section of the family, it is my finding that the Defendant's narrative is connected with the Osei Bonsu section of the family rather than the section to which the Plaintiff belongs. In any case, I note that the Defendant's contention that the Plaintiff is not the head of the family he claims to be the head is a bare denial. For instance, the Defendant contends the obituary notices tendered by the Plaintiff are of persons who are not members of the Nii Ablorh Adjei We but no evidence was produced to support the assertion. It is trite that he who asserts must prove. Since, it was the Defendant who

says the said persons were not members of the Nii Ablorh Adjei family, he had onus to prove same. The Defendant only mounted the box to make allegations and contended that the Plaintiff is not the head of family without more. Again, I am not persuaded that any cogent evidence was led support the Defendant's contentions. As was held by the Supreme Court in **T.K. Serberh & Co Ltd. v. Mensah [2005-2006] SCGLR 341** "mere assertion by a witness does not amount to proof".

[76] Further, in my respectful opinion, the documents (Exhibits 1, 2 and 3) tendered by the Defendant are connected with the story of his grandfather and granduncle already determined by a court of competent jurisdiction but do not show why the Plaintiff's contention that he is the head of family of the "Ablorh Adjei Family" is not true. The tendered documents do not address the live issue of whether or not the Plaintiff was nominated and appointed the head of family. Curiously, I question that if 1949 and 1967 documents existed, why did the Defendant's predecessors not tender them to make their case in the earlier suit but rather prepared a document in the course of the trial which the court rejected as of no evidentiary value?

[77] In this case, I note that apart from the documents the Plaintiff tendered to support his claim, he was also corroborated by Joseph Okoe Ashong who described himself as the Secretary of the Teshie Agbawe Quarter who confirmed that the Plaintiff was nominated and appointed as the head of family of Nii Ablorh Adjei family on 18th April 2009. He tendered Exhibit "F", from the Council of Elders dated 10th July, 2010 which the Plaintiff signed as the head of the family. The documents predate this litigation and therefore I accept that they were not executed in anticipation of this litigation.

[78] I note that the Defendant was cross-examined by Plaintiff's Counsel on the documents tendered by the Plaintiff in support of his nomination and appointment. The following is a snippet of the exchange as contained in the proceedings:

Q: Kindly take a look at Exhibit "A" attached to the witness statement of the Plaintiff. You will find a letter dated 20th April 2009. Correct?

A: That is correct.

Q: Exhibit "A" is the letter nominating and appointing Plaintiff as head of family of Nii Ablorh Adjei family. Correct?

A: No. The heading reads as suggested. All meetings, customary functions for Nii Ablorh Adjei We are performed in Nii Ablorh Adjei We i.e., house number 85/1 Agbawe Teshie. The Plaintiff and all the persons who signed Exhibit "A" have never ever come to Nii Ablorh Adjei We, house number 85/1. So, the meeting that is indicated in Exhibit "A" to have been held in the family house is not correct. No meeting was ever held in house number 85/1, Nii Ablorh Adjei We Agbawe Teshie to nominate and appoint the Plaintiff as head.

Q: From paragraph 1 of your witness statement, you live at number 234/1, Adom Nungua. Correct?

A: That is correct, that is the house number given to me by my landlady as the number of that house.

Q: Your house at Nungua is distinct from the Ablorh Adjei We family house at Teshie. Correct?

A: That is correct.

Q: In Exhibit "A", you can find signatures of elders and principal members who appointed Plaintiff as the lawful head of Nii Ablorh Adjei We. Correct?

A: No, that is not correct. The names and signatures are not names and signatures of elders and principal members of Nii Ablorh Adjei We.

Q: I suggest to you that Exhibit "A" dated 20th April, 2009 is a true reflection of the appointment of Plaintiff as the head of Nii Ablorh Adjei We.

A: That is not correct. Exhibit "A" is a letter written by one Erasmus Nii Adjei Ablorh to the Plaintiff, it is not part of Nii Ablorh Adjei We and for that matter Teshie Agbawe custom for a person who has been nominated and appointed to be written to.

Q: *Take a look at Exhibit "B" dated 23rd April, 2012 headed appointment of head of family to the president – Teshie Traditional Council, Teshie. This also confirms Plaintiff's appointment as head of Nii Ablorh Adjei We. I suggest that to you.*

A: *No, that is not correct. As we speak today, there is no Teshie Traditional Council, the Shikitele is the head of Teshie Agbawe Quarter and the persons to whom Exhibit "B" were copied were not the head of Teshie Agbawe Quarter nor the Shikitele. The headship of Nii Ablorh Adjei We of Teshie Agbawe by custom, does not have what is described in Exhibit "B" as family succession name.*

Q: *By Exhibits "A" and "B", the Plaintiff has been the lawful head of Nii Ablorh Adjei We since 18th day of April 2009. I suggest that to you.*

A: *No, that is not correct. The Plaintiff have never been the head of Nii Ablorh Adjei We or Teshie Agbawe neither is he the head of Nii Ablorh Adjei We of Teshie Agbawe. The Plaintiff has never superintended over any customary function at Nii Ablorh Adjei We house number 85/1 Teshie Agbawe, a duty performed only by the head of Nii Ablorh Adjei We. [Emphasis Mine]*

[79] First and foremost, it is important to note that House No. H85/1, Teshie Agbawe was held by Dove J in the earlier suit referred to above to belong to both parties and therefore stated that both "*are all entitled to discuss the notice issued by the Accra City Council in 1983 about the demolition*". I understand that judge to say that the Defendant cannot claim the said house alone because the Plaintiff's side of the family are also entitled to claim and use same. Secondly, I find some of the answers given by the Defendant intriguing because some of the denials he made, did not conform with reason. For instance, he denied the signatures on Exhibit "A" not because there are no signatures on the document but because according to him, those who signed are not elders and principal family members. With respect to the Defendant, those are two different matters. The fact that those who signed are allegedly not family members does not mean they did not sign the document. Also, the court did not hear from any

of the individuals whose signatures appeared on the document to say, it was not their deed or mark. Neither did the Court hear from those the Defendant say are the true elders or principal members come to testify to say the names on Exhibit “A” are fake and not elders of the family.

[80] As quoted by Plaintiff’s counsel, the Supreme Court in the unreported case of *Adams Addy & Anor vs Solomon Mintah Ackaah (J4/19/2021)* delivered on 14th April 2021 per Kulendi JSC on family headship stated that;

“In any event, we are of the view, that family headship is by appointment and therefore has to do with the factual circumstances of the appointment of a person as against historic predecessorship...

The succession to family headship being by appointment or election, much emphasis ought to be given to the factual circumstances of the appointment or election of a person such as the nature of the appointment or election and the recognition of the appointment or election by the family itself.

[81] I find the statement of the law to be sound and relevant to the issue under discussion and I adopt same. As I indicated, the 1949 documents and 1967 indentures tendered by the Defendant, do not in any way, shape or form support the Defendant’s position that the Plaintiff is not the head of family. The Plaintiff’s documents tendered all speak to support the factual circumstances of his nomination and appointment as the head of the Ablorh Adjei family and I therefore accept them and resolve the issue under discussion in his favour. Consequently, I hold that the Plaintiff proved his capacity, because in my view legal capacity is a Plaintiff’s status as a legal person and not about the role of a party in the proceeding but to the party’s personal characteristics or status.

[82] The next issue I wish to speak to is issue (ii) above, being “Whether or not the male and female line descendants of Numo Ablorh Adjei a.k.a Numo Ablade Adjei have been

appointed to the headship of the Ablorh Adjei section of the larger Ablorh Adjei We of Teshie Agbawe Quarter". Writing on this issue, Counsel for the Defendant wrote as follows:

"My Lord, respectfully, I have observed an inadvertence in the wording of Issue 2 of the joint issues filed, and I wish to bring same to this Court's notice as well as to the notice of the Plaintiff's lawyer. Numo Ablorh Adjei is the second son of Numo Ablade Adjei. Hence Numo Ablorh Adjei and Numo Ablade Adjei refer to two distinct persons, a son and his father respectively. As such the part of Issue 2 that reads "Numo Ablorh Adjei a.k.a. Numo Ablade Adjei" is not correct. **I pray that the issue 2 reads as follows: "Whether or not the male and female line descendants of Numo Ablorh Adjei have been appointed to the headship of the Ablorh Adjei section of the larger Ablorh Adjei We of Teshie Agbawe Quarter"**.

My Lord Respectfully, *there is no Ablorh Adjei section of Nii Ablorh Adjei We of Teshie Agbawe Quarter. The Plaintiff could not bring any evidence to show that there exists an Ablorh Adjei section of Nii Ablorh Adjei We of Teshie Agbawe. There is only one Nii Ablorh Adjei We of Teshie Agbawe. The Nii Ablorh Adjei We is not made up on Ablorh Adjei section and Osei section. In Exhibit "1" found at page 6 of the Defendant's witness Statement and also per Exhibit "22" found at page 117 of Defendant's Witness Statement, the Nii Ablorh Adjei family, also known as Osei We, has been rightly stated therein. Exhibit "1" was prepared in 1949 and the accredited heads of the seven families or Houses of Agbawe signed Exhibit "1".*

[83] Plaintiff's counsel on his part submitted as follows:

"1st Plaintiff in Suit No. 2260/1988 was recognised by the court as having been accepted as head of Ablorh Adjei family. The judgment of the court in Suit No. 2260/1988 stated that from the evidence 1st Plaintiff descended from a female member of the Ablorh Adjei family, Tawiahyoo who was a granddaughter of

Ablorh Adjei. Tawiahyoo was the 1st Plaintiff's great grandmother. Even though 1st Plaintiff descended from a female member of the Ablorh Adjei family, he was made or accepted as head of family. The court in Suit No. 2260/1988 found that strictly speaking there is no hard and fast rule about membership or holding of office in Ablorh Adjei We.

The evidence on record confirms that both male and female line descendants of Numo Ablorh Adjei a.k.a. Numo Ablade Adjei have been appointed to the headship of the Ablorh Adjei Section of the larger Ablorh Adjei We of Teshie Agbawe Quarter".

[84] In my view, Counsel for the Defendant's submission above is based on his contention that there is only one Nii Ablorh Adjei family and without any section called Osei Bonsu. In my view, that issue was settled by the High Court in 1990 and I do not find it necessary to rehash same. Consequently, I accept the analysis of Dove J in Suit No 2260/1988, which Plaintiff's Counsel referred to as the position of the Nii Ablorh Adjei family in regards to succession and I do so hold. Consequently, I resolve that the Nii Ablorh Adjei family does not have a strict rule because it has been established that both male and female line descendants have been appointed in the past.

[85] The other issues stated in the joint issues filed are "Whether or not Plaintiff is entitled to his claims" and "Whether or not Defendant is entitled to his counterclaim". The setting down of these issues with respect was unnecessary and indeed superfluous and needless because as was held by the Supreme Court per Pwamang JSC in *Dalex Finance and Leasing Company Limited v. Ebenezer Denzek Amanor, L.G.G Company Limited and Huawei Technologies (Ghana) SA Limited* Civil Appeal No. J4/02/2020 delivered 14 April, 2021 - reported as [2021] DLSC10163 the whole task for any court or adjudicating body called upon to deal with a matter comes down to

whether or not a party's claim is to be granted or dismissed by the Court. To that extent, I do not see the need to separately discuss these issues. Suffice to say that it is my holding that the Defendant having filed a counterclaim had the burden to establish his claim with acceptable evidence to the Court. In the view of the Court, he failed to discharge the onus as the court did not receive any acceptable evidence for the grant of the reliefs endorsed on the counterclaim.

v. Conclusion & Disposition:

[86] From the evidence, both oral and documentary it is clear that the Nii Ablorh Adjei We has two branches, and the branches are Ablorh Adjei Section and the Osei Bonsu Section. It is also clear that the Plaintiff is connected with the Ablorh Adjei Section and the Defendant is connected with the Osei Bonsu Section. Each section appoints its head of family and both are of the "Agbawe Quarter". Both sections own a common family house, which is House No. H85/1, Teshie.

[87] Consequently, based on all of the evidence and the analysis above, I am satisfied that the Plaintiff has adduced credible and admissible evidence in accordance with the standard prescribed by law and on the strength of the evidence on the balance of probabilities. Based on the evidence heard I have resolved the issues formulated and set down in his favour. Consequently, I make the following orders:

- i. The Plaintiff's relief (A) & (B) by which he seeks a declaration that the "*Ablorh Adjei We of Agbawe-Teshie consists of 2 different branches, namely Ablorh Adjei Section and Osei Section*" and "*A further declaration that being separate and distinct, each branch has its own head*" are **GRANTED**.
- ii. The declaratory reliefs (C) to (L) endorsed on the Writ of Summons are all also **GRANTED**.
- iii. Relief (M) is **DISMISSED** because the court did not hear any evidence in regards to the named persons as direct lineal descendants of Osei Bonsu as alleged.

- iv. The Plaintiff's relief (N) to (F) are also **GRANTED**.

- v. All of the Reliefs, which are declaratory endorsed on the Defendant's Counterclaim are **DISMISSED**. The Court affirms that the Defendant failed to discharge the onus cast on him by law to provide acceptable cogent evidence for the grant of his reliefs.

[88] Having heard the submission of counsel on cost today (July 14, 2023), I hereby award the Plaintiff cost of GH¢20,000. I note that the Plaintiff's Counsel asked for cost of GH¢50,000 and Defendant offered GH¢5,000. I have awarded the cost based on the consideration of the factors set out under Order 74 of C.I. 47 and the fact that this was a full-blown trial.

(Sgd) **KWEKU T. ACKAAH-BOAFO, JA**
(JUSTICE OF THE COURT OF APPEAL)