IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA

CORAM: ATUGUBA, J.S.C. (PRESIDING)
DR. DATE-BAH, J.S.C.
ANSAH, J.S.C.
ADINYIRA (MRS), J.S.C.
DOTSE, J.S.C.
ANIN-YEBOAH, J.S.C.
BAFFOE-BONNIE, J.S.C.
GBADEGBE, J.S.C.
AKOTO-BAMFO (MRS), J.S.C.

WRIT
J1/4/ 2011

13TH JUNE, 2012

1. CHARLES MATE KOLE
2. NENE AZAGO KWESITSU I . . . PLAINTIFFS

VRS

1. THE ELECTORAL COMMISSION
2. THE ATTORNEY GENERAL . . . DEFENDANTS

AND

1. NENE TEYE TITRIKU I
2. AKUSE-AMEDEKA CITIZENS ASSOCIATION . . CO-DEFENDANTS

J U D G M E N T

ATUGUBA, J.S.C:

On the 24th day of December, 2010, the plaintiffs issued a writ in this court claiming:

i. "A declaration that the creation and specification of a new District Electoral Area by the Local Government (Creation of New District Electoral Areas and Designation of Units) Instrument, 2010 (L.I. 1983) made in exercise of the powers conferred on the Minister responsible for Local Government by Section 3(3) and (4) of the Local Government Act, 1993 (Act 462), is inconsistent with and in contravention of Article 5 of the Constitution, 1992, to the extent that its effect with regard to the Lower Manya Krobo District (which is in the Eastern Region) and the Dangme West District (which is in the Greater-Accra Region), is to alter the boundaries between the Greater-Accra Region and Eastern Region.

ii. A declaration that the specification by the Local Government (Creation of New District Electoral Areas and Designation of Units) Instrument, 2010 (L.I. 1983) that Osorkutu, Bungalow, Akutue, Zongo New Town, Amedeka, Natriku and Salom Electoral Areas (previously part of the Lower Manya Krobo District in the Easter Region as per the specification made by C.I. 46 of 2004), are now part of the Dangme West District in the Greater-Accra Region, is in excess of the powers conferred on the Minister responsible for Local Government by Section 3(3) and (4) of the Local Government Act, 1993 (Act 462)

iii. A declaration that upon a true and proper interpretation of Articles 241 (2) and Article 5 of the Constitution, Parliament acted in excess of its powers by approving, adopting and enacting L.I. 1983.

iv. A declaration that upon a true and proper interpretation of Articles 241 and Article 5 of the Constitution, 1992, the Minister responsible for

Local Government acted in excess of the powers conferred on him by the Local Government Act, 1993 (Act 462) by specifying Osorkutu, Bungalow, Akutue, Zongo New Town, Amedeka, Natriku and Salom Electoral Areas (previously part of the Lower Manya Krobo District in the Eastern Region as per the specification made by C. 1. 46 of 2004), as now part of the Dangme West District in the Greater-Accra Region under the Local Government (Creation of New District Electoral Areas of Designation of Units) Instrument, 2010 (L.I. 1983)

v. An order declaring as null, void and of no effect the Local Government (Creation of New District Electoral Areas and Designation Units) Instrument, 2010 (L.I. 1983) made in exercise of the powers conferred on the Minister responsible for Local Government by Section 3(3) and (4) of the Local Government Act, 1993 (Act 462).

vi. An order declaring null, void and of no effect the parts or specifications in the second column of the Schedule to the Local Government (Creation of New District Electoral Areas and Designation Units) Instrument, 2010 (L.I. 1983) which relate to the specification of Osorkutu, Bungalow, Akutue, Zongo New Town, Amedeka, Natriku and Salom Electoral Area as part of the Dangme West District.

vii. An order restraining the 1st defendant herein, the Electoral Commission from conducting elections or Unit Committee elections or exercising its powers to conduct any elections whatsoever in Osorkutu, Bungalow, Akutue, Zongo New Town, Amedeka, Natriku and Salom Electoral Areas which are specified by L. I. 1983 as being part of the Dangme West District in the Greater-Accra Region by the Local Government (Creation of New District Electoral Areas and Designation Units) Instrument, 2010 (L.I. 1983), pending the hearing and final determination of the merits in the instant action.

viii. Any further order(s) as to this honourable court may seem meet."

From the reliefs claimed it is quite clear that the plaintiffs initially set out to impeach the validity of one legislative instrument, namely, the Local Government (Creation of New District Electoral Areas and Designation Units) Instrument, 2010 (L.I. 1983) on the grounds that it is in violation of article 5 of the Constitution relating purported to alter the regional location of six villages within Akuse from the Manya Krobo District in the Eastern Region into the Dangme West District in the Greater-Accra Region.

However, subsequently on the 16th day of June, 2011 the plaintiffs filed, with leave, a supplementary statement of their case in which they now averred as follows:

> " 47. It is very relevant to indicate that the original version of the legislative instrument in dispute, L. I. 1983 placed before Parliament, had the seven electoral areas in dispute specified as being part of the Lower Manya Krobo District in the Eastern Region. A copy of the relevant pages of the original L. I. 1983 has been filed by the Plaintiffs herein.
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> 48. As Your Lordships will note, the original version of L. I. 1983 was also gazetted on the 19th day of October, 2010. Page 71 indicates that the total number of electoral areas allocated to the Lower Manya Krobo District Assembly was ***thirty-one (31)***, whilst page 100 also shows that the total number of electoral areas allocated to Dangme West was ***Forty-one (43)***. This was in line with the current status of Akuse as an Eastern Region town.
>
> 49. Quite curiously, when the L.I. was debated by Parliament, Parliament without any warrant or authority, altered the total number of electoral areas allocated to the Lower Manya Krobo and the Dangme West District Assemblies. The result was that the final L. I. 1983 passed into law had the total number of electoral areas for Manya Krobo reduced to ***Twenty-***

five (25), whilst the total number of electoral areas for Dangme West was increased to ***fifty (50)***.

50. It is the further case of the Plaintiffs that Parliament in reducing the total number of electoral areas for Lower Manya Krobo from the original figure of 31 to 25, and increasing the total number of electoral areas for Dangme West from the original figure of 43 to 50, acted without authority. This is because the Parliament of Ghana in adopting, approving and enacting a legislative instrument, is regulated by **Article 11** of the 1992 Constitution. …

51. It is the respectful submission of the Plaintiffs herein that, to the extent that the original L.I. 1983 laid before Parliament had thirty-one (31) electoral areas for the Lower Manya Krobo District Assembly, same should have been approved by Parliament and come into force after the lapse of twenty-one sitting days of Parliament. It is to be noted that the original version of L.I. 1983 was also gazetted and therefore after 21 days, same should have become law.

52. If the Parliament of Ghana deemed it necessary to change any provision in the original version of L.I. 1983, in accordance with Article 5, it should have annulled the whole of the Legislative Instrument. It did not have the power to *suo motu*, change, alter, increase or reduce the number of electoral areas allocated to both the Lower Manya Krobo and Dangme West District Assemblies.

53. It will be respectfully appreciated that the L. I. 1983 which came into force on the 24th day of November, 2010, is laden with flagrant unconstitutionalities and same must be declared as such."

The defendants consistently contend that the disputed areas ought constitutionally to belong to the Dangme West District of the Greater Accra Region of Ghana. This court took the view that the issues raised in this case have some different colour from *Stephen Nii Bortey Okane and Others v. The*

Electoral Commission & Attorney General (Writ No. J1/2/2011) and *Nii Tetteh Opremreh v. The Electoral Commission & Attorney-General* (Writ No. J1/3/2011) where the only issue was whether Parliament could make alterations of its own to subsidiary legislation laid before it under article 11 of the 1992 Constitution. In the present case there is also the issue as to which region, between the Greater Accra and Eastern regions, do the disputed electoral areas belong having regard to article 5 of the Constitution.

The Constitution of Ghana by virtue of articles 1 and 2 is the supreme and most fundamental law of Ghana and it is clear from articles 2 and 130 as construed by this court that subject to the High Court's jurisdiction in the enforcement of private fundamental human rights this court is the Trustee of the 1992 Constitution of Ghana. Clearly then if a genuine break with the infamous case of *In Re Akoto* (1961) 2 GLR 253, SC is to be made by this court then this court cannot shut its eyes to breaches of the Constitution when they loom large in a case before it. This must be so because even at common law a court is bound *suo motu* to raise fundamental issues such as lack of jurisdiction (even after judgment), see *Mosi v. Bagyina* (1963) 1 GLR 337 S.C. or illegality, by tracking it when it looms even faintly in a case before the court, see *Napier v. National Business Agency Ltd* (1951) 2 All ER 264 C.A.

It would therefore have been a dereliction of constitutional Trust on the part of this court to have confined itself solely to the issue whether one version of L.I. 1983 as opposed to the other was procedurally duly passed.

However, in a bid to get to the constitutional bottom of this matter this court hit a hard rock. This is because the whole question as to whether the disputed areas fall within the Dangme West District in the Greater Accra Region or the Manya Krobo District in the Eastern Region hinges on the territorial components of the erstwhile Osudoku Local Council which under the provisions of the Greater-Accra Regional Act, 1982 (P.N.D.C.L. 26) as

amended by the Greater-Accra Region (Amendment) Law, 1982 (P.N.D.C.L. 28) is a constituent part of the Greater Accra Region.

It is true that the second Schedule to P.N.D.C.L. 26 contains a *"Statutory Description of the Greater Accra Region*" and some towns or villages are depicted on the map within the area described as Osudoku in the Greater Accra Region in the Third Schedule thereof. However, as Africans and Ghanaians in particular we know that maps often depict the major towns or villages and therefore it will be perilous to apply the maxim *expressio unius est exclusio alterius* in respect of all other villages or areas alleged to be part of a certain territory or geographical area because they are not depicted on a map. This is brought to the fore when one considers that despite these schedules to PNDCL 26, it is shown by paragraph 7 of the original statement of the plaintiffs' case dated the 7th day of January 2011 as follows:

> "Your Lordships, in order to assist in an appreciation of the issues raised herein, it is pertinent to state that, *the genesis of the dispute as to the determination or demarcation of the boundary between the Greater-Accra Region and Eastern Region as it pertains to Natriku, Akuse and its surrounding villages occurred in the early 1990s upon the enactment of* ***the Local Government (Dangme West District Assembly) (Establishment) Instrument 1989, L.I. 1490 and the Local Government (Manya Krobo District Assembly) (Establishment) Instrument 1989, L.I. 1492.*** *Quite curiously, these two enactments listed Natriku under both Dangme West and Manya Krobo District Assemblies.*" (e.s.)

It took a Cabinet Review Team to resolve this matter as stated in paragraph 8 of the said plaintiffs' statement of case:

> " … *After a review of the process* which led to the enactment of L.I. 1490 and L.I. 1492, evidence *by the Electoral Commission, the*

Survey Department, the Osudokus and Manya Krobos as well as a *scrutiny of all documents* …"

All this apart, the high water mark of this case is that the said "Erstwhile Osudoku Local Council" was constituted by the Local Government (Osudoku Local Council) Instrument, 1952. We, at this stage acknowledge our plenary gratitude to the distinguished Professor Justice V.C.R.A.C. Crabbe, the Statute Law Review Commissioner who unearthed this legislative instrument for us in response to our distress call to him, per our letter dated 28th March, 2012. The most crucial provision of this Instrument is section 5 as follows:

"5. *The area of authority* of the Council *shall be the area of the Osudoku State* but not East of 0 20 East Longitude of Greenwich."

Apart from the purely cartographic exclusion of "East of 0◦20 East Longitude of Greenwich", the residue of the constitutive area of authority of the said Local Council is "*the area of the Osudoku State*".

The question what constitutes the Osudoku State is manifestly a question of customary chieftaincy law because surely such a state is a native state constituted under customary constitutional law. This will involve the question of constitutional relations between the Osudoku paramount stool and other customary chiefly stools with which it shares native boundaries. All this has been clearly highlighted by paragraphs 4 and 7 of the plaintiffs' affidavit in opposition to the co-defendants' motion for leave to file a counterclaim as follows:

" 4. That the *question whether Akuse belongs to the Manya Krobo Traditional Council or the Osudoku Traditional Council is a bone of serious contention between the two traditional councils. In point of fact, Akuse has two chiefs nominated by both the Manya Krobo Traditional Council and the Osudoku Traditional Council. …*

7. That *the true situation is that as a result of the conflicting claims by both the Manya Krobo Traditional Council and the Osudoku*

Traditional Council, the National House of Chiefs has deferred recognition of both claimants until a resolution of the impasse. Attached herewith and marked as Exhibit "NAK" is a letter from the National House of Chiefs disclosing a reference of the impasse to the Standing Committee of the National House of Chiefs." (e.s.)

The question as to the nature and area of a traditional council has for many years been determinable by reference to a legislative or administrative instrument. But though this issue arose in *Republic v. High Court, Koforidua; Ex parte Otutu Kono III (Akwapim Traditional Council Interested Party)* (2009) 1 SCGLR 1 this court, as noted by the Editorial Note thereto was split in such a way that the matter cannot be said to have been resolved therein. Nonetheless whereas in this case there is a real issue as to which chief has the customary authority to appoint a chief for Akuse and consequently under which chief's customary authority does Akuse and by extension the disputed areas falls or fall, a cause or matter affecting chieftaincy is clearly involved.

The crux of the matter is that whether Akuse is part of the Osudoku State or not is a cause or matter affecting chieftaincy since aforesaid constitutional relations and claims between two contending chiefs in different traditional councils, Districts and Regions are involved.

It is therefore crystal clear that the question whether Akuse falls within the Greater Accra Region or Eastern Region cannot be resolved without resolving the nature, extent and area of the Osudoku State which clearly evinces a cause or matter affecting chieftaincy. This issue is cardinal and this court cannot entertain it without entertaining a cause or matter affecting chieftaincy, see *Ababio v. Boso Traditional Council* (1979) GLR 53, *In re Wa-Na, Republic v. Fijoli-Na; Ex parte Yakubu* and *Others* (1987-88) 1 GLR 180 C. A. and *Republic v. Kumasi Traditional Council Ex parte Dei* (1973) 2 GLR 73 C.A. Chieftaincy is a matter peculiarly suited and entrusted to the customary institutions except the appellate jurisdiction of this court in decisions of the

National House of Chiefs, see *Kyereh v. Kangah* (1978) GLR 83 (Full Bench) and *Aduamoa II v. Adu Twum II* (2000) SCGLR 165.

Consequently this court can determine as at now only the issue as to the validity of the two competing versions of L.I. 1983. It is clear from the evidence and the two versions of this legislative instrument that though both of them were gazetted on 19th October 2010 one of them is stated as having come into force on 24th November 2010 and that is the version which puts the disputed areas within the Dangme West District in the Greater Accra Area.

Clearly since under article 11(7) a statutory instrument laid before Parliament takes effect within 21 Parliamentary sitting days it follows that the version which is stated as having come into force on 24th November, 2010 cannot be right. It simply in those circumstances cannot be said to have been laid before Parliament or gazetted on 19th October 2010. The period between 19th October 2010 and 24th November 2010 manifestly exceeds the constitutional maturity date of 21 parliamentary sitting days and it is to be wondered why this singular version of L.I. 1983 was in need of special extension of time, which is not constitutionally feasible, to come into effect. By contrast the other version of LI 1983 also dated 19th October 2010 does not contain any unacceptable commencement date. The presumption therefore is that it took effect after the usual 21 parliamentary sitting days. We therefore declare the version of L.I. 1983 which carries the disputed electoral areas under the Dangme West District within the Greater Accra Region unconstitutional and null and void. See *Stephen Nii Bortey Okane and Others v. The Electoral Commission & Attorney General* (Writ No. J1/2/2011) and *Nii Tetteh Opremreh v. The Electoral Commission & Attorney-General* (Writ No. J1/3/2011)

Conclusion

For the reasons given we do not decide the District or Region to which the disputed areas belong. That can be litigated by the appropriate legal

processes in the light of our foregoing reasons. However having declared the version of L.I.1983 which is therein stated to have come into force on 24th November 2010 null and void, it follows that the other version which we accept as the earlier or original version of L.I. 1983 as procedurally valid enjoys, in all other respects, the presumption of regularity.

The plaintiff's action therefore succeeds to the extent indicated in this judgment.

(SGD) W. A. ATUGUBA
JUSTICE OF THE SUPREME COURT

(SGD) DR. S. K. DATE-BAH
JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

(SGD) S. O. A. ADINYIRA(MRS.)
JUSTICE OF THE SUPREME COURT

(SGD) J. V. M. DOTSE
JUSTICE OF THE SUPREME COURT

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