IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: BAFFOE-BONNIE JSC (PRESIDING)
DORDZIE (MRS.) JSC
AMEGATCHER JSC
LOVELACE-JOHNSON (MS.) JSC
KULENDI JSC

CHIEFTAINCY APPEAL
NO. J2/02/2021

4TH MAY, 2022

1. OPANIN ANTWI MANU
   (Substituted by KOJO KYER ADDAQUAY)
2. ABREWATIA LOVE ADWO SOM
   (Substituted by ABREWATIAYAA ARKU)

……. PETITIONERS/APPELLANTS/ APPELLANTS

AND

1. NANA AFRAKOMA II
2. NANA NYARKOA (Benkumhemaa)
3. NANA ASOMANI (Amanguahene)
4. KWABENA OWIREDU

……. RESPONDENTS/RESPONDENTS/ RESPONDENTS

JUDGMENT

AMEGATCHER JSC:-

"...If the customary laws involved are not adequately set out and the roles and responsibilities of all involved in the king making process are

not defined any further, attempts to install a chief for Akwamu is likely to end in another litigation".

My Lords, these were the prophetic words of the judicial committee of the National House of Chiefs in one chieftaincy case concerning the Akwamu Stool (Suit No. NHC.3/E/98, exhibited by the 1st Respondent as EXHIBIT NA3, at page 272 of the Record of Appeal (ROA)). Since 1998, this prophecy has haunted the Akwamu people evidenced in one litigation or other in the various attempts to install Akwamuhene.

True to the divination, this appeal emanates from the decision of the judicial committee of the National House of Chiefs ("**JCNHC**") dated 23rd May 2019, where, by a majority of four to one, the committee affirmed the decision of the judicial committee of the Eastern Regional House of Chiefs ("**JCERHC**") dated 10th May 2017, in favour of the Respondents/Respondents/Respondents (hereafter referred to as "the Respondents")

It is important to briefly detail the facts which provoked the commencement of this matter.

Odeneho Kwafo Akoto II, paramount chief of the Akwamu Traditional Area and occupant of the Akwamu Black Stool passed away in 1992. Upon his demise, Mr. Kyeremanteng Afranie (*who hails from the Yaa Ansaa Family of Akwamu*) was nominated and purportedly installed as the next chief of Akwamu. This purported installation found disfavour with some principal actors within the Akwamu Chieftain, including 1st Respondent herein (Nana Afrakoma II).The discontented parties therefore collectively brought a chieftaincy petition before the JCERHC to revoke Mr. Kyeremanteng's installation. That petition (*Suit No. NHC.3/E/98*)was dismissed. On appeal to the JCNHC however, Nananom remitted the matter back to the JCERHC for a fresh trial.

Unfortunately, the conduct of the matter dragged on for 17 years and within that period, Mr. Kyeremanteng Afranie passed on. On the passing of Mr. Kyeremanteng Afranie, 1st, 2nd and 3rdRespondents attempted to install 4th Respondent (Mr. Kwabena Owiredu), as the new chief of Akwamu. Their endeavours greatly upset the

Petitioners/Appellants/Appellants (hereafter referred to as "the Petitioners") who brought a petition (later amended), before the JCERHC for the following reliefs:

a) **Declaration that it is the turn of the Ansaa gate to nominate a candidate for occupation of the royal black stool of Akwamu.**
b) **Declaration that in Akwamu nomination of a candidate for the black stool is not the exclusive preserve of the queenmother.**
c) **Declaration that any nomination, election, and enstoolment of the 4th respondent is contrary to custom and practice of Akwamu and therefore null and void.**
d) **Perpetual injunction to restrain the respondents from nominating, electing, selecting, enstooling or in any way installing the paramount chief of Akwamu without the involvement of the Ansaa gate.**
e) **Perpetual injunction to restrain 4th respondent from acting or purporting to act as the paramount chief of Akwamu.**
f) **Perpetual injunction to restrain the 1st, 2nd, and 3rd respondents from projecting, endorsing, encouraging, or acknowledging the 4th respondent as the paramount chief of Akwamu.**

Petitioners sought these reliefs on the premise that the black stool of Akwamu is occupied by two families; the Ansaa family and the Botwe family and that as the last chief of Akwamu, Odeneho Kwafo Akoto II was from the Botwe family it was the turn of the Ansaa family to occupy the Akwamu black stool.

THE PETITIONERS' CASE:

It was Petitioners' contention that the right to ascend to the black stool of the Akwamus, is traditionally the exclusive preserve of the Yaa Ansaa family. In a long chronology of history, Petitioners contended that the Akwamus were compelled by wars and other movements to migrate from Southern Sudan to Swedru and then later to Twifu Heman where they created a black stool and named it Amanpon Gua. To make

the stool more powerful, they needed a human being for some rituals, at which point one Kofi Akoto, the son of Obaapanin Yaa Ansaa, of his own free will offered himself to be sacrificed. After the purification rites with the blood of Kofi Akoto, the Yaa Ansaa Family to which he belonged, to their glory and honour, became the custodians of the black stool and all duties and authority in respect of the stool were vested in the Yaa Ansaa Royal Family. Petitioners contended that the Yaa Ansaa family belongs to the Aduana Clan, and it was agreed that it was only from Yaa Ansaa's family that the chief of Akwamu could be nominated, elected, and enstooled. Consequently, in 1500, the first Chief of Akwamu, Nana Agyen Kokobo who hailed from the Yaa Ansaa family was enstooled. In like fashion, successive chiefs from the Yaa Ansaa family took over the reigns and led the people of Akwamu through migrations to the present place of settlement at the banks of the River Volta.

Petitioners continued that in 1733, Nana Akunor Kuma, a prince who was appointed a regent of Akwamu led the Akwamus to cross over the River Volta to a place where they met some settlers; the Akrades, Nkonyas, Kotropes and the Aboabos. Nana Akunor Kuma led the Akwamus to drive away the Nkonyas and settled thereon. He also conquered the people of Kamenaman and the Aboabos. Nana Akunor Kuma compelled the Kamenas to surrender to the Akwamus and caused Nana Okyere Sampa, the chief of Aboabo to be beheaded, whose skull was placed beneath the black stool of Akwamu. After their defeat, the Aboabo people introduced themselves to the Akwamus as being of the Aduana clan. Nana Akunor Kuma therefore released just a little portion of all the lands he had seized to the Aboabos for them to settle on. Nana Akunor Kuma was elevated to the status of paramount chief of Akwamu due to his great achievements.

According to the Petitioners, there had been instances where individuals had ascended to the Akwamu black stool although they were not Yaa Ansaa family members and that out of fourteen (14) chiefs who have ascended to the black stool of Akwamu from 1733 to 1992, two (2) (*Nana Kwafo Akoto Okofroboo, 1866 – 1882* and *Odeneho Kwafo Akoto II, 1937 -1992*) have come from the Yaa Botwe family of Aboabo to which 1st

Respondent (*Nana Afrakoma II, current queenmother of Akwamu*) and 4th Respondent (*Kwabena Owiredu, newly installed chief of Akwamu*) belong.

Petitioners explained these two instances where the Yaa Botwe family of Aboabo were able to ascend to the black stool of Akwamu was due to a lack of eligible candidates from the Yaa Ansaa family. Petitioners contended that any other chief, who had ascended to the black stool of the Akwamus had done so with the consent of the Yaa Ansaa family and due to the shortfall of eligible candidates from the Yaa Ansaa Family. Petitioners averred that Odeneho Kwafo Akoto II who was of the Yaa Botwe family of Aboabo ascended to the Akwamu black stool for this very reason. Having reigned for an unprecedented fifty-five (55) years, he took advantage of his long reign to institute an arrangement where the ascendency to the black stool of Akwamu became rotatory between the Yaa Ansaa Family and his family, the Yaa Botwe Family.

Petitioners further contended that the Akwamus have had only two recognised queenmothers in their history. The first was Nana Akua Ansaa and the present one, being the 1st Respondent and that all other women who had played leading traditional roles in Akwamu were not queenmothers but rather family or clan mothers, who were not vested with the role of nominating candidates for the black stool.

THE RESPONDENTS' CASE:

The Respondents first attacked the competency of the Petitioner's petition on the ground that another petition which was pending had been commenced by a certain Abusuapanin Kojo Akwaa and Abrewatia Akua Nyantakyiwah, in the same capacities as the Petitioners herein. Next, contrary to Petitioners allegation that there had been only two queenmothers in Akwamu history, Respondents contended that there have been queenmothers in Akwamu who have always been involved in the nomination and enstoolment of Akwamuhene. According to Respondents, the queenmothers of Akwamu were Akua Ansaa (1927 – 1964), Afua Yirenkyiwaa, Yaa Bodua, Akua Ofeibea and Yaa Ansaa before 1st Respondent. Respondents contended that the Akwamu traditional area has six Aduana/Abrade families with five sub-stools and the Amanpon stool, each of

which is headed by an Abusuapanin and Abrewatia who come together to deliberate on matters affecting the Amanpon stool and other matters in the Akwamu state.

Respondents claimed that 1st Respondent as queenmother doubles as the Abrewatia of the Akwamu Amanpon stool and consequently, all matters relating to the nomination ofa candidate for vetting and possible nomination as chief is within her competence. On the right of ascendency to the black stool of Akwamu, Respondents contended that a custom or tradition had developed where the descendants of two matriarchs (*Yaa Ansaa and Yaa Botwe, who constitute two royal houses*), have ascended to the Black stool but in no order, the major criteria however being a royal, the individual's fitness, suitability, and personal characteristics.

At the end of the trial, both parties addressed the JCERHC on the following issues:

a. **Whether or not the Petitioners have capacity to institute the action.**
b. **Whether or not the black stool of Akwamu is occupied by two gates and whether succession to the stool is rotational?**
c. **Whether the Akwamu people traditionally had a queenmother and if so, whether she has the sole prerogative to nominate the occupant of the black stool.**
d. **Whether it is the turn of Yaa Ansaa gate to nominate a candidate for the black stool after the death of Mr. Kyeremanteng Afranie.**
e. **Whether the nomination, election, installation, and outdooring of the 4th Respondent was contrary to any known custom, practice, or tradition of Akwamu.**

DECISION OF THE JUDICIAL COMMITTEE OF THE EASTERN REGIONAL HOUSE OF CHIEFS

The trial judicial committee narrowed the issues to be determined to be just the following:

a) **Whether or not there is an established system of Rotation in Akwamu.**
b) **Whether or not Kyeremanteng Afranie was a validly installed chief.**
c) **Whether the people of Akwamu had a queenmother and nomination of a candidate to occupy the back stool was her duty.**
d) **Whether or not the 4th Respondent was validly nominated, elected, and installed as paramount chief of Akwamu.**

Regarding the issue of whether a rotational system of succession to the black stool existed in Akwamu custom, Nananom believed that no such established and systematic rotation existed in Akwamu. According to them, the evidence of both parties led to the sole conclusion that there are two houses (Yaa Ansaa and Yaa Botwe), from either of which families a candidate can be nominated to ascend the Akwamu throne. They considered Exhibits A, N17 and 18, which in their opinion at best pointed to the fact that from the Yaa Ansaa and Yaa Botwe houses or lineage, an eligible candidate can be nominated to ascend the paramountcy. According to Nananom, for there to be an established system of rotation, there had to be a clear custom of practice to that effect, and they could find none.

It was the opinion of Nananom that the legal tassels that existed throughout Mr. Kyeremanteng Afranie's reign up until his demise and the fact that he was not recognised and supported by the 1st Respondent as the chief of Akwamu did not deprive him of his status as paramount chief of Akwamu. On this basis, Nananom found Mr. Kyeremanteng Afranie to have been validly nominated, elected, and installed as chief of Akwamu after the passing of Odeneho Kwafo Akoto II.

On the status of the queenmother and regarding whether such a position existed in the history and custom of the people of Akwamu, Nananom believed as a matter of fact that the people of Akwamu had the office of queenmother before the reign of the 1st Respondent. They relied on Exhibit NA2, which named one Akua Ansah as queenmother. Having reached this conclusion, Nananom swallowed whole Respondent's contention that for the purpose of nominating a candidate to ascend to the throne, the

queenmother summons or convenes a meeting and presides over same and that whereas all Mmrewatia had an equal right to contribute to the business of the meeting, the queenmother as convener had the final say. In effect, Nananom made the finding that it was the duty of the queenmother to nominate a candidate from either the Yaa Ansaa or Yaa Botwe houses to ascend the paramount stool. According to Nananom, 1st Respondent was not the 1st, 2nd, or 3rdqueenmother of Akwamu.

Nananom found as a fact that the Petitioners had not been able to prove that the processes that led to the installation of the 4th Respondent was contrary to the customs of Akwamu. According to the evidence before them, they believed the 4th Respondent to be a royal and validly nominated, elected, and installed as chief of Akwamu.

Dissatisfied with the decision of the JCERHC, the Petitioners appealed to the JCNHC on the grounds that the judgment was against the weight of evidence and that the trial panel erred in law by failing to consider the solid corroborative evidence of the Petitioners' witness No. 1 (PW1).

DECISION OF THE JUDICIAL COMMITTEE OF THE NATIONAL HOUSE OF CHIEFS

The Petitioners in the course of the Appeal procured an amendment of their Petition. Consequently, by their amended Petition filed on 16th July 2018, their endorsed reliefs were as follows:

a) **A declaration that the Yaa Ansah [SIC] family of Akwamu is separate and distinct from the Yaa Botwe family.**
b) **A declaration that the black stool of Akwamu is the property of the Yaa Ansah [SIC] family.**
c) **A declaration that any occupation of the said black stool of the Yaa Botwe family was at the license and or permission of the Yaa Ansah family [SIC].**

d) **Declaration that any nomination, election of the 4th Respondent is contrary to custom and practice of Akwamu and therefore null and void.**
e) **Perpetual injunction to restrain the respondents from nominating, electing, selecting, enstooling or in any way installing the paramount chief of Akwamu without the involvement of the Ansaa Gate.**
f) **Perpetual injunction to restrain the 4th respondent from acting or purporting to act as the paramount chief of Akwamu.**
g) **Perpetual injunction to restrain the 1st, 2nd and 3rd respondents from projecting, endorsing, encouraging or acknowledging the 4th respondent as the paramount chief of Akwamu.**

The majority on the committee believed, having carefully examined the Record of Appeal, that the Petitioners had not made out the case that the Yaa Botwe family or the 4th Respondent were ineligible to ascend the Akwamu stool. Consequently, in their opinion, the Respondents were not required to demonstrate their eligibility to occupy the black stool of Akwamu.

According to the majority, on Petitioner's own chronicle of history, the Aboabo Aduana Abrade family was assimilated into the Akwamu Aduana Abrade family and the fact that the Ansaa and Botwe families qualified to ascend to the stool, consequently meant that when the stool becomes vacant a candidate can be picked from any of the lines of the Aduana Abrade families including the Benkum, Asomani Amangua House, Adumand Ankobea. Ultimately, the majority believed that on the Petitioners own account they could only agree that the two families were brought together.

The majority acknowledged the status of the 1st Respondent as queenmother of Akwamu and stated that in their consideration, it was not an accident for the 1stRespondent and the 4th Respondent to be related by blood to the last substantive Akwamuhene. On this basis, they found the Petitioners contention that the Yaa Botwe family begged to be made paramount chiefs as unproven and further found no clear

evidence that the members of the Yaa Botwe family ascend the black stool by the license of the Yaa Ansaa family.

They affirmed the Yaa Ansaa and Yaa Botwe families to be separate in the sense that they had their respective heads and houses, they intermarried and did not share funeral debts.

In the end, they concluded that the findings of fact made by the JCERHC were amply supported by evidence on record and accordingly refused the appeal.

APPEAL TO THE SUPREME COURT

Aggrieved, the Petitioners sought and were granted leave by the Supreme Court to appeal which they did on the following grounds:

a) **The judgment is against the weight of the evidence**
b) **The Court below erred in its decision that the Yaa Botwe family ascends the Akwamu stool as of right.**

In ascertaining the weight of evidence given at trial, a trial court is enjoined by law, to consider whether the evidence is admissible, relevant, credible, conclusive, or more probable than that given by the other party. Thus, where an aggrieved party cries out to an appellate court that the judgment against which he appeals is against the weight of the evidence, he implies that there were certain pieces of evidence on the record which if applied could have changed the decision in his favour or that there are certain pieces of evidence that had been wrongly applied against him.

This Court's jurisprudence on the omnibus ground and the legal principles governing its duty as an appellate court when such a ground is raised is commonplace. It is that where on appeal, a judgment is said to be against the weight of the evidence, it is imperative on the appellate court to study the entire record of appeal, consider the entire testimonies and all documentary evidence adduced at the trial before arriving at its decision. See cases of **Akufo Addo v Catheline [1992] 1 GLR 377, Achoro v Akanfela [1996-97] SCGLR 209, Tuakwa v Bosom [2001-2002] SCGLR 61,**

Ackah v Pergah Transport Ltd. [2010] SCGLR 891, Aryeh & Akapo v Ayaa Iddrisu [2010] SCGLR 891,Oppong Kofi& Others v Attibrukusu III [2011] 1 SCGLR 176 etc.

It is instructive to note that this omnibus ground does not only bestow a duty on an appellate court. A duty is simultaneously placed on the appellant canvassing such a ground to demonstrate to the appellate court the lapses clearly and properly in the judgment being appealed against. Such appellant has a duty to demonstrate that the trial judge failed to consider adequately the evidence placed before it; further the appellant must properly demonstrate the lapses he complains of, which lapses if corrected would cause the scale of justice to tilt favorably towards him. See cases of **Abbey& Others v Antwi [2010] SCGLR 17** and **Djin v Musah Baako [2007-2008] SCGLR 686.**

It is also trite learning that an appeal is by way of rehearing. This principle has been explained in a plethora of this Honourable Court's decisions. In the case of **Praka v Ketewa [1964] GLR 423 (SC)**, Ollennu JSC explained that:

> **"It is true that an appeal is by way of rehearing, and therefore the appellate court is entitled to make up its own mind on the facts and to draw inferences from them to the same extent as the trial court could; but where the decision on the facts depends upon credibility of witnesses, the appeal court ought not to interfere with findings of fact except where they are clearly shown to be wrong, or where those facts are wrong inferences drawn from admitted facts or from the facts found by the trial court. Therefore, if in the exercise of its powers, an appeal court feels itself obliged to reverse findings of fact made by the trial court, it is incumbent upon it to show clearly in its judgment where it thinks the trial court went wrong. It goes without saying that if an appeal court sets aside the findings of a trial court without good ground, or upon grounds which do not warrant such interference with**

the findings made by the trial court, a higher court will set that judgment aside."

As earlier recounted, the JCNHC opined that having carefully examined the Record of Appeal, the Petitioners had not made the case that the Yaa Botwe family or the 4th Respondent were ineligible to ascend the Akwamu stool. Nananom stated at page 557 of the ROA as follows:

"Evidently, on the Appellants own showing, the Aboabo Aduana Abrade family was assimilated into the Akwamu Aduana Abrade family that came from Nyinawase.

Nananom sitting at the Committee below noted and we agree with them that, the Appellants went further to assert that the two gates qualified to ascend to the stool, without showing any special qualifications or disqualifications on either side, thus when the stool becomes vacant a candidate can be picked from any of the lines of the Aduana Abrade families including the Benkum, Asomani Amangua House, Adum and Ankobea

Consequently, if the Appellants have made these declarations that the Aboabo Aduana Abrade family was assimilated into the Akwamu Aduana Abrade family that came from Nyanawase, which evidence was not challenged, we can only agree that the two families were brought together."

This was in effect an endorsement of the JCERHC's finding that there are two houses (Yaa Ansaa and Yaa Botwe), from either of which families a candidate can be nominated to ascend the Akwamu throne. **The important question to ask here is, were these findings proper inferences drawn from the specific facts?**

PRELIMINARY MATTER ON CAPACITY

In the majority decision of the JCNHC, Nananom found that the Petitioners had capacity to institute the action. Even though the Respondents did not cross appeal in respect of this finding of fact, the Respondents in their statement of case have argued extensively on the issue of capacity.

It is trite that capacity can be raised at any stage of proceedings. **In Nii Kpobi Tettey Tsuru III & 2 Ors vrs. Agric Cattle& 4 Ors J4/15/2019dated 18thMarch 2020** (unreported), the Supreme Court held that:

> **"The law is trite that capacity is a fundamental and crucial matter that affects the very root of a suit and for that matter, it can be raised at any time even after judgment on appeal".**

However, if the Respondents intended to challenge this finding of fact by the judicial committee, they should have cross appealed against it. In the case of **Republic v Judicial Committee of the Central Regional House of Chiefs; Ex Parte AABA [2001-2002] SCGLR 545** this Court held that**:**

> **"Rule 6 of the Supreme Court Rules, 1996 (CI 16), did not permit an appellant to argue a ground of appeal that was not set forth in his notice of appeal. And rule 6(7)(b) , which enjoined the court not to " confine itself to the grounds set forth by the appellant or be precluded from resting its decision on a ground not set forth by the appellant" was subject to rule 6(8); that rule meant no more than the decision to rely on a ground not set forth by the appellant rested solely with the court when in any particular appeal before it justice of the case required the court to rest its decision on a ground not relied on by the appellant in his notice of appeal. Rule 6(8) should not be taken as granting the appellant a general licence to abandon his obligations under the rules. The court would therefore not accept the invitation of**

the counsel for the appellants to consider the grounds of appeal filed before the Court of Appeal".

We note from the ROA that the issue of capacity was argued and ruled upon by the JCNHC. The proper thing for the Respondents to do if they were dissatisfied with that determination was to have appealed. By failing to appeal, that determination remained binding on them and are, therefore, disabled from having a second bite at this same argument before this Court. Accordingly we dismiss the arguments on capacity urged on us by the Respondents.

ANALYSIS OF THE EVIDENCE

A careful examination of the ROA discloses that the Respondents unequivocally denied Petitioners averments that the black stool of the Akwamus is occupied by two (2) families(*paragraph 4 of their Answer*). Respondents also equally unequivocally denied Petitioners' averments on the history and makings of the Akwamu black stool particularly that traditionally the black stool of the Akwamus was brought by the Ansaa house when the Akwamus came from Nyinawase. In our opinion, the issue of whether the two families possess the right to occupy the stool and if not, which of the two does, was made a critical issue for determination by these unequivocal denials. Further**,** although Petitioners action started as a stool rotatory petition, from the way it was couched and later amendments at the JCNHC, the claim was, in substance, an action to determine whether the Yaa Ansaa or the Yaa Botwe family owned the customary right to the Akwamu Amanpon stool**.** The issue deserves all premium because a determination as to the right lineage and family is paramount to the further determination of whether an individual has been validly nominated, elected, or enstooled. That hurdle cannot just be side stepped in any chieftaincy dispute.

Counsel for the Petitioners submit that once an issue appears to be the cardinal issue for determination by a court, the mere fact that the parties failed to set it down will not preclude a court of law and equity from making a determination on it. We are inclined to agree with the Petitioners' submission on this point. Granted that the basics of

Petitioners' case as foretold by their pleadings was that there had been some form of amalgamation of the two families regarding succession, the trial committee ought to have averted its mind to the fact that these were critical averments that had been denied outright. It is important to state that proceedings before the judicial committees of the Houses of Chiefs are fact finding ventures. Therefore, to reecho the Court's rightful words in **Darkoh v Amoah [1989-90] 2 GLR 214,** members of traditional courts must place more confidence in their traditional role as chiefs and as repositories of the customary law and not be carried away by technical rules and procedure preferred by counsel. Consequently, regardless of the allegations that may be put forward by either party as being the true state of events, where a committee's fact-finding process reveals the facts to be of certain truth whereas those alleged by the parties are otherwise, it is incumbent on the committee undertaking such proceedings to declare the correct position and set the facts straight for the benefit of posterity. It is for this reason that we are unable to agree with Respondents' counsel's submission that by Petitioners own pleadings and evidence, they were deemed to admit that the Yaa Botwe family had a right equal to the Yaa Ansaa family to ascend the black stool of Akwamu.

Sowah JA (as he then was) reading the majority judgment in **Kyereh V Kangah [1978] GLR 83, CA** at 91 said that:

> **"In a dispute involving the cherished and unique institution of chieftaincy the adoption of principles or rules of law evolved for the purposes of solving ordinary land and civil suits can lead to unsatisfactory results and bring the whole of the institution into disrepute. Such principle or rules, call them what you will, namely, 'the plaintiff must prove his case beyond all reasonable doubt' or that `the plaintiff must rely on the strength of his case and not on the weakness of the defendant's' should in my view have no place in disputes involving chieftaincy."**

Consequently, the pleadings and evidence made it imperative for Nananom to determine which of the families (or if both) had a right to ascend the Akwamu black stool as an issue of paramount importance**. See Re Asebu Akroful Stool; Andzie VIII vs. Bofo IX [1998-99] SCGLR 339** per Acquah JSC (as he then was).

S.A. Brobbey writes in his text **THE LAW OF CHIEFTAINCY IN GHANA** that:

> **"The connection with the original founder of the stool or skin is the basis for another important notion that succession to stools and skins is hereditary. Succession is said to be hereditary in the sense that only persons from certain recognised families described as the "royal family" are eligible for consideration as chiefs or Queenmothers. The royal family must be traceable to the originator of the stool or skin. It may be many years down the family line, but the contestant will inherit the title of chief traceable to the progenitor or the originator of the stool or skin. That is the significance of the use of the expression "hailing from the appropriate family and lineage" contained in article 277 of the 1992 Constitution that has been discussed below. The contestant may hail from the "appropriate family". That family may have many "lines" within it. The contestant must additionally hail from the right line of succession within that family."**

The evidence presented by both parties regarding the ownership of the Akwamu black stool was heavily traditional. The legal position set down in assessing rival traditional evidence is that the court must not allow itself to be carried away solely by the impressive manner in which one party narrated his version, and how coherent that version is; it must rather examine the events and acts within living memory established by the evidence, paying particular attention to undisputed acts of ownership and possession on record; and then see which version of the traditional evidence, whether coherent or incoherent, is rendered more probable by the established acts and events. The party whose traditional evidence and such established acts and events support or render more probable must succeed unless there exists, on the record of proceedings, a

very cogent reason to the contrary. [See **In Re Taahyen & Asaago Stools; Kumanin II (substituted by) Oppon v Anin [1998-99] SCGLR 399**

Abrewatia Love Adjo Som (2nd Petitioner), who began the evidence for the Petitioners, principally chronicled the history of the Akwamu in her evidence in chief. Particularly her evidence at page 165 of the ROA were as follows:

> **"Since 1733 to 1992, there had been 13 chiefs, eight (8) out of this 13 chiefs have come from Yaa Ansaa family and 2 have come from Yaa Botwe. The remaining 3 are from Ankobea, one from Amanya, the 3rd from Oyoko. The 2nd(sic) from Yaa Botwe are Nana Kwafo Akoto I and II. Kwafo Akoto II was enstooled in 1937. He died in 1992 on the throne. After death of Kwafo Akoto II in 1992, he documented that the throne should move fromYaa Botwe to Yaa Ansaa. But he thought that from Yaa Botwe gate it would go to Yaa Ansaa gate. Consequently, on the demise, Yaa Ansaa nominated Kyeremanteng Afranie."**

The 2nd Petitioner maintained throughout her testimony that Kwafo Akoto II was a loaned candidate from the Yaa Botwe family of Aboabo. She was staunch and emphatic in her testimony that the deceased chief was from the Yaa Botwe family and was loaned to the Yaa Ansaa family. The various elicited testimonies were as follows: At page 166 of the ROA the following dialogue went on:

> **Q: From your evidence Kwafo Akoto II was the 3rd Chief from Yaa Botwe gate?**
>
> **A: No, he was rather the 2nd. Explanation is that both Kwafo Akoto I and II are from Aboabo, but they begged to be made chiefs.**

At page 171 of the ROA, the elicited evidence continued as follows:

> **Q: You remember Odeneho Kwafo Akoto, he is dead.**
>
> **A: Yes**

Q: He is not a member of the Yaa Ansaa family?

A: No.

Q: He ruled for over 50 years.

A: He was asked to be the king by default. He was not the rightful heir. He was "loaned" to the stool by the Aboabo Abrewatia.

Again, at page 180 of the ROA2nd Petitioner maintained as follows:

Q: Who informed your family that it was their turn to ascend the stool?

A: When Nana Kwafo Akoto died it was the royal Ansaa family that were rightful people to occupy the stool.

JC: Kwafo Akoto ruled for how many years before he died.

A: 55 years on loan

When questioned by the Judicial Committee, the 2nd Petitioner again answered at page 186 of the ROA as follows:

JC: Who brought Nana Kwafo Akoto?

A: He was brought by the Yaa Ansaa family from Aboabo.

JC: Who in Yaa Ansaa family brought Kwafo Akoto?

A: The elders of the Yaa Ansaa family.

Q: Are you related by blood to Kwafo Akoto?

A: No. he was brought from Aboabo.

The above testimony was corroborated by Oheneba Albert Oppong Akoto (PW1), son of Kwafo Akoto II from the Yaa Botwe family. The witness provided in great detail the knowledge gained from his father the longest reigning Omanhene of Akwamu, his mother, uncle (the Gyasehene), the elders of the community and his own personal

knowledge from his long sojourn at Akwamufie the genesis of the Akwamu black stool and how the Yaa Ansaa family became custodians of it. Of particular importance was his evidence that each time a candidate had been chosen from outside the Yaa Ansaa family to ascend the Akwamu black stool, it was only by reason of the lack of eligible candidates. That part of his testimony at pages 194-195 of the ROA reads as follows:

> **"27. Out of the six (6) paramount chiefs who reigned from 1887 to 1992, three (3) of them came from the Yaa Ansaa Royal family, and one (1) from the Asamani House of the Abrade clan, being Otumfuo Akoto Ababio III (1910-1917) and later re-enstooled as Otumfuo Akoto Ababio IV (1921 – 1937). His father was an Abrade and his mother was an Ewe but due to shortfall of eligible men from the Yaa Ansaa Royal family, he was called upon to ascend the throne.**
>
> **28. The next paramount chief who took over from Otumfuo Akoto Ababio IV was my biological father, Otumfuo Kwafo Akoto II who reigned from 1937 till 1992. He was from the Yaa Botwe Family of Aboabo and known in private life as Opanyin Kwame Offei. His enstoolment was as a result of another short all of men from the Yaa Ansaa family.**
>
> **29. My father, Otumfuo Kwafo Akoto II was loaned from one Obaapanin Ama Ago to be installed as a paramount chief and not from the entire Yaa Botwe family."**

PW1 tendered Exhibit A, titled as a comprehensive list of the Akwamu Chiefs at the Volta Basin. From this document, the predominance of the Yaa Ansaa family regarding succession to the Akwamu black stool is undoubtedly discernable.

On the contrary, 1st Respondent merely maintained that members of the two houses of Yaa Ansaa and Yaa Botwe have in no order regularly ascended the Akwamu black stool. Her evidence at paragraph 14 of her Witness Statement at page 246 of the ROA provides clearer details as follows:

"In so far as ascendency to the paramount stool is concerned, a custom or tradition has developed where the descendants of two matriarchs known as Yaa Ansaa and Yaa Botwe constitute the two royal houses whose members have regularly ascended to the paramount stool, but in no particular order, the major criteria for nomination and installation, besides being a royal, is the individual's fitness, suitability and personal characteristics which the kingmakers consider acceptable for becoming a paramount chief."

She tendered Exhibit NA1, which is titled "Akwamu Regal List", from 1505 to 1937. This Regal list supports Exhibit A, the comprehensive list of the Akwamu chiefs at the Volta Basin which establishes the predominance of the Yaa Ansaa family regarding succession to the black stool of Akwamu tendered by PW1. Her Exhibit NA2, the Gold Coast Chiefs Listin 1929 recorded Emmanuel Asare Akoto Ababio IV as the Omanhene of Akwamu. This Exhibit also confirms item 13 of Exhibit A tendered by PW1 and item 27 of Exhibit NA1 tendered by 1st Respondent. The rest of her Exhibits being family history of the Yaa Botwe family and past court proceedings in respect of suits at the various Houses of Chiefs were of little assistance to the determination of the ownership of the Amanpon Gua black stool.

After assessing the rival traditional evidence and of the two rival testimonies, Petitioners story of the Yaa Ansaa family's undisputed acts of ownership and possession of the Akwamu Black Stool, in our opinion and on the balance of probabilities is overwhelming and is rendered more probable by the established acts and events within living memory.

WHETHER ASCENSION TO THE STOOL IS BY ROTATION

The Petitioners have stated in their pleading and 2nd Petitioner testified in her evidence that the Akwamu Stool became rotational because during the reign of Kwafo Akoto II he documented that the throne should move from Yaa Botwe family to Yaa Ansaa family in rotation. Hence, it was the turn of the Yaa Ansaa family to nominate a

candidate to occupy the stool. The 2nd Petitioner, however admitted that prior to Kwafo Akoto II's edict, there was no system of rotation in ascension to the Akwamu black stool. It was clear also from her testimony that the rotation if it existed at all was a recent creation given under the instruction and hand of the deceased Odeneho Kwafo Akoto II. Her testimony below which was elicited during cross-examination was instructive in that regard.

Q: Your petition acknowledges that the Akwamu stool rotates between the Yaa Ansaa and Yaa Botwe?

A: It is Kwafo Akoto II who laid down that rule of rotation. That chief came from Yaa Botwe.

PW1 testified to the effect that due to his father's long reign (Odeneho Kwafo Akoto II), he took advantage to institute significant changes which included the enstoolment of the 1st queenmother of Akwamu as well as bringing in the Yaa Botwe family of Aboabo as an alternative family that could also ascend the black stool of Akwamu thereby creating a second royal family to ascend the black stool of Akwamu. The following pertinent corroborative testimony was elicited during PW1's cross examination at page 228 of the ROA:

Q: You belong to the same family as the 1st and 5th Respondent.

A: Yes. The 1st respondent is my sister [my fathers, sister's daughter that makes 4th respondent my nephew]

Q: The petitioner's first relief is that it is the turn of the Ansaa's gate to nominate a candidate. Do you agree with that?

A: That is so.

Q: When you talk of the turn, it means that there are other people. Which persons are in there?

A: I do not know of any person/gate who is in turn.

By Court

Q: Do you practice rotation in Akwamu?

A: No. Akwamu does not have the rotation system.

Q: Your father was the longest reigning king of Akwamu. Kwafo Akoto from Botwe's house?

A: Yes

Q: Is your father a royal?

A: He was a royal from Aboabo.

Continuation by Counsel:

Q: As chief/royal from Aboabo could he be king of Akwamu?

A: It is by a certain circumstance.

Q: Who made that determination that it was the turn of the Ansaa gate to rule?

A: The late Kwafo Akoto made that determination. He established the two gates of nominating a candidate. As he was from the Botwe side it was then the turn of the Ansaa's gate.

Q: There is no known system of rotation in Akwamu.

A: What is known is that Kwafo Akoto had written something to that effect.

Now the 1st Respondent's contrary testimony was that no such system of rotation existed in Akwamu custom. She stated at paragraph 28 of her Witness Statement as follows:

"28. I admit that a royal from either the Yaa Ansaa House or the Yaa Botwe House can ascend to the Akwamu stool, but I emphatically deny

that the ascension to the stool is by rotation in the sense being contended by the Petitioners that one royal from one House must necessarily be followed by another royal from the other House after his reign comes to an end."

Prior to this evidence, the Respondents had pleaded in paragraph 9 of their Answer at pages 47-48 of the ROA that:

"9. **In response to the Petitioners claim the Respondents will say that the petitioner's contention that ascension to the stool is rotational is not borne out by history in that from 1866 to 1937 apart from Nana Kensen of Ankobea (1882-1887) and Nana Akoto Ababio III of Asamani (1910-1917) who acted as caretaker paramount chiefs all the other paramount chiefs namely: Nana Kwafo Akoto I (1866-1882) (ii) Nana Akoto Ababio (1887-1909) (iii) Nana Akoto Kwadwo (1909-1910) (iv) Nana Ansah Sasraku IV 1917-1921 were all from the Ansaa gate**."

This averment by the Respondents is very revealing. In the first place, it asserts that the system of ascension to the paramount stool of Akwamu is not rotational. Secondly Akwamu always had paramount chiefs selected from the Ansaa family. Thirdly the other chiefs who were not from the Ansaa family were caretaker paramount chiefs.

Despite this pleading, it came up under cross-examination that the late Odeneho Kwafo Akoto II and 1st Respondent as queenmother had in fact filled out a questionnaire where both had admitted that the system of succession in Akwamu Chieftaincy was rotatory. The evidence in that regard at pages 338 and 339 of the ROA were as follows:

Q: As a queenmother, it is expected that you have filled the questionnaire in the Traditional Council in respect of your queenmother role.

A: Yes

Q: Did you fill yours?

A: Yes

Q: Take a look at this document and see if it is your signature.

A: Yes it is.

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Q: In question 8 of the questionnaire the question was, is the stool rotatory or non-rotatory, and you answered that it was rotatory.

A: It is not rotatory we choose the candidate from the royal family house.

Q: At question 8A [Counsel reads question 8A]

A: We select a chief from the two houses

What can be deduced from the evidence presented by both parties is that at some point in their history precisely during the reign of Kwafo Akoto II, this supposed rotational system was introduced as the new order of succession to the Akwamu black stool. This fact was supported by the corroborative testimonies of both 2nd Petitioner and PW1 as well as 1st Respondent's evidence albeit contradicted by the answers provided to the questionnaire in her own Exhibit NA17 which she has not denied authorship.

My Lords, the above analysis is not to impeach the finding of the JCERHC which was endorsed by the JCNHC but rather to support the findings of the two houses that no system of rotation existed in succession to the Akwamu paramountcy. The law is quite succinct that the mere fact of the existence in a stool family of two or more sections was no justification for holding that succession to the stool was rotatory. According to the Supreme Court in **Essilfie v Anafo VI [1993-94] 1 GLR 669,** there had to be a clear custom or practice to that effect. See also **Dzasimatu v Dokosi [1993-94] GLR 463, SC** where holding 2 confirms the legal position on rotatory system as follows:

"(2) Since the defendants, who were from the Osetu clan, had admitted that the plaintiffs who belonged to the Kofime clan were royals, in

order for the defendants to establish that by the tradition of the mankrado stool there was a system of rotation between the Kofime clan and the Osetu clan, they first had to prove that they were also royals. However, on the evidence they failed woefully to discharge that primary burden of proof which lay on them. In any case, since a clan was defined as a group of people with a common ancestor and yet the parties were from different clans, it was obvious that they could not have a common ancestor. Accordingly, the fact that at some point in time members of the Osetu clan had occupied the mankrado stool of the Kofime clan did not create a rotatory system of occupation of the mankrado stool between the Kofime clan and the Osetu clan."

The evidence is clear that ascension to the paramountcy of Akwamu is not rotational. However, the evidence also exposes the inconsistencies in the evidence presented by the Respondents. The Petitioners' evidence, corroborative testimony and the historical texts supports their case that the Yaa Ansaa family is the family with the right of succession to the Akwamu stool. The custom has been established and it cannot be impeached that for instances where eligible candidates cannot be found, other families within the Abrade-Aduana clan (not just the Yaa Botwe family) is resorted for eligible candidates.

Consequently, it is our opinion that the findings of the JCERHC and the JCNHC on the rightful family which owns the black stool of Akwamu and from which nomination is made or could select a candidate to occupy the stool is not borne out by the traditional evidence and are hereby set aside.

STATUS OF THE QUEENMOTHER AND HER ROLE IN THE AKWAMU KINGMAKING PROCESS

Nananom of the JCERHC on the status of the queenmother of Akwamu held at page 400 of the ROA as follows:

"On the issue of the existence of a queenmother of Akwamu, Nananom find as a matter of fact that the people of Akwamu had the office of the queenmother before the reign of the first respondent. That the evidence per exhibit B, names one Abrewa Ansaa as a queenmother. So, for the petitioners to contend that the office of the queenmother is alien to the people of Akwamu is contrary to the history of the people of Akwamu. To assert again that the first respondent is the first queenmother of Akwamu is also not factual as the evidence will show.

Having established that the office of the queenmother is not alien now to the people of Akwamu, what then will be the function of the queenmother in relation to the nomination, election, and installation of a paramount chief? Nananom find out that the duty of the queenmother is to nominate a candidate, a royal eligible candidate from the Yaa Ansaa and Yaa Botwe houses to ascend the paramount stool. That this nomination is done with the involvement of all the Mmrewatia but as the convener of the meeting, the queenmother takes full control of the meeting. Nananom find that the first respondent is not the first, second or third queenmother of Akwamu. That the office of the queenmother here existed long before the first respondent ascended to the office of the queenmother…

That the first respondent is one in the series of queenmothers known to the people of Akwamu…

Nananom find out that in Akwamu, nomination of a candidate for the black stool is the prerogative of the queenmother with the involvement of the Mmrewatia."

It is interesting to note that the committee's conclusion above that the office of queenmother has long been in existence in Akwamu custom is premised on Exhibit NA2, which only lists one Akua Ansah as queenmother. Now Nananom of the JCNHC

merely stated that there was ample evidence on record to support the above findings of the JCERHC without more. With respect to Nananom of the JCNHC, it is our respectful opinion that their conclusion was erroneous and unsupported given the traditional evidence on record.

While we acknowledges that many Akan chiefdoms have queenmothers whose prime responsibility is to nominate a candidate for a vacant stool, we venture to say that this custom and practice differs from community to community. Thus in this Court's case of **Republic v Osei Bonsu II, Mamaponghene; Ex parte Amadie & Buor [2007-2008] SCGLR 566** Brobbey JSC explained the varied nature of this practice as follows:

> **"What the respondents established was that the events of 7 February constituted the custom for the installation of the queenmother of Asante Mampong. It is important to bear in mind when dealing with customs of various people in this country that customs differ from one traditional area to the other. What may be the essential practice in one area may not necessarily be the practice in another area. This principle is emphasized by the 1992 Constitution, art. 11(3) which defines customary law as "the rules of law which by custom are applicable to particular communities in Ghana."..... There are several features of customary law pertaining to installation of queenmothers. They include confinement, outdooring to the populace, presentation of the queenmother - elect to the overlord chief and others. It is the stool elders and kingmakers who decide which aspect of the custom will be applicable to a particular area. There are basic rules which are applicable to specific areas. But rules on aspects of custom do not apply with equal force in all areas. While compliance with one rule will be imperative in one area, it may either not apply at all or be applicable but not subject to the same force and compulsion as its application in another area. This is the essence of the constitutional provision that**

customary law is the rule of law which by custom is applicable to *particular communities* in Ghana."

WHAT WAS THE EVIDENCE ON THE ISSUE?

The 2nd Petitioner gave evidence that the first Akwamu queenmother was Nana Akua Ansaa and the second queenmother is Nana Afrakoma II. This evidence is corroborated by Exhibit NA2, the Gold Coast Chiefs List, 1929 tendered by the 1st Respondent. In that Exhibit, Akua Ansah is recorded as Ohemaa for Akwamu enstooled in 1927. Apart from her, the only other female name on record which came close to that office was Ohemaa Afrakoma. But she is named among the chiefs of Akwamu in Exhibit NA1, reigning from 1625 to 1640. This confirms the evidence of PW1 that Ohemaa Afrakoma also known as Nana Afrakoma 1 was the 9th paramount chief of Akwamu and not a queenmother. Therefore, on record, the second person whose name appears as queenmother is Nana Afrakoma II, the 1st Respondent.

The 2nd Petitioner also testified in her evidence in chief that she as the Abrewatia nominates a candidate for the paramountcy with the consent of the Abusuapanyin and that it is not the role of the queenmother to nominate.

On the role of the Abrewatia and the queenmother of Akwamu in the nomination process preceding the installation of a chief, 2ndPetitioner's evidence under cross examination at pages 170-171 of the ROA were as follows:

Q: Apart from Abrewatia, do you hold any customary duty?

A: No

Q: I want you to describe your duty by reference to the Akwamu stool?

A: <u>If the stool becomes vacant I am the last person to be called upon with my head of family to nominate a person who is fit to occupy the stool.</u>

Q: Tell us what are the roles of the other Mmrewatia in the process you have described?

A: What they do is after I have nominated a person to occupy the stool, they help me with the other processes necessary.

Q: What is the role of the queen mother in the process described?

A: Because the queenmother is of the Aboabo clan, after I have nominated the person, she comes in where the person nominated is installed.

Q: Tell us now, why is it that you have to nominate the person before the queenmother is informed?

A: The stool she occupies is from the Kwafo Akoto side, but we have great respect for the stool she occupies, so we do not take her out of our functions.

JC: What is the role of the queenmother?

A: When the person is selected, he is taken to meet the Mmrewatia and the queenmother is part. I agree that she is the queen mother.

Further under cross-examination, 2nd Petitioner emphasised that the Aduana family of Akwamu has 7 clans i.e. the family is divided into clans such as Aduana, Agona, Oyoko etc. That the clan is determined by parentage i.e. fathers clan & mothers clan. Each clan has its own Abrewatia and families also have the Abrewatia. Yaa Ansaa family is one family with 7 Mbrewatia. According to her when a stool becomes vacant, it is the Abrewatia with the head of family who nominates a fit person to occupy the stool. The other Mbrewatia help the Yaa Ansaa Abrewatia with the processes after she has nominated a person to occupy the stool.

As stated above, PW1, the son of Kwafo Akoto II on this issue testified that his father Kwafo Akoto II enstooled the first queenmother of Akwamu in the person of the 1st respondent, Nana Afrakoma II but prior to that the Akwamus never had a queenmother to play any traditional role in their culture. PW1 also testified that Nana Afrakoma I was the only female who had ascended the throne of the Akwamus (1625-1634) but she was a chief (9th paramount chief of Akwamu) and not a queenmother and was succeeded by Otumfuo Ansa Sasraku I.

This evidence is confirmed by 1st Respondent under cross-examination at page 333 of the ROA.

> **Q. Do you know that a female has ever been occupant to the paramount stool of Akwamu.**
>
> **A. Yes. Sometime back one queenmother took care of Akwamumanhene.**
>
> **Q. What was her name?**
>
> **A. Akwamuhemaa Nana Afrakoma……**

PW1further testified in his evidence in chief that every division has its own head of family and Abrewatia and they wield their authorities and perform their roles exclusively and without interferences from the others save that the Yaa Ansaa Family has an edge over the others because of the fact that they are the custodians of the black stool of Akwamu. According to PW1, it is only the Abrewatia of the Yaa Ansaa Family who can nominate a candidate for the Akwamu paramount stool and that no other person or Abrewatia from the other divisions cando that. These pieces of evidence adduced by the Petitioners were never challenged by the Respondents in cross-examination.

Again, the 2nd Petitioner's testimony that **should the stool become vacant she is the last person to be called upon with her head of family to nominate a person who is fit to occupy the stool** was corroborated by Nana Ansah Okomahene

(PW2), whose evidence under cross examination at pages 329 to 330 of the ROA were as follows:

Q: You also know that the installation process involves the queenmother and Mmrewatia.

A: <u>What I know is that when the stool becomes vacant the Abusuapanyin and the Abrewatia sees to the election of suitable candidate to the stool.</u>

Q: Do you know that the present queenmother is the 1st queenmother of Akwamu.

A: Yes that is so

Evidently, the judicial committee was bound to accept these pieces of evidence on record in support of the case of the Petitioners. It is noteworthy that not only does PW2's evidence corroborate that of 2nd Petitioner but there are also two documentary evidence on record which corroborate the testimonies of 2nd Petitioner and PW2 on the issue. The first is PW1's Exhibit B titled ***"Minutes of an extra-ordinary meeting of kingmakers of Abrade Clan of Akwamu traditional area charged with the nomination of a candidate to the paramount stool held at Atimpoku on 30th May 1993"*** on the nomination of Mr. Kyeremanteng Afranie as successor to Odeneho Kwafo Akoto II by the Abrewatia of the Yaa Ansaa family, records at page 2 as follows:

"...Abrewatia Aku was then asked by the chairman Nana Budu III to go to her people who were outside the palance [SIC], their meeting place, and to bring a candidate acceptable to all. Maame Aku then went out with a permission, and returned in about 30 minutes time. She called Okyeame and told the meeting that the family has chosen Mr. Kwaku Kyeremanteng, a member of the family and the clan to be enstooled the next Paramount Chief of Akwamu Traditional Area..... The house

then called Abusuapanyin Owusu Bruku and the family and charged them the traditional and customary fees…"

At page 3 of the minutes, it continues as follows:

"Before closing, the chairman Nana Budu Akomea II said it was necessary that Nana Afrakoma II hear of the outcome of the meeting…"

The other document is Exhibit NA3 tendered by 1st Respondent. This is the record of the decision of the JCNHC, at page 1 (See page 265 of the ROA). The following is recorded:

"When the Akwamuhene, Odeneho Kwafo Akoto died in 1992 it became necessary to find a successor to occupy the Akwamu Paramount Stool. At a meeting of the Royal family specially convened for that purpose and presided over by the Abusuapanyin, Nana Budu, 2nd Respondent/Respondent, the Queenmother of Akwamu nominated Odehye Kwadwo Asare; Nana Adwoa Dankwa an Abrewatia of Yaa Ansaa Line and the Royal Abrade family nominated Ansah Sasraku and Nana Bruku, member of the Abrade clan nominated Kyeremanten Afranie."

PW1's corroborative testimony in respect of the issue at page 223 of the ROA were as follows:

Q: The last time there was a vacancy, three (3) people were nominated and of the three (3), two (2) were from Yaa Ansaa family and one (1) from Botwe side and out of the three the last chief who died was made a chief.

A: That is so and that brought about more issues because they can never bring out three nominees.

Despite the above, it was 1st Respondent's contrary uncorroborated evidence which surprisingly found favour with Nananom. Her evidence which stood unsupported were as follows:

> **"10. By Akwamu custom and tradition, I, in my capacity as the Queenmother doubles as the Abrewatia of Akwamu "Amanpon Stool". Consequently, all matters relating to the nomination of a candidate for vetting and possible installation as the Omanhene is within my competence.**
>
> **18. For the purposes of nominating a candidate to ascend the paramount stool, the Queenmother summons or convenes a meeting and presides over same. All Mmrewatia have an equal right to contribute to the business of the meeting. However, the Queenmother, as the convener, has the final say. Thereafter, the chosen candidate is presented to the Gyase through the Aduanahene for onward processes. If for any reason the candidate is rejected, the Queenmother and her elders have two chances to make fresh nominations.**
>
> **19. After the death of Nana Kwafo Akoto II in 1992, there were series of meetings which culminated in the nomination of three candidates, two from the Yaa Ansaa house namely, Mr. Kyeremanteng Afranie and Mr. Kwame Sasraku, and one from the Yaa Botwe House, namely, Mr. Kwadwo Asare for consideration for installation as Omanhene.**

1st Respondent's testimony does not state categorically that it is the queenmother who has the sole prerogative of nominating a candidate. However, that part of her evidence that the queenmother as convener has the final say suggests it is possible for the queenmother to overrule the Mmrewatia should she disagree on where the consensus leans. Whether this is the true custom of the people of Akwamu, there's only the testimony of 1st Respondent to account for. It is instructive to note that Respondents answer suggests the role that the queenmother plays in the king making process is not

so fundamental. Paragraphs 10 and 11 of Respondent's answer at page 48 of the ROA reads as follows:

> **"10. In response to paragraph 21 of the petitioner's statement of claim, the respondents will say queen mothers of Akwamu have always been involved in the nomination and enstoolment of chiefs for the Akwamu stool.**
>
> *11.* ***The respondents say that when the late Nana Kwafo Akoto was nominated and enstooled as Akwamuhene without the participation of the then queenmother ...*** *"*[Emphasis is ours]

Again, by Respondent's own pleadings, there was a nomination and enstoolment even without the participation of the then queenmother. The evidence orchestrated by Petitioners so far indicates that the Mmrewatia play a more instrumental role in the nomination process than the queenmother. Based on this nomination without the involvement of the queenmother, Nananom found Mr. Kyeremanteng Afranie to have been validly nominated, elected, and installed as Chief of Akwamu after the passing of Odeneho Kwafo Akoto II.

In this Court's decision in **In Re Kwabeng Stool; Karikari v Ababio II [2001-2002] SCGLR 515**, the appropriate procedure for appointing a chief or queenmother was stated in holding 3 as follows:

> **"There are three processes involved in the enstoolment of a chief or queenmother. Whilst the right to nominate the Omanhene (paramount chief) or Ohene (Chief) lies with the queenmother, the right to nominate the queenmother lies with the Omanhene or Ohene. After the nomination, the election is made by the kingmakers in consultation with all the relevant sections of the family; and the installation is done with people (including the elders) who take turns to swear the oath of allegiance to the Omanhene or Ohene after he has sworn to them..."**

However, **Brobbey** at page 143 of his text **The Law of Chieftaincy in Ghana** was quick to add that this may be said to be the correct exposition of the law in areas where the queenmother has much sway in the installation of chiefs. **The procedure may be different in areas where** skins are used, where there are no queenmothers or where q**ueenmothers do not exert much influence in the installation of the chief**, as was explained in Akenten v Akyeremah.

The evidence adduced at the Judicial Committee is conclusive that Akwamu is one of the communities which initially did not have a queenmother. However, the practice of nominating a queenmother in line with other Akan societies started creeping onto the custom in the second decade of the twentieth century and had continued to date. Unlike other Akan communities, the Akwamu queenmother while a key member of the kingmakers did not have a defined role as the figure who nominates a candidate for paramountcy in the event of a vacancy. The role from the evidence and age old custom of the Akwamus is the preserve of the Abrewatia in consultation with the Abusuapanyin.

On that score, the instances where an appellate court such as the Supreme Court could interfere with the findings of a trial court has been set out by Aryeetey JSC in **Amoah V. Lokko & Alfred Quartey (Substituted By) Gloria Quartey [2011] 1 SCGLR 505**, as follows:

> **"The appellate court can only interfere with the findings of the trial court if they are wrong because (a) the court has taken into account matters which were irrelevant in law, (b) the court excluded matters which were critically necessary for consideration, (c) the court has come to a conclusion which no court properly instructing itself would have reached and (d) the court's findings were not proper inferences drawn from the facts."**

In **Fofie v. Zanyo [1992] 2 GLR 475,** the Court of Appeal set aside the findings of facts of the trial court and made its own findings. The Supreme Court in holding 4 of its judgment had this to say:

"Although an appellate tribunal in appropriate circumstances had the right to interfere with the findings of fact of a trial court, that right was subject to the exclusive preserve of a trial tribunal to make primary findings of fact where such findings of fact were supported by evidence on the record and were based on the credibility of witnesses when the trial tribunal had had the opportunity and advantage of seeing and observing their demeanour and had become satisfied of the truthfulness of their testimonies touching on any particular matter in issue. Where such findings could not be said to be wrong because the tribunal had taken into account matters which were irrelevant in law, or had excluded matters which were crucially necessary for consideration, or had come to a conclusion which no court properly instructing itself on the law would have reached and the findings were not inferences drawn from specific facts, it was incompetent for an appeal court to interfere."

On the strength of the foregoing, it is our opinion that the conclusive finding of the JCERHC endorsed by the JCNHC on the status and role of the queenmother of Akwamu was unsupported by the evidence on record and is hereby set aside.

We state that in Akwamu, whenever a vacancy occurs in the paramountcy, it is the Abrewatia of the Yaa Ansaa Family who in consultation with the Abusuapanyin of the Yaa Ansaa Family nominates a candidate from the royal house for approval and installation by the kingmakers. In making the nomination and depending on the availability of eligible males from the Yaa Ansaa family, the Abrewatia may consider candidates from other houses such as the Yaa Botwe family in line with the customs and practices of the Akwamu people.

IS THE NOMINATION, ELECTION & INSTALLATION OF THE 4TH RESPONDENT AS PARAMOUNT CHIEF OF AKWAMU NULL & VOID?

Evidently, from the conclusion reached above, one would have expected that our answer to the question posed above should be positive. However, as noted above, Akwamu's kingship history especially in the nineteenth and twentieth centuries revealed that the kingmakers had compromised and legitimized the custom and practices put in place by the founding fathers for the selection, nomination and installation of a paramount chief for occupation of the Black Stool.

It became legitimate for the kingmakers at the time to permit candidates from other families to occupy the paramount stool. For example Abrewatia Love Adjo Som (2nd Petitioner), who began the evidence for the Petitioners, principally chronicled the history of the Akwamu in her evidence in chief. Particularly her evidence at page 165 of the ROA were as follows:

> **"Since 1733 to 1992, there had been 13 chiefs, eight (8) out of this 13 chiefs have come from Yaa Ansaa family and 2 have come from Yaa Botwe. The remaining 3 are from Ankobea, one from Amanya, the 3rd from Oyoko.**

It was also legitimate after the creation of the queenmother position into Akwamu kingship to permit her to play an active role in the nominating process, though by the Akwamu age old custom, it was not the queenmother's traditional role to present a candidate for the paramountcy. For instance in the processes leading to the nomination and installation of the 4th Respondent, the 2nd Petitioner, the Abrewatia of the Yaa Ansaa family testified that she did not nominate any candidate after the death of Kyerematenng Afranie in 2010 and has not done so as at the date of adducing evidence in this petition. She also admitted under cross-examination at pages 187 of the ROA that in certain situations nomination of the paramount chief of Akwamu could be made by the queenmother in consultation with the kingmakers.

It further became legitimate for various kingmakers to be assembled and propose multiple candidates for the vacant stool contrary to the custom in place that it was the preserve of the Abrewatia of the Yaa Ansaa family to propose a candidate for the

paramountcy in consultation with the Abusuapanyin. The evidence of 2nd Petitioner under cross-examination confirming this practice is at page174 as follows:

Q. The matter that came before the committee was because there were 3 nominees nominated to occupy the position of Omanhene of Akwamu.

A. Yes I do remember

Q. Of those 3 the queenmother nominated one Odekye Kwaku Asare, do you remember?

A. Yes I remember.

Q. Abrewa Adwoa Ansaa nominated Ansah Sasraku?

A. I do remember

Q. There was a 3rd candidate called Kyerematen, who was nominated by Nana Bruku, eventually Kyerematen Affranie was installed as Omanhene and that led to the litigation.

A. I do remember

The 1st Respondent in her capacity as queenmother refused to acknowledge the nomination and installation of Kyerematen Afranie by Abusuapanyin Nana Bruku. This ended up in a chieftaincy litigation commenced by the 1st Respondent in the JCERHC against the nomination. The suit went on appeal to the JCNHC and then remitted back to the JCERHC for a retrial. However, before the retrial could be concluded, Kyerematen Afranie passed away.

This was the state of affairs in the Akwamu chiefdom after the death of Kyrematen Afranie in 2010. The 1st Respondent and queenmother then nominated the 4th Respondent from the Yaa Botwe family for the vacant position of the Akwamu black stool. The nomination was accepted by the kingmakers of Akwamu. This fact was confirmed by the 2nd Petitioner in her evidence under cross-examination at pages 180-

181 of the ROA. She stated that in 2011, the following kingmakers in Akwamu accepted and installed 4th Respondent as Kwafo Akoto III and wrote to the National House of Chiefs on 15th August 2011 to confirm the installation:

-Nana Mankai-Asumanyawahene
-Nana Debrah-Adontenhene
-Nana Yaw Boadu-Kyedomhene
-Nana Afia Poakwaa-Nifahene
-Nana Nyarkoaa II-Benkumhemaa/Akradehenmaa
-Nana Asare Kowuah-Krontihene
-Nana Kofi Banko-Komahene
-Nana Osei Nyarko-Oshene
-Nana Kwadwo Asomani-Amanguahene/Adwadehene

The nomination and installation of the 4th Respondent as Akwamuhene sparked off another leg of chieftaincy litigation commenced by the Abusuapanyin and Abrewatia of the Yaa Ansaa family in 2011 which appeal is what we have been called upon to determine.

In this Court's case of **In Re Asebu Akroful Stool; Andzie VIII v Bofo IX (supra),** a chieftaincy dispute between the royal Adwinadze Family and the royal Nsona Family involving the chief of Ekroful, near Asebu in the Central Region ended up in the judicial committee of the National House of Chiefs. After the determination, the National House of Chiefs found the Nsona family owned the stool of Ekroful but although the candidate from Adwinadze had occupied the stool for over 16 years and had been gazette, on his death, his family would have no claim to the Ekroful Stool. The Supreme Court per **Acquah JSC (as he then was) at 348 held as follows:**

> **"As said earlier on, the pleadings and evidence made it imperative for the traditional council to determine which of the parties family had a right to the Ekroful stool. For, as the plaintiff recognized from the nature of the challenge to his status, his claim as Chief of Ekroful was**

not in his own personal right but from his membership of the Adwinadze Family which, he believed, owned the stool. Accordingly, although his action appeared personal from the way he couched his claim in his summons, it was, in substance, an action to determine whether the Adwinadze or Nsona Family had a right to the Ekroful stool. Hence the plaintiff sought in his evidence and by his exhibits to demonstrate that the Ekroful stool had from time immemorial belonged to his Adwinadze Family. Consequently, the defendant likewise sought to establish his Nsona's family title to the said stool. On the basis of such rival claims, a finding by the traditional council, as later affirmed by the National House of Chiefs, that the defendant's Nsona family owned the stool logically implies that the plaintiff's Adwinadze Family had lost its claim to the stool. And thus the National House of Chief's assertion that the plaintiff's successors would have no claim to the Ekroful Stool after the death of plaintiff, is a logical consequence of that finding and is therefore not unjustified."

As discussed earlier, the Akwamus introduced in the last two centuries a customary system whereby ascension to the stool was opened to candidates from other families in the absence of eligible men from the Yaa Ansaa family. That leeway led to the installation of Kwafo Akoto I who ruled from 1866-1882, Kwafo Akoto II from 1937-1992 (55 years) and later Kwafo Akoto III all from the Yaa Botwe family. Accordingly, the 4th Respondent from the Yaa Botwe family, having been nominated and enstooled by the kingmakers according to the compromised customary practice in force at the time, for peace and development of the community and for orderly transition back to the custom and practices put in place by the founding fathers of the Akwamu state, his nomination and enstoolment as the paramount chief of Akwamu would be confirmed by this Court.

We order that after the tenure of the 4th Respondent, nomination to the Akwamu Paramountcy shall be made from any of the eligible candidates from the royal line by the Abrewatia of the Yaa Ansaa family in consultation with the Abusuapanyin.

CONCLUSION

We must admit that custom, like society is dynamic. However unless the customary practice conflicts with a mandatory provisions of statute or contrary to natural justice, equity and good conscience, customs do not undergo that rapid transformation as other societal norms. Over a period in their history, the Akwamu kingmakers compromised the strict customary practices relating to the kingship by first permitting candidates from other gates to ascend to the throne on loan; secondly varying the nomination process for succession to the paramount stool, thirdly proposing a system of rotation to alternate between two houses and finally introducing the queenmother position into the king making process.

These innovations were made on ad hoc basis but did not find unanimity among all the stakeholders and especially the Akwamu Traditional Council. The consequence was the surge of infighting and challenges to the legitimacy of the nomination processes of the candidates for the paramountcy at the judicial committees of the Eastern Regional and National Houses of Chief. This became more pronounced after the death of Kwafo Akoto II in 1992 who, because of his long reign initiated moves for some of these innovations.

The Akwamus are free to reform their customs, traditions and practices if they want to. In doing so, they must comply with strict customary ways of reforming such ongoing practices of the Akwamu people which over time had crystallized into law. Until then, our role as a Court in charting the way forward for peaceful nomination, selection and installation of the Paramount Chief is to give effect to the customary practices which were put in place by the progenitors or the originators of the stool of the Akwamu state and practiced over several centuries.

This approach, we believe, will calm the fears expressed in the prophetic words of the National House of Chiefs in the 1998 ruling quoted at the beginning of this judgment that until the customary laws involved are adequately set out and the roles and responsibilities of all involved in the king making process defined, any "further attempts to install a chief for Akwamu is likely to end in another litigation."The course we have adopted in this judgment is to restate the legitimate king making process so as to avert in the future, chieftaincy litigation which has bedeviled the Akwamu paramountcy over the past three decades.

In the result the appeal succeeds in part.

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