IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: TORKORNOO (MRS.) CJ (PRESIDING)

PWAMANG JSC

OWUSU (MS.) JSC

LOVELACE-JOHNSON (MS.) JSC

KULENDI JSC

CIVIL APPEAL

NO. J4/37/2020

19TH JULY, 2023

1. OPANYIN KOFI AMONOO

2. MARGARET ABOAGYE

(SUBT. BY ARABA MENSIMAH) — **PLANTIFFS/RESPONDENTS/**

3. STEPHEN MENDS — **RESPONDENTS**

4. GEORGINA ADDISON

VS

1. NANA AFARI TWAAKO (DECEASED) …… 1ST DEFENDANT

2. CENTRAL REGIONAL HOUSE OF CHIEFS …….. 2ND DEFENDANT/APPELLANT

3. NATIONAL HOUSE OF CHIEFS ..…… 3RD DEFENDANT/APPELLANT

4. OSABARIMA KWESI ATTA II …… 4TH DEFENDANT/APPELLANT/ APPELLANT

5. OGUAA TRADITIONAL COUNCIL ……. 5TH DEFENDANT/APPELLANT/ APPELLANT

JUDGMENT

PWAMANG JSC:-

INTRODUCTION

My Lords, Chieftaincy is an age-old institution in Ghana so our republican Constitution, 1992, did not seek to establish it but only guaranteed its existence. The customary laws and usages relating to Chieftaincy reign supreme in the determination of who is a Chief and there is no longer a legal requirement of government recognition in order to be a Chief. The Constitution, 1992, under Article 277 defines who a Chief is in the following terms;

"In this Chapter unless the context otherwise requires, "chief" means a person, who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queenmother in accordance with the relevant customary law and usage."

It is only in areas including the organisation of Houses of Chiefs, jurisdiction in causes or matters affecting Chieftaincy, the keeping of a National Register of Chiefs, and the supporting role of Chiefs in the administration of the republican state that provisions

have been made by the Constitution and statute. As a consequence, our system of law maintains a dichotomy in cases about Chieftaincy. Disputes as to the content of customary law and usage that determine the validity of enstoolment of a Chief and his status are in the exclusive jurisdiction of the Traditional Councils and Houses of Chiefs, with final appeal to the Supreme Court. On the other hand, disputes concerning interpretation and enforcement of the enactments on Chieftaincy and related principles of the common law come within the regular jurisdiction of the courts. This seemingly clear separation in jurisdictions on Chieftaincy however does not play out as such in practice. There are too many reported cases that on the face are concerned with statutory provisions about Chieftaincy but the actual objectives of the claimants are to attack the status of a Chief, a matter exclusively in the domain of customary law.

This appeal we are considering falls within the jurisdiction of the courts of applying the common law and the interpretation and enforcement of the **Chieftaincy Act, 1971 (Act 370)** and regulations made thereunder. That was the statute on Chieftaincy in force at the time the dispute arose. However, the matters dealt with in the proceedings stem from a petition filed about twenty-five (25) years ago in the Judicial Committee of the Central Regional House of Chiefs to dispute the validity at customary law of the installation of the 4th defendant/appellant/appellant (4th defendant) as Paramount Chief of Oguaa Traditional Area. To date, that petition has not been prosecuted but other actions filed by the plaintiffs that sought to prevent and later challenge the insertion of the 4th defendant's name in the National Register of Chiefs have been very active in the regular courts; the High Court, the Court of Appeal, and the Supreme Court, more than once in each of these courts.

THE BACKGROUND TO THE CASE

Though the instant action was filed in the High Court in 2006, its beginnings are from 1998 when the Oguaa Chieftaincy Dispute started. The royal family of Cape Coast that

owns the Paramount Stool of Oguaa is called Ebiradze Royal Family and the Stool rotates among five Gates, namely; 1) Mbrah Fie, 2) Fikessim Fie, 3) Abokyi/Thomson Fie, 4) Atope Fie, and 5) Essibu Fie. In August 1996, Osabarima Mbrah V, who had reigned as Paramount Chief of Oguaa and President of the Oguaa Traditional Area for about 46 years, died. He hailed from the Mbrah Fie Gate. About two years after his passing, specifically 17th July, 1998, the 4th defendant herein, a Chartered Accountant who was known in private life as Joseph Sakum Haizel, hailing from Fikessim Fie Gate of the royal family was nominated, selected, enstooled as the Paramount Chief of Oguaa with the Stool name, Osabarima Kwesi Atta II. After the enstoolment of the 4th defendant, the 1st defendant, in his capacity as the Acting President of Oguaa Traditional Council, prepared and forwarded to the 2nd defendant a report in accordance with **Section 51(1)** of the **Chieftaincy Act, 1971** for onward transmission to the 3rd defendant for the name of the 4th defendant to be entered in the National Register of Chiefs. The report under Section 51(1) consisted of a form referred to as Chieftaincy Declaration Form (CDF 1B) that was filled out with certain information about the enstoolment, the Curriculum Vitae (CV) of the newly enstooled chief and a notice of the event that caused the vacancy on the Stool, death in this case.

Meanwhile, on 20th July, 1998, the then head of Mbrah Fie Gate, Ekow Garbrah, and others filed a petition in the Judicial Committee of the Central Regional House of Chiefs challenging the nomination, election and confinement of the 4th defendant as Paramount Chief of Oguaa as being contrary to Oguaa customary practices and norms. They also prayed for perpetual injunction against his outdooring and installation. When the 2nd defendant received the forms of the 4th defendant, it held onto them and did not transmit to the 3rd defendant immediately. The 4th defendant therefore, relying on section 48(2) of Act 370, applied to the High Court, Cape Coast for an order of Mandamus to compel the 2nd defendant to transmit the forms to the 3rd defendant for entry of his name in the

National Register of Chiefs. Although those who filed the petition against the enstoolment were not parties to the Mandamus application, they became aware of it and intervened. They were heard by the High Court judge after which he ruled on the application. On 15th June, 1999 the High Court granted the application for Mandamus and ordered as follows;

"IT IS HEREBY ORDERED that Order of Mandamus be and is hereby granted compelling the Respondent Central Regional House of Chiefs to comply with Section 51(1) of Chieftaincy Act, 1971 (Act 370) in transmitting the information of the enstoolment of the applicant to the National House of Chiefs for that House to comply with Section 48(2) of Act 370 in inserting the applicant's name in the National Register of Chiefs."

Section 48(2) of the Act provided as follows;

(2) Subject to the foregoing subsection (1) the name of any person who has been installed as a Chief shall be entered by the National House of Chiefs in the National Register of Chiefs not later than one month from the date of the receipt of the notification of such installation.

Pursuant to this order, the 2nd defendant, on 17th June, 1999 filled out another Chieftaincy form, (CDF.2) also providing information about the enstoolment and attaching the CDF.1B and the CV of the 4th defendant, the notification of death of the previous Chief, and the order of Mandamus and sent to the 3rd defendant.

However, those who opposed the grant of the Mandamus filed an appeal to the Court of Appeal. This held up the process at the National House of Chiefs for the entry of the name of the 4th defendant for some time. In the Court of Appeal they contended that the order for Mandamus was wrong in law because the Research Committee of the Regional House of Chiefs were required to vet the information contained in the CDF before deciding

whether or not to transmit it to the 3rd defendant. Unless such vetting was done, they argued, the 2nd defendant could not be compelled by Mandamus to transmit the forms. The Court of Appeal unanimously dismissed the appeal and in their ruling dated 2nd May, 2002 they held as follows;

"[After reproducing sections 51(1) and 48(2) of Act 370]. It is evident that the words in sections 51(1) and 48(2) of the Chieftaincy Act, 1971 (Act, 370) quoted above are very clear and unambiguous. The principle is that words in a statute must be given their ordinary meaning unless to do so will amount to an absurdity. I hold that there is nothing in sections 51(1) and 48(2) of Act 370 that support the applicant's contention that a Research Committee must vet the Chieftaincy Declaration Forms. There is also nothing in section 51(1) (supra) which suggests that before the section can be brought into play the Research Committee has to certify the Chieftaincy Declaration Forms of the 3rd Respondent."

The appellants did not further appeal to the Supreme Court and the 3rd defendant entered the name of 4th defendant in the National Registrar of Chiefs.

Their next step of was that they filed another petition, this time round, in the Judicial Committee of the National House of Chiefs and prayed for an order for the name of the 4th defendant to be removed from the register, alleging that the entry was based on fraud or false information. The petition was dismissed on a preliminary objection taken to challenge the jurisdiction of the Judicial Committee of the National House of Chiefs over the petition as a tribunal of first instance. Undaunted, the petitioners appealed to the Supreme Court against the dismissal but that appeal too was unanimously dismissed by the Supreme Court and its decision is reported as; **In re Oguaa Paramount Stool; Garbrah & Ors v Central Regional House of Chiefs & Haizel [2005-2006] SCGLR 193**. At holdings (4) and (5) of the Headnote of the Report, the Supreme Court held as follows;

"(4) The input of the research committee was in the nature of recommendations. Thus it would appear that the decision to register or not to register remained that of the National House of Chiefs. Consequently, the rejection of inputs from the research committee did not invalidate the acts of the National House of Chiefs; the non-utilization of the research committee in that exercise was a mere procedural irregularity and did not, as a matter of law, vitiate the decision of the National House of Chiefs. ***In re Effiduase Stool Affairs (No 2); Republic v Numapau, President of the National House of Chiefs; Ex parte Ameyaw II (No 2)*** **[1998-99] SCGLR 639 (per Acquah JSC (as he then was) at 667) cited.**

(5) The duty of the National House of Chiefs in the registration process, ie in pursuance of sections 48(2) and 50(2) of Act, 370, namely, entering the names of chiefs in the register and recording such particulars was discretionary and administrative and not judicial. Because the acts of registration did not constitute adjudicatory acts, such acts were not amenable to the writ of certiorari. However, the exercise of the administrative acts could be challenged under section 50(1) of Act, 370 and otherwise by an action in the appropriate court to set aside any wrongful registration. Dicta of Francois JA in Republic v The President, National House of Chiefs; Ex parte Akyeamfour II [1982-83] GLR 10 at 16 and 16, CA applied".

THE EARLIER PROCEEDINGS IN THIS SUIT.

After this Supreme Court decision the plaintiffs/respondents/respondents (the plaintiffs) filed the instant suit in the High Court, Cape Coast, on 27th July, 2006 claiming against the defendants for;

"(1) Order directed at the 3rd defendant to have the name of J.S. Haizel removed from the National Register of Chiefs on grounds of fraud."

At the time of the trial there had been substitutions and the plaintiffs were then the head of Mbrah Gate, one of the elders of Essibu Gate, the Head of Atope Gate and an elder of Mbrah Gate. Though in the statement of claim mention was made of Thompson House, in his evidence the 1st plaintiff stated that they were not in support of the action they had taken. They filed the case against the1st, 2nd and 3rd defendants without initially joining the 4th defendant whose name was sought to be removed. Subsequently, the 4th and 5th defendants applied and were joined to the action, first as co-defendants but later they were stated as defendants. The main grounds on which the plaintiffs mounted this action were contained in paragraphs 9, 10, 11 and 12 of their statement of claim as follows;

"9. In the said Chieftaincy Declaration Forms CDF 1B. the 1st Defendant fraudulently misrepresented answers to questions No. 6 and 7 as contained in the Form.

10. the Plaintiffs aver and will contend that the information contained in the Chieftaincy Declaration Forms (CDF 1B) are crucial to the determination of the issue whether a person name should be entered in the National Register of Chiefs or not.

11. Further to paragraph 9 supra the Plaintiffs aver and will contend that by reason of the fraud and misrepresentation by the 1st Defendant as contained in the Chieftaincy Declaration (CDF 1B) the 2nd Defendant transmitted the said forms to the 3rd Defendant which erroneously registered same.

Particulars of Fraud on the part of 1st Defendant

(a) Fraudulently stating that there was no case pending against the said J. S. Haizel when indeed there was.

(b) Fraudulently stating that the said J. S. Haizel was in possession of the Stool properties (including the Black Stool) when indeed he was not.

12. The Plaintiffs aver and will contend that by reason of the fraud perpetrated by the 1st Defendant, the Research Committee of the 2nd Defendant House failed and/or neglected to vet the information contained in CDF.1B before transmitting same to the 3rd Defendant for registration."

On service on the original defendants, appearance and defence were filed on their behalf by J.A. Dawson Esq, of blessed memory. In that defence there was a denial of the pleadings alleging fraud. When the 4th and 5th defendants were joined to the case, they filed defence in which they equally denied those averments.

While this suit was pending, the plaintiffs, who were the petitioners in the Judicial Committee of the Central Regional House of Chiefs, applied to that Committee and were granted leave to amend their petition. They then filed an amended petition dated 17th January, 2007 and added the following two reliefs against the 4th defendant (2nd Respondent there) to their claims there;

(iii) Declaration that the 2nd Respondent is not qualified to be a Chief under both Oguaa customary law and practice and constitutionally.

(iv) Order striking out his name from Register of Chiefs.

It would have been expected that with the amendment the plaintiffs would pursue their relief for the removal of the name of the 4th defendant in the Judicial Committee but they did not do so, possibly due to a twist in this action. On 16th March, 2007, the 1st defendant, acting by himself, filed a notice to state that he did not intend to contest the case against him. In that notice he repudiated the appearance and defence filed on his behalf by J.A. Dawson, Esq, stating he did not instruct him. Following that the plaintiffs filed a motion for judgment on admissions. This would have meant that the 4th defendant's name would be ordered to be removed without hearing evidence from the plaintiffs and the 4th and 5th defendants who were directly affected by the suit, but that application was

never granted. Then the plaintiffs instituted contempt of court proceedings against J.A. Dawson, Esq on the ground that he entered appearance and filed defence for parties who did not instruct him. That application too failed but the processes were nevertheless struck out. Interestingly, the plaintiffs did not make a criminal complaint against the1st defendant having regard to the serious allegations they made against him personally. The result was that the 1st defendant continued to be a party in the case in the High Court but he never participated in the proceedings.

After application for directions had been taken, the defendants filed a motion praying for the dismissal of the suit arguing, that by the provisions of **Or 55 R 9** of the **High Court (Civil Procedure) Rules, 2004 (C.I.47),** no proceedings can be brought against a person for acting on an order of Mandamus. The defendants submitted that since the name of the 4th defendant was entered in the National Register of Chiefs by reason of an order of Mandamus, no proceedings were permitted to question the entry. In a ruling dated 7th July, 2009, the High Court agreed with that position and dismissed the whole suit. The plaintiffs appealed against the dismissal and the Court of Appeal in their judgment dated 3rd November, 2011, allowed the appeal for the reason that the allegations of fraud made on the pleadings required to be investigated. They concluded their decision as follows;

"Having failed to determine the fraud alleged by the appellants I will order that the case be remitted to the High Court, Cape Coast for the issues settled by the appellants for trial on the alleged fraud to be determined. The trial should be conducted by a new judge. The appeal succeeds accordingly."

That appeal and the interlocutory matters delayed the suit and the actual hearing commenced on 2nd April, 2014, about eight years after it was filed. The 1st plaintiff testified and called two witnesses. The Deputy Supreme Head of Fikessem Gate, where 4th defendant hails from, testified on behalf of the 4th and 5th defendants, whereas a Registrar of the 3rd defendant also testified on its behalf. The1st and 2nd defendants did

not testify. At the close of the trial the High Court entered judgment in favour of the plaintiffs. The defendants appealed against the judgment but the Court of Appeal dismissed the appeal and still being aggrieved, they have appealed to this Court.

THE PRESENT APPEAL IN THE SUPREME COURT

The 4th and 5th defendants who have appealed initially stated the only ground of the appeal to be that the judgment was against the weight of the evidence. Later, they filed eight additional grounds of appeal, with the leave of the court. In arguing the appeal in their statement of case and reply, the defendants combined the grounds and argued them together. The plaintiffs too adopted the same approach and argued their response to all the points raised by the defendants in the grounds of appeal and statement of case.

The defendants have submitted that both lower courts erred in their evaluation of the evidence and failed to apply the legally required standard of proof in the case which ought to be proof beyond reasonable doubt. They referred to **Sasu Bamfo v Sintim [2012] 1 SCGLR 136** and submitted that though this is a civil case the allegations made being about fraud were required to be proved on the criminal standard. Defendants explained that the Court of Appeal erred in relying on the fact that1st defendant did not contest the case as proof of fraud because the 1st defendant proved himself to be a turncoat and therefore was unreliable. They also stated that the Court of Appeal erred when in their judgment they commented that the fact that an order of Mandamus was made did not relieve the 2nd defendant from vetting the CDFs before transmitting to the 3rd defendant. According to defendants, there is no legal requirement for vetting of CDFs before the name of a newly installed Chief would be entered in the National Register. They referred to this court's decision in **In re Oguaa Paramount Stool (supra).** In reply to the plaintiffs' statement of case, the defendants argued that the law allows the setting aside of concurrent findings where it is demonstrated that two lower courts were clearly wrong in their findings.

On their part, the plaintiffs have argued that where there are concurrent findings, a second appellate court ought to be slow in upsetting those findings. They referred to a number cases on this well-known principle and quoted from **Achoro v Akanfela [1996-97] SCGLR 209** the following speech by Acquah, JSC (as he then was) at pages 214-215 of the report when he delivered the unanimous judgment of the court;

"Now in an appeal against findings of facts to a second appellate court like this court, where the lower appellate court had concurred in the findings of the trial court, especially in a dispute, the subject matter of which is peculiarly within the bosom of the two lower courts or tribunals, this court will not interfere with the concurrent findings of the lower courts unless it is established with absolute clearness that some blunder or error resulting in a miscarriage of justice, is apparent in the way in which the lower tribunals dealt with the facts. It must be established, eg, that the lower courts had clearly erred in the face of a crucial documentary evidence, or that a principle of evidence had not properly been applied: see Thakur Harihar Buksh v Thakur Umon Parshad (1886) LR 14A7; or, as pointed out in Robins v National Trust Co. [1927] AC515, that the finding is so based on erroneous proposition of the law that if that proposition be corrected, the finding disappears. In short, it must be demonstrated that the judgments of the courts below are clearly wrong: see Allen v. Quebec Warehouse Co (1886) 12 App Cas 101."

The plaintiffs made extensive references to the judgments of the High Court and the Court of Appeal and submitted that those courts held, that in complying with the order of Mandamus, the 2nd defendants fraudulently submitted false information to the 3rd defendant. Counsel for the plaintiffs referred to us the unanimous opinion of the Supreme Court delivered by Kpegah, JSC in **Republic v High Court, Accra; Ex parte Arteetey (Ankrah Interested Party) [2003-2004] SCGLR 398**. Counsel then quoted the following passage from **Okwei Mensah (Decd) v Laryea & Anor [2011] 1SCGLR 317** holding (1) of the headnote;

"Fraud qua fraud was a serious allegation in legal proceedings. It should not be lightly made. The courts would look with disfavor on a party who made it and was unable to substantiate it and would sometimes dismiss the action with heavy penalties."

Another case counsel referred to us is **Appeah v Asamoah [2003-2004] SCGLR 226** and quoted Bamford-Addo, JSC saying at p. 229 that;

"Fraud would vitiate everything. And ordinarily, fraud should be pleaded."

CONSIDERATION OF THE APPEAL

It is now well-settled that even where an appeal has been brought on the sole ground of the judgment being against the weight of evidence, issues of law may be considered by the appellate court where those issues of law relate to how the evidence ought to have been understood and applied by the court below. In **Owusu-Domena v Amoah [2015-2016] 1 SCGLR 790**, the Supreme Court explained the actual scope of the omnibus ground of appeal, speaking through Benin, JSC at page 799 of the Report in the following words:

"We are aware of this court's decision in Tuakwa v Bosom [2001-2002] SCGLR 61 on what the court is expected to do when the ground of appeal is that the judgment is against the weight of evidence. The decision in Tuakwa v Bosom, has erroneously been cited as laying down the law that, when an appeal is based on the ground that the judgment is against the weight of evidence, then, only matters of fact may be addressed upon. ***Sometimes, a decision on facts depends on what the law is on the point or issue. And even the process of finding out whether a party has discharged the burden of persuasion or producing evidence is a matter of law. Thus when the appeal is based on the omnibus ground that the judgment is against the weight of evidence, both factual and legal arguments could be made where the legal arguments would help advance or facilitate a determination of the factual matters***". (Emphasis supplied).

In this appeal, we find it necessary to discuss, in some detail, the relevant principles of law that ought to be applied in the evaluation of the evidence adduced in the trial of this case and in making findings thereon. This is the only way to ensure that the case is determined in a fair and just manner. But, before that, permit us to distinguish some matters considered by the lower courts and addressed by the parties in their statements of case relating to the Order of Mandamus, the failure of the Research Committees of the 2nd and 3rd defendants to vet the Chieftaincy Declaration Forms, and issues touching on customary law, all matters that do not properly belong to this suit. It must be borne in mind that the Court of Appeal earlier on in 2002 decided that the Order of Mandamus for the 4th defendant's name to be entered in the register was lawfully made and there was no appeal against that decision. Secondly, the Supreme Court decided that failure of the Research Committees to vet the Chieftaincy Declaration Forms prior to the entry of the name of the 4th defendant in the register did not invalidate the entry. Therefore, those matters are *res judicata* and could not be considered in this suit. Unfortunately, the Court of Appeal in their judgment at page 127 vol 2 of the record dwelled on the fact that the CDFs of the 4th defendant were not vetted and plainly applied it as a ground for setting aside the entry of his name. They said as follows;

"The research committees of the various Houses of Chiefs failed to vet the documents received for errors and accuracy under the guise of an order of mandamus. The result of this is the fraudulent entry of the 4th Defendant's name in the National Register of Chiefs."

In the above passage, the Court of Appeal clearly used the failure to vet the forms as the basis for their decision because in their judgment they did not set out any elements of fraud that in law ought to have been proved and they did not examine the evidence led to make findings whether those elements have been proved to the required legal standard or not.

Besides the issue of *res judicata*, matters relating to the content of customary law and usage that are by statute outside the jurisdictions of the lower courts were considered by the Court of Appeal in their judgment. For instance, whether or not the physical possession of a Black Stool by a chief was a mandatory requirement in all circumstances at customary law for the installation of a chief to be valid is not cognisable by the High Court and the Court of Appeal, yet in their judgment, the Court of Appeal said as follows;

"…That the Council further knew that the stool properties which were germane to complete the installation of the 4th Defendant as Omanhene of Oguaa is required by custom were not in his custody but however fraudulently misrepresented the answers on the forms. The Defendants in their defence failed to establish that the information with regards to the petition and the stool properties were not crucial to the determination of the registration of the 4th Defendant."

The Court of Appeal were mistakenly expecting the defendants to establish the validity of the enstoolment of the 4th defendant in the proceedings in the High Court but that is most regrettable. That was the question pending for determination in the Judicial Committee of the Central Regional House of Chiefs, which is the tribunal with exclusive original jurisdiction to determine that matter. Therefore, the Court of Appeal exceeded their jurisdiction by purporting to pronounce on an issue over which they clearly lacked jurisdiction. In any event, their opinion about a mandatory requirement at customary law for presence of the Black Stool in the enstoolment process is incorrect as there is no such condition precedent as a general rule of customary law. In the case of **Republic v Sito; Ex parte Fordjour [2001-2002] SCGLR 323** at 337, Adzoe, JSC stated as follows;

"The Court of Appeal and Counsel for the respondent were under the wrong impression that by allowing himself to be enstooled as omanhene, the appellant committed contempt of court because at the time of the said enstoolment the Black Stool had not been returned to Petelli House. The argument is clearly misplaced. The return of the stool

was not declared a condition precedent to the enstoolment. It must not be forgotten that the Judicial Committee of the Brong Ahafo Regional House of Chiefs found as a fact that Nana Kwadwo Worasa "was properly and customarily enstooled by the elders of the Petelli Family" at a time when the Black Stool was still in the custody of the Kralongo House."

Customary law is not as simplistic as the Court of Appeal appeared to see it. For instance, whilst it is a general rule of customary law of most Akan communities that it is the queen mother that makes the nomination of a person to set in motion the process of selection and enstoolment of a chief, in the case of **In re Wenchi Stool Affairs [2011] 2 SCGLR 1024,** the Supreme Court, speaking unanimously through Brobbey, JSC at pages 1038-1039 of the report stated the following exception to the general rule;

"There is no doubt that where a queen mother is unwilling to co-operate with the kingmakers or reluctant to nominate a candidate for three occasions, the kingmakers can proceed to put forward a candidate as a chief. This is a customary law principle too well-settled to require elaboration. An instance will, however, be found in the case of Republic v Boateng; Ex parte Adu-Gyamfi II [1972] 1 GLR 317."

In the case of the plaintiffs' petition, the whole evidence of the processes leading to the installation of the 4th defendant, including the claim of the plaintiffs that their Gate refused to handover the Black Stool to the next rightful Gate for use by the new Chief, (this was denied though) would have to be considered by the Judicial Committee of the Central Regional House of Chiefs before a determination would be made about the legitimacy of their challenge to his enstoolment. This suit cannot be a short-cut to avoid proving the averments of violations of the customs and usages of Oguaa in the appropriate forum and the Court of Appeal erred when they expected otherwise.

When the first Court of Appeal by their judgment of 3rd November, 2011 remitted the case to the High Court for trial, they were explicit in stating that it was for the determination of the issue of fraud and nothing more. Therefore, the only issue over which the High Court and the Court of Appeal had jurisdiction was whether the registration of the 4th defendant's name in the National Register of Chiefs was obtained by fraud.

It is stated of civil fraud as follows in **Halsbury's Laws of England, 3rd Ed, Vol 26, Para 1512;**

"There are however, many aspects of fraud, whether as regarded by the rules of common law or equity, or declared to be, or treated as such by express statutory provisions, which give rise to civil liability. Thus, an arbitrator's award or a judgment may be ordered to be set aside if it has been obtained by fraud."

It is significant to note that the plaintiffs prayed for the removal of the name of the 4th defendant alleging fraud committed, not by the 4th defendant, but by1st and 2nd defendants so their cause of action must be understood properly as based on common law fraud or fraud in equity. With the above clarification, the court in the determination of this case has to pay attention to the elements of fraud that have to be alleged and proved in a civil claim, the standard of proof that would be required to be met in this case, and the grounds at common law and equity on which a registration of one person's interest alleged to have been induced by the fraud of another may be set aside.

There is the following definition of fraud in **Black's Law Dictionary (5th Edition) at page 594** that the High Court judge referred to in his judgment. It states as follows;

"An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact whether by word or conduct, by false or misleading allegations, or by

concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.."

Also, in **Kerr on Fraud and Mistake** (7th ed.) at p. 1 there appears this statement: *"Fraud in all cases implies a willful act on the part of any one, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled to."*

In the case of **Eaglesfield v Marquis of Londonderry (1878) 26 W.R. 540**, the plaintiff sued, alleging that he had been deceived by the form in which company stock had been issued and certificates of shares made, and prayed that the company, the directors, and the secretary, all of whom were made defendants, might be held responsible jointly and severally for the misrepresentation. On a final appeal in the House of Lords, James, L.J said as follows;

"The misrepresentation to sustain the bill must be willful and fraudulent; this was not the case here, nor had the plaintiff shown that he had relied upon and been deceived by the misrepresentation."

Then, in **Dzotepe v Hahormene II & Ors [1984-86] 1 GLR 288, CA**; a case whereby a judgment obtained by fraud was sought to be set aside, the Court of Appeal explained the influence the alleged fraud must have had on the native court that gave the decision before the judgment may be set aside. In holding (1) of the Headnote of the Report the Court (Apaloo C.J, Edward Wiredu, and Osei-Hwere, JJA) held as follows;

"(1) in an action to set aside a judgment on the ground of fraud, the fraud must relate to matters which prima facie would be a reason for setting the judgment aside if they were established by proof and not to matters which were merely collateral. In the instant case, the judgment of the native court in favour of the applicant's predecessor-in-title was set aside by the High Court on the ground of fraud founded on an alleged altered plan of the land. ***But the question of the plan regarding the identity of the disputed land could, at best, only be a collateral issue—not***

affecting the central issue before the native court, namely whether the applicant's predecessor bought the land in his own right or on behalf of the tribe. Granted that the plan had been altered, could it be said that the plan had misled the native court into accepting the applicant's predecessor's case that he had bought the land in his own right?*" (Emphasis supplied)*

The basic elements to be proved for liability to lie in civil fraud that are deducible from the authorities may therefore be stated as follows; (i) the information provided to another is false, (ii) the provider of the information willfully or intentionally provided the false information (iii) the provider intended the other person to rely on the information, and (iv) the person to whom the false information was provided must have been influenced by the false information and relied on it to act.

Proof of the state of mind of the provider of false information as it relates to civil fraud is not an easy subject for courts. So far the words of Lord Herschell in **Derry v Peek (1889) 14 App Cas 337** continue to guide judges. He said that;

"…fraud is proved when it is shown that a false representation has been made (1) knowingly, (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and the third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement from being fraudulent, there must, I think, always be an honest belief in its truth."

Lord Herschell explained further at 376 that;

"the fact that an alleged belief was destitute of all reasonable foundation would suffice of itself to convince the court that it was not really entertained, and that the representation was a fraudulent one."

The 4th and 5th defendants have argued that the standard of proof in this action, though a civil claim, ought to be by the standard of proof beyond reasonable doubt. At English common law, the position has been that the standard of proof for fraud in a civil case is on a balance of probabilities, but depending on the seriousness of the allegation, the court may require a higher degree of proof. See **Hornal v Neuberger Products Ltd [1957] 1 QB 247.**

In this suit, the plaintiffs allege that the1st defendant fraudulently provided false information with intent to evade the requirements of the law for the entry of the name of the 4th defendant in the National Register of Chiefs provided for by Act 370. The plaintiffs in paragraph 10 of their statement of claim contend that the information was crucial in the determination of whether a person's name should be entered in the register. Clearly, such conduct alleged against the1st defendant amounts to the crime of Deceiving a Public Officer contrary to **Section 251** of the **Criminal and Other Offences Act, 1960 (Act 30).** Therefore, though the action is based on the general rubric of fraud, directly in issue here is the commission of the crime of Deceit of a Public Officer, never mind that the plaintiffs did not make a criminal complaint against the1st defendant. In the circumstances, although the allegations are made in a civil claim, the standard of proof ought to be beyond reasonable doubt in this suit by virtue of section 13(1) of the **Evidence Act, 1975 (NRCD 323)** which provides as follows;

(1) In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.

See **Zakaria v Billa [1992] 1 GLR 42** and **Fenuku v John Teye [2001-2002] SCGLR 985.**

Now, let us review the evidence led at the trial to satisfy ourselves as to whether the concurrent findings and conclusions by the High Court and the Court of Appeal were

made in conformity with the standard of proof explained above. If they were not, then it is permissible by the decisions in the **Achoro v Akanfela (supra)** line of cases to set aside the findings and conclusions of the lower courts.

The evidence of the plaintiffs was that the 1st defendant's answer to questions 6 and 7 on the CDF. 1B as well as the 2nd defendant's answers to questions 5 and 6 on CDF. 2 are untrue. That information was as follows;

From the 1st defendant;

Q6. Is there any appeal pending against the enstoolment?

A. No

Q7. Is the chief in possession of the Stool Property including the Black Stool?

A. Yes.

Then from the 2nd defendant;

Q5. Is there any case/appeal pending against the enstoolment/destoolment?

A. No

Q6. If enstoolment state whether the new chief is in possession of the stool property (including the Black Stool)?

A. Yes.

The 1st plaintiff testified and tendered these forms. He also tendered the petition his predecessor filed against the 4th defendant and said since the petition had been filed as at the time the forms were filled out, the information that there was no case against the enstoolment was not true. Furthermore, he said the information that the 4th defendant was in possession of the Black Stool was also not true because the Stool was with the previous Chief and when he died his predecessor took possession of it and did not release

it even when it was requested for. He tendered a letter written by one Nana Ebu after the death of the previous Chief requesting for the Stool properties including the Black Stool from his predecessor. He also stated that when the 2nd defendant received the CDF 1B from the 1st defendant they did not carry out any investigations to verify the truth or otherwise of the information stated on the form but transmitted it to the 3rd defendant. When they also received the forms they failed to cause their Research Committee, which had the duty to investigate the contents of the forms to do so but went ahead and inserted the 4th defendant's name in the register. He said the insertion was fraudulently done and ended his evidence-in-chief. Under cross-examination the 1st plaintiff basically confirmed what he had said in evidence-in-chief.

PW1 was a sub-chief of Oguaa Traditional Area and his evidence was that he personally saw the Stool properties and the Black Stool at the residence of the late Chief shortly after his death and that he advised a nephew of the Chief called Bart-Addison to take possession of the properties and secure them. According to him the properties were with Bart-Addison and have never been with the 4th defendant.

Mr Bart-Addison testified as PW2 to say that after the death of the previous Chief he collected the stool properties to an undisclosed location for safe keeping. He tendered pictures of the items constituting the Stool regalia and the Black Stool and said that the 4th defendant was never given the Stool properties and the Black Stool.

On the other side, the 4th and 5th defendants called one William Robert Kwesi Jacobs, 84-year old Deputy Head of Fikessim House, the Gate of the royal family of the 4th defendant. He testified that the Black Stool was by tradition kept in a special room at Fikessem House and was not moved about as contended by the plaintiffs' witnesses. He said he saw it some time back when they were performing traditional rituals with it. He said by custom, it is only male children from the paternal side of the royal family that participated in those rituals. He was shown a picture tendered by Bart-Addison in which

there was a stool said to be the Black Stool and he denied that that was the Black Stool of the Royal Ebiradzi family. He described the Black Stool of the royal that he saw and said it is different from what was in the picture.

A Registrar of 3rd defendant testified on their behalf and admitted that the Research Committee did not vet the CDFs of the 4th defendant for the reason that they were accompanied by an Order of Mandamus and a ruling by the Court of Appeal dismissing an appeal against the order. He tendered the order and the decision of the Court of Appeal dismissing the appeal.

My Lords, from the totality of the evidence as summarised above, it is apparent that the 1st defendant's answer to the question about whether there was a case pending against the enstoolment cannot be true since the petition was filed on 20th July, 1998 and the first form was filled out on 27th July, 1998. However, these dates alone ought not to be the determinative factor in this action. The critical fact here is whether at the time the 1st defendant filled the form he was aware of the filing of the petition? We have read closely the evidence of the 1st plaintiff and his witnesses and there is no statement to that effect. Also, there is no record of service of the petition on the1st defendant and a date of any such service. Rather, at pages 263, 264A, 272A and 290C volume 1 of the record there are copies of certificates of service of the petition and a motion for interlocutory injunction effected on 28th July, 1998 on W.R.K. Jacobs and Nana Kojo Ebu and 15th August, 1998 on J.S.Haziel respectively. Thus, these were after 27th July, 1998 when the1st defendant filled the form. Since there is no evidence of prior knowledge of 1st defendant, it is our view that the question of 1st defendant intentionally misinforming the 2nd defendant on that matter does not arise.

As for the 2nd defendant who also stated that there was no case/appeal pending against the enstoolment, that statement was apparently untrue since it appeared the substantive Petition was still pending. But here too, the critical fact is, how did the official of the 2nd

defendant who filled the Form 2 understand the import of the question to be, because in a consideration of fraud, the state of mind of the person under examination is important. Did he intentionally ignore the pendency of the substantive petition? In **Okwei Mensah v Laryea, S.C (supra)** Anin Yeboah, JSC (as he then was) in dismissing arguments that a Land Title Certificate ought to be set aside on grounds of fraud at page 324 of the report said as follows;

"In the particulars of fraud stated in the instant case, it was not averred that there was a misrepresentation of facts which the defendants had made dishonestly by word or conduct with knowledge that same was false and intended for the plaintiff to rely on it to his detriment."

No one from the 2nd defendant testified and there is no evidence as to how the form was filled.–The testimony of the official from the 3rd defendant who testified was on what happened in respect of the forms of the 4th defendant when they got to the National House of Chiefs. The testimony of the 1st plaintiff was on the non-vetting of the forms and we do not find any evidence to substantiate the allegation that the 1st defendant and 2nd defendant's official who filled the forms acted willfully to deceive the 3rd defendant about the information provided.

Meanwhile, it must be noted that before the 2nd defendant filled their form the case for Mandamus in respect of the 4th defendant had been concluded and it is not stated whether they were served with an appeal as at the time the form was filled. By the time of filling the CDF 2, the petition had been dormant and the only case concerning the 4th defendant that was being pursued in court was the Mandamus which had concluded. Under these circumstances, we do not find a clear indication that the official who filled the form at 2nd defendant stating that there was no case or appeal against the enstoolment did so dishonestly.

Next to be considered is the information about the 4th defendant being in possession of the Stool properties, especially the Black Stool. On this matter, the evidence was not clear as to whether the information provided was not true. First, it is significant to appreciate that possession of property spans both physical possession and access without physical possession. In his evidence the 1st plaintiff stated that he was in possession of the Stool properties and the Black Stool. He later on called Bart-Addison to testify and say that he had possession of the Stool paraphernalia and the Black Stool. The 1st defendant was not called to testify as to whether by his answer that the 4th defendant had possession of the Black Stool, he meant physical possession. This is especially significant because it is a notorious fact that in most traditional areas in Ghana that have Black Stools, they are kept in special rooms because of their ritualistic nature. The plaintiffs' evidence was that the stool had a room to itself at the house Osabarima Mbrah V lived in during his final days.

Whereas the plaintiffs' evidence was that they had possession of the Black Stool and that they kept it away from the Gyasehene when he requested for it, the defendants' witness testimony was that the Black Stool the plaintiffs said they are keeping is not the ritualistic Black Stool of the royal family. The plaintiffs therefore had a duty to prove that willful and intentional misinformation was provided by the 1st and 2nd defendants. However, they failed to adduce evidence from which the court can arrive at the conclusion that there was willful false information that misled the 3rd defendant. They could have called the 1st defendant to testify but did not.

It is our view that the absence of the 1st defendant only relieved the plaintiffs of proving any case against him but it did not absolve them of their obligation under the Evidence Act to prove their case beyond reasonable doubt against the other defendants who denied the particulars of fraud. The unanswered questions pertaining to the state of mind of the1st defendant with regard to the basis for the representation that the 4th defendant

was in possession of the Black Stool must have the effect that the plaintiffs did not sufficiently prove the element of fraud requiring willful misrepresentation.

Consequently, our assessment of the totality of the evidence adduced at the trial is that there was a failure to persuade the court beyond reasonable doubt that the answer that 4th defendant had possession of the Black Stool was willful falsehood that misled the 3rd defendant. It is our view that the High Court and the Court of Appeal made their findings of fraud basically on presumptions. The High Court judge even unfortunately misread the evidence that was led before him. At page 500 vol 1 of the record he said in his judgment that;

"[4th and 5th Defendants' witness] even admitted that Exhibits "D9" and "D10" are photographs of a stool but alleged he never saw it before."

The above statement creates the impression that the witness admitted the case of the plaintiffs that they had possession of the Black Stool but that is not correct. The following is what the witness stated in his testimony as recorded by the judge at page 434 vol 1 of the record;

"(The witness is shown Exhibits 'D9' to 'D10'). I can see a stool among these Exhibits. I have never seen that stool before. The black stool is very small. The height is about 1 feet. It has two separate stools, one is resting on the other. The down one is a little bigger than the top one but they are considered as one stool. The color is black."

Thus, the defendants strongly challenged the case of the plaintiffs about their being in possession of the Black Stool by leading contrary evidence.

Again, the trial judge misapprehended his duty in this case when he said as follows in his judgment at page 501 vol 1 of the record;

"From the notice of intention not to contest, the 1st defendant thereby admitted the falsity of the information in Exhibits "B" and "B1" submitted…Clearly therefore, the said information was fraudulent in terms of the definition of fraud quoted supra. The information was not only a perversion of the truth, but was also intended to mislead. I am unimpressed about submissions to the contrary on behalf of the defendants."

The particulars of fraud in this case were denied both in the pleadings and the evidence and as stated earlier, we see that all the trial judge did was to find fraud based on presumption. But, as Kpegah, JSC pointed out the case of **Ex parte Aryeetey (supra)** at p. 407;

'The proponent must not only distinctly and specify the alleged fraud, but also strictly prove same because ***it is not permissible to infer fraud from general situations or facts. Thesiger LJ stated the rule long ago in the Case of Davy v Garrett (1877) 7 Ch D 473 AT 489 thus;***

"In the Common Law Courts no rule was more clearly settled than that fraud must be distinctly alleged and as distinctly proved, and that it was not allowable to leave fraud to be inferred from the facts."' (Emphasis supplied)

The trial court thus committed a grievous error when he based his determination of fraud on an unsworn and untested notice by the1st defendant. Those relying on that notice ought to have called the 1st defendant to testify so he could be cross-examined. In **Okwei Mensah (Decd) v Laryea & Anor (supra),** this court held that;

"Fraud qua fraud was a serious allegation in legal proceedings. It should not be lightly made. The courts would look with disfavor on a party who made it and was unable to substantiate it and would sometimes dismiss the action with heavy penalties."

The plaintiffs built their case in the High Court on the fact that the Research Committees of the 2nd and 3rd defendants did not verify the information on the forms and that if they did it would have been shown that the information were wrong. What must not be lost

is that this suit that the plaintiff filed was based on fraud with particulars and the court ought to have looked out for any evidence that proved the alleged fraud in accordance with the settled principles of law.

There can also be no dispute that plaintiffs failed to prove that the 3rd defendant was influenced by false information to enter the name of the 4th defendant in the register. The evidence is unequivocal that the 3rd defendant acted on the basis of the order of Mandamus and the fact that the appeal against that order was dismissed by the Court of Appeal.

Finally, the argument by the 4th defendant that the 1st defendant was a turncoat and his conduct of refusing to contest the action must not to be held against him, ought to have been examined seriously by the courts below as a matter of law. It would be contrary to established principles of the common law to fix the 4th defendant with liability on account of a wrong he had no hand in. The Court of Appeal clearly erred on the law when they concluded otherwise.

CONCLUSION.

My Lords, while this case was pending, the plaintiffs went to the Judicial Committee of the Central Regional House of Chiefs to file for the very same relief for the removal of the name of the 4th defendant from the National Register of Chiefs. That is the appropriate tribunal with jurisdiction that may set aside the insertion of his name for wrongful registration if it determines that the enstoolment of the 4th defendant was invalid at customary law.

As a matter of policy, this court recognizes that Cape Coast is a major town in Ghana and very important, particularly in relation to the attraction of foreign tourists. Nobody would gain from the temporary removal of the name of the 4th defendant at a time when his status as a Chief at customary law remains unaffected on account of Article 277 of the

Constitution, 1992. If the plaintiffs feel strongly that the 4th defendant is not qualified to perform the functions he currently performs, our view is that the proper action and place to resolve that controversy is to prosecute their petition. In **Republic v National House of Chiefs & Ors; Ex parte Fabille III [1984-86] 2 GLR 731**, Edward Wiredu, JA (as he then was) cautioned as follows at p. 739;

"The point of importance here is that the respondents have by their present application chosen to achieve by a short-cut procedure, what their destoolment action pending before the Western Regional House of Chiefs is in effect intended to achieve. Under such a situation the caution is for the court to be slow in the exercise of its discretion so as not to arrogate to itself a jurisdiction it would not otherwise have had: see the case of Yiadom I v. Amaniampong [1981] G.L.R. 3, S.C."

For all the reasons explained above, we find absolute merit in the appeal and same is allowed. The judgments of the High Court dated 8th July, 2015 and of the Court of Appeal dated 23rd January, 2020 are hereby set aside. The relief claimed against the defendants for the removal of the name of the 4th defendant from the National Register of Chiefs is accordingly dismissed.

(SGD) G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

(SGD) G. A. E. SACKEY TORKORNOO (MRS.)

(CHIEF JUSTICE)

(SGD) M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

(SGD) A. LOVELACE-JOHNSON (MS.)

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