IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- A.D. 2023

CORAM: OWUSU (MS.) JSC (PRESIDING)

LOVELACE-JOHNSON (MS.) JSC

PROF. MENSA-BONSU (MRS.) JSC

ASEIDU JSC

KOOMSON JSC

CIVIL APPEAL

NO. J4/83/2022

26TH JULY, 2023

SAMUEL KORMLA AGBALE …….. PLAINTIFF/RESPONDENT/APPELLANT

VS

EKUVOR AGBALE LADZAGLA

KWASIVI AGBALE LADZAGLA

JAMES KOFI LADZAGLA ….. DEFENDANTS/APPELLANTS/RESPONDENTS

ASIEDU JSC:-

INTRODUCTION:

My Lords, this appeal is against the judgment of the Court of Appeal, Accra dated the 20th day of May 2020. In the said judgment, the Court of Appeal set aside the judgment of the High Court, Accra delivered on the 26th July 2016 in favour of the Plaintiff against the Defendants herein. The Court of Appeal also dismissed the Plaintiff's claims and entered judgment in favour of the Defendants herein on their counterclaim. Aggrieved, the Plaintiff has appealed to this Court per a Notice of Appeal filed on the 24th June 2020.

FACTS:

William Quao Anipatie (deceased) was the owner of House Number D498/4 Jones Nelson Road, Adabraka Accra. His father was Amega Agbale Ladzagla (deceased) who married five women. William Quao Anipatie's mother was Yedinu Agbale, the first wife of Amega Agbale Ladzagla. The Plaintiff's father, Dugbaza Kale Anipatie was a brother of the full blood with William Quao Anipatie. The Plaintiff claims that after the death of William Quao Anipatie, Dugbaza Kale Anipatie succeeded him on the matrilineal side. After the death of Dugbaza, the Plaintiff's father; one Richard Awuku Ladzagla, a nephew of William Quao Anipatie, was appointed, by Christian Kwadzo Tay alias C. K. Akaho-Tay with the consent of the elders of the matrilineal family, to apply for Letters of Administration to administer the estate of William Quao Anipatie. The Letters of Administration was granted on the 11th March 1991. Christian Kwadzo Tay alias C. K. Akaho-Tay is described as the current head of family of William Quao Anipatie at the maternal side. Richard Awuku Ladzagla could not finish with the administration of the estate of William Quao Anipatie and so after his death in December 2004, the Plaintiff herein applied in Suit Number BDP 415/2006 for Letters of Administration to enable the

Plaintiff continue with the administration of the estate of William Quao Anipatie but the said application was caveated by the Defendants herein. Following the orders of the High Court therefore, the Plaintiff issued the instant writ against the Defendants herein.

The Plaintiff says that being half-brothers of William Quao Anipatie, the 1st and 2nd Defendants can neither administer the estate of William Quao Anipatie nor inherit his properties because the properties belong to the maternal family of William Quao Anipatie, that is, the descendants of Yedinu Agbale, the mother of William Quao Anipatie. Plaintiff says also that House Number D498/4 Jones Nelson Road, Adabraka, Accra does not belong to Amega Agbale Ladzagla, the father of William Quao Anipatie and the 1st and 2nd Defendants and therefore, the 1st and 2nd Defendants cannot inherit the said property under Mepe customary law and practice. The Plaintiff says that a customary arbitration was held in November 2005 between the parties wherein an award was made in his favour but the Defendants refused to abide by the award. The Plaintiff says that both parents of William Quao Anipatie hail from the Akorvie clan of Mepe and that their ancestors migrated from Denkyira in the Ashanti Region through Akwamu in the Eastern Region before settling at Mepe in the Volta Region and that the people of Mepe practice the matrilineal system of inheritance which is an exception to the patrilineal system which is generally practiced in the Volta Region. The Plaintiff also says that the Akorvie clan which installs the Paramount Chief of Mepe can install a person from either the Patrilineal or Matrilineal System as a Chief.

The Plaintiff therefore claims against the Defendants:

> "a. A declaration that Plaintiff is the rightful or appropriate person by the pleadings to apply for the grant of Letters of Administration in this Honourable Court, administer and distribute the Estate of William Quao Anipatie (Deceased) including in particular H/No. D498/4 Jones Nelson Road Adabraka, Accra

formerly H/No. D4588/4 Jones Nelson Road Adabraka, Accra among the beneficiaries of the said estate according to Law.

b. A declaration that the Estate of William Quao Anipatie (Deceased) is located at the matrilineal section of William Quao Anipatie (Deceased) family by virtue of the customary practices and usages in force of his Akorvie Clan of Mepe as determined on 10th November 2005 by Togbe Sasago Adotey of Mepe as per his arbitration Award determined at Mepe in the Volta Region.

c. An order that Plaintiff should apply to administer the Estate of William Quao Anipatie (Deceased) as the sole applicant to administer the said Estate to the exclusion of the Defendants and distribute same according to law.

d. An order of perpetual injunction restraining the Defendants their agents, servants, workers, assigns or anyone claiming through the defendants from interfering with the administration of the Estate of William Quao Anipatie (Deceased) and in particular H/No. D 498/4 Jones Nelson Road, Adabraka, Accra.

e. Cost(s)".

The Defendants denied the averments of the Plaintiff and insisted that the system of inheritance among the people of Mepe in the Volta Region is Patrilineal and not matrilineal as claimed by the Plaintiff. The Defendants pleaded that the 1st Defendant being a biological brother of William and the current head of family of the family of William Quao Anipatie is the person with power to nominate a member of the family to apply for Letters of Administration to administer the properties of William. The Defendants pleaded fraud against the Letters of Administration which was granted to Richard Awuku Ladzagla. Finally, the Defendants counterclaim against the Plaintiff as follows:

"a. A declaration that upon the death of William Quao Anipatie (deceased) without a wife or a child the deceased's estate becomes the property of the family.

b. A declaration that the Estate of William Quao Anipatie (deceased) is located at the patrilineal section of William Quao Anipatie (deceased)'s family by virtue of the customary practices and usages in force of the Akovia clan of Mepe and indeed of the Ewes of the Volta Region.

c. A declaration that plaintiff is not the rightful or appropriate person by the pleadings to apply for the grant of Letters of Administration to administer the Estate of the late William Quao Anipatie (deceased).

d. An order setting aside the Letters of Administration dated 11th day of March 1991 and obtained per deposition in suit number PD57/91, for fraud.

e. An order setting aside the purported arbitration settlement said to have been determined on 10th November, 2005 at Mepe as incompetent.

f. A declaration that the 1st defendant is the head of the Agbale family to which the deceased William Quao Anipatie belonged.

g. An order of perpetual injunction restraining the plaintiff his agents, servants, assigns workers or anyone claiming through the plaintiff from interfering with the administration of the Estate of William Quao Anipatie (deceased) and in particular H/No. D498/4 Jones Nelson Road, Adabraka, Accra".

JUDGMENT OF THE HIGH COURT:

After the hearing of the case, the High Court Judge found that the Mepe people practices the matrilineal system of inheritance which they brought from Denkyira and that the properties of William Quao Anipatie can only be inherited by the matrilineal side of William Quao Anipatie. At the same time, the trial Judge found that the people of Mepe

can also inherit through the patrilineal side. Finally, the learned trial Judge granted the reliefs sought by the Plaintiff and went ahead to dismiss the counterclaim filed by the Defendants.

JUDGMENT OF THE COURT OF APPEAL:

Dissatisfied with the judgment of the High Court, the Defendants appealed to the Court of Appeal which, after reviewing the records, found that the people of Mepe in the Volta Region practice the Patrilineal system of inheritance. The Court of Appeal, by a unanimous judgment, set aside the Judgment of the High Court, dismissed the Plaintiff's claims and entered judgment for the Defendants on their counterclaim.

APPEAL TO THE SUPREME COURT:

Claiming to be also aggrieved by the judgment of the Court of Appeal, the Plaintiff filed a Notice of Appeal to this Court praying that *"the decision of the Court of Appeal dated the 20th May 2020 be set aside"* on the grounds that:

> *"(a). The Court erred in law in not resolving the dispute between the parties, namely: deciding who has the priority to the grant of letters of administration to administer the estate of the late William Quao Anipatie.*
>
> *(b). That the Court erred in holding that the estate of the late William Quao Anipatie was family property.*
>
> *(c). That the Court erred in resolving the dispute as matrilineal versus patrilineal dispute instead of as a dispute between full-blood descendants and half-blood descendants.*
>
> *(d). That the judgment is against the weight of evidence on record.*
>
> *(e). Additional grounds to be filed upon the receipt of the Record of Appeal."*

CONSIDERATION OF THE APPEAL:

The first ground of appeal argued on behalf of the Plaintiff/Appellant by Counsel, in his Statement of Case which he wrongly described as "Written Submission" is ground (a) of the grounds of appeal. This ground states that: *"the Court erred in law in not resolving the dispute between the parties, namely: deciding who has the priority to the grant of letters of administration to administer the estate of the late William Quao Anipatie"*. Under this ground, it was stated that the suit being essentially that of a probate action, the sole issue for determination is '*who has the right to apply for letters of administration'*. Counsel for the Appellant argued that '*at the heart of this suit is the question of who had the priority to the grant of letters of administration in respect of the estate of the late William Quao Anipatie: descendants of his whole-blood siblings being the Plaintiff or descendants of his half-blood being the Defendants. That question had nothing to do with patrilineal or matrilineal inheritance among Ewe people of Mepe in the Volta Region'*. Counsel referred to pages 371-372 of Ewe Law of Property (2nd ed.) by Professor A. K. P. Kludze and submitted that the Plaintiff/Appellant is a *'descendant of a whole-blood brother of the late William Quao Anipatie'* and for that matter he has priority to the grant of letters of administration in respect of the estate of William Quao Anipatie than '*the Defendants who are descendants of brothers of the half-blood of the late William Quao Anipatie'*. It was finally submitted on behalf of the Plaintiff/Appellant that '*the Court of Appeal in its judgment dated 20th May 2020 failed to address the critical question at the heart of this suit'*. Counsel therefore invited this Court to determine which party has priority to the grant of letters of administration.

Whiles conceding that the suit is a probate action and that it calls for determination of '*who has a right to apply for letters of administration'*, it was submitted on behalf of the Defendants/Respondents that the Court was not barred from determining other corollary issues that drive the main issue. Counsel submitted further that the pleadings and the issues agreed upon at the directions stage determine matters to be decided by the Court. It was argued that the trial Judge failed to consider the fact that House Number D498/4

Jones Nelson Road, Adabraka, Accra was not shared among the beneficiaries after the death of William Quao Anipatie, the original owner of the said House. It was also argued that the trial Judge failed to consider the fact that the House in question had become family property following the demise of William Quao Anipatie and has been handled as such since 1943 when William Quao Anipatie died. It was submitted that the Court of Appeal dealt with the critical issues in the suit and that it is therefore untenable for the Plaintiff to argue that the Court of Appeal failed to address the main question at the heart of the action.

Given the arguments put forth under this ground of appeal, it is necessary for this Court to determine the nature of the case and the issues which were placed before the trial Judge. The second relief stated on the Plaintiff's writ of summons which can be found at page 2 of the record of appeal states that:

The plaintiff claims against the Defendants jointly and severally for:

> *"A declaration that the estate of William Quao Anipatie (deceased) is located at the matrilineal section of William Quao Anipatie (deceased)'s family by virtue of the customary practices of and usages in force of his Akorvie clan of Mepe as determined on the 10th November 2005 by Togbe Sasago Adotey of Mepe as per his arbitration award determined at Mepe in the Volta Region"*

In addition to the endorsement on the writ of summons the Plaintiff attached a twenty-four-paragraph statement of claim. A critical reading of the said statement of claim shows that in almost every paragraph thereof, the Plaintiff used the word 'matrilineal' or 'maternal' or 'patrilineal' or 'paternal' to describe the appropriate family which, in his view, should deal with the administration of the estate of the late William Quao Anipatie. For instance, in paragraphs 7 and 22 of the Statement of Claim, the Plaintiff/Appellant pleaded that:

"7. Plaintiff says that after the death of William Quao Anipatie (Deceased) on 4th day of February 1943, the said Dugbaza Kale Ladzagla alias Dugbaza Anipatie (also deceased on 24th April 1988) administered the Estate of William Quao Anipatie (Deceased) on the maternal side of this family, where his properties were already left by him William Quao Anipatie (Deceased), as the Customary successor on the Matrilineal part of his family without any challenge or let or hindrance in any form or manner whatsoever till he also died.

22. Plaintiff says that the people of Akorvie Clan which William Quao Anipatie (Deceased) belongs were originally migrated from Denkyira in the present day part of Ashanti Region of Ghana through Akwamu in the Eastern Region of Ghana before finally arriving at Mepe in the past Centuries and settled at Mepe of which both Agbale Ladzagla and Yedinu Agbale families are from the said Akorvie Clan of Mepe where they continued their customary practices and usages of the Akans brought from Denkyira along with them including the Akan inheritance Law which is specific and continued to practice and use same till date as the exception to the general Ewe system of inheritance as patrilineal system which is also applicable to the Akorvie Clan of Mepe in particular".

The Defendants on their part denied the allegations of the Plaintiff that the property of William Quao Anipatie fell to his maternal side of the family. For example, at paragraphs 16, 35 and 36 of their Statement of Defence, found at page14 of the record the Defendants pleaded that:

"16. The Defendants in further denial of paragraph 7 say that there is nothing like customary inheritance on the matrilineal part in the Agbale Ladzagla family nor Akorvie Akukorgome nor Akorvie clan nor Mepe Traditional Area nor Volta Region as inheritance is patrilineal.

35 The Defendants deny paragraphs 22, 23 and 24 of the statement of claim and say that the people of Akovia believe that they come from Akwamu but none of the chiefs that make the principal homes of Akovia clan inherit maternally but rather paternally and the records abound.

36. The Defendants in further denial of paragraphs 22, 23 and 24 of the statement of claim, say that, the theory or research being propounded by the Plaintiff on Akan name into Ewe is unknown to the Mepes and Defendants rather maintain that the traditional customary inheritance law, practices and usages of Akorvie clan of Mepe is patrilineal and not matrilineal."

Again, in his Reply to the Statement of Defence and Counterclaim, the Plaintiff continued with his allusion to matrilineal as opposed to patrilineal system of inheritance by the people of Mepe. For instance, in paragraph 24 of the Reply which is at page 18 of the record, the Plaintiff averred that:

"24. In Reply to paragraph 16 of the Statement of Defence and Counterclaim, Plaintiff deny paragraph 16 of the statement of Defence and Counterclaim and says that Mepe Traditional Council and areas practices customary inheritance in the matrilineal side if the property falls or belongs to the maternal side of the family as in the case of the estate of William Quao Anipatie."

At the application for directions stage, several issues were set down for trial. These include the following issues which can be found at pages 28 and 29 of the record:

"(a). Whether or not the property in contention, House Number D498/4 Jones Nelson Road, Adabraka, Accra, already belongs to or falls at the maternal side of the Yedinu Agbale (deceased)'s descendants' section of the Agbale Ladzagla family.

(b) Whether or not Defendants being at the paternal section of the Agbale Ladzagla family can claim and inherit House Number D498/4 Jones Nelson Road, Adabraka Accra which

already belongs to or falls at the Yedinu Agbale (deceased)'s descendants' section of the Agbale Ladzagla family under the Mepe customary inheritance law and practices."

Further to the above, in paragraph 2 of his witness statement, Azi Akorlor who testified on behalf of the Plaintiff stated that:

"2. The rules on inheritance as prevailing in the Mepe Traditional Area are as follows:

(a). That all properties left behind by a parent either a man or a woman after their death belongs to his or her children.

(b). That if a man married more than one woman and the man dies, all the man's properties shall be shared proportionally among the number of wives (women) the man married whether the women were dead or alive.

7. That there is enough evidence of customary cultural practices persisting that the people of Akorvie currently settled at Mepe came from Denkyira through Akwamu and still maintained part of their culture and inheritance matrilineally when the property falls on the maternal side"

On the contrary, Kudzodzi Papa Zoe, who also gave evidence on behalf of the Defendants stated at paragraphs 4 and 5 of his Witness Statement as follows:

"4. That a paternal family head can customarily appoint, nominate and even inherit and has a right to administer the self-acquired property of a deceased child.

5. That the Akorvie clan only selects its stool father from the paternal side of the family"

In the light of the endorsement on the Plaintiff's writ of summons, the averments in the Statement of Claim, the pleadings in the Statement of Defence, the Reply and considering the issues set down by the parties and adopted by the Court for trial and the evidence given by the parties and their witnesses as contained in the various Witness Statements some of which have been quoted herein, it is erroneous for the Plaintiff to submit in his

Statement of Case that the only issue for determination in this matter is the question of which of the parties has the right or priority to the grant of letters of administration to administer the estate of William Quao Anipatie. It is also incorrect for Counsel for the Plaintiff/Appellant to submit in his Statement of Case that the question of the priority to or the grant of letters of administration herein, *'had nothing to do with patrilineal or matrilineal inheritance among the Ewe people of Mepe in the Volta Region'*. Indeed, given the nature of the pleadings filed by the parties herein, both the trial Court and the Court of Appeal cannot, correctly, determine the issues set forth in this matter without determining the question of whether William Quao Anipatie (deceased) belong to the patrilineal or matrilineal system of inheritance. It is the correct determination of the personal law of the late William Quao Anipatie that can lead to a correct determination of which of the parties herein should be granted the right to apply for letters of administration to administer the estate of the deceased.

The Courts Act, 1993, Act 459 (as amended) provides guideline as to the determination of issues involving the system of law that shall govern the devolution of property of a deceased person. Section 54 subsection 1 Rule 2 states that:

> *"54. Choice of law*
>
> *(1) Subject to clause (2) of article 11 of the Constitution, this Act and to any other enactment, a Court when determining the law applicable to an issue arising out of a transaction or situation, shall be guided by the following rules in which references to the personal law of a person are references to the system of customary law to which that person is subject or to the common law where that person is not subject to a system of customary law:*
>
> *Rule 2. In the absence of an intention to the contrary, the law applicable to an issue arising out of the devolution of a person's estate shall be the personal law of that person."*

The major issue in this matter is whether the Plaintiff is entitled to the grant of letters of administration or whether the Defendants are entitled to the grant of letters of administration to administer the estate of William Quao Anipatie who died intestate in 1943 and who was neither survived by a spouse nor a child. The Plaintiff asserts his right to the grant of letters of administration because, according to him, the estate of the deceased falls to be determined by the rules of customary law of the matrilineal side of the family of the deceased William Quao Anipatie. The Defendants also assert their right to the grant of letters of administration because they claim that the late William Quao Anipatie hails from a patrilineal system and hence, it is members of his patrilineal family who are qualified and entitled to be granted letters of administration to administer his estate. In other words, the question which confronted the trial Judge is which system of customary law shall govern the devolution of the estate of William Quao Anipatie (deceased). Hence, a duty was cast upon the trial Court to determine the personal law which is the customary law of William Quao Anipatie. In this wise, section 55 (1) and (2) of the Courts Act, 1993, Act 459 (as amended) becomes very relevant. The section states that:

> *"55. Ascertainment of customary law*
>
> *(1) A question as to the existence or content of a rule of customary law is a question of law for the Court and not a question of fact.*
>
> *(2) Where there is doubt as to the existence or content of a rule of customary law relevant in proceedings before a Court, the Court may adjourn the proceedings to enable an inquiry to be made under subsection (3),*
>
> *(a) after the Court has considered submissions made by or on behalf of the parties, and*
>
> *(b) after the Court has considered reported cases, textbooks and other sources that may be appropriate to the proceedings."*

Clause 2 of article 11 of the Constitution, 1992 reinforces the provisions in section 54 and 55 of the Courts Act. It also states that:

> *"(2) The common law of Ghana shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature."*

What the above provisions, particularly, section 54 rules 1 and 2 and section 55 (1) and (2) mean is that:

(a). Unless stated otherwise in the Constitution or some other enactment, the personal law of a person is the customary law of that person.

(b). However, where the person is not subject to any system of customary law, then the common law shall be his personal law and shall apply to that person.

(c). The existence or the content of the customary law of that person is a question of law and not of fact and it is to be ascertained by the Court following the guidelines set out under subsection 2 of section 55 of the Courts Act.

(d). Where there is no doubt as to the existence or content of a rule of customary law, that is, where there are no competing claims as to the existence or the content of a rule of customary law, all that a Court needs to do is to adopt the rule of customary law and apply it to resolve the dispute as to the devolution of the estate of the person whose property is at the centre of the dispute.

(e). Nonetheless, where there are competing claims as to the existence of a customary law or the content of the customary law then the existence or otherwise and the content of the customary law ought to be ascertained by the Court:

(i) By considering submissions made by or on behalf of the parties and

(ii) By considering reported cases, textbooks and other sources that may be appropriate to the proceedings.

If after going through the above procedure, the existence and or the content of the rule of customary law is still not established then the Court:

(f) Shall resort to inquiry as stated under subsections 3, 4 and 5 of section 55 of the Courts Act which are that:

> *"(3) The inquiry shall be held as part of the proceedings in the manner that the Court considers expedient, and the provisions of this Act (the Courts Act) relating to the attendance and testimony of witnesses shall apply with the modifications that appear to the Court to be necessary.*
>
> *(4) The decision as to the persons who are to be heard at the inquiry shall be one for the Court, after hearing the submissions on it made by or on behalf of the parties.*
>
> *(5) The Court may request a House of Chiefs, Divisional or Traditional Council or any other body with knowledge of the customary law in question to state its opinion which may be laid before the inquiry in written form."*

The inquiry is to be resorted to only if there is a dispute as to the existence of the rule of customary law and or the content of the rule of customary law and after the Court had gone through the process of considering arguments or submissions made by or on behalf of the parties, and, after the Court had considered reported cases, textbooks and other sources that may be appropriate to the proceedings. It is only after all these have failed to produce the needed outcome that the inquiry may be resorted to by the Court. In the instant matter, the High Court and the Court of Appeal did not resort to inquiries to ascertain the existence and content of the customary law of William Quao Anipatie because the parties made submissions on the said customary law from which the Court could establish the existence and the content of the customary law. In **Yirenkyi vs. Sakyi**

[1991] 1 GLR 217.CA, the Court held in respect of the personal law of the deceased in that case that:

> *"Bekoe enjoyed the double advantage of belonging to both the matrilineal family of his mother and the patrilineal family of his father. Accordingly, the devolution of his self-acquired property on his intestacy might follow either of those systems of inheritance. And since there was an internal conflict in the two systems, succession to his property would be determined by his personal law and not the lex situs, which had no application in determining the descent of immovable property upon the intestacy of a domiciled Ghanaian. The applicable law was that which prevailed at the date of his death, or immediately thereafter and not at the date of the trial. Since Bekoe died in 1930, the relevant statute was section 87(1) of the Courts Ordinance, Cap 4 (1951 Rev). That section had, however, been re-enacted with modifications as section 49 of the Courts Act, 1971 (Act 372), and it required that in determining the personal law of an intestate Ghanaian for the purpose of devolution of his estate recourse should not be had to such negative or shadowy claims such as the deceased had lived all his life among the particular community where his estate was situated or that he had adopted for his children names prevailing in that community to assist in the choice of his personal law because they could not conduce to "equity and good conscience" to achieve justice as required under section 87 (1) of Cap 4 or section 49 (1), r 6 of Act 372. However, if the deceased intestate had succeeded to property within a particular system of his dual personal laws, then the devolution of his own estate must point to that system. Since neither Bekoe nor any of his mother's children succeeded anyone in the maternal family, and those children ensured that during their lifetime no one outside their mother's line enjoyed the disputed property, the personal law governing the devolution of the estate of Bekoe was patrilineal. Accordingly, the children of Bekoe were entitled to succeed to the property."*

In **Amerley vs. Otinkorang and Another [1965] GLR 656**, this Court pointed out that:

"Where a domiciled Ghanaian dies intestate, succession to his property must be determined by his personal law, and that English rules of private international law do not apply to the distribution of the estate of an intestate Ghanaian who dies in Ghana."

The learned High Court Judge made positive findings of fact and also of the customary law of the late William Quao Anipatie. At page 427 of volume 1 of the record of appeal, the learned Judge stated that:

"The undisputed facts of the case are that the property in dispute is the self-acquired property of the late William Quao Anipatie. It is undisputed also that the late William Quao Anipatie died intestate and having no surviving child(ren) in 1943. It is undisputed that William Quao Anipatie's father, Amega Agbale Ladzagla was a polygamist during his lifetime and married five (5) women. It is also undisputed that the people of Mepe in the Volta Region inherit patrilineally. The parties part ways in their understanding of patrilineal succession in polygamous families. The Plaintiff is also, it is agreed by both parties, a descendant of Yedinu Agbale, the mother of the late William Quao Anipatie, the first wife of Amega Agbale Ladzagla, while Defendants are descendants of the late Yedinu's co-wives.

Whiles the Plaintiff claims that only a father's children by the same mother can inherit their late brother's estate, the Defendants claim that the identity of one's mother is of no consequence. For them, once the owner of the estate is one's father's son, such a person can administer the estate of the deceased and inherit his property. It is a question, for them, of who is the most senior of the children of the father, and not necessarily, whose mother's son acquired the estate".

Contrary to the criticisms of the Plaintiff/Appellant levelled against the judgment of the Court of Appeal under this ground of appeal that: *"the Court erred in law in not resolving the dispute between the parties, namely: deciding who has the priority to the grant of letters of*

administration to administer the estate of the late William Quao Anipatie", the Court of Appeal recognised its task in the instant matter when it stated at page 79 volume 2 of the record that:

> *"It is worth underlying that from the claim and counterclaim of the parties our mandate is to determine who is entitled to be appointed to apply for letters of administration. That should be differentiated from succession to the deceased's property or who takes the beneficial interest of the estates of William."*

The statement of the task that confronted the Court of Appeal as quoted above was preceded by an observation made by the learned Justices of the Court of Appeal at pages 73 and 74 of the record to the effect that:

> *"The 1st Defendant was represented in Court by Michael Kwasi Ladzagla. The 1st Defendant, 2nd Defendant and the Plaintiff's father are siblings of William. William is therefore a paternal uncle of the 1st Defendant's representative in Court (Michael Kwasi Ladzagla). Plaintiff is a cousin of the 1st Defendant's representative, Michael. What evidence did the 1st Defendant's representative give to the Court?*
>
> *He denied that citizens of Mepe are matrilineal. They are patrilineal and therefore C. K. Akaho Tay who testified for the Plaintiff has no customary position in the Agbale Ladzagla family. Narrating the headship and administration of the Adabraka property, he told the Court that the paternal family of William appointed one Rufus Ladzagla to administer the property when William fell sick and eventually had to be sent home in Mepe. At this time Kale was the head of the Agbale Ladzagla family. After Kale's death in 1988, the 1st Defendant took over the headship of the Ladzagla family as head and the self-acquired properties of Kale were distributed to his children. When a son of the 4th wife of Amega, Ernest Bludo died, it was the 1st Defendant who sat in headship to perform the burial and funeral rites. Defendants tendered the letters of administration, exhibit 233 found at page*

263, as evidence of his involvement in the funeral rites of Ernest. The exhibit mentions the 1st Defendant as one of the administrators appointed by the Court for the deceased Ernest Bludo Ladzagla and in the letters of administration granted in respect of Ernest Bludo's properties, the 1st Defendant is mentioned as the customary successor and brother of Ernest Bludo. The other two are described as widow and daughter. ***The value of this exhibit to the Defendants' case we appreciate to be that if the wives of Amega Agbale Ladzagla form their own family, as the plaintiff contends, then he 1st Defendant could not have been named a successor to a son of the 4th wife of Amega and further appointed as one of the administrators".***

It must be stated in no uncertain terms that in patrilineal societies, females cannot form a family. The progenitors of patrilineal families are males simpliciter. That does not mean that females are not part of patrilineal families and that does also not mean that females qua females cannot inherit in patrilineal families. To the extent that a female can trace her membership of the family through the male line she qualifies to inherit properties however minimal in the patrilineal system of inheritance. It must be emphasised that the most important condition here is one's ability to trace his/her lineage through the male line. The implication is also that the offspring of female members of the patrilineal families are, generally, not qualified to inherit to properties of the patrilineal family. The opposite is the case in matrilineal families. Here, membership of the family is traced through the female line and, it is only persons who can trace their membership of the family through a female member of the family who qualify to inherit the properties of the family. The important condition here is one's ability to trace his/her membership through the female line.

Some cases will help with the understanding of the customary law in both the patrilineal and matrilineal family systems:

In **Addo and Another vs. Manko [1976] 2 GLR 454**, CA the Court held that:

"If there was anything like a general rule for patrilineal societies it was that the self-acquired property of a male person dying intestate in a patrilineal community devolved not on the whole patrilineage, but on his immediate family, both as to title and as to rights of beneficial enjoyment. But a distinction should be drawn between the family he was born into and the one he originated when he had issue. The group which was generally regarded as being beneficially entitled to such property was the group which was most proximate, namely, his children. In the present case since the deceased was a native of Abiriw, a Guan patrilineal society, the children were entitled to succeed to the part of the property due to the family."

At page 455 to page 456, the Court dealt correctly with the position of the law in both patrilineal and matrilineal systems of inheritance which we hereby endorse. The Court said that:

"It is important, I think, to advert briefly to general principles which underlie the basic issue raised by the specific question before I proceed to consider that question. The general issue can safely be posed in the form of the question: who are the inheriting family of a deceased member of a family for the purposes of the beneficial enjoyment of his self-acquired property? Taking first the case of a male member of a family in a patrilineal society, from the moment of birth the position is that he was born into his father's family and so clearly became a member of that family by right of birth. He would then start life as a member of his father's family, together with any brothers and sisters who share a common paternity with him and under their father would constitute one unified family, patrilineal in character. For purposes of succession he would not, at birth, have any other relevant family since his right at law to identify with a family for the purpose of succession was determined at birth by his paternity. His family then would be his father's family and he would be a member of the family of his father. Since however a male member of a family in the patrilineal system is himself a point of origin of a new family, he starts such a family when

he has issue and a family that a male member of a patrilineal family starts himself is his own or personal family and he stands at the apex of that family as the originator thereof. When therefore one considers the position of a male member of a patrilineal family, for purposes of succession it is of importance whether he has issue or not. If he has not, then his family is his father's family he having none of his own. Where however he has issue then his children constitute his own or personal family, that is the family which he himself originated as distinct, that is, from the family his father originated. The true position therefore must be that a male member of a family in a patrilineal society who has issue is the head of the family that he himself procreates in addition to being a member by right of birth of the family he was born into, that is his father's family.

By contrast in a matrilineal society a family is originated by a female who at her own birth belonged to her mother's family by right of birth. When she herself has issue her children would constitute her own or personal family and she would be the head of that family as the originator thereof. Her female issue would in due course have their own children who would then constitute their personal family. Her male issue would however be incapable of having their own accretions to her family as their personal family since, being in a matrilineal system, they cannot themselves originate their own branches of the successional family. These male members, therefore, as a matter of necessity, continue to be members of their mother's personal family as the nearest successional family they can have, they having none more proximate to themselves than that family. The nearest family therefore of a male member of a family in a matrilineal society must be his mother's family whether he himself has issue or not whereas a female member's nearest family must be her issue only that is her personal family and if none, her mother's family, that is her mother's personal family, the family into which she was born."

In **Budu vs. Amponsah and Others [1989-90] 1 GLR 150, CA**, the Court held that:

"The self-acquired property of the deceased, a member of the patrilineal Guan community, became by operation of law the property of the family to which he belonged on his death intestate. All children, male and female, of the deceased were treated and regarded as members of his family and were as such entitled to the beneficial enjoyment of his self-acquired property. The grandchildren of the deceased by his surviving daughters, the plaintiffs in the instant case, were not members of his family but members of their respective fathers' families. Those grandchildren were strangers to the patrilineal family to which the deceased had belonged and were therefore not entitled to enjoy beneficially his self-acquired property. Since the defendant's father was the deceased's elder uterine brother, he was a member of the family originated by his own father and at the same time a member of the family to which his father belonged, i.e. the family of the deceased. The defendant as a nephew of the deceased was entitled to enjoy beneficially the deceased's self-acquired property adjudged to be family property upon intestacy."

The position of the law stated above was affirmed by this Court in **Odamtten & 4 Others vs. Wuta-Offei & Another [2017-2018] 2 SCLRG 133** where it was held also that:

"Upon the death intestate of the original owner of the property, who was a Ga from Osu, his self-acquired property became family property and succession to the property was by Osu customary law which is patrilineal, that is, it is the children of the deceased who inherit him. The female children have only a life interest in the estate. The Court of Appeal therefore stated the true position of the law and practice of the devolution of property in a patrilineal system, not only in Osu, but predominantly, in other parts of Ga, Ewe and Guan communities.

The Court of Appeal in the instant matter, after analysing the evidence adduced before the trial Judge stated at page 76 of the record that:

"We make a definite finding that the usual patrilineal customary practice of inheritance is the applicable system for the people of Mepe traditional area. As we have stated herein, there was no evidence to explain what the Plaintiff meant by the property belongs or falls at the maternal side of the Yedinu Agbale deceased's descendants' section of the Agbale Ladzagla family. The deceased when he was alive belonged to his paternal family. On his death intestate without a child or spouse his property fell to his paternal family led by the head of family"

We hold that the above finding made by the Court of Appeal bear root in the evidence adduced before the trial Court. The Plaintiff/Appellant acknowledges the fact, through out his Statement of Claim, that William Quao Anipatie's father and mother both hail from the Akorvie clan of Mepe. There is evidence on record to the effect that the people of Mepe traditional area practices the patrilineal system of inheritance. It follows naturally that the personal law of the deceased William Quao Anipatie is the customary law of the people of Mepe where his father and himself come from. Yedinu Agbale, the wife of Amega Agbale Ladzagla and the mother of the late William Quao Anipatie, never formed any family known as the Yedinu Agbale family of the Agbale Ladzagla family. Being a patrilineal society Yedinu Agbale could not have found any such family for the simple reason that she was female. In patrilineal systems, families are formed by males and not females as stated in the authorities. The attempt by the Plaintiff to create the so-called Yedinu Agbale family is just to advance the selfish purpose of the Plaintiff and no such family can be recognised under the patrilineal system since that will result in creating divisions among the family members. In patrilineal systems, irrespective of which woman gave birth to a person, once the children can trace their lineage through a male member of the family, they qualify to inherit generally to family properties of the patrilineage. Further, children qualify to inherit the properties of their father and if a brother or a sister dies, in a patrilineal family, without a wife or a child, the surviving

brothers and sisters can inherit that person, with the caveat that the females have only life interest in such family properties.

The Plaintiff also complains that *"the Court erred in holding that the estate of the late William Quao Anipatie was family property*." This is a matter of law and the Court of Appeal cannot be faulted for coming to that conclusion. See: **Odamtten & 4 Others vs. Wuta-Offei & Another (supra)**. We find that evidence was adduced of the fact that the late William Quao Anipatie died intestate in 1943. There is evidence on the fact that the late William Quao Anipatie was not survived by a wife or a child. In such circumstances and given the fact that he came from a patrilineal society, his estate immediately become family property and devolves on his siblings who were begat by his father, Amega Agbale Ladzagla and the descendants of his male brothers. Thus, whiles his surviving sisters and brothers have beneficial interest in the estate of the late William Quao Anipatie, the descendants or the children of William Quao Anipatie's sisters cannot succeed unto or inherit any property of the William Quao Anipatie (deceased). On the contrary the children of the brothers of the William Quao Anipatie (deceased) like the Plaintiff herein can inherit or succeed to such estates with the consent of the head of family. Thus, in **Amoyaw vs. Amoyaw and Another [1999-2000] 2 GLR 124**, CA the Court decided that:

> *"In a patrilineal community, the self-acquired property of a male deceased devolved on his immediate family, the most proximate being his children. However, it could not be doubted that grandchildren who were descendants of the children of the deceased in the direct male line were also members of the family. Consequently, the defendant who on the evidence was a child of A Jnr, a son of A Snr, and who traced his descent in a direct male line, was a member of the family of A Snr through his son A Jnr."*

Under ground (c) of the grounds of appeal, the Plaintiff/Appellant argued that *"the Court erred in resolving the dispute as matrilineal versus patrilineal dispute instead of as a dispute between full-blood descendants and half-blood descendants*." However, as already pointed out,

the endorsement on the writ of summons, the pleadings filed and the evidence given at the trial by the parties and their witnesses show clearly that the dispute was as much about patrilineal and matrilineal system of inheritance as it was a contest about the right of full-blooded relatives and half-blooded relations to succeed or inherit the estate of one of their own. We have shown that the Court of Appeal was right when it found that the William Quao Anipatie (deceased) came from a patrilineal system of inheritance and that that being his personal law, the devolution of his estate ought to be in accordance with that system of customary law and that is so whether a sibling was related to the deceased by the full blood or half blood. The most important consideration is one's ability to trace his lineage by the male line with the late William Quao Anipatie. The Plaintiff/Appellant fails on this ground of appeal.

Ground (d) of the grounds of appeal is the omnibus ground that *"the judgment is against the weight of evidence on record"*. This ground constitutes an invitation to this Court to examine the totality of the record of appeal and come to its own conclusion whether on the basis of the evidence adduced at the trial, both oral and documentary evidence, and, within the context of the relevant and applicable law, the trial Court or the first appellate Court came to the correct conclusion. This ground of appeal has been explained in numerous decisions of this Court to mean that by this ground, the Appellant alleges that there are pieces of evidence favourable to his cause which were either ignored by the trial Court or, in the instant matter, by the first appellate Court, the Court of Appeal or that the evidence were not applied in his favour and that if the Court had applied those pieces of evidence in favour of the Appellant, it would, naturally, have led to judgment being given in favour of the Appellant. The onus is on the Appellant in such instances to point to those pieces of evidence. See: **Djin vs. Musah Baako [2007-2008] SCGLR 686.**

In **Republic vs. Conduah; Ex parte Aaba (substituted by) Asmah [2013-2014] 2 SCGLR 1032**, the Supreme Court, speaking through Akamba JSC, stated at page 1041 of the report that:

> *"This ground alleges that the judgment was against the weight of evidence. Such omnibus ground, invites this Court to take another look at the facts on record to ascertain whether the conclusions arrived at by the Court of Appeal are borne out or not; and to arrive at its own conclusion. In Akufo-Addo vrs Catheline [1992] 1 GLR 377, SC this Court observed that whenever an appeal is based on the omnibus ground that the judgment is against the weight of the evidence, the appellate Court has jurisdiction to examine the totality of the evidence before it and come to its own decision on the admitted and undisputed facts. Thus, when an appellant complains that the judgment is against the weight of evidence, he is implying that there are pieces of evidence on record which, if applied properly or correctly, could have changed the decision in his favour or certain pieces of evidence have been wrongly applied against him."*

In arguing this ground of appeal, Counsel referred to exhibit 'J' which can be found at page 83 of the record. The said exhibit is an alleged record of arbitration between the parties herein which took place on the 20th August 2006 before one Amega Zometi Ladzagla described as the head of the Ladzagla family. The Plaintiff had pleaded in paragraph 20 of his Statement of Claim that there was an arbitration before Togbe Sasago Adotey in November 2005 in respect of the matters before this Court and after the hearing, the panel decided and made an award in favour of the Plaintiff herein against the Defendants. Exhibit H, found at page 80 of volume 1 of the record was tendered as evidence of this arbitration. It seems that there was a second arbitration between the Plaintiff and the Defendants which was held on the 20th August 2006. Exhibit 'J' was tendered in support. This second arbitration was held before Amega Zometi Ladzagla.

The Defendants denied the Plaintiff's assertion on the arbitration and stated in at paragraphs 33 and 34 of their Statement of Defence that they rejected the first arbitration and that it was resolved by the second arbitration that the House in contention belong to the Agbale Ladzagla family and that the Plaintiff was ordered to withdraw the case from Court. It is worthy of observation that no issue was joined on this allegation of arbitration and its award in both the Application for Directions and the Additional Application for Directions. These can be found at pages 28 to 33 of the record. Further, it is to be observed that no claim was made by the Plaintiff for the enforcement of any arbitration award. This, to us, is a clear indication of the abandonment of any claim in respect of the so-called arbitration.

On these arbitrations, the Court of Appeal observed in its judgment at pages 66 to 67 of the record that:

> *"It is the case of the Plaintiff that they had to go before two different arbitration panels both of which found in their favour. In exhibit 'H' they were declared as the 'next of kin and the rightful beneficiaries of the property of William by the custom of Mepe'. This arbitration was on 19th of November 2005.*
>
> *The next one was before Zometi Ladzagla. The recorded findings can be found in exhibit 'J' at page 83 of the records and this was on the 20th of August 2006.The conclusion was that all the descendants of Agbale Ladzagla family should enjoy the proceeds of the Adabraka property so as to unite the family. The Plaintiff Samuel Agbale who is a descendant of Yedinu Zofortor be appointed the new administrator of the said property. Ekuvor Ladzagla be appointed as the head of the Agbale Ladzagla family. And thirdly the property be managed as a Trust under the Company name "William Quao Anipatie Trust Company". We have stated that there were two arbitrations all convened on the complaint of the Plaintiff. If the Plaintiff chose to ignore the first arbitration of 10th November 2005 and went in to get another arbitration convened on the same subject matter then it presupposes,*

he, for reasons best known to himself, had abandoned whatever rights he had acquired under this earlier arbitration. If there is any arbitration for the trial Court to consider, then that was the arbitration of 20th August 2006. Unfortunately, the trial Court did not consider this arbitration because she believed that even without the arbitration the case of the Plaintiff was made out.

We have read the records and there is no doubt that there was an arbitration but what were the findings of the arbitration? The Plaintiff tendered what he alleges was the recording of the arbitration proceedings and the award as exhibit 'J'. This was challenged by the Defendants. It is their case that there was no such recorded arbitration because nobody took records on that day but it was C. K. Akaho Tay who made video recordings of the proceedings. A cursory examination of this exhibit shows that exhibit J was not signed by the 1st Defendant, Ekuvor. With such issue joined, just like an oral arbitration, it was necessary for the Plaintiff who was relying on the arbitration recorded in exhibit J to call evidence that indeed there was such arbitration findings and award as contained in exhibit 'J', particularly when the 1st Defendant did not sign exhibit 'J'. Plaintiff called no evidence of that sort. On the records as we have it, we are not in a position to conclude accepting the authenticity of exhibit 'J' as what transpired and was concluded at the said arbitration."

The above findings of the Court of Appeal are very much supported by the evidence adduced before the trial Judge and we have no reason to disturb the findings as quoted above.

After examining the evidence adduced before the trial Court, we are satisfied that the findings and conclusion reached by the Court of Appeal are amply supported by the evidence on record. It is the position of the law that where the first appellate Court affirms the findings made by the trial Court, a second appellate Court must be slow to set aside the concurrent findings of fact. In the instant matter however, the finds of fact made by the trial judge was set aside by the Court of Appeal as stated above, in such

circumstances, a second appellate Court is at liberty to examine the record and make its own findings as to which of the judgments of the two lower Courts is supported by the evidence on record. Thus, in **Duodu vs Benewah [2012] 2 SCGLR 1306**, the Court held that:

> *"It is well settled that; an appellate Court is entirely at liberty to review the evidence on record and find out whether the evidence supported the findings made by the trial Court. The appellate Court must not disturb the findings of the trial Court if they are supported by the evidence…. The Supreme Court's duty as the final appellate Court, is also to review the evidence on record to ascertain whether the findings were supported by the evidence on record, there being no concurrent findings of facts from the lower Courts. And the duty of the Appellant is to demonstrate that the Court of Appeal was in error in reversing the findings of facts made by the trial judge."*

CONCLUSION:

We hold, after examining all the evidence presented by the parties to the trial Court, that the Court of Appeal was right in setting aside the judgment of the trial Court since that judgment was not supported by the evidence on record. We therefore find no merit in the present appeal which is therefore dismissed. The judgment of the Court of Appeal delivered on the 20th May 2020 is hereby affirmed.

S. K. A. ASIEDU

(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

A . LOVELACE-JOHNSON (MS.)

(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)

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