**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**ACCRA – A.D. 2018**

**CORAM: ANSAH, JSC (PRESIDING)**

**YEBOAH, JSC**

**BAFFOE-BONNIE, JSC**

**APPAU, JSC**

**PWAMANG, JSC**

**CHIEFTAINCY APPEAL NO. J2/01/2017**

**23RD MAY, 2018**

IN THE MATTER OF:

1. BIMBILLA NA, SALIFU DAWUNI
   (SUBSTITUTED BY SAGNARIGU LANA
   SHANI AZUMAH)

2. JUO REGENT, OSMAN MAHAMA ……. PETITIONERS/APPELLANTS/ APPELLANTS

VRS

1. ANDANI DASANA
   (SUBSTITUTED BY NYELINBORGU
   NAA YAKUBU ANDANI DASANA)

2. AZUMAH NATOGMA ……. RESPONDENTS/RESPONDENTS/RESPONDENTS

## JUDGMENT

**PWAMANG, JSC**:-

This is an appeal by the Petitioners/Appellants/Appellants from the judgment of the Judicial Committee of the National House of Chiefs, Kumasi, delivered on the

8th October, 2014 which affirmed that of the Judicial Committee of the Northern Regional House of Chiefs. In this judgment the parties shall bear the descriptions they bore in the trial Judicial Committee.

**BACKGROUND.**

There is not much controversy about the events that gave rise to this chieftaincy dispute but the correct provisions of Nanum customary law on ascension to the paramount Skin of Bimbilla in the Northern Region and the lineage of the 1st petitioner are matters in high contention in the case.

Following the death in 1999 of the Paramount Chief of Bimbilla Traditional Area, Na Abarika Atta, a dispute arose between the parties herein as to who was the rightful successor to the throne. The Bimbilla skin rotates between two gates, the Bangyili and Gbugmayili gates. Na Abarika, the late chief was from the Bangyili gate so it was the turn of the Gbugmayilli gate to provide a candidate for enskinment as Bimbilla Na. By the constitutional structure of Nanum each gate or family controls a number of chiefly skins in hierarchical order of authority with the highest skin for Bangyili being Dakpam and that of Gbumagyili being Nakpa. In Nanum the Skin which is higher than these two kingship skins is the Bimbilla paramount Skin, the ultimate in Nanum. A royal from Bangyili who rises from the lower skins controlled by his family up to Dakpam is most likely to occupy the Bimbilla Skin when a vacancy occurs and it is the turn of his family to provide an occupant for the paramount Skin. In same way, a royal of Gbumagyili who rises from skins of lesser authority in his family to the kingship skin of Nakpa is most likely to ascend to the Bimbilla paramount skin if a vacancy occurs and it is the turn of his family to occupy it. But there have been instances in Nanum history where persons have risen to the ultimate Bimbilla paramount Skin without passing through the kingship skins of Dakpam and Nakpa.

As stated above, following the death of the last Bimbilla Na it fell to Gbumagyili gate to present an occupant of the skin and the 1st Petitioner who was the incumbent Nakpa Na and the 1st Defendant who was a royal and also hailed from the Gbugmayili family expressed interest to be nominated and enskinned as Bimbilla Na. When the kingmakers met to consider who would become the next Bimbilla Na, 1st petitioner was nominated by Juo Regent, the 2nd petitioner, who is the head of the kingmakers of the Bimbilla skin. However, the eligibility of 1st petitioner to mount the Skin was challenged by the acting Kpatihi Na, the 2nd defendant, who is a member of the council of kingmakers. He contended that the 1st petitioner was not of the right lineage and did not qualify to be nominated. 2nd defendant supported 1st defendant who was nominated by the elders of Gbumagyili family to become the next Bimbilla Na. A majority of the kingmakers

went along with 2nd defendant in supported of the 1st defendant. The kingmakers were unable to arrive at a consensus and it ended up that both candidates were enskinned on different dates as Bimbilla Nas. According 1st petitioner's evidence-in-chief, it was the Regent of the late Bimbilla Na Abarika who handed all the items related to the Skin of Bimbilla to him but 2nd petitioner said he sent Jillo Na and Jolle Na to perform the enskinment rites on 1st petitioner. 1st defendant was enkinned by 2nd defendant who, according to defendants, is the proper authority under Nanum custom to enskin a Bimbilla Na. Before the enskinment, a chiefly title of Kamkapuya Na was conferred on the 1st defendant because according to the defendants, under Nanum customary law, where a royal who was qualified to be made Bimbilla Na had no previous chiefly title, one would be conferred on him by the elders. It is after the conferment of the chiefly title that he could be enskinned Bimbilla Na. This led to a dispute as to which of the enskinments was valid. The petitioners first initiated some proceedings in the Nanumba Traditional Council in 2003 but those proceedings were quashed by certiorari in the High Court, Tamale on 26th January, 2004 at the instance of the 1st defendant. Thereafter, the petitioners filed the petition that has resulted in this appeal at the Judicial Committee of the Northern Regional House of Chiefs on 10th February 2004 and claimed against the defendants the following reliefs:

i. Declaration that the 1st Petitioner is the Bimbilla Na duly nominated and enskinned in accordance with Nanum custom.

ii. Declaration that the 2nd Petitioner is the sole authority to nominate a candidate for enskinment as Bimbilla Na

iii. Declaration that the purported nomination of the 1st Respondent by the 2nd Respondent and subsequent purported enskinment of the 1st Respondent as Bimbilla Na are nullities.

iv. Declaration that the 2nd Respondent is not a Kingmaker within the Nanum custom and is also not a regent of Kpatihi Na.

At the close of pleadings the following issues were set down for resolution:

i. Whether or not each of the Petitioners had the capacity to sue at the time of this petition.

ii. Whether or not 2nd Petitioner alone has the authority to nominate a candidate to the Bimbilla skin for enskinment.

iii. Whether or not Nakpa is the sole skin by which the Gbugmayili gate ascends to the Bimbilla skin.

iv. Whether or not a person who is not a son or grandson of Bimbilla-Na can become Bimbilla-Na

v. Whether or not the Kpatihi family is the sole family possessed of the regalia for enskinment of Bimbilla-Na

vi. Whether or not the Kpatihi is the sole family to perform enskinment rites to make a candidate Bimbilla-Na

vii. Whether or not the Petitioners are entitled to their reliefs

viii. Whether or not the 1st defendant is qualified to be nominated and enskinned as Bimbilla-Na

ix. Whether or not the 1st defendant is duly nominated and enskinned as Bimbilla Na.

x. Whether or not the 1st defendant occupied any skin customarily recognized by Nanum custom, within the hierarchy of chiefs in Gbugmayili gate to contest for the paramount skin of Nanumba as Bimbilla Na.

xi. Whether or not Nakpa is the only skin gate of the Gbugmayili gate.?

xii. Whether or not Nakpa is a skin gate of the Gbugmayili gate?

xiii. Whether or not the 2nd defendant was at the time when he interfered with the nomination and enskinment processes of the 1st defendant as Bimbilla Na enskinned as regent of Kpatihi.

xiv. Whether or Kampakuya is a gate recognized by Nanumba custom for the purpose of contesting for the paramount skin of Bimbilla.

After a hearing, the Judicial Committee of the Northern Regional House of Chiefs delivered its judgment on 13th March 2012, unanimously dismissing the claims of the petitioners. They held among others that both 1st and 2nd petitioners had no capacities to file the petition. On the paramount issue of whether it was the 1st petitioner or the 1st defendant who was the validly nominated, selected and enskinned Bimbilla Na, the trial judicial committee found in favour of the 1st defendant.

On 16th of March 2012, the petitioners appealed against the judgment of the Judicial Committee of the Northern Regional House of Chiefs to the Judicial Council of the National House of Chiefs but save that the appellate Judicial Committee held that 2nd petitioner had capacity to file the petition, they dismissed the appeal. The petitioners have appealed to this court from the

judgment of the Judicial Committee of the National House of Chiefs on nine grounds as follows;

**THE GROUNDS OF APPEAL:**

a. The Judicial Committee of the National House of Chiefs erred in law and occasioned a grave miscarriage of justice when it relied on customary laws and practices of other areas to justify the validity of the 1st respondent's nomination or selection as the Bimbilla-Na when evidence had been led that 1st petitioner was validly enskinned under the peculiar customary law, tradition and practice of the people of Nanum.

b. The Judicial Committee of the National House of Chiefs erred in law and occasioned a grave miscarriage of justice when it upheld the decision of Judicial Committee of the Northern Regional House of Chiefs that 1st appellant was ineligible or unqualified under Nanum custom because he is a great grandson on the matrilineal side when evidence was led to establish that he was customarily enskinned as chief of Bimbilla in accordance with Nanum custom.

c. The Judicial Committee of the National House of Chiefs erred in law and occasioned a grave miscarriage of justice when they held that the customary nomination and enskinment of 1st appellant as Chief of was undertaken by a minority of the Kingmakers and was in contravention with modern democratic principles and therefore void.

d. That the Judicial Committee of the National House of Chiefs misapplied the customary law of Nanum and occasioned a miscarriage of justice when it held that succession to the Bimbilla Skin by occupants of Nakpa or Dakpam is not automatic but open to competition when there is no evidence that 1st respondent is qualified under Nanum custom to be nominated and enskinned the chief of Bimbilla.

e. That the Judicial Committee of the national House of Chiefs erred in law and occasioned a miscarriage of justice when it upheld the decision of the Judicial Committee of the Northern Regional House of Chiefs that the occupant of Nakpa and or Dakpam is not a prerequisite to be enskinned as chief of Bimbilla when there is evidence that under the rotation system of Bimbilla 1st appellant was duly qualified under Nanum customary law and tradition by virtue of having occupied Nakpa, the most senior gate of the Gbugmayilli gate upon the death of the chief.

f. The Judicial Committee of the National House of Chiefs erred in law and occasioned a miscarriage of justice when it upheld the Judicial Committee of the Northern Regional House Judgment that it is the responsibility of the Gbugmayilli

gate to present a candidate to the Kingmakers when there is evidence that under the custom and tradition of Nanum 1st respondent is not is not qualified.

g. That the Judicial Committee of the National House of Chiefs erred and occasioned a substantial miscarriage of justice when it misconstrued Section 36 (2) of Act 759 to justify the adoption of the proceedings by the Northern Regional House of Chiefs following the occurrence of a vacancy prior to the Judgment of the Judicial committee of the Northern Regional House of Chiefs.

h. That the Judicial Committee of the National House of Chiefs erred and occasioned a miscarriage of justice when it upheld the Judicial Committee of the Northern Regional House of Chief's judgment that 1st appellant is not qualified as Chief of Bimbilla by virtue of being a descendant of the matrilineal family when there is evidence that the said Judicial Committee in a judgment in another suit ruled that the 1st appellant is validly enskinned as chief of Nakpam by virtue of being descendant of the patrilineal family.

i. That the judgment of the Judicial Committee of the National House of Chiefs cannot be supported by the evidence on Record.
Petitioners indicated in their notice of appeal that they would file additional grounds of appeal but none was filed.

**CONSIDERATION OF THE APPEAL**

The petitioners argued all the grounds of appeal. Ground G of the appeal is a point of law which if upheld would dispose of the appeal so we shall commence our consideration of the appeal with that ground.

The petitioners contend that the trial Judicial Committee misconstrued **Section 36(2) of the Chieftaincy Act, 2008 (Act 759)** and thereby committed an error of law which makes their judgment a nullity so there was no judgment to appeal against. The section provides as follows;

**"(2) Where the proceedings of a Judicial Committee have not been completed before the filling of a vacancy, the Judicial Committee as re-constituted after the filling of the vacancy shall adopt the proceedings of the Judicial Committee as previously constituted in the cause or matter in question."**

From the record, one of the panel members of the Judicial Committee of the Northern Regional House of Chiefs was reported to have passed on after the defendants called their last witness on 25th August, 2011. On that day the panel member, the late Kpembe-Wura Alhaji Ibrahim Haruna, participated in the proceedings wherein after the defendants announced the closure of their case the

Committee directed the parties to file their addresses. The committee's next sitting was 8th December, 2011 and in the presence of the parties and their lawyers Wasipe-Wura Mumuni Yakubu II was substituted for the deceased panellist without any objection. By then both counsel had not yet filled their addresses so the Committee set new dates for them to do so. Subsequently, the addresses were filed and judgment delivered. The objection that was taken by the petitioners unsuccessfully before the appellate Judicial Committee which they have repeated before us is that, proceedings in the case were closed when defendants closed their case and since **S. 36(2) of Act 759** talks of adoption of proceedings that had not closed, the trial Judicial Committee had no power to adopt the proceedings in this case. So according to the petitioners, proceedings in a case end with the closure of the defendant's case. In our view, this interpretation of the word "proceedings" in the Act is wrong.

The **Black's Law Dictionary,** 9th edition, page 1324 defines proceedings as *"the regular and orderly progression of a law suit including all acts and events between the time of commencement and entry of judgment".* This, in our view, is the meaning of the word "proceedings" as used in **Section 36(2) of the Chieftaincy Act, 2008 (Act 759).** Consequently, since judgment had not been delivered in the case, the proceedings were not closed and the trial Judicial Committee acted within the law in adopting the proceedings. See also the case of **Republic v Military Tribunal; Ex parte Ofosu Amaah [1976] 2 GLR 5.** Ground G of the appeal is therefore dismissed.

However, before we consider the appeal on the merits, the defendants in their statement of case raised an issue about the want of capacity of the 1st petitioner in respect of the appeal in this court. We are at a loss as to the reason for this point by defendant. The petitioners have not argued any ground of appeal challenging the judgment of the Judicial Committee of the National House of Chiefs which affirmed the holding by the trial Judicial Committee that 1st petitioner had no capacity to bring the petition. In any case, the 2nd petitioner has capacity and even though the 1st petitioner and 1st defendant who are the protagonists in this drama have died, the declaratory reliefs endorsed on the petition are capable of being determined by the court. The usefulness of a final resolution of the matters arising in this case is underscored by the fact that, apart from clarifying Nanum customary law on ascension to the Bimbilla Skin, the status according to Nanum customary law of the 1st petitioner and 1st defendant at the time of their deaths will influence questions of succession to the Bimbilla Skin going forward.

> Now moving to the other grounds of appeal, we notice that they are inter-connected and even the petitioner argued some of them together so we shall do likewise. For ease of analysis we shall consider grounds (a) and (c)

together as they both relate to the correct position of Nanum custom and usage regarding nomination, selection and skinment of Bimbilla Na. Grounds (b), (d), (e) and (h) concern eligibility and qualification of a candidate, especially 1st petitioner, to be enskinned Bimbilla Na and they shall be taken together. The omnibus ground which is (i) will be considered along as we deal with each group of grounds while ground (g) on the qualification of 1st defendant to be nominated for the position of Bimbilla Na will be determined last.

In the case of **Achoro & Anor v Akanfela & Anor [1996-97] SCGLR 209,** Acquah JSC, as he then was, delivering the judgment of the Supreme Court in a chieftaincy appeal from a judgment of the Judicial Committee of the National House of Chiefs affirming that of the then Upper Regional House of Chiefs had this to say, at p. 214 of the Report,:

**"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."**

This appeal is against concurrent findings and it appears from their statement of case that the petitioners accepted the legal burden on them to displace those findings and have therefore made a number of salient arguments and invited the court to overturn the concurrent findings. As an appeal is a rehearing, we are duty bound to comb through the whole record of appeal and satisfy ourselves that the concurrent findings by the two lower Judicial Committees are without clear blunders and errors leading to a miscarriage of justice.

The case of the petitioners on grounds (a) and (c) is that at Nanum customary law, the Juo Na, that is the head of the kingmakers of the Bimbilla skin, is the *alfa and omega* in matters of nomination, selection and enskinment of Bimbilla Na, and that in their case he nominated, selected and enskinned the 1st appellant so there can be no valid challenge of his status as Bimbilla Na. The Juo Regent himself in his testimony said that he is everything when it comes to occupation of the paramount Skin of Bimbilla. The defendants countered that there was no such customary law in Nanum that made the Juo Na the sole determiner of who becomes Bimbilla Na. We shall first consider the claim by petitioners that it is the Juo Na who has authority to nominate a candidate for enskinment as Bimbilla Na. In this regard, apart from the evidence that was led, we need to examine two documents that were referred to by

both the trial and appellate Judicial Committees and commented upon by the parties. One was the minutes of the 1983 proceedings of the Bimbilla Traditional Council held in connection with the selection of Bimbilla Na Abarika whose passing led to this litigation. The other document was a research article by Peter Shainik published in the **Journal of Legal Pluralism** in 1987. Though these two document were considered by the lower Judicial Committees, the defendants in their statement of case drew attention to the fact that they were not tendered in evidence. It was not necessary to have those documents tendered in evidence before the Judicial Committee could use them in the determination of the case. It is provided by **Section 31(3)(b) of Act 759** as follows;

**"A judicial committee……may take cognisance of matters which are so notorious or so clearly established that evidence of their existence is not necessary."**

There is no doubt about the existence of the two documents so the Judicial Committees were right in taking cognisance of them. The only condition is that, before a Judicial Committee takes cognisance of a matter not raised in pleadings or tendered in evidence, it must make it known to the parties and afford them opportunity to comment on it as has been done in this case.

In the evidence of 2nd petitioner and PW2 they testified to the effect that candidates wishing to occupy a vacant Bimbilla Skin are required to approach the Juo Na to be considered for nomination. They gave the impression that the family whose turn it was to occupy the skin had no role at all to play in the nomination. The defendants testified to the contrary and insisted that it is the family whose turn it was to occupy the skin which nominates the candidate for selection by the kingmakers whose head is the Juo Na. Both lower Judicial Committees found in favour of the defendants but in this appeal the petitioners contend that the Judicial Committees applied rules of customary law found to exist in some other communities but Nanum has a peculiar custom that vested the powers of nomination, selection and enskinment in the Juo Na. We do not think Nanum custom and usage is different because if we take guidance from Nanum customary practice as exhibited in the 1983 proceedings, we find a situation where the Regent of Bimbilla made a request to the newly selected Bimbilla Na at the time to enskin him as Nakpa Na. The Bimbilla Na who, it is common ground between the parties has sole authority to decide who becomes Nakpa Na, nevertheless referred the request to the Regent's family for them to deliberate upon before approaching him to consider the request. We shall reproduce the 1983 proceedings at length for their effect;

*" At this point, the Juo-Na reminded members that due to his old age he was likely to forget some aspects of the customs. He therefore asked members to remind him*

*of mistakes. But the Jilo-Na replied that there were no mistakes, and that the Regents request was in accordance with the laid down custom, and the new Paramount Chief should try to settle it amicably. The Langri-Na at the juncture, supported the Kpatihi-Na's suggestion that the new Bimbilla-Na be consulted on the matter. The Juo-Na approved the Kpatihis-Na's suggestion and asked the Langiri-Na, Jilo-Na, Kpatihi-Na and the Ag. Registrar to see the new Bimbilla-Na for his comments on the Regent's request. The new Bimbilla-Na was met at his lodging place in chambers and the matter was put before him. The Dakpa-Na now Bimbilla-Na also confirmed the Regent's request but remarked that he Regent has got uncles who are older that he is, and it might be because of the uncles (Karaga-Lana, Jua-Na and Suga-Na) that he was asking for the Nakpa skins. He therefore referred the issue to the Gbugmayili gate so that they could settle it amongst the members of the family. The Kpatihi-Na supported the new Bimbilla-Na's stand and asked the Langri-Na, Jilo-Na and himself to go back and meet the Regent and his uncles. The new Bimbilla-Na advised that they followed the gate system, not only from the Divisional status but from the lesser skins in order of seniority. The Langiri-Na then asked for permission for members to meet the Regent and his uncles. Members met the Regent and his uncles – Jua-Na, Musah Abdulai, and Suga-Na, Azim Abudulai. The Langiri-Na delivered the message to the family and the Jua-Na after consulting the rest accepted their suggestion and approved the Bimbilla-Na's message."*

*The Regent and his uncles message was delivered, the Juo-Na reminded members that, that was why he said that it was not their duty to select other chiefs to the Paramount chief. He thanked members for their fair play in the issue and that the decision from the Gbugmayilli gate will help to bring peace to Nanum."*

So if the Bimbilla Na who is the overlord with sole authority to select a chief would defer to the applicant's family, Gbumagyili, to approve the request of the Regent to be enskinned Nakpa Na, then in our opinion the petitioners could not be right in saying that Nanum custom and usage is peculiar and it allows the Juo Na to nominate a candidate from the family whose turn it was to occupy the Bimbilla Skin without recourse to the elders of that family. We are therefore unable to disturb the concurrent findings of the two lower Judicial Committees that it is the family which nominates a candidate for selection to be enskinned Bimbilla Na.

The next point is the selection of the nominated candidate under Nanum custom which the petitioners again claimed the kingmakers have no say and it is the Juo Na alone who selects. On this matter the petitioners evidence was that all the other kingmakers are messengers of the Juo Na. They initially even denied that the number of kingmakers of the Bimbilla paramount Skin are nine but after intense cross examination it was establish that there are nine kingmakers. Though the Juo Na is head of the council of kingmakers, the evidence and documents that were

considered by the Judicial Committees do not support petitioner's claim of a one man show existing at Nanum customary law. In the 1983 proceedings of the kingmakers, though it was the Juo Na who proposed the candidature of Dakpam Na to the kingmakers, the record states that the Kpatihi Na and Langiri-Na supported the candidate and the rest of the members unanimously endorsed him. In our understanding, that record, part of which has been reproduced above, portrays a consideration by the members of the council of kingmakers of the candidature of the person presented by the Juo Na and not a dictation by him to the other kingmakers. Therefore, the learning from that record is that the Juo Na presides at the meeting of the kingmakers but he is not everything in the selection process and that the other members of the council of kingmakers have a say as to who is finally selected.

The third aspect of making someone a Bimbilla Na is the act of eskinment. Here too, the parties took different positions; petitioners maintaining their case that that the Juo Na is everything and he determines which customary official does the enkinment on his behalf. The defendants position was that it is the Kpatihi Na who is the official with authority to enskin a Bimbilla Na. On this issue, petitioners witness PW1, who is from Kpatihi family, under cross examination said that it is Kpatihi Na who enskins Bimbilla Na but the Regalia used in the enskinment is kept by Juo Na and he hands it to Kpatihi Na for the enskinment. This is what transpired during the cross examination;

*Q. From what you are saying Juo Na nominates Bimbilla Na and Kpatihi Na performs the enskinment rites, is that so*

*A. It is true that Juo Na nominates and the Regalia is always with Juo Na who provides it to Kpatihi who uses it during the enskinment rites.*

However, the testimonies of the defendants was to the effect that Kpatihi Na is the custodian of the regalia used to enskin Bimbilla Na and that Juo Na is not even permitted under Nanum custom to sight that regalia. 2nd defendant, who is the acting Kpatihi Na, stated in his evidence that according to Nanum customary practice, after the council of kingmakers have selected the candidate to become Bimbilla Na, the Juo Na announces the name of the candidate and sends to inform him. After that announcement the Juo Na departs Bimbilla to his village and the rites of enskinment are done by the Kpatihi Na who is the custodian of the regalia. DW3 who is a former Juo Regent in his evidence stated categorically that while he acted as Juo Regent no regalia of Bimbilla Na was handed to him and he did not hand any to his successor. DW2, chief of Wulensi also testified that the regalia of Bimbilla Na is kept by the Kpatihi Na. Petitioners' witness PW2, the chief drum beater of Bimbilla Na, testified that the regalia of Bimbila Na is left with the Juo Na but he also said something interesting in his evidence in chief. Hear him; *"The origin of Kpatihi in the*

*Nanum system of chiefship stems from the fact that the 1st Bimbilla Na was a warrior so there are people who follow him to wage war. Kpatihi is one of such people who follow the Bimbilla Na during war to perform duties such as carrying umbrellas, cushions, etc".* One wonders what other accoutrements of Bimbilla Na were given to the Kpatihi Na to carry when the chief was waging wars? But this is how Peter Schainik described the Kpatihi Na at page 311 of his article under reference;

*" The Kpatihi Naa has a very special position. My information indicates that his function of 'skinner' – a ceremonialist who enskins chiefs on behalf of the Bimbilla Naa – was only recently introduced into Nanun, probably under the influence of Dagbon. But the Kpatihi family is also believed to have come with Nmantambu in his retinue. At any rate the present Kpatihi Naa Ponadooo, enskinned by members of his own family (the only dignitaries to enskin themselves) on 4th January 1983, had more influence on the procedures of the Bimbilla Naa's funeral than any of the electors."*

This writing confirms the Kpatihi Na as a key kingmaker and a substantive customary office holder who plays a distinctive role of investiture in Nanum custom and usage unlike the manner the petitioners sought to portray him as someone who performs duties at the pleasure of the Juo Na. In the circumstances, we find no justification to reverse the findings of the two lower judicial committees that it is the Kpatihi Na who has custody of Bimbilla Na's regalia and he enskins Bimbilla Na and not the Juo Na.

The sum effect of the above analysis is that, in our opinion the two lower Judicial Committees were right in rejecting the case of petitioners that 1st petitioner was validly nominated, selected and enskinned Bimbilla Na in accordance with Nanum custom and usage.

In respect of grounds (b), (d), (e) and (h), the petitioners contended in one vein that the documentary records and publication on Nanum custom and usage that the two lower Judicial Committees were referred to and which they considered in their judgment are to the effect that when a vacancy occurs on the Bimbilla paramount Skin and it is the turn of Gbugmayili to occupy it, the incumbent occupant of Nakpa Skin had automatic right to ascend to it. Where it is the turn of Bangyili, the incumbent occupant of the Dakpam Skin had automatic right of ascension. However, in another vein they admitted the evidence led by the defendants of instances where incumbent occupants of the two kingship skins were bypassed in the selection of candidates to occupy the paramount Bimbilla Skin. The petitioners say those instances were special circumstances which constituted exceptions to the rule as far as Nanum customary law on ascension to the Bimbilla Skin is concerned. The

documents relied on by the petitioners are the 1983 record of the proceedings of the Bimbilla Traditional Council for the selection of Na Abarika, and the article by Peter Shainik published in the **Journal of Legal Pluralism** in 1987 both of which we have already referred to. Even a casual reading of the 1983 proceedings would show that they covered a situation where there was unanimity among the kingmakers on the nomination and selection of Na Abarika who was the incumbent Dakpam Na. No question of his lineage and qualification arose so that record cannot offer specific direction as to what the custom is where such issues are raised against an incumbent of a kingship skin as we have in this case. So, for answers as to what the customary law provides where the lineage and qualification of an incumbent Nakpa Na or Dakpam Na are raised, we have to look elsewhere beyond the 1983 record.

In their statement of case the petitioners relied on Peter Shainik's article in support of their case of automatic selection of Nakpa Na but as the defendants have submitted in their statement of case, Peter Shainik never stated that his research revelled a rule of automatic ascension to the Bimbilla Skin by occupants of the kingship Skins. The part of the article relied upon by the petitioners appearing at page 312 of the journal states as follows;

*"Competition for the paramount naam of Bimbilla has become so reglemented that* ***the most likely person*** *to win is the incumbent of the naam of Nakpaa, in the case of Gbugmayili,and of the naam of Dakpam for Banyili. The chieftaincies of Nakpaa and Dakpam are thus 'gates' to the naam of Bimbilla. For example, Bimbilla Naa Dasana (1959-1981) from Gbugmayili was the Nakpaa Naa before he became the Bimbilla Naa. The present Bimbilla Naa Abarika (enskinned 1983) from Banyili was the Dakpam Naa before he ascended to Bimbilla.* ***But this has not always been the case."*** *(emphasis supplied).*

The writer used the words "most likely" and that cannot be stretched to mean "automatic". In fact, the writer was quick to add a proviso that it has not always been the case in Nanum history.

This text therefore corroborates the evidence of the defendants of instances of bypassing an incumbent Nakpa Na or Dakpam Na which for us means that whereas an incumbent Nakpa Na or Dakpam Na, depending on which Gate's turn it was to occupy a vacant Bimbilla Skin, has a high probability of being made the Bimbilla Na, he does not have an automatic right to the skin. The evidence of 2nd petitioner, the Juo Regent himself was that; *"After the death of Bimbilla Naa Abarika, Nakpa Naa, Bakpaba Naa, Jua Naa showed interest to become Bimbilla Naa. They are all from Gbumagyili."* If ascension to the Bimbilla Skin were automatic for Nakpa Na, then the other contestants would have known and not expressed interest. From the evidence

it appears to us that where there are circumstances considered justifiable, the kingmakers may bypass an incumbent Nakpa Na or Dakpam Na as the case may be.

In answer to the issue of justifiable circumstances, the petitioners have argued that in the case of 1st petitioner there were no special circumstances to justify bypassing him but the defendants say there were. They contended that 1st petitioner was not of the right lineage he being a maternal great grandson. And that, according to Nanum custom and usage, great grandsons even if they are of paternal lineage do not qualified to ascend the Bimbilla Skin for it is only sons and grandsons of a Bimbilla Na that quailify for nomination as Binbilla Na. The petitioners have countered the issue of lineage and qualification of 1st petitioner on two grounds. Firstly, they submitted that on the basis of the principle of estoppel stated in **Section 26 of the Evidence Act, 1975 (NRCD 323),** the Gbumagyili family which raised the issue of 1st petitioner's non-eligibility are prevented from relying on it to disqualify him. Secondly, the petitioners submitted that even if the family were not estopped, 1st petitioner adduced evidence to prove that he was a paternal great grandson and no Nanum customary law rule was established during the trial that disqualifies a great grandson from occupying the paramount Bimbilla Skin.

The estoppel argument as we understand it is that when 1st petitioner was being enskinned Nakpa Na some 14 years earlier, no one in Gbugmayili challenged his eligibility on grounds of being a great grandson and a maternal one at that. That since becoming a Nakpa Na implied that he was automatically qualified to become Bimbilla Na, by not challenging 1st petitioner, they made him to believe that he was qualified to be made Bimbilla Na so his eligibility by lineage and qualification are presumed to be true. The Section provides as follows;

**"26. Estoppel by own statement or conduct**

**Except as otherwise provided by law, including a rule of equity, when a party has, by that party's own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon that belief, the truth of the thing shall be conclusively presumed against that party or the successors in interest of that party in proceedings between**

**(a) that party or the successors in interest of that party, and**

**(b) the relying person or successors in interest of that person."**

In the first place, the section says "except as otherwise provided by law," meaning the estoppel does not apply in all cases. It ought to be noted that it is the **Constitution of Ghana, 1992**, **Article 277** thereof that requires that for someone to become a chief he must hail from the appropriate family and lineage. Being a

requirement of the Constitution it cannot be defeated by the principles of estoppel. This was the decision of this court in the case of **Attorney-General v Faroe Atlantic Co Ltd [2005-2006] SCGLR 271.** Consequently, the petitioner cannot say that he is relived from proving his lineage because of principles of estoppel.

In any event, **Section 26 of NRCD 323** requires that the conduct relied upon to found the estoppel should amount to "intentionally and deliberately caused or permitted another to believe a thing to be true.." It has not been proved by the petitioners that at the time 1st petitioner was about to be made Nakpa Na, Gbugmayili family intentionally and deliberately caused or permitted him to belief that he was a paternal grandson and was eligible to mount the Bimbilla Skin. At that time there was no issue of ascending to the Bimbilla Skin so the argument of petitioners on **Section 26 of NRCD 323** is far fetched and was rightly dismissed by the appellate Judicial Committee. See the case of **In Re Suhyen Stool; Wiredu & Obenewaa v Agyei [2005-2006] SCGLR 424.**

Petitioners also attempted in this last appeal to rely on estoppel per *rem judicatem* on the basis of a judgment delivered in 1990 by the Judicial Committee of the Northern Regional House of Chiefs in a chieftaincy cause involving a challenge to the enskinment of 1st petitioner as Nakpa Na. As we have already explained, all estoppels are inapplicable with respect to the lineage of 1st petitioner. Besides, where a party intends to rely on estoppel per *rem judicatem* as part of his case he is required by the rules of procedure and judicial decisions to pleaded it and to tender the pleadings, proceedings and judgment in evidence. That way the opponent will be able to counter any claims that he is prevented from leading evidence contrary to what was held in the judgment. In this case, the judgment was not pleaded and was not tendered in evidence at the trial. No reference was made to it in the judgments of the two lower Judicial Committees and as to how it found itself into the record of appeal before us, only the Registrar of the Judicial Committee of the National House of Chiefs can answer.

That notwithstanding, the petitioner claimed that by **Article 11 of the Constitution, 1992,** decisions of courts are part of the laws of Ghana and can be relied upon in judicial proceedings. **Article 11 Clauses (1) and (2)** provide as follows;

**" 1) The laws of Ghana shall comprise-**

**(a) this Constitution;**

**(b) enactments made by or under the authority of the Parliament established by this Constitution;**

**(c) any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitution.**

**(d) the existing law; and**

**(e) the common law.**

**(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."***

The decision sought to be referred to in this case is not a determination of a question of customary law by a superior court. The Judicial Committee of the Northern Regional House of Chiefs is an inferior tribunal so its decisions on customary law do not automatically become part of the customary law of Ghana. What is more, the part of the 1990 decision of the Judicial Committee of the Northern Regional House of Chiefs sought to be relied on by the petitioners was not in respect of eligibility of 1st petitioner to ascend to the Bimbilla paramount Skin which is the issue we are concerned with in this case. We accordingly set aside petitioners references to the 1990 judgment of the Judicial Committee of the Northern Regional House of Chiefs and proceed to examine the evidence from both sides in respect of the lineage and qualification of 1st petitioner to occupy the Bimbilla paramount Skin.

The petitioners contended that they led evidence to prove that 1st petitioner was a paternal great grandson and that the two lower Judicial Committees erred in finding against them on that issue. In their statement of case they referred only to the following exchange under cross examination of 1st petitioner as the evidence of proof of his lineage;

*Q. Your only claim to membership of Gbumagyili is through the mother of Lepu Na Dawuni, Nabi Kasua.*

*A. Not true, it is because my grandfather Nabiyon Dramani and my grandmother Kasua were all from Gbumagyili.*

*Q. Nabiyon Dramani never married Nabiyon Kasua*

*A. Both of them married each other.*

However, in affirming the finding of the trial Judicial Committee that 1st petitioner related to Gbumagyili only through his matrilineal line, the appellate Judicial Committee relied on and considered the testimony of 1st defendant which was corroborated by the evidence of 2nd defendant and DW4, whilst the 1st petitioner's terse testimony on this very material issue was not supported in anyway. In the face

of the direct challenge of 1st petitioner's paternal connection to Gbumagyili family which is key to ascending a paternal Skin, 1st petitioner ought to have done more than rely on his testimony alone. Petitioner has argued that corroboration in this case has not been made mandatory by the law. While that may be true, a tribunal of facts in making findings has to weigh the evidence of both parties and where a party's case is capable of corroboration but he chooses to rely on his say so and does not call evidence in support of his testimony, he cannot, in the absence of compelling reasons, blame the trial tribunal if it finds against him on the ground that it believed the corroborated case of his opponent. Since there was evidence upon which the two lower Judicial Committees made their concurrent findings in favour of defendants we are unable, in the absence of compelling reasons, to interfere with those concurrent finding that 1st petitioner related to Gbumagyili only through his matrilineal line and not his paternal lineage.

With regard to whether paternal great grandsons are qualified to mount the Bimbilla paramount Skin or not, petitioners said that they can. It was the 1st petitioner and PW2 who stated in their evidence that under Nanum custom and usage great grandsons qualify to ascend the Bimbilla Skin but under cross examination they were challenged and asked to provide instances in Nanum history when a great grandson became Bimbilla Na. They were not able to mention even one instance. The case of the defendants on this issue was supported by the evidence of 1st and 2nd defendants and that of DW4. The trial Judicial Committee found as a rule of Nanum customary law that great grandsons of a Bimbilla Na do not qualify to ascend the Bimbilla paramount Skin and that only paternal sons and grandsons of a Bimbilla Na qualify. This finding of Nanum customary law was affirmed by the Judicial Committee of the National House of Chiefs. We have not been given any justifiable grounds to disturb those concurrent findings.

We finally deal with ground (g) of the appeal where the petitioner is challenging the finding of the two lower Judicial Committees that the 1st defendant was qualified under the custom and usage of Nanum to be nominated by Gbumagyili family for selection as Bimbilla Na. One leg of petitioner's argument on this ground is that 1st defendant was not incumbent Nakpa Na so he was not qualified to mount the Bimbilla Skin on behalf of Gbumagyili gate. This argument cannot stand because we have already endorsed the finding of the two lower Judicial Committees that a royal did not necessarily have to be a Nakpa Na or Dakpam Na to qualify to become Bimbilla Na. Another leg of their case on this ground is that under Nanum custom and tradition a non title holder could not occupy the Bimbilla Skin and though in the past princes could be given titles in order to qualify them to occupy vacant skins in Nanum, the evidence adduced showed that it was done only in relation to lesser skins and not the paramount Bimbilla Skin. Finally on this ground petitioner stated

that the title Kamkapuya Na that was conferred on 1st defendant is found only in Dagbon and does not exist in Nanum. This is how Nananom of the Judicial Committee of the National House of Chiefs answered the above issues raised by the petitioners;

> *""The answers given by the 1st Appellant, particularly, on the fact that certain titles did not exist in Nanum but could be* ***conferred on a Prince,*** *and could even be borrowed from Dagbon corroborates the evidence of the Respondents on this issue. The evidence of the Respondents and other evidence on record tend to support the finding of the committee that titles like "Vo-Na" and Kampakuya are titles that could be conferred on Princes in the Nanum area. There was also sufficient evidence to establish that some of those who occupied Bimbilla skin did not previously occupy lesser skins before their enskinment. And it was on this category of candidates that such titles were conferred before being enskinned as Bimbilla Na."*

We have reviewed the evidence on this issue and agree with the conclusion reached by Nananom that at Nanum customary law it is permissible to confer the kingship title Kamkapuya Na on a prince in order for him to ascend to the Bimbilla Skin. Even if it were true that the practice in the past was limited to lesser skins as claimed by the petitioners, it would still be permissible to apply it to the paramount Bimbilla Skin because as was said by Date-Bah JSC in the chieftaincy appeal case of **B.K. Adama (Subt by) Issah Bukari v Yakubu Seidu [2005-2006] SCGLR 1088, at page 1100;**

**"..it was nevertheless legitimate for the National House of Chiefs to develop Wala customary law further through interpretation. Interstitial gap-filling through constructive and purposive interpretation of customary practice is a legitimate part of their judicial function and we are not willing to reverse their decision on this issue. Indeed, this Court should positively endorse this decision in the interest of certainty."**

We have examined the evidence and are satisfied that the finding by the Judicial Committee of the Northern Regional House of Chiefs which was affirmed by the Judicial Committee of the National House of Chiefs to the effect that the 1st defendant hailed from the appropriate family and lineage and was validly nominated, selected and enskinned Bimbilla Na in accordance with Nanum custom and usage is supported by the evidence and the documents on the record. We according endorse that finding.

**CONCLUSION.**

In conclusion, the petitioners have not succeeded in convincing us that the Judicial Committee of the National House of Chiefs committed any blunders or errors in their evaluation of the evidence or application of the law so as to warrant a reversal of their judgment. We find no merit in this appeal and same is dismissed in its entirety.

**G. PWAMANG**
**(JUSTICE OF THE SUPREME COURT)**

**ANSAH, JSC:-**

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

**J. ANSAH**
**(JUSTICE OF THE SUPREME COURT)**

**YEBOAH, JSC:-**

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

**ANIN YEBOAH**
**(JUSTICE OF THE SUPREME COURT)**

**BAFFOE-BONNIE, JSC:-**

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

**P. BAFFOE-BONNIE**
**(JUSTICE OF THE SUPREME COURT)**

**APPAU, JSC:-**

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

**Y.APPAU**
**(JUSTICE OF THE SUPREME COURT)**

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