IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2017

CORAM: ATUGUBA, JSC (PRESIDING)
BAFFOE-BONNIE, JSC
BENIN, JSC
APPAU, JSC
PWAMANG, JSC

CHIEFTAINCY APPEAL
NO. J2/02/2017
14TH DECEMBER, 2017

1. NANA OFORI APPIAH
(KRONTIHENE OF BEREKUM TRADITIONAL AREA &
ACTING PRESIDENT OF THE BEREKUM TRADITIONAL COUNCIL)

2. NANA ADU GYAMFI KUMANIN I
(AKWAMUHENE BEREKUM AREA, BEREKUM)

3. NANA OFORI KWABENA
(TWAFOHENE OF BEREKUM TRADITIONAL AREA)

4. NANA OKOFO DARTEY
(GYASEHENE OF BEREKUM TRADITIONAL AREA)

5. NANA KOFI YEBOAH ABABIO II
(ANKOBEAHENE OF BEREKUM TRADITIONAL AREA) ……. PETITIONERS/APPELLANTS/
CROSS-RESPONDENTS/APPELLANTS

VRS

1. NANA AKUA AMEAHENE
(QUEENMOTHER OF BEREKUM TRADITIONAL AREA)

2. NANA OPPONG BASAWURUKU II
(ADONTEHENE OF BEREKUM TRADITIONAL AREA)

3. NANA GYAN GYAU
(ATIPIMHENE OF BEREKUM TRADITIONAL AREA)

4. DR. LEO OFORI
(ROYAL OF THE KORASO FAMILY OF BEREKUM TRADITIONAL AREA)

5. NANA OWUSU EFFAH
(MAWEREHENE OF BEREKUM TRADITIONAL AREA) …… RESPONDENTS/RESPONDENTS
CROSS-APPELLANTS/RESPONDENTS

JUDGMENT

APPAU, JSC:-

This is an appeal against the decision of the Judicial Committee of the National House of Chiefs. The Appellants who are the Krontihene and Gyasehene of the Berekum Traditional Area were the 1st and 4th Petitioners respectively in the trial judicial committee of the Brong-Ahafo Regional House of Chiefs. They would be referred to simply as appellants in this judgment. The respondents, on the other hand, were the 1st, 4th and 5th respondents to the petition filed by the appellants and three others before the trial judicial committee. The other three petitioners; i.e. 2nd, 3rd and 5th who were the Akwamuhene, Twafohene and Ankobeahene respectively of Berekum Traditional Area died in the cause of the action before the matter got to this Court. They were never substituted so they are not part of this appeal. The respondents also numbered five (5) at the trial stage. However, two of them; i.e. the 2nd and 3rd died before the matter came on appeal before us. They were also not substituted so they are not part of this appeal.

The appeal raises two fundamental issues. These are:

1. Whether or not the two lower judicial committees of the Brong-Ahafo Regional House of Chiefs and the National House of Chiefs erred in holding that there is only one (1) royal family of the Omanhene Stool of Berekum; i.e. the Koraso Royal Family, and
2. Whether or not the 4th respondent was properly nominated, elected, enstooled or installed as the Omanhene of Berekum Traditional area.

The facts that gave birth to the petition are that the 4th respondent Dr. Leo Ofori of the Koraso Royal Family of Berekum was enstooled as the Omanhene of Berekum Traditional Area in the Brong-Ahafo Region, having been nominated by the 1st respondent Nana Akua Ameahene (Queen mother of Berekum) as such. The appellants and the deceased petitioners objected to the installation of the 4th

respondent on the ground that same did not conform to the custom of the Berekum Traditional Area. They subsequently filed a petition against the respondents at the Brong-Ahafo Regional House of Chiefs praying for the following reliefs:

(i) a declaration that the nomination and instalment of the 4th respondent as Omanhene of Berekum was against custom, practice and usage and therefore unlawful and must be declared as null and void and of no customary effect;

(ii) a declaration that it is the prerogative and customary duty of the kingmakers to elect a properly-nominated candidate and have him installed;

(iii) an order to compel the 1st respondent to adhere to the proper customary procedure for the nomination, election and installation of an Omanhene;

(iv) an order restraining the 1st, 2nd, 3rd and 5th respondents from recognising and holding out the 4th respondent as the Omanhene of Berekum Traditional Area and;

(v) an order restraining the 4th respondent from holding himself out as the Omanhene of Berekum Traditional Area.

The case of the appellants simply was that there were four (4) families or gates that constituted the Berekum Royal Family. These gates they mentioned as: KORASO; ABONTEMA; BABIANIHA; and PAPAASE. In the nomination of a candidate to fill the vacant stool, the queen mother was under an obligation to consult all the four gates or families. In the case of the 4th respondent, however, she did not do so. She consulted only one of the gates; i.e. the Koraso Royal Family or gate and that was a breach of the custom, thus this litigation.

The respondents on the other hand contended in their response that there was only one Royal Family in Berekum and that was the Koraso Royal Family, which originated from Asokore-Ashanti. The nomination of the 4th respondent who is from the Koraso Royal Family by the 1st respondent and his installation or enstoolment by the kingmakers as the Omanhene was therefore proper as it conformed to the custom, usages and practice of the Berekum Traditional Area. Their further response was that all the three remaining families mentioned; i.e. ABONTEMA, BABIANIHA

and PAPAASE were not gates of the Royal Family as such. Rather, they constituted the maternal families of children of the Stool; i.e. the children of male occupants of the Stool who, by custom, do not ascend the Stool. However, due to the absence of males within the Royal family to ascend the Stool after the demise of the 2nd occupant Nana Kyere Diabour, one Kwaku Diawuo who was the first son of the first occupant of the Stool Nana Amankona Diawuo, was made to occupy the Stool as a caretaker chief to assist the aged queen mother who was both the queen mother and the Chief, to administer the traditional area. On the death of the queen mother some few years after, their son who was on the Stool managed to enstool his sister as the queen mother. From that time, the children monopolised the Stool until 1941 when the Royal Family petitioned the Asantehene for the return of the Stool to its proper place. The Asantehene went into the matter and found that the only Royal family of the Berekum Omanhene Stool was the Koraso Royal Family from Asokore-Ashanti so he ordered that the Stool should return to its proper place; i.e. the Koraso Royal Family. That settlement led to the installation of the 1st respondent, who is from the Koraso Royal Family, as the queen mother in 1974. The respondents therefore denied the claim of the petitioners. Whilst the appellants agreed with the respondents that there was once arbitration before the Asantehene's court somewhere in 1941 involving the royal stool matters of Berekum, they differed as to what actually transpired before that court.

The Judicial Committee of the Brong-Ahafo Regional House of Chiefs, after hearing from both parties, dismissed the petitioners' petition. The Committee made very positive findings. These were:

- ***(i)*** *the only Royal Family of the Berekum Paramount Stool was the Koraso Royal Family from Asokore – Ashanti and that the remaining three families mentioned by the petitioners, namely; Abontema, Babianiha and Papaase, were indeed sons or children of the Koraso Royal House;*
- ***(ii)*** *the 4th respondent hailed from the Koraso Royal House or family. He was therefore properly nominated, elected and installed as the Omanhene of Berekum.*

(iii) *the three other families who are children of the male occupants of the Stool managed to ascend the Stool for generations when their fathers had no heirs to ascend the Stool.*

After making these positive findings, the Committee went on further to make a consequential order. It ordered that since the children of the Koraso Royal family (i.e. the Abontema, Bababianiha and Papaase families) were the ones who preserved the Stool for their fathers for generations when they were short of heirs, the stool should be made to rotate between the main Koraso Royal House as one unit or gate on the one hand and then all the three other families; i.e. Abontema, Babianiha and Papaase put together as another unit or gate on the other hand. The petitioners appealed against the decision of the Judicial Committee of the Brong-Ahafo Regional House of Chiefs to the Judicial Committee of the National House of Chiefs whilst the respondents also cross-appealed against that part of the decision that tended to introduce a rotational system of inheritance within the Berekum Paramountcy when that system was unknown and contrary to the custom, practice and usage of the Berekum Traditional Area.

The petitioners' grounds of appeal as contained in their notice of appeal to the National House of Chiefs were:

a. ***The Judicial Committee of the B/A Regional House of Chiefs erred in law by holding that there is only one Royal Family (i.e. the Koraso Royal Family) but not four royal families under the Berekum Paramount Stool;***
b. ***The Judicial Committee of the B/A Regional House of Chiefs erred in law by holding that the 4th respondent was validly nominated, elected and installed as paramount chief of Berekum Traditional Area and;***
c. ***The judgment was against the weight of evidence.***

The respondents' cross-appeal contained only one ground of appeal. This ground was that:

"The Judicial Committee of the B/A Regional House of Chiefs erred when after arriving at the right finding and conclusion that the Asokore Koraso Royal Family of Berekum was the only Royal Family of Berekum (and hence the rightful owners of the Berekum Paramount Stool), it wrongly went ahead to direct that henceforth when the Berekum Omanhene Stool becomes vacant, the said Stool should rotate between the said Royal Family on the one hand and the three non-royal families namely; Abontema, Papaase and Baabianiha together as one unit, on the other hand; a decision which has resulted in a miscarriage of justice to the Asokore Koraso Royal Family of Berekum and should therefore be set aside, and/or reversed by an order of the Honourable Judicial Committee of the National House of Chiefs"

From their petition before the Brong-Ahafo Regional House of Chiefs, it was not the case of the appellants that the Omanhene Stool be made to rotate either among the four families they mentioned as constituting the Berekum Royal Family or between the Koraso family on the one hand and the other three families as one gate on the other hand as the trial judicial committee ordered. Their claim was that the three families, namely; Abontema, Papaase and Babianiha belonged to the Royal family just as Koraso, so the 1st respondent who is the queen mother should have consulted these families before nominating the 4th appellant as the Omanhene. We want to emphasize that none of the original petitioners (including the appellants) belonged to any of these three families, namely; Abontema, Papaase and Babianiha, which they claimed formed part of the Royal family. By their positions, they were kingmakers just like the 1st, 2nd, 3rd and 5th respondents.

The Judicial Committee of the National House of Chiefs, in a unanimous decision, dismissed the petitioners' appeal and allowed the respondents' cross-appeal. It affirmed the findings of the trial judicial committee that the only Royal family, from which the Omanhene of Berekum Traditional Area could be chosen, according to the customs, practice and usage of the Berekum people, was the Asokore/Koraso Royal House or Family so the 4th respondent's nomination and installation as Omanhene of Berekum Traditional Area was proper. Before coming to this conclusion among

others, the 1st appellate tribunal recognised three issues that emerged for its determination. These could be found at pages 505-506 of the record of appeal (RoA) and they are as follows:

a. *Whether or not the findings of fact by the Judicial Committee of the Brong-Ahafo Regional House of Chiefs were supported by the evidence on record;*
b. *Whether or not the Judicial Committee of the National House of Chiefs could interfere and substitute its own findings for that of the trial Judicial Committee;*
c. *Whether or not the decision by the trial Judicial Committee that* ***"...henceforth when the Berekum Omanhene Stool becomes vacant, the Asokore Koraso Family on one hand and the Abontema, Papaase and Baabianiha families together as one unit on the other hand shall ascend and occupy the Stool on rotational basis and whoever is the Queenmother at any point in time shall nominate a candidate accordingly..."*** *thus making the Berekum Paramount Stool rotatory, was erroneous.*

After reminding itself of the position of this Court on how appellate courts must deal with findings of fact made by trial courts, with reference to the decisions in the cases of **AMOAH v LOKKO & ALFRED QUARTEY [2011] 1 SCGLR 505** and **AGYENIM BOATENG v OFORI & YEBOAH [2010] SCGLR 861**, the first appellate court dismissed the petitioners' appeal in the following words:

"We have meticulously gone through the Record of Appeal as well as the respective arguments by both counsel for the appellants and respondents per their written submissions filed in this appeal and we find that the findings of fact made by the trial Judicial Committee of the Brong-Ahafo Regional House of Chiefs are supported by the evidence on record.

In fact, the evidence of DW1 and DW2 are very instructive as they corroborate the evidence of the 3rd respondent as to the origin of the Berekum Stool and the fact that there is only one royal family at Berekum which is the Koraso/Asokore Royal Family of Berekum and to which the 1st and 4th respondents belong.

It is equally important to note that the said findings by the trial Judicial Committee are founded on the evidence adduced during the trial when the parties and their respective witnesses appeared before Nananom at the Judicial Committee below and who had the opportunity to see, hear and assess the said parties and witnesses that testified.

With this position and supported by the authorities as cited above, we have no reason to interfere with the said findings of fact by the Judicial Committee below and will therefore not disturb same. This to a greater extent resolves issues (a) and (b) hereinabove raised.

In respect of issue (c), the trial Judicial Committee rightly found as borne out by the record that members of the Abontema, Papaase and Baabianiha families are children of the Berekum Paramount Stool and hence do not form an integral part of the Asokore/Koraso royal family… It stands to reason therefore that the occupation by the Abontema, Papaase and Baabianiha families to the Berekum Paramount Stool at one point in time, however long, as borne out by the record, does not and can never make them part of the Asokore/Koraso royal family to be entitled to occupy the Berekum Paramount Stool and as the saying goes; ***'however long a log stays in water, it cannot turn into a crocodile.'***

Consequently, this Judicial Committee cannot interfere with the aforementioned findings of fact by the Judicial Committee of the Brong-Ahafo Regional House of Chiefs and we hereby affirm same. It follows therefore that the Berekum Paramount Stool family is made up of one and only the Asokore/Koraso Royal Family of Berekum and eligibility to occupation of the Berekum Paramount Stool cannot be rotatory. Furthermore, nomination for election and installation as Paramount Chief for the Berekum Paramount Stool remains the prerogative and customary duty of the queen mother in consultation with her said Stool Family in accordance with Akan Custom as pertains in Berekum.

Accordingly, the decision and/or order by the Judicial Committee of the Brong-Ahafo Regional House of Chiefs in the following terms – ***'…we therefore decide that henceforth when the Berekum Omanhene Stool becomes vacant, the***

Asokore Koraso royal family on one hand and the Abontema, Papaase and Baabianiha families together as one unit on the other hand shall ascend and occupy the Stool on rotational basis and whoever is the queen mother at any point in time shall nominate a candidate accordingly...'*, thus making the Berekum Paramount Stool rotatory and entitling the three (3) families, namely; Abontema, Papaase and Baabianiha eligible to occupation of the Berekum Paramount Stool, is erroneous and same is hereby set aside."*

The major issue that emerged in this appeal was; whether or not the finding of the trial judicial committee as affirmed by the 1st appellate judicial committee that there was only one Royal family of the Omanhene Stool of Berekum; i.e. the Koraso Royal family, was against the weight of evidence adduced at the trial. Referring to two authoritative decisions of this Court in the cases of **ACHORO v AKANFELA [1996-97] SCGLR 209** and **TUAKWA v BOSOM [2001-2002] SCGLR 61** on how an appellate court has to deal with findings of fact made by a trial court and the fact that an appeal is by way of re-hearing, appellants rightly contended that it was clearly their duty or task to demonstrate that the findings made by the trial judicial committee and affirmed by the 1st appellate judicial committee or tribunal were perverse and unjustified. In our view, they failed to do so in their submissions as we have demonstrated below.

Their main submission was that the respondents by their conduct, actions and inactions prior to the institution of this action, did admit that there were four gates to the Royal family of Berekum, namely; Koraso, Abontema, Papase and Babianha. They were therefore estopped by conduct and acquiescence from contending otherwise. They referred to exhibits **E**, **F**, **G**, **H** and **J**, which were authored on the instructions of the 1st respondent some time ago, as supporting their claim that there were four gates to the Royal family. According to them, the two lower judicial committees or tribunals failed to give any consideration to the exhibits referred to above. Again, they did not consider the testimonies of the 1st and 4th appellants and the corroborative testimonies of P.W.1, 3rd respondent and D.W.1 on the subject, which occasioned a substantial miscarriage of justice to the appellants. They described as unfortunate the findings of the two lower judicial committees that there

was only one Royal family at Berekum when the evidence to that effect was undermined by material contradictions in the testimonies of the respondents and their witnesses, particularly; the fact that members from the three families described as children of the stool, have occupied the stool for several years more than members from the Koraso Royal family.

As we have already indicated above, at the heart of the dispute between the parties is; *whether or not there are four gates to the Berekum Royal family or just one royal family*. These two conflicting positions held by each of the parties was an invitation to them to lead cogent and satisfactory evidence to support or justify their conflicting positions. We disagree with the appellants position that they had nothing to prove since it were the respondents who asserted that the other three families, namely; Abontema, Papaase and Babianiha constituted children of the Koraso Royal family, and having made that assertion, the onus was on them to prove it. There is no denial to the fact that it were the appellants who petitioned that in nominating the 4th respondent for installation or enstoolment as the Omanhene of Berekum Traditional Area, the 1st respondent breached custom when she failed to consult the three other gates of the Royal family, namely, Abontema, Papaase and Babianiha. The onus therefore fell on the appellants to provide sufficient evidence to establish that these three families formed part of the Berekum Royal family from which an Omanhene or a Paramount Chief could be chosen in the wake of the assertion by the respondents that members from these three families ascended the stool as caretakers but not as royals as such.

A 'chief' has been defined in the Constitution, 1992 (article 277) and under section 57 (1) of the Chieftaincy Act, 2008 [Act 759] as; ***"a person who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage".*** {Emphasis ours}. Since chiefs are selected or chosen from royal families, those chosen must hail from the appropriate family and lineage from which the selection is made. However, examples abound from our case law on chieftaincy, where persons who do not hail from the appropriate family or lineage as constitutionally mandated, manage

to ascend the royal stool due to one reason or the other. Such chiefs are described as 'caretaker chiefs'. Brobbey, JSC, gave three typical factors that normally give rise to caretakership in chieftaincy at pages 114-115 of his book; **"THE LAW OF CHIEFTAINCY IN GHANA"**; published by the Advanced Legal Publications, Accra, Ghana in 2008. According to the learned author and eminent jurist, caretakership can arise in the matrilineal system when the matrilineal family has no male child to ascend the throne and a distant relative (like a son), is made to take over the throne. This is typified by the facts the respondents narrated in this case. The second factor is; *"where there is the need for money for some pressing family matter and the one who provides the money is given the stool as security for the debt".* The third is; *"where a representative of a strong overlord or a powerful tribal head is allowed to occupy the stool or skin in return for protection against an invading force"*. These are but a few examples of how such caretaker chiefs who are not from the appropriate family and lineage emerge. Politics has not been ruled out completely as a contributing factor to such developments, which constitute a complete aberration of our traditional systems.

As Brobbey, JSC rightly stated in his book under reference supra, when such non-royal chiefs ascend the stool for many years, the arguments canvassed by their offspring is that they too are eligible to ascend the stool by virtue of the fact that their great grand-uncle once ascended the stool and that was proof that their family too was part of the royal family. However, claimants from families described as caretaker families cannot claim to be members of the royal family entitled to succeed or ascend the stool. They do not hail from the appropriate family or lineage for the purposes of succession as clearly provided under the Constitution. Therefore when a dispute arises as to the eligibility of one as a royal, it is incumbent upon the one asserting that right to prove that he/she did descend from the originator of the royal family. This was the task that confronted the appellants in their petition before the trial judicial committee.

The trial judicial committee, did find, as was affirmed by the 1st appellate tribunal or committee that though members of the three families of Abontema, Papaase and Babianiha have ascended the Omanhene stool on several occasions as the

respondents themselves admitted, they did so for some reasons and that they do not hail from the appropriate family and lineage from which chiefs in an Akan setting like Berekum, are chosen under customary law. The trial judicial committee came to this finding after hearing from both parties and their witnesses and observing their demeanours. Having made this crucial finding, it was for the appellants to convince us that this finding was perverse, judging from the evidence on record, or that the finding was not supported in any way by the totality of the evidence on record, so the first appellate tribunal erred in affirming same. However, the only evidence the petitioners led to establish that the said three families formed part of the Royal family that ascends the Omanhene Stool of Berekum was rooted in estoppel. It was in two legs:

(1) *majority of the Paramount Chiefs or Amanhene of Berekum in the past came from these three families, and*

(2) *the 1st respondent queen mother and the 3rd respondent, have by their conduct, through documents authored at the 1st respondent's instance, admitted that there were four but not one royal family of the Berekum Stool*.

Their case was basically built around the common law principle of estoppel by conduct and acquiescence. They argued that since the 1st respondent has, by her conduct, made them believe that there are four royal families forming the Berekum Royal Family and that members from the three other families have ascended the throne before, the respondents were estopped from denying this fact. Aside of the common law principle of estoppel that the appellants invoked, they did not lead any further evidence to positively prove that members of the three families of Abontema, Papaase and Babianiha families are not children of the Koraso Royal family as such but originate from the maternal line of the Royal family. They did not satisfy the constitutional requirement that whoever claims to be eligible for enstoolment as a chief or queen mother must establish that he/she hails from the appropriate family and/or lineage from which such chiefs are chosen.

The appellants, from the record before us, demonstrated their ignorance of the history of the Berekum Royal Stool. The 2nd appellant herein, (who was the 4th

petitioner) said the Stool originated from Adansi. His testimony was that it was the Abontema family from Adansi that founded the Berekum Stool. From his testimony, he acknowledged the fact that the first chief or Omanhene of Berekum was Amankona Diawuo who he said was from Adansi but not Asokore. When quizzed further during cross-examination, he said emphatically that he did not know that Kwaku Diawuo who became chief after Kyere Diabour, was the son of Amankona Diawuo, however, he was told Kwaku Diawuo hailed from Abontema family which was from Adansi. His testimony was contradicted by the 1st appellant (the 1st petitioner) who admitted during cross-examination that the Berekum Omanhene Stool originated from Asokore-Ashanti as was contended by the respondents.

It is well settled that whenever the testimony of a party on a crucial issue was in conflict with the testimony of his own witness on that issue, it was not open to a trial court to gloss over such a conflict and make a specific finding on that issue in favour of the party whose case contained the conflicting evidence on the issue. {See the case of **ATADI v LADZEKPO [1981] GLR, 281 @ P 224}**. The trial judicial committee could not therefore have glossed over this serious conflict in the testimonies of the appellants on the roots of the Berekum Royal family, which the appellants appeared to be ignorant about. Again, the appellants said nothing about the roots of Papaase and Babianiha whom the respondents said constituted the families of the wives of the male occupants of the Stool just like Abontema. None of the appellants belonged to any of the three families they claimed were branches of the Berekum Royal family. They did not, from their testimonies, know the original roots of these families. Unfortunately, they did not call any witness from any of the three families to support their claim that these families belonged to the appropriate royal family or lineage from which the paramount chiefs and queen mothers of Berekum are chosen. They only relied on estoppel and acquiescence.

The respondents did not deny that majority of the chiefs who have ascended the Omanhene Stool of Berekum were chosen from the three families of Abontema, Papaase and Baabianiha. They gave reasons to explain why that had been the case and wanted the anomaly to be rectified. It was their quest to have what they called 'uncustomary' practice halted that brought about the dispute now on appeal before

us. The reasons they gave as the cause of that uncustomary practice, found favour with the Regional Chieftaincy Tribunal that is mandated to delve into such matters and subsequently affirmed by the National Chieftaincy Tribunal when the matter proceeded on appeal before it. Again, apart from the 1st respondent, none of the other respondents was a privy to the exhibits the appellants are relying on as constituting estoppel against the respondents. The doctrine or principle of estoppel per rem judicatam is founded on the maxim: ***'interest reipulicae ut sit finis litium'***, which simply means that public interest, demands that there must be an end to litigation***.*** The contents of the exhibits do not constitute authoritative pronouncements on the number of royal families within the Berekum Paramountcy. They cannot therefore operate as estoppel against the respondents.

Ascension to a stool in an Akan state is grounded on custom. Any admission that runs counter to the custom of the people or community concerned cannot be accepted. It was therefore incumbent on the appellants to establish the roots of the three families of Abontema, Babianiha and Papaase to the original stool, which they agreed, with the exception of the 2nd appellant, originated from Asokore-Ashanti. The question is; could the appellants trace the three families of Abontema, Papaase and Babianiha to the original Koraso Ekoana Royal family from Asokore-Ashanti? The answer is no. The appellants led no evidence to establish any such link. They were even not ad idem as to the originator of the Berekum Royal Stool. On the other hand, the evidence of the respondents on how the three families in question came to associate with the Royal Family was immense and overwhelming and the two lower courts or tribunals could not have ignored that piece of evidence. The respondents were able to establish that it was the wife of the first chief Nana Amankona Diawuo of the Koraso Royal family called Bomo who was from Adansi. The third chief Kwaku Diawuo was the son of Amakona Diawuo and his wife Bomo. It is this Bomo who hailed from the Asona clan that originated from Adansi. Her family is the Abotema family and her son Kwaku Diawuo was therefore from the Abontema family from Adansi as the 2nd appellant rightly contended.

As the respondents argued, Kwaku Diawuo was placed on the Stool by his grandmother the then queen mother called Nana Ameahene to help her administer

the stool as there was no male child in her family. However, when she died two years later, Kwaku Diawuo enstooled his sister as queen mother and from that time, the children of the Royal family monopolised the stool until this dispute arose as to their eligibility. The claim by the appellants in their statement of case that DW1 contradicted the testimony of the 3rd respondent on how the three families of Abontema, Babianiha and Papaase came to occupy the Stool is not supported by the evidence on record. The substance of their testimonies was the same. The crux of their testimonies was that when the 2nd occupant of the stool Nana Kyere Diabour who was the younger brother of Nana Amankona Diawuo died, there were no male heirs in the royal family so the then queen mother invited the first son of the 1st occupant to ascend the stool to assist her administer the state as she was old. Not quite long, she died and the son who was made to occupy the stool, enstooled her sister as the queen mother. That was how, according to the two of them, the monopoly over the stool by the children started.

As was held by the Court of Appeal in the case of **R. T. BRISCOE (GH) LTD v BOATENG [1968] GLR 9 at pages 11** and **12**, a judge is not entitled to disbelieve a witness merely because in narrating his account of events, which happened some time ago, he slips here and there or because there are a few discrepancies between his story and that of another witness called to support him on that particular issue. ***"The accepted principle of law on this matter is rather that where the discrepancies are really material and make the version of the witness on the point or points at issue highly improbable when viewed against the general background of the dispute, the court of appeal in hearing the appeal may say that the judge of the trial court erred in accepting and believing what such witness has testified about".*** This Court endorses that principle as enunciated above.

The appellants did not narrate any historical account as to how the three families of Abontema, Papaase and Babianiha came to occupy the stool to enable the trial judicial committee compare the two on the balance or preponderance of probabilities to determine which of the two narrations was more probable. They only relied on the fact that members from these families had ascended the stool before, a fact

which the respondents do not deny. In the case of **IN RE KWABENG STOOL; KARIKARI & Another v ABABIO II & Others [2001-2002] SCGLR 515**, Ampiah, JSC stated the point rightly at page 538 of his judgment when he opined that; ***"the institution of Chieftaincy is a sacred one and things that are uncustomary should not be allowed to desecrate the stool".*** Thus, this Court, in **DARKO v DARKO [1982-83] 1 GLR 345** held that; ***"non-ascension to the stool for over 150 years was not a bar to a family's claim to the stool"***. This means that the fact that non-members of the royal family have ascended the stool continuously for over hundred years does not debar the original or appropriate royal family from making a claim for the retrieval of the stool from the non-members. Matters that are strictly of constitutional character, do not lend themselves to common law principles like acquiescence and estoppel. The fact that a constitutional provision has been breached for a long period cannot operate as estoppel to its challenge in a future action.

This Court has held in several cases that the notion of rotatory succession to Stools should not be established on the mere fact that a non-member of a royal stool family had through some circumstances, ascended the royal stool. In **ESSILFIE & Anor v ANAFO VI & Anor [1993-94] 2 GLR 1**, this Court held that the rotatory system could only be declared if there is satisfactory evidence that that has been the custom and practice of the people. It is presumed that the National House of Chiefs is an authoritative exponent of the customary law of the land. Though this is a rebuttable presumption, where the National House of Chiefs has affirmed a specific finding of fact made by the Regional House of Chiefs on the customs of a particular community, as in this case, this Court must be slow in disturbing that finding unless it has been established that the said finding was not supported by the evidence on record or that *…"there were strong pieces of evidence on record which made it manifestly clear that the findings of the trial court and the 1st appellate court were perverse"* - **GREGORY v TANDO IV AND HANSON [2010] SCGLR 97.**

The appellants, from the record before us, were not able to establish that the findings of the trial judicial tribunal as affirmed by the 1st appellate tribunal was perverse. The appellants could not prove that members of the three families of

Abontema, Papaase and Babianiha belong to the original royal family that descended from Asokore in the Ashanti Region. Whilst the 1st appellant admitted that the original royal family came from Asokore as contended by the respondents, the 2nd appellant said it came from Adansi. That was a material contradiction that goes to the root of the matter in issue. There was abundant evidence that the original royal family that descended from Asokore was the Koraso Royal Family of the Ekoana Clan and that the wife of the first chief called Bomo of Abontema family, was the one who hailed from Adansi and of the Asona Clan. The trial judicial tribunal that heard from the witnesses believed the respondents' story as to how members of the three families of Abontema, Papaase and Babianiha came to occupy the stool. This made the committee to rule that the long occupation of the stool by members from these three families did not make them royals eligible to ascend the stool. Their eligibility is determined by their being members of the original Koraso Royal Family. They must hail from the 'appropriate family and lineage', as provided under the definition of a chief in the Constitution, 1992 – article 277. The evidence on record is that the Koraso royal family and the Abontema family belong to different clans. Whilst Koraso is of the Ekoana Clan from Asokore, Abontema belongs to the Asona Clan from Adansi. A Clan is defined as a group of people with a common ancestor so invariably; the two families of Koraso and Abontema do not have a common ancestor. Being two different ancestral units, they do not hail from the same family and lineage. Appellants said nothing about Papaase and Babianiha, apart from their claim that they are branches of the royal family as was in the case of Abontema.

This Court, in the *In re: Kwabeng Stool case* (cited supra), held that: - ***"Estoppel of all kinds are subject to one general rule; they cannot override a statutory provision. Thus where a particular formality is required by statute, no estoppel will cure the defect..."*** The issue before the Court is of a constitutional character. It does not therefore lend itself to common law principles like estoppel and acquiescence as the appellants have heavily hammered on. The question is; do members of the three families of Abontema, Papaase and Babianiha, contrary to the findings of the two lower courts, originate from Asokore where the original royal stool emanated from? The appellants did not establish that as the two lower courts

rightly found. Rather, the appellants proved to know very little of, or not at all, the history of the royal family of Berekum. They relied on the fact that members from those three families have ascended the stool before and again the 1st respondent, from her previous conduct, had made them to believe that the three were part of the royal family. But that alone cannot guarantee their claim that the three families in question truly belong to the Royal family. They must trace their roots to the originator of the stool. This, the two lower tribunals found they could not do. We cannot depart from these findings as they are supported by the evidence on record.

On whether the 4th appellant was properly nominated, elected and enstooled, we affirm the position of the two lower courts or tribunals that he was. The choice of a candidate for the stool in Akan societies, as was held by this Court in the case of - **IN RE: WENCHI STOOL AFFAIRS; NKETIAH & Ors v SRAMANGYEDUA III AND 2 Ors [2011] 1 SCGLR 1024;** *"is the preserve of the queen mother. She does not share this responsibility with anybody".* The 1st respondent need not consult the three families in question in the nomination of her candidate for the Stool. If that was the practice in the past as was known to the appellants, the respondents were able to establish the uncustomary nature of that practice and nothing debars them from taking steps to curtail it.

We find no merit in the appeal. We accordingly dismiss same.

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(JUSTICE OF THE SUPREME COURT)

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(JUSTICE OF THE SUPREME COURT)

P. BAFFOE-BONNIE
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