IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: DOTSE, JSC (PRESIDING)
YEBOAH, JSC
BAFFOE-BONNIE, JSC
APPAU, JSC
PWAMANG, JSC

CHIEFTAINCY APPEAL
NO. J2/03/2017
18TH JULY, 2018

1. NENYI KOBINA ANDAKWEI IV
   (SUBSTITUTED BY NENYI KWAME KOTSIA IV)
2. JOSHUA KWAKU BENTUM
3. NAASE NKWANTA OTUBA II
4. OPANIN KOW AGYARE
   (SUBSTITUTED BY KOW ATTEH)
5. SUPI KOBINA ESOUN …… PETITIONERS/APPELLANT/APPELLANT

VRS

1. KOW LARBIE @ KOBINA ABAKA II
   (SUBSTITUTED BY NENYI KOBINA AFFIR)
2. KOBINA AFFIR
3. SUPI KOW ASAFUA
   (SUBSTITUTED BY NENYI NICHOLAS TETTEH)
4. ALBERT ABOAGYE …….. RESPONDENTS/ RESPONDENTS/RESPONDENTS

JUDGMENT

BAFFOE-BONNIE, JSC:-

The case before us is an appeal by the petitioners/appellants/appellants, hereafter, referred to as petitioners, against the decision of the Judicial Committee of the National

House of Chiefs confirming the majority decision of the Central Regional House of Chiefs. The said decision was in favour of the respondents/respondents/respondents, hereafter referred to as respondents.

The facts of the case are as follows:

The Petitioners and Respondents are all subjects of the Senya Beraku Stool with Nenyi Kweku Issiw VI as their Paramount Chief. In Senya Bereku there are two Kingmakers, namely, the Asafo Company No. 1 and No. 2. The petitioners are from the Asafo Company No. 2, while the respondents are from the Asafo Company No 1. Nenyi Kwaku Issiw VI is from the Asafo Company No 2.

In November 1992, Nenyi Kwaku Issiw VI left the jurisdiction of Ghana leading to the appointment of the 1st Petitioner as the Regent and Acting President of the Senya Beraku Traditional Council. In February 1993, the 3rd Respondent brought a petition against Nenyi Kweku Issiw VI seeking to destool him as the Paramount Chief of Senya Beraku. Nenyi Kwaku Issiw VI on the grounds that at the time of the petition, Nenyi Issiw V1 had jumped bail and was considered a fugitive of the law. That petition was unsuccessful. Subsequently, in March 1994 the 3rd Respondents brought another petition to destool Nenyi Issiw V1. This action was discontinued. After the discontinuance of the 2nd petition, the 1st, 2nd and 3rd Respondents herein, claiming to be Kingmakers from Asafo Company No1, nominated and installed the 4th Respondent as Paramount Chief of Senya Bereku without regard to the Asafo Company No 2. They claimed that at the time of the installation of Nenyi Kwaku Issiw VI who was from the Asafo Company No 2 they did not participate and therefore a precedent had been set that one faction alone could install a chief. Peeved by the action of the Respondents, the petitioners initiated an action in the Judicial Committee of the Central Regional House of Chiefs (Cape Coast) challenging the enstoolment of the 4th Respondent on the grounds that Nenyi Kweku Issiw VI is still the lawfully installed and recognized Paramount Chief who has neither abdicated nor been destooled. The Judicial Committee, held that Nenyi Kweku Issiw IV, by fleeing his jurisdiction and evading

arrest, had abandoned the stool. They also upheld the claim of the Respondents that one faction could install a chief. The Petitioners' appeal to the National House of Chiefs was dismissed and the decision of the Regional House of Chiefs (Cape Coast) was upheld. In August 2013, Nenyi Kwaku Issiw IV returned to Ghana. The Petitioners have brought this appeal against the decision of the Judicial Committee of the National House of Chiefs on the sole ground that the judgment cannot be supported having regard to the evidence adduced at the trial.

Where an appellant argues that a judgment cannot be supported having regard to the evidence on record, an appellate court is under an obligation to examine the findings of fact of the court below to determine whether those findings can be supported by the evidence on record. Where the findings of fact are inconsistent with the evidence on record, the appellate court has a duty to make its own findings based on the said evidence. However, the appellant in such cases assumes the burden of showing from the evidence on record that the judgment cannot indeed be supported having regard to the evidence adduced. In Bonney v Bonney [1992-1993] GBR 779 SC, the court had this to say:

> *"Where an appellant contended that a judgment was against the weight of evidence, he assumed the burden of showing from the evidence that that was in fact so. The argument that an appeal is by way of rehearing and therefore the appellate court was entitled to make its own mind on the fact and draw inferences from them might be so, but an Appeal Court ought not under any circumstances interfere with findings of fact by the trial judge except where they are clearly shown to be wrong, or that the judge did not take all the circumstances and evidence into account, or had misapprehended some evidence or had drown wrong inferences without any evidence in support or had or had not taken proper advantage of having seen or heard in support, the witnesses."*

The submissions of both the Petitioners and the Respondents call for the resolution of two main issues:

1. Whether or not the long absence of Nenyi Kwaku Issiw VI from Senya Beraku constitutes abandonment/ábdication rendering the Senya Beraku Stool vacant?

2. Whether or not the 1st, 2nd and 3rd Respondents rightly installed the 4th Respondent as the Paramount Chief of Senya Beraku?

We will first address the issue of abandonment leading to vacancy of a stool. The 1992 Constitution defines a chief in Article 277 as

"A chief means a person, who, hailing from the appropriate family and lineage, has been validly nominated, elected, selected and enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage."

Thus, the Chieftaincy institution, though not a creation of the Constitution, has received recognition from the Constitution. Before a person is nominated for enstoolment, there must necessarily be a vacancy. So the first issue in this case begs the question of how a stool becomes vacant. In Ghana, a stool may become vacant in one of three ways; namely, death, destoolment, or abdication. All other issues like abandonment, sickness, renunciation, etc are causes of, rather than reasons for, vacancy.

Firstly, a stool may become vacant through death of the occupant. This needs no further explanation.

Secondly, a stool may become vacant by deposition of a chief. Deposition connotes two things namely, destoolment and deskinment. Deskinment refers to the process of removing from power a chief whose symbol of authority is the skin. On the other hand, destoolment refers to the process of removing from office a chief whose symbol of authority is the stool. The process of deposition is based on the custom of a traditional area which vary from community to community. In the case of The Republic v Kumasi Traditional Council, Ex parte Nana Opoku Agyeman II [1977] 1 GLR 360 CA, the court

had the opportunity to deal with the requirements of a valid deposition. The court stated as follows:

> *"The pre-requisites of a valid customary destoolment of an Ashanti chief were (a) the chief must have committed a known customary offence; (b) this must have been brought to his notice by the elders; (c) if it was intended to destool him, the elders must formulate charges against him, and (d) he must be tried on those charges and a finding of guilt made."*

The Chieftaincy Act, 2008 (Act 759) has settled the essential requirements for a valid destoolment. Section 40(2) and (3) of Act 759 provides as follows:

> *"(2) A Traditional Council shall not declare a chief to be deposed unless in accordance with subsection (3) and the Traditional Council Judicial Committee has considered the charges against the chief and found the chief liable to deposition.*
>
> *(3) Except where deposition is accepted without challenge, and subject to an appeal, a chief is not deposed, unless*
>
> > *(a) deposition charges have been instituted against the chief;*
> >
> > *(b) the appropriate customary practice for deposition in the area concerned have been complied with.*
>
> *(4) Subsection (3) does not preclude a Traditional Council from imposing appropriate customary sanction on a divisional or subordinate chief of a Traditional area, the Traditional Council or member of the Traditional Council of the area."*

Deposition can only be done by people who have been vested with that power under customary law. In Essilfie and Another v Anafo VI and Another [1993-94] 2 GLR 1 the court held as follows:

"The power to destool a chief was a customary right vested wholly in the kingmakers who alone had the power to make and unmake a chief customarily. Accordingly, the chieftaincy tribunals of the traditional, regional and the National House of Chiefs as established by law had no power to destool a chief or make an order for his destoolment."

Flowing from the above, a chief cannot be deposed by anyone other than the kingmakers who put him on the stool. Even in a cause or matter affecting chieftaincy, the judicial committees lack the power to order the deposition of a chief.

The third way of creating a vacancy, and for the purposes of this case the most relevant one, is abdication. Abdication can be defined as the formal act of renouncing and resigning from a stool. Abdication is a voluntary act of a chief which can reasonably be interpreted to mean that he has vacated his office as a chief. Examples of acts that would amount to abdication include a chief forcibly jumping from a palanquin or when a chief leaves his palace unceremoniously. However, abdication is not complete without the full participation, consent, and concurrence or acceptance of the elders and Kingmakers who enstooled that particular chief. Thus, it is only those who elect a chief who can also legitimately accept his abdication. In Boampong v Aboagye and others [1981] GLR 927, the Supreme Court defined abdication as follows:

"abdication [is] a voluntary renunciation of a stool by a chief in public, e.g. in the palace or dwabrem (i.e. assembly place), which is accepted by his elders and kingmakers and is sealed by the performance of the necessary customary rites and formalities, eg the slaughtering of sheep."

Abdication as defined above is not one sided. It begins with the chief taking the necessary initiative and ends with consummation by the elders and kingmakers of the stool. The chief must first of all, voluntarily inform the elders and kingmakers of his decision to step down as chief. The act of abdication not being one sided must be followed by the elders and the kingmakers accepting the chief's decision to step down. There must then be performance of the necessary rites and customs to signify the

abdication of the chief. The process of abdication must be publicized so that the subjects of the stool will know that their chief has stepped down. In Boampong v Aboagye,(supra), the court gave the essentials of a valid abdication by a chief as follows:

> *"In short, the sine qua non for a valid customary abdication in the Akan customary law are:*
>
> *i. Voluntary renunciation of the stool by the occupant;*
> *ii. Its acceptance by the stool elders and kingmakers;*
> *iii. Through the performance of the requisite rites and formalities; and*
> *iv. Publicity."*

The court went further to state that all four must co-exist for the abdication to be valid.

All other matters considered as creating vacancy on a stool either fall under any of the above or are causes of it. For example if a chief is said to be a fugitive at law or has abandoned his people or has broken his oath of office, it does not automatically render the stool vacant. It may be a cause for the right people to initiate destoolment proceedings in the appropriate forum. If a chief openly renounces his stool, he continues to remain a chief and the stool does not become vacant until his renunciation is accepted by the kingmakers and the necessary rights performed or the kingmakers take the necessary steps to destool him.

Where none of the above modes by which a vacancy is created is established, a stool cannot be said to be vacant, and any purported installation of another person will be null and void. In Komey v Onanka [1962] 1 GLR 52 the court in holding 1 stated as follows:

> *"(1) unless the holder of an office has been removed, or has resigned or abdicated, the office cannot be vacant, and any purported installation of another person into that office is void ab initio"*

Having established the necessary legal frame work within which a chief could be said to have abdicated, let us apply the principles therein contained to the facts of this case.

The Central Regional Judicial Committee (CRJC) came to the conclusion that, the long absence of the chief from his traditional area was uncustomary. This is how they put it,

"This CRJC has considered this issue 1- whether or not a Paramount Chief could just leave his stool, elders and the whole paramountcy for a continuous period of three years or seven years without a single letter?- the answer is emphatically NO! This Committee has found that according to evidence of 1st petitioner on record, the only letter received by the 1st petitioner was not complete- because it had no address of the Odefey. By customary law, customary practices and usages, or the tradition, every chief is such a unique personality and a symbolic figure or a leader of his people in the chiefdom. And in the case of a paramount chief, the premium is even higher if not the highest within the paramountcy. The petitioners are saying that their paramount chief Odefey Issiw has left for a medical treatment yet the petitioners could not tell the court as to what disease the Odefey was suffering from. It is the finding of this judicial Committee that such situation is most uncustomary and therefore untenable.

"This Committee first has to ask itself that for how long this Odefey has to hold his people or the others at (sic) ransom, because the petitioners themselves on record do not know the whereabouts of the Odefey, neither do they know when he is coming back."

The committee then referred to the cases of Boampong V Aboagye(supra) and Nana Yiadom 1 v Nana Amaniampong(1981) GLR 3 and continued,

"The Petitioners' Counsel Mr. Dawson, cited the above cases to support his case that despite the long absence of the Odefey without communication with his people that does not amount to abandonment nor abdication. This judicial committee hereby dismisses this notion of the Counsel, since the facts of the cases he cited, are not on all

fours with this very case. After all, each and every case has its own merits. This law cited is therefore found to be untenable and unconvincing,"

As stated in the facts, the petitioners' appeal to the National House of Chiefs was also dismissed. In dismissing the appeal and upholding the decision of the Judicial Committee of the Regional House of Chiefs (Cape Coast), the Judicial Committee of the National House of Chiefs stated as follows:

> *In our view, even though the Supreme Court did not mince words when it held in this same case that customary law consist in the performance of the reasonable in all the circumstances of the case, the above constitutes some of the means of abdication or renunciation of a stool. Among the modes of abdication or renunciation of a stool as enumerated by this house the one relevant to this committee is the leaving of the palace unceremoniously by a chief amounts to abandonment of the stool… And in the peculiar circumstances of the instant case the incumbent chief was found to have abandoned the stool thereby rendering same vacant irrespective of whether or not any formal customary rite was made to that effect. This Committee, in view of the above, endorses the trial Committee's approach in what they term "applying the ordinary standards of common sense by Akan custom and tradition" in making a finding of fact that the Chief had in deed abdicated the stool by abandonment."*

Before us, the Petitioners argue in their statement of case that, the Supreme Court having laid down the requirements of abdication in Boampong v Aboagye (supra), both the Central Regional House of Chiefs and the National House of Chiefs were enjoined by law, to apply the requirements in evaluating the case of Nenyi Kweku Issiw VI. The two Judicial Committees in this case unwarrantedly refused to apply the law relating to abdication of a stool. All the Judicial Committees involved had before them the authority of Boampong v Aboagye which sets out the essential requirements of a valid abdication. However, they chose to ignore the said authority. The Judicial Committee of the

National House of Chiefs in upholding the decision of the Judicial Committee of the Regional House of Chiefs (Cape Coast) stated as follows:

> *"This Committee, in view of the above, endorses the trial Committee's approach in what they term "applying the ordinary standards of common sense by Akan custom and tradition" in making a finding of fact that the Chief had in deed abdicated the stool by abandonment."*

Words or expressions are normally construed in their ordinary dictionary meaning without any gloss or additions. However, where a word or expression as used had acquired a special or technical meaning, the court must construe the word or expression in its special or technical meaning and not its ordinary meaning. This view can be supported with the case of Monta v Paterson Simons (Ghana) Ltd [1974] 2 GLR 162.

From the several decided cases in Ghana, particularly Boampong v Aboagye (supra), the word abdication is a term of art. The word had acquired a technical meaning which does not necessarily accord with its ordinary meaning. Any construction or application of the word must be done in accord with the technical meaning acquired particularly as provided in Boampong v Aboagye.

When the authority of Boampong v Aboagye was put before the two judicial committees, they were bound to apply same considering the fact that the case before them was on abdication. Unless they were seeking to expand the technical meaning of the word abdication by "applying the ordinary standards of common sense by Akan custom and tradition", which is not the case, they were bound by the decision in Boampong v Aboagye.

We therefore hold that the two judicial committees woefully failed to appreciate the law regarding the creation of a vacancy in a stool. The two judicial committees held that abandonment could lead to abdication without going through the requirements laid down by law. That cannot be the case.

Abandonment was construed by the Judicial Committee of the National House of Chief as "to leave somebody especially somebody you are responsible for, with no intention of returning". The committee relied on the Oxford Advanced Learner's Dictionary, 6th Edition. Abandonment as defined above cannot amount to abdication as was found by both judicial committees. Abandonment to say the least can be considered as a ground for destoolment. For the respondents to succeed in their claim of vacancy through abdication, they must establish that Nenyi Kweku Issiw VI, before leaving the country, voluntarily renounced the stool either orally or by a letter or any other means, and that the said renunciation was accepted by the elders and kingmakers of Senya Beraku. They must further show that the elders and kingmakers performed the necessary customary rites and formalities to signify the abdication of the stool by Nenyi Kwaku Issiw. Lastly they must show that the entire process of abdication was made known to the public. In the absence of these requirements, this court cannot hold that the Senya Bereku Stool became vacant as a result of Nenyi Kwaku's decision to leave the country.

The respondents have not adduced any evidence to establish any of the above requirements neither have they adduced any evidence to show that Nenyi Kwaku was destooled. In fact the respondents initially realized that they could not talk of abandonment and for that matter abdication, because they brought this action within 2 years of the departure of the incumbent chief. Two years could not be said to be a long period of abandonment. Their desire to replace him stemmed from the fact that they felt that he had brought disgrace to the stool by his remand in police custody and his escape from justice after jumping bail. That is why they took the initial step of trying to destool him. It was only after they failed in that regard that they started to talk of abdication.

We are fortified in our conclusion by reference to the case of

HUAGO IV. V. DJANGMAH II [1997-98] 1 GLR 300, SC.

The facts in that case (as found in the head notes), make for very interesting reading.

"The paramount chief of the Great Ningo Traditional Area (GNT A) functions both as a chief and the high priest of their deity, the Djange shrine. There were two ruling houses in the GNT A: the Adainya and Loweh Kpono royal families. The first respondent, Nene Osroagbo Djangmah II from the Adainya family was enstooled as the paramount chief of the GNT A in 1972. He was duly recognised by the government. However, Nene Tei Djangmah IX, an uncle of the first respondent from the Adainya family, challenged his enstoolment and that led to a protracted chieftaincy dispute between the two. In the course of the dispute, the first respondent left the traditional area and went into a self-imposed exile which lasted for several years. On 22 July 1983, the first respondent wrote to the sietse, the Oman stool father of the GNT A, to inform him that he had abdicated as the paramount chief and the high priest of the GNTA. The Oman stool father then wrote to the first respondent to accept his abdication. Subsequently, the first appellant, Huago IV, from the Loweh Kpono family, was enstooled as the paramount chief of the GNTA. Later the first respondent brought an action against the first appellant and the king-makers of the Loweh Kpono family before the Greater Accra Regional House of Chiefs (GARHC) for a declaration that he was still the paramount chief of the GNTA. The appellants denied the claim on the ground that the first respondent had abdicated from the stool. The chieftaincy tribunal of the GARHC found, on the evidence that, there was no precedent of a Ningo custom on the conditions for the abdication of a chief. The tribunal, however, held that the conditions for a valid abdication of an Akan chief as stated in Boampong v Aboagye [1981] GLR 927, SC were reasonable and fair and could be applied to the Great Ningo Traditional Area. And even though the tribunal found on the evidence that those conditions had not been fully satisfied, it nevertheless held that since the first respondent had turned his back on his people for so long, it [pg 301] would not only be morally wrong for him to go back to the stool, but also that would bring the institution of chieftaincy into disrepute. The tribunal therefore held that the abdication of the first respondent was effective and legally operative. On appeal by the first respondent from that decision to the National House of Chiefs, the judicial committee affirmed that the conditions for a valid abdication of a chief as stated in Boampong v Aboagye (supra) was fair and reasonable.

Since the tribunal also found that those conditions had not been met in the case of the first respondent, it allowed the appeal from the decision of the Greater Accra Regional House of Chiefs. Aggrieved by that decision the appellant appealed against it to the Supreme Court.

Held, dismissing the appeal (Kpegah JSC dissenting): (I) the proper test to entitle a chieftaincy tribunal to apply a known customary practice or principle in one area to another area where no precedent existed, was the reasonableness and fairness of the known customary practice or principle. Chieftaincy matters were within the preserve of the chieftaincy tribunals. Since on the evidence the chieftaincy tribunals of the Greater Accra Regional House of Chiefs and the National House of Chiefs exhaustively dealt with the matter before them, there was no cause to disagree with the reasonableness and fairness of the principle on the conditions for abdication by an Akan chief as they approved, adopted and applied to the situation as it existed in the Great Ningo Area which had no known precedent of abdication of a chief.

(2) The conditions for a valid customary abdication of a chief were (i) voluntary renunciation of the stool; (ii) its acceptance by the stool elders or kingmakers; (iii) performance of the requisite rites and formalities; and (iv) publicity of the abdication. Accordingly, the judicial committee of the National House of Chiefs were justified in holding that the letter of abdication by the first respondent and its acceptance by the sietse, the stool father of Ningo, could not by themselves be legitimately considered sufficient as a valid customary abdication. Accordingly, the first respondent was still the occupant of the Great Ningo paramount stool. Boampong v Aboagye [1981] GLR 927, SC applied.

As can be seen from this case, the chief himself wrote to the stool father that he had abdicated. The stool father wrote back to accept this renunciation and somebody else was subsequently customarily enstooled as the new chief. It was only after these events that the old chief, who had written the letter, brought an action saying he was still the chief. This claim was resisted by the Stool father saying he had abdicated. The

Supreme Court referred to the Boampong v Aboagye case and said the letter alone and acceptance without more was insufficient to pass for customary law abdication. In other words the 4 grounds of (1) renunciation, (2), acceptance by the kingmakers, (3), publication and (4), performance of the necessary customary rites, must be present at one and the same time. Common sense plays no part here! As was put by Wiredu JSC,

"The matters such as abandonment of post and neglect of customary duties by the first respondent, as was contended by the tribunal to justify their finding in favour of the appellant, could have formed the basis of a charge against him for his destoolment in the appropriate forum."

We therefore hold that in spite of the long period of absence of Nenyi Kwaku Issiw VI from his paramount area, the Senya Bereku Stool did not become vacant and that Nenyi Kwaku Issiw VI is still the chief of the traditional area, and that the purported installation of another person by the respondents is null and void.

Having decided the central issue that there was no abdication, and that the purported installation by the respondent was void because the stool was not vacant, the question whether or not the right people took part in the second installation is moot. The appeal succeeds and the decisions of the Central Regional House of Chiefs and the National House of Chiefs are set aside.

ADDENDUM.

We have come to this conclusion because we believe it is in accord with the law which we swore an oath to uphold. But we cannot say the behavior of the Chief Nenyi Issiw is in accord with the oath of allegiance which he swore at his enstoolment, both to his sub chiefs and his people. We recognize that demands of modernity sometimes mean chiefs have to be away from their traditional areas for some spells of time. But for a person

who has sworn an oath to be available to his people through rain and shine, bar illness, the behavior of the Nenyi is very reprehensible and very uncustomary. For 10 or more years the Chief was nowhere to be found and even his regent and Queen mother did not know his whereabouts. And this could well be because he was running away from justice as the respondents claim. His behavior is despicable and reprehensible and must be condemned by all right thinking people. No wonder both the Regional and National Houses of Chiefs felt that he had lost any moral right to call himself a chief after abandoning his people for so long.

Fortunately, the law has given him a reprieve and a second chance of some sort. We sincerely hope that he will grab this opportunity with both hands, take proactive steps to mend any broken bridges and reconcile his people for the development of the Senya Bereku paramountcy, for the betterment of the people he swore an oath to serve.

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

J. V. M. DOTSE, JSC:-

I agree with the conclusion and reasoning of my brother Baffoe-Bonnie, JSC.

J. V. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

YEBOAH, JSC:-

I agree with the conclusion and reasoning of my brother Baffoe-Bonnie, JSC.

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

APPAU, JSC:-

I agree with the conclusion and reasoning of my brother Baffoe-Bonnie, JSC.

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

PWAMANG, JSC:-

I agree with the conclusion and reasoning of my brother Baffoe-Bonnie, JSC.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

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