IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: DOTSE, JSC (PRESIDING)
MARFUL-SAU JSC
DORDZIE (MRS.), JSC
AMEGATCHER, JSC
LOVELACE-JOHNSON (MS.), JSC

CIVIL MOTION
NO. J8/95/2019

10TH JUNE, 2020

PITIKO-KWAHU STOOL …….. 1ST CLAIMANT/APPELLANT/APPELLANT/APPLICANT

VRS

ABETIFI-KWAHU STOOL … 2ND CLAIMANT/RESPONDENT/RESPONDENT/RESPONDENT

RULING

DOTSE, JSC:-

This ruling has been triggered by the application filed on the 7th of May 2019, by learned Counsel for the 1st Claimant/Appellant/Appellant/Applicant, hereafter Applicant, *"praying for an order to explain the demarcation of the land belonging to the parties in accordance with the Judgment delivered on 29th November 2017 upon the grounds set out in the accompanying affidavit."*

In an affidavit sworn to on behalf of the Applicant's herein by Nana Boateng Pitikohene, he deposed to as follows:-

1. That in respect of the suit in respect of which the Applicants, and the 2nd Claimants/Respondents/Respondents, hereafter Respondent had been engaged in, reference Suit No. J4/38/2011, the Respondents herein were adjudged the victorious party on 29/11/2017.
2. Following the delivery of the said judgment, learned counsel for the Respondent stool filed an entry of judgment dated 20th April 2018 together with a site plan which the counsel for the Respondent described as *"Supreme Court Site Plan".*
3. The Applicant further deposed that, in the course of the trial, the land in dispute was captured in the map and described as ***"plan of land in dispute shaded yellow, supposed to be the property of the Pitiko or Abetifi Stool"***
4. It was further deposed to that, following the service of the said site plan, the Respondents herein have resorted to encroaching on the land which has previously been in the exclusive possession of the Applicant.
5. As a result of the said *"Supreme Court Map"* it was deposed to that the Respondents had started alienating land which had been under the control of the Applicant stool.

It was basically upon the above stated facts that the Applicants prayed this court in the interest of justice and to avoid further litigation, that a Government Surveyor be appointed to demarcate carefully the boundaries of the parties.

AFFIDAVIT IN OPPOSITION

Despite an affidavit in opposition, sworn to by Nana Asiedu Agyeman III of Abetifi-Kwahu, on behalf of the Respondents, which opposed the said application in very unsavoury language, which was frowned upon by the court, this court on the 11th day of May 2019 granted the application in the following terms.:-

> *"After listening to the parties, we order that the Regional Surveyor of the Eastern Region to prepare the notice to draw the judgment plan based on the decision of the Stool Lands Boundaries settlement which decision was confirmed by the Supreme Court. The parties are to come back for further description and plan to be admitted."*

It must be noted that, the court was then constituted as follows coram: *Ansah JSC (Presiding), Dotse, Marful-Sau, Dordzie (Mrs) and Amegatcher JJSC's.*

Following the making of the order referred to supra, one Robert Hackman Antwi, Regional Surveyor for the Eastern Region in the office of the Survey and Mapping Division of the Lands Commission in Koforidua was the official who satisfied the description contained in the order made on 11/06/2019 and accordingly executed the order of the Court.

In this court, we have also noted that, two plans have been produced and filed in the Registry of the Court with copies made available to the parties, their Counsel and the Court.

In order to understand the preparation of two different plans and also to further attempt to resolve the fundamental question raised by the Applicants herein that the Respondents had encroached upon their land and added it to their land, this court on the 22nd day of

April 2020 took evidence from the said Robert Hackman Antwi, hereafter referred to as Court witness 1 (C.W.1).

The panel for the court has at that material time been changed by order of the Chief Justice to *Dotse JSC presiding, Marful-sau, Dordzie (Mrs) Amegatcher and Lovelace-Johnson (Ms) JJSC's.*

EVIDENCE OF C.W.I ON 22/04/2020

The evidence of CW1 has been very explanatory and has indeed added a lot of understanding to the issues germane in this case. We shall therefore produce in extenso the said evidence in context as follows:-

a. He confirmed that he was appointed by order of this court dated 11th June 2019 already referred to supra. By the said order, he was requested to draw a plan of the land in respect of the dispute between the claimants showing the Stool Lands Boundaries Settlement Commission decision that was affirmed by the Supreme Court.
b. As a result of the order, he invited the parties to his office. At that meeting, he informed them about the procedures to be adopted in executing the orders of the court. This consisted of the payment of his fees and the documents they have to make available to him to empower and enable him execute his mandate.
c. He indicated that the decision of the Stool Lands Boundaries Settlement Commission came with a plan. This will be referred to in extenso shortly during

this delivery. CWI also had the benefit of the Stool Lands Boundaries Settlement Appeal Tribunal decision, which will also be profusely referred to during this rendition.

d. According to the witness, the understanding he got from these two documents was that, the Appeals Tribunal varied the original decision of the Stool Lands Boundaries Settlement Commission and all these information were contained in the plans attached to the judgments.

e. According to C.W.I, he had a little challenge in executing the order of this court. This lay in the fact that the order of the court referred to the decision of the Stool Lands Boundary Settlement Commission and not the Appellate Tribunal's decision.

f. However, C.W.1 explained that, taking into consideration the fact that an Appellate court decision is superior to a trial court decision which the Stool Lands Boundary Settlement Commission was, he decided to prepare two plans, one plan indicating the extent of land adjudged to belong to each claimant under the trial Stool Lands Boundary Settlement Commission and another Plan showing the land that had been denoted or allotted to the claimants under the Appellate Tribunal decision.

g. As a result, C.W.1 tendered the following documents without objection.

    i. Exhibit CW2 – This is the Plan of the lands for the claimants based on the decision of the Stool Lands Boundary Settlement Commission

    ii. Exhibit CW3 – This is the plan of the land delineating portions of the land to the claimants based on the Appellate Tribunal decision.

iii. Exhibit A – Decision of the Appellate Tribunal of the Stool Lands Boundaries Settlement Commission dated 16th June 1993 which was also tendered without any objection.

iv. Exhibit B – This is the decision of the trial Stool Lands Boundaries Settlement Commission dated 25th January, 1991 which was also tendered without any objection.

h. C.W.1 further explained to this court that, he accepted the two judgments because both parties involved confirmed the existence of both the trial stool lands and the appellate Tribunal decisions. He also indicated that the plan also had the boundaries of the portions of land adjudged to each claimant in the two judgments clearly delineated on the plan.

Even though C.W.1 stated that whilst Exhibit A, had a certified stamp mark on it, that contained in Exhibit B had no such certification mark. He stated however that both parties confirmed the existence of the said two judgments. It is to be noted also that, learned counsel for the Applicant, Nii Bi Ayibonte, who raised this issue during cross-examination of the C.W.1 did not press the issue.

In any case, as a court, in the absence of any evidence to the contrary, we accept both exhibits A and B as authentic official documents emanating from proper sources and had been admitted and confirmed by the Applicants. See Section 137 of the Evidence Act, 1975, NRCD 323.

In answer to a question, C.W.1 emphasised the fact that, he understood the remit of the order of this court to mean that he should base the plan on Exhibit A, and this exhibit A is the decision of the Appellate Tribunal. This is because an Appellate court decision always supersedes a trial court decision.

We will now consider the contents of Exhibits B and later A in order to put them in context in our understanding of Exhibits C.W.2 and C.W.3 the Plans that were drawn based on the two judgments respectively.

WHAT WAS THE DECISION OF THE "TRIAL" STOOL LANDS BOUNDARIES SETTLEMENT COMMISSION CONTAINED IN EXHIBIT B AND DATED 25TH JANUARY 1991?

Commissioner J.A Osei (as he then was) presiding over the Stool Lands Boundaries Settlement Commission on 25th January 1991 rendered a detailed decision setting out the reasons for the said delivery. In our attempt to bring finality to the instant dispute and also attain a very high degree of clarity of thought and understanding, we will set out in some detailed context, the reasons for the renditions in both Exhibits A and B.

In respect of the delivery in Exhibit B, it was stated in part by Hon. Commissioner J.A Osei (as he then was) as follows:-

> *"I have fully considered the evidence on both sides claiming village and/or farms in the area in dispute. I have also considered the need for permanent natural boundary features and now make the following findings on the totality of the evidence:*

1. *That the traditional evidence on record for both sides is unreliable for the purpose of determining the issues of ownership of the land in dispute.*
2. *Th1at Pitiko stool does not share common boundary with Kumawu stool.*
3. *That Pitiko stool does not share common boundary with Bukuruwa.*
4. *That Pitiko stool rather shares common boundary with Abetifi stool.*
5. *That Obosom river is a boundary feature between Kumawu stool and Abetifi stool.*
6. *That Dede stream is a boundary feature between Abetifi and Bukuruwa stool lands*
7. *That Abetifi has persistently been claiming lands beyond the Regional boundary and was the party that claimed the lands up to Sone river in 1906 or thereabout.*

All things considered, the boundary between the two stools, namely Pitiko and Abetifi is, and shall be as follows:

"It shall commence from the point where the old Krachi footpath touches the lake, and shall follow this old footpath to a point one mile to Bonkurom village, then it shall turn north-eastwards to hit Kotwi rocks. From these rocks, the boundary shall turn south-eastwards thus touching Teteibuo rocks crossing river Apapasu to hit Bawhim rocks; then it shall continue straight to Abuotia rocks. From there the boundary shall turn north-eastwards to the Kyirebuo Rocks. Thence the boundary shall cross the footpath between Dunkra village and Kwaikesi village to the source of Abribiwasu river. Then it shall turn south-eastwards to the source of river Abadoboma. From there the boundary shall continue same south-eastwards to cross river Atonsu-Adentom and thence it shall turn eastwards to hit another tributary of the same river (Atonsu-Adentem) at a point one mile to Obomeng village. From here, the boundary shall turn

southwards to hit point (23) twenty-three of the Southern boundary near an unnamed village on Exhibit A (the plan).

All lands to the south of the boundary line as herein defined shall be Pitiko Stool land and all lands on the other side thereof up to the Afram river on the west, the Regional boundary on the north-west, river Obosom on the north, and the Dede river on the east shall be Abetifi stool land." Emphasis

It must also be emphasized that, at the end of the delivery of this decision, Commissioner J. A. Osei concluded by ordering one Licensed Surveyor of Accra, Mr. Okoi Lartey to carry out the physical demarcation of the boundary lines as defined in the judgment on the land in dispute and thereafter prepare a plan showing the features and the demarcations mentioned therein within a period of 3 months from the date of judgment which was 25th January 1991. The trial Commissioner also directed the said Surveyor to erect concrete pillars along the boundary lines except where the boundary runs into a stream or a river, in which case the same stream or river shall be the natural feature of the boundary features.

APPELLATE TRIBUNAL DECISION

As has been noted supra, the Applicants herein appealed against the decision of the trial Stool Lands Settlement Commission to the Appellate Tribunal. This is the judgment tendered as Exhibit A.

EXHIBIT A

On the 16th June 1993, the Appellate Tribunal of the Stool Lands Boundaries Settlement Commission in a unanimous decision Coram: *Amuah J. A. (Presiding) Sotomey and Olaga (JJT)* dismissed the appeal lodged by the Applicants herein. Amuah J. A and Olaga J.T. in separate opinions dismissed the appeal whereas Sotomey J. T. concurred in the decision of his brothers mentioned supra.

As indicated supra, because of our resolve to bring clarity, finality and real understanding to the issues raised herein, we will set out in detail the reasoning of Olaga J. T, and later that of Amuah J. A as follows:-

> *"Olaga, J.T. This an appeal by the 1st Claimant, Pitiko Stool, from the decision of the Stool Lands Boundaries Settlement Commission presided over by Mr. J. A. Osei, the Settlement Commissioner delivered in Accra on the 25th day of January 1991.*
>
> *By this findings "all land to the South of the boundary line as defined (in the judgment) shall be Pitiko Stool Land and all land on the other side thereof up to the Afram river on the West, the Regional boundary on the North-West, river Obosom on the North, and Dede river on the east shall be Abetifi Stool Land."*

After stating the above, Olaga J.T then profusely referred to the grounds of appeal argued by Mr. Adumua-Bossman, learned Counsel (of blessed memory) for the Appellants therein, herein Applicants as follows:

Grounds of appeal argued by the Pitiko Stool before the appeals Tribunal for and on their behalf by Mr. Adumua-Bossman

"Eight grounds of Appeal and three additional grounds were filed and accepted by the Tribunal. They can be summed up as follows:-

1. *The Learned Commissioner misdirected himself by ignoring historic research writings, established works, post graduate thesis, and evidence of an expert witness.*
2. *The Learned Commissioner failed to treat the evidence of 2nd witness for Pitiko, Nana Osei Bediako Firaw, as traditional evidence.*
3. *The learned Commissioner failed to apply the principle of established modern facts given in evidence by Pitiko.*
4. *The omnibus ground that the judgment is against the weight of evidence.*
5. *I wish to add two issues which are pertinent to be stated or spelt out. They are*
   a. *Whether or not Abetifi took part in the Ataala Firan war.*
   b. *Whether or not Pitiko and Abetifi share boundary with Bukuruwa."*

After referring to the grounds of appeal argued before them, Olaga J.T. proffered the following reasons for his decision to dismiss the appeal of the Applicants herein.

"I am left to agree or disagree with the learned Commissioner on whether or not Pitiko forms boundary with Bukuruwa. The evidence of the 3rd witness for Abetifi, Emmanuel Obeng Marfo, Chief of Somusei under Bukuruwa admits that Dede stream is boundary feature between Bukuruwa and Abetifi but he denies it in request of Pitiko. There was only a feeble attempt to challenge this witness. Pitiko did not call any one from Bukuruwa on this issue. ***I agree with the Learned Commissioner's conclusion.***

Of the two stools Abetifi stool is the Adonten of the Kwahu Traditional area next in rank to the Omanhene; Pitiko Stool is a subordinate stool under the Nifahene of Obo and serves through Asakraka, Bepong and Obomeng. Simply put, Abetifi is superior and higher in status while Pitiko is lower in the Kwahu Traditional set up. It is therefore obvious as contended by Mr. Enock D. Kom on behalf of Abetifi that the superior stool is likely to have more land attached to its stool than the subordinate stool with the same traditional area.

The facts weigh against Pitiko and the appeal must fail.

Although the Abetifi stool has by notice filed on 11/2/1993 asked for variation of the Southern boundary of the land adjudged for the stool by the Learned Commissioner it was not argued by counsel. It is in respect of the boundary in the south from point P4/A2 in the South-West to point P3/A1 in the South-East.

By Rule 32 of the Court of Appeal Rules (Supreme Court Rules, 1962) L.I. 218 the Tribunal has the power to give any judgment "and may also exercise the power in favour or all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision."

In order to invoke and exercise the powers conferred by the said Rule 32 the Tribunal invited Counsel to Address it on the Southern boundary altered by the Learned Commissioner. ***Both counsel agreed to submit written addresses which they did.***

Boundaries with Abetifi on its northern boundary, instead it says it has boundary with Kumawu. The Learned Commissioner has found that Abetifi is the Southern neighbor of Kumawu and the northern neighbor of Pitiko. He has however carved out land measuring between one mile to about 10 miles in width stretching from the old Atabubu-Krachi foot path across almost the entire land in dispute to only a few miles from the eastern boundary for Pitiko. It looks like an attempt to share the disputed area between the contestants giving, in my estimation, about one-third to Pitiko.

The reasons for rejecting the boundary claimed by Abetifi are that there are no natural features and the trees on the boundary were between 10 and 12 years old; further that Abetifi had difficulty in demarcating the boundary and that the features given by Nana Kwabena Dede were not shown to the Surveyor on the field and that the Tampori fetish belongs to Pitiko. The cross-examination of the Surveyor by counsel for Abetifi negate the Learned Commissioner's reasoning.

Except that there was no evidence to explain the age of the boundary trees which according to the evidence, were up to 20 years and not 12 years as the Learned Commissioner put it, there is sufficient evidence to answer the Learned Commissioner's reasons for rejecting Abetifi's Southern boundary. As to Nana Kwabena Dede's features they are the village which, it is asserted, Pitiko subjects were allowed to establish and it was their adverse claim which invoked the Oath and which precipitated the inquiry; the same would apply to the Tampori.

The absence of natural features cannot be used in favour of Pitiko who has forfeited its right to any claim along that boundary since they say they have no common boundary with Abetifi. That apart the boundary could be drawn in a straight line without being tied to any natural feature as in the case of the straight line boundary drawn by Commissioner F. C. Fuller between Ashanti and Gold Coast colony as appears in the plans exhibited in this case. ***For the above reasons I do not agree with the Learned Commissioner for slashing that large portion of land he has found to be vested in Abetifi."***

After setting out the reasons and analyzing same why some of the conclusions on the boundaries drawn and set out by the trial Stool Lands Boundaries Commissioner had to be varied, he concluded same as follows:-

"If the learned Commissioner is right in fixing the boundary using rocks as natural features one would ask why he has not used the Tampori rocks and another rock east of Boten; both are located south of the rocks preferred and purported to have been used by the Learned Commissioner as natural features.

Pitiko cannot be said to be in possession of the land the learned Commissioner has slashed from what would have been part of Abetifi land. Indeed the area is predominantly occupied by Abetifi.

By virtue of the said Rule 32 of L.I. 218 I ***vary the boundary for Abetifi to coincide with the boundary marked on the preliminary plan from P4/A2***

in the south west along the dotted line with the trees as natural features to P3/A1 in the South-east as appears in the judgment plan.

For the reasons which I have already given the appeal should be dismissed and accordingly I dismiss it."

CONCURRING OPINION OF AMUAH JA

After briefly narrating the facts and the grounds of appeal, Amuah J.A, concurred in the decision of Olaga J. T and concluded thus:-

"My view is that just below the regional boundary the area was inhabited by the Abetifi.

By the overt acts of the subjects of Abetifi stool on Exhibit A and claims to settlements and villages which are underlined with green in Abetifi stool colour, the Abetifi stool are predominant in the disputed area. The settlements underlined green out-numbered by far, those underlined red for Pitiko.

I am therefore satisfied that Abetifi Stool is the nearest state of the Kwahu along the Obosum River and the Ashanti territory, and that the Kwahu being referred to on or before 1906 are the people of Abetifi.

The appeal is dismissed.

I have also considered the complaint lodged by Abetifi Stool in their application for variation. An appeal is for rehearing and it is the duty of the tribunal to consider any complaint which points to a substantial miscarriage of justice.

As you are probably aware by now, the credibility of Pitiko Stool is greatly shaken.

They claim to be in possession of a shrine in the Southern portion of the disputed land adjudged to belong to them. However, Abetifi Stool claimed to have granted it to them.

I have no cause to disbelieve Abetifi Stool on this issue and coupled with the fact that Pitikos have not emigrated into the said southern portion, I am minded to grant the application.

The Southern boundary of the disputed land claimed by Abetifi shall therefore read, P4/A2 in the south along the dotted green line to P3/A1 where we have different species of trees along the boundary line, in otherwords the southern boundary claimed by Abetifi is granted to them."

Solomey J.T, the third member of the panel just concurred in the decision of his two brothers.

APPEAL TO SUPREME COURT

Still undaunted, the Applicants herein yet again appealed this Appeal Tribunal decision to this Court, which by a unanimous decision rendered on the 29th of November 2017 dismissed the appeal.

The Supreme Court, speaking through our distinguished and respected brother, Pwamang JSC held as follows:-

> *"This appeal is against the judgment of the Stool Lands Boundaries Appeals Tribunal dated 16th June, 1993. In that judgment the Appeals Tribunal dismissed an appeal by Pitiko Stool, hereinafter referred to as the appellant, against the decision of the Stool Lands Boundaries Settlement Commissioner, to be called the Commissioner, dated 25th January, 1991 and varied the said decision by granting a larger land to the Abetifi Stool, which shall be referred to as the respondent. The disputed land lies roughly between the Obosom river which is along the boundary between the Ashanti and Eastern Regions of Ghana to the north, Dede river to the East and the Afram river to the west. At the enquiry the parties relied on traditional evidence and also testified on acts of possession within the disputed land in proof of their boundary claims. A surveyor was appointed by the trial Commissioner who prepared and tendered a plan on which he indicated the respective boundaries claimed by the parties and their villages, farms, shrines and other features of possession.* "

After beautifully setting out the antecedents in the appeal lodged before them as stated supra, the Court, still speaking through Pwamang JSC concluded their decision thus:-

"We noticed from the grounds of appeal and the statement of case that the appellant did not complain about the variation by the Court of Appeal of the boundary that was determined by the trial Commissioner and which was more favourable to the appellant. The law accepts alternative claims and defences by parties and if appellant could justify the boundary by the trial Commissioner it should have argued that before us so its silence can only mean that it is unable to support that boundary either. It is apparent from the evidence on record that the appellant failed to lead sufficient evidence of recent facts so as to avoid a finding against it on the disputed boundary but unfortunately for it that is what the law requires of parties relying on traditional evidence that tend to conflict as in this case. ***The respondent's evidence of recent acts of possession on the whole outweighed that of the appellants so they were entitled to judgment in their favour.***

In the circumstances we find no merit in the appeal and we dismiss same."

Having set out the chronology of events in this protracted litigation commencing from the Stool Lands Boundaries Settlement Commission, then to the Appeals Tribunal of the Stool Lands, and finally to the Supreme Court, and back to this Court on a request to ***"explain the demarcation of the land to the parties in accordance with the judgment of the court delivered on 29th November 2017",*** we accept the said invitation and proceed to conclude this rendition thus.

We refer to the evidence of C.W.1 and the exhibits he tendered which are Plans of the land based on the judgments from the Stool Lands and the Appeals Tribunal, tendered as exhibits CW2 and CW3. In view of the deep clarity that his evidence has brought to

these proceedings, it bears emphasis that, Exhibit C.W.3, which is the Plan of the land based on the decision of the Appeals Tribunal of the Stool Lands Boundaries Settlement Commission is the plan that has to be accepted for the purpose of determination of the real questions germane to this application. This is because an appellate court decision is superior to that of a trial court decision. By simple logic, the decision of the trial Stool Lands Boundaries Settlement Commission is equivalent to the High Court, whilst that of the Appeals Tribunal is equivalent to the Court of Appeal.

EFFECT OF SUPREME COURT DECISION

There is absolutely no doubt, that the Supreme Court, by their unanimous decision referred to supra, dismissed the appeal of the Applicants herein against the decision of the Appeals Tribunal dated 16th June 1993.

What this therefore means is that, the variation by the Appeals Tribunal of the decision of the Commissioner of the Stool Lands Boundaries Settlement Commission, dated 25th January 1991 still stands and is thus valid and enforceable. This is because, even though there was not much clarity in the rendition of the Supreme Court, the statement ***"In the circumstances, we find no merit in the appeal and we dismiss same speaks volume."***

That, since the appeal fails the orders and decisions of the Appeals Tribunal of 16th January, 1993 still stands.

CONCLUSION

On the basis of our analysis supra, and taking into account all the exhibits tendered and referred to supra in the testimony of C.W.1, (Robert Hackman Antwi) the Regional Surveyor of the Survey and Mapping Division of the Lands Commission in the Eastern Region, we affirm the Plan of land as drawn by him and marked herein as Exhibit C.W.3.

EPILOGUE

The boundaries of the land between the parties herein shall therefore be as delineated in the plan of land marked as Exhibit C.W.3 which shows the Respondents land as follows:-

- ✓ ***From P1/A4 to P2/A3 bounded by Ashanti and Gold Coast Colony, Kumawu Stool land and Obosum River to the north,***
- ✓ ***From P2/A3 to P3/A1 boundered by Dede River and Dedeso to the West,***
- ✓ ***From P3/A1 to P4/A2 boundered by Dedeso to an area near Floating Vegetation and***
- ✓ ***From P4/A2 to P1/A4 boundered by Floating Vegetation to Hyewoden and another Floating Vegetation more particularly delineated in the colour legend for the Abetifi Stool.***

APPLICANT STOOL LAND BOUNDARIES

All land to the South of the Respondents land described supra and more particularly delineated in the colour legend of the Pitiko Stool as indicated on Exhibit C.W.3.

In view of the clarity that this Application has brought about, there will be no order as to costs.

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

S. K. MARFUL-SAU
(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS.)
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