IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2014

CORAM: ANSAH, J.S.C. (PRESIDING)
ADINYIRA (MRS), J.S.C.
DOTSE, J.S.C.
YEBOAH, J.S.C.
AKAMBA, J.S.C.

CHIEFTANCY APPEAL
NO.J2/1/2013

21ST MAY 2014

1. **ALHAJI ISSAH BUKAR, GBETOR NAA (DECEASED) SUBSTITUTED BY ALHAJI MAHAMA BUKARI OF H/NO: BUDU 0022, NAKOREE-YIRI**
2. **NAA MUMUNI SAAKA, SING NAA (DEC'D) SUBSTITUTED BY NAA ABU SALIAH BAFARADO II, KULK-PONG, SING NAA.**

PETITIONERS APPELLANTS APPELLANTS

VRS

1. **MAHAMA BAYONG OF SUYIRI – WA**
2. **YERI NAA ALHAJI MOGTARI**
3. **FUSEINI SEIDU PELPUO, SEJEE-NAA**
4. **MAHAMA SEIDU KUNLUGU – CHARINGU NAA SOKPEYIRI, WA**

RESPONDENTS RESPONDENTS RESPONDENTS

JUDGMENT

AKAMBA, JSC;-

This is an appeal from the decision of Judicial Committee of the National House of Chiefs (herein after simply NHC) which affirmed an earlier decision by the Judicial Committee of the Upper West Regional House of chiefs (simply referred to as UWRHC) against the petitioners/appellants/appellants herein in a dispute over who is the appropriate person under customary law of the Wala Traditional area to convene a meeting for the nomination and election of a Wa-Na.

This chieftaincy dispute is one of the numerous such disputes that have plagued the Northern parts of our dear country over the years with the unpleasant consequence of sapping the energies and resources of whole communities which could have been spent in productive ventures. This case commenced by petition at the UWRHC in 2007. In between the time of filing in 2007 and the present appeal before us this 2014 what has been dissipated in the nature of financial resources and man hours, not to speak of the level of disunity in leadership, is anybody's guess. The saddening part of the whole matter is the narrowness of the issue that has brought the parties this far. It is hoped that traditional councils all over the country will follow the example of the few councils that have documented their customary practices and resort to documentation thereof rather than reliance upon oral traditions which are easily lost or forgotten. This is not to suggest that codification or documentation will completely eradicate disputes but will make for ease of resolution of them.

BRIEF FACTS

In this presentation the petitioners/appellants/appellants would be referred to simply as the appellant/s whilst the respondents/respondents/respondents would be referred to as the respondent/s.

On 3rd September 2006 Wa Naa, Naa Yakubu Seidu Soalle II passed on. A vacancy was thus created in the Wa Paramount skin. In order to fill this vacant traditional position, the 1st respondent in his capacity as Tindana/Widana of Wa and purported lead kingmaker, invited other Kingmakers of the Wa Paramouncy to a meeting for the purpose of nominating and electing a new Wa Naa. The meeting took place on 19th January 2007 and attended by five out of the seven recognized Kingmakers. The outcome of the meeting was the election of the 3rd respondent as the new Wa Naa. The 3rd respondent was en-skinned as the Wa-Naa and the President of the Wala Traditional Council (WTC) on 21st January 2007. The appellants, contending that the election of the 3rd respondent was conducted contrary to the customs, traditions and practices of the Wa Nam, filed a petition dated 22nd January 2007 challenging the said en-skinment. The respondents' not only denied the appellants claims but cross-petitioned that the 3rd respondent was properly elected and enskinned. They also prayed for an injunction to restrain the appellants from interfering with the 3rd respondent's performance of his duties and functions as a chief. The respondents' cross petition was upheld by the UWRHC whilst the petition was dismissed. An appeal by the appellants to the NHC was also dismissed.

As regards the original petitioners, it is worth noting that the 1st and 3rd petitioners passed on during the pendency of the appeal before the NHC. The original 1st Petitioner Alhaji Issah Bukar who passed on was replaced by Alhaji Mahama Bukari while the 3rd Petitioner Naa Mumuni Saaka, Sing Naa who also passed on was substituted by Naa Abu Saliah Bafarado II. When the matter came on appeal before the NHC in Kumasi the 2nd Petitioner /Appellant withdrew his appeal. He was accordingly struck out as a party on 27th October 2010. The decision of the NHC was therefore rendered against the two petitioners Alhaji Mahama Bukari who would be referred to as the

1st appellant and Naa Abu Saliah Bafarado II who would be referred to as the 2nd appellant.

CONCURRENT FINDING OF FACT

This appeal arising from the concurrent findings of fact by both the trial UWRHC and the NHC cannot escape the obvious and generally held considerations or principles upheld in numerous decisions of this court in such instances. The principle is that where a finding of fact has been made by a trial court or judicial committee as in this case and concurred in by the first appellate court or tribunal (the NHC in this case) as in the present case, the second appellate court (the Supreme Court) should be slow in coming to different conclusions unless it is satisfied that there are strong pieces of evidence in the record of appeal which make it manifestly clear that the findings of the trial and first appellate tribunals are perverse. A few such cases on the point include In re Wa Na; B.K.Adama (subst by) Issah Bukari & Anor (2005-2006) SCGLR 1088; Gregory v Tandoh (IV) and Hanson (2010) SCGLR 971, at 985; Obeng v Assemblies of God Church, Ghana 2010 SCGLR 300; Achoro v Akanfela (1996-97) SCGLR 209 (holding 2); Akufo-Addo v Cathline (1992) 1 GLR 377 per Osei Hwere JSC); Watt (or Thomas v Thomas [1947] 1 AER 582; 176 LT 49, HL; KoglexLtd (No 2) v Field [2000] SCGLR 175; Jass Co Ltd v Appau [2009} SCGLR 265 which deals with circumstances justifying interference with findings of fact by the Supreme Court; and Awuku Sao v Ghana Supply Co Ltd [2009] SCGLR 710. The principle quoted above does not, so to speak, bar a second appellate court such as this court from coming to a different conclusion except that it should be resorted to upon a satisfaction that there are strong pieces of evidence which render such conclusion inevitable. This court in its majority review decision in Koglex Ltd (No 2) v Field [2000] SCGLR 175 at 176 cited the dictum of Ollenu JA (as he then was) in Kyiafi v Wono (1967) GLR 463 at p 466 in holding 1 that *"A second appellate court, like the Supreme court, must satisfy itself that the judgment of the first appellate court was justified or supported by evidence on record. Where there was no such evidence that finding ought to be set aside."* Secondly and relying on Achoro v Akanfela (supra) the court held further in holding 2, that *where the first appellate court had confirmed the findings of the trial court, the second appellate court would not interfere with*

the concurrent findings unless it was established with absolute clearness that some blunder or error, resulting in a miscarriage of justice, was apparent in the way in which the lower court had dealt with the facts.

Also in Fosua & Adu-Poku v Dufie (Deceased) & Adu Poku Mensah [2009] SCGLR 310 at 313 my respected and able brother Ansah JSC succinctly stated as follows: "*A second appellate court would justifiably reverse the judgment of a first appellate court where the trial court committed a fundamental error in its findings of facts but the first appellate court did not detect the error but affirmed it and thereby perpetuated the error. In that situation, it becomes clear that a miscarriage of justice had occurred and a second appellate court will justifiably reverse the judgment of the first appellate court."*

In the very recent unreported case of Unilever Ghana Ltd vs Kama Health Services Ltd, Civil Appeal No J4/24/2013 of 19th July 2013, SC. my able brother Benin, JSC pithily stated the position as follows: "*Much as an appellate court should refrain from disturbing findings of fact made by a trial court, it will not shirk its responsibility of setting aside those findings of fact which are not borne out of the evidence on record."*

Against the background of the legal authorities cited above we would thread cautiously in considering the grounds of appeal to ascertain whether or not any miscarriage of justice occurred to warrant any interference with the conclusion of the first appellate tribunal (NHC) when it affirmed the findings of the trial UWRHC.

GROUNDS OF APPEAL

A close observation of appellants grounds of appeal reveals that only one ground of appeal was indeed filed, as in (a), and accompanied by eleven particulars of misdirection complained of.

They are:

a. "The Judicial Committee of the National House of Chiefs misdirected herself with regard to the custom, convention and tradition of the role of the Tindana vis a vis the nomination, selection, enskinment etc of Wa-Naa.

Particulars of Misdirection.

a. The Judicial Committee of the National House of Chiefs failed to consider adequately the Petitioners/Appellants/Appellants claim and the reliefs which were sought for by the Respondents/Respondents/Respondents in the cross petition.
b. The judgment is against the weight of evidence adduced at the trial.
c. The failure of the 1st, 2nd and 3rd Respondents/Respondents/Respondents to testify and give evidence was fatal to the Respondents/Respondents (sic) case more especially having filed a cross petition.
d. Both the National House of Chiefs and the Regional House of Chiefs – Judicial Committee erred in both law and custom when they equated the position of "Tindana" with that of "Nabipon". Thus the entire process which resulted in the nomination of the 3rd Respondent was a nullity.
e. The Committee members of both the lower and the appellant court – National House of Chief's incorporated into their arguments, extraneous matters which were not before the courts for determination.
f. Since appeal is in the form of re-hearing, the appellant court is being called upon to evaluate the entire proceedings/case including the judgments of both the National House of Chiefs and the Regional House of Chiefs and reverse the decisions of the two courts.
g. The Judicial Committee of the National House of Chiefs failed to consider critically the legal effect of the unsigned judgment of the Upper West Regional House of Chiefs.
h. That the record of proceedings which consisted of interlineations, handwritings etc definitely and naturally prejudiced the minds of the

Appellant court – National House of Chiefs which inevitably resulted in substantial miscarriage of justice.

i. Both Regional and National House of Chiefs – Judicial Committees erred in law when they rejected the letter written by the 'Frokos family'
j. The Petitioner/Appellant/appellants having established their case beyond preponderance of probabilities, the Judicial Committee of the National House of Chiefs ought to have dismissed the Respondents cross petition.
k. Additional grounds of appeal shall be filed upon receipt of the record of proceedings."

The Judicial Committee of the National House of Chiefs misdirected herself with regard to the custom, convention and tradition of the role of the Tindana vis a vis the nomination, selection, enskinment etc of Wa-Naa.

The gravamen of the dispute between the parties to this appeal has been the question of who is the rightful person to convene the meeting of Kingmakers for the purpose of enskinning a Wa Naa. The next issue which we consider secondary is the position of a Nabikpon in these affairs. We would thus resolve the main ground of appeal and particulars of misdirection together under three subtitles. The first determination would deal with such particulars on the question of burden of proof; the next will deal with the issue of the role of Tindana and/or Nabikpon in these affairs and lastly the question of unsigned judgment, interlineations and handwritings on the record of proceeding as well as the rejection of a letter from the Frokos family for consideration.

GROUND a, b, c, d, and k

The first rubric we propose to deal with is the question whether or not the parties discharged the various burdens of proof on them to warrant the decision/s entered by each of the courts below. An appeal being by way of a re-hearing we would evaluate the various pieces of evidence led by either party and arrive at our own conclusion. The appellants' by their petition sought:

a) A declaration that the Tendana of Wa has no capacity to convene a meeting of Kingmakers of Wa to elect a Wa Naa.
b) A declaration that the meeting of Kingmakers convened by the 1st respondents in his capacity as the head of Tendamba for the election of a Wa Naa on the 19th of January, 2007 was null and void and of no effect as well as his enskinment on 21st January 2007.
c) Declaration that the 3rd defendant, Fuseini Pelpuo is not the Wa Naa and therefore prayed for an order of perpetual injunction restraining the defendants from outdooring and holding the said Fuseini Pelpuo as the Wa Naa.

The Evidence Act, Act 323 (1975) prescribes the procedure to be applied in every proceeding including inquiries, investigations and hearings etc. It provides a useful guide as to the burden required to be discharged by a party to a dispute at a trial. Section 11 (1) of Act 323 obliges a party to introduce sufficient evidence to avoid a ruling against him on an issue. As the petitioners in this dispute the appellants had the initial obligation or burden to produce such evidence as would satisfy the tribunal or court or judicial committee of the Upper West Regional House of Chiefs (UWRHC) in this case, on the issues raised for determination.

The position of the law on proof is pithily captured by Kpegah, JSC in Zabrama v Segbedzi (1991) 2 GLR 221, CA wherein he restated the well known principle in Majolarbi v Larbi (1959) GLR 190 as follows:

"….a person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden."

This burden is not discharged by merely entering the witness box and repeating the claims or averments as by leading admissible and credible evidence from which the facts they assert can be properly and safely inferred or concluded. (See **Memuna Moudy & Others v Antwi (2003-2004) SCGLR 967 especially 974 to 975**).

The appellants were thus obliged to lead evidence in proof of their assertions mindful that this being a chieftaincy dispute the enquiry is in the nature of a fact finding endeavour, as observed by **Sowah JA** as he then was in **Kyereh and Ors v Kangah (1978) Part 1 GLR 83 at 84**. What evidence did the appellants therefore produce to satisfy the committee, which evidence must meet the requisite degree of proof?

The parties do not dispute the fact that the Tendamba of Wa are the original settlers of Wa. They also do not dispute the membership of the following seven as Kingmakers for the Wa Royal skin namely; the four chiefs of the four gates to the skin made up of the Nakpaha, Jonyuohi, Najeri and Yijiihi together with the Tendana, Yerina and Froko. The last three kingmakers listed (supra) hold their positions by virtue of their traditional offices. These traditional office holders or ex officio members are not royals so to speak, and so cannot aspire to occupy the Wa skin. They nevertheless together play a key and crucial role in the nomination, election and enskinment of a Wa Naa. This court upheld the position that there are seven kingmakers to the Wa royal skin in the case of **In re Wa Na; B.K.Adama (subst by) Issah Bukari & Anor (2005-2006) SCGLR 1088 at 1091** as follows: "The election was by the seven Kingmakers of the Wala State, consisting of; one representative of the Froko; the Tendana and the Yeri Na. The four divisions or gates are: Yijiihi, Najeri, Jonyuobi (sic) and Nakpaha."

Rattray in his **Tribes of the Ashanti Hinterland, Vol II (1st Published in 1932) Reprinted 1969, at page 450** (which is a published treatise in conformity with s. 132 of NRCD 323), highlights the four gates or divisions of Wa as follows:

"*The Chieftainship is, in theory, supposed to be held alternately by members of four family groups each tracing descent from one or another of Sorliya's four 'sons', i.e. Nakpasa, Gyonyose, Nagjare, and Napelpuo, but in practice, the claimant who was strongest would seize the Na-ship."*

The parties however disagree that there is another customary personality described as the 'Nabikpon' who has a role to play in the making of a Wa Na so to speak. The force of the appellants' petition is the role they ascribe to the 'Nabikpon' as the one who has the prerogative to summon the Kingmakers to a

meeting for the quest for a new Wa Naa to commence. The respondents vehemently deny any such prerogative of any 'Nabikpon' to convene the meeting of Kingmakers. The respondents' contend that it is rather the Tendana who has such responsibility to summon the other colleague Kingmakers to such meeting. This therefore obliges the appellants as petitioners to introduce sufficient evidence on the balance of probabilities on the issue to avoid a ruling against them.

APPELLANTS' EVIDENCE

To grant the appellants' prayer is to imply that the 3rd respondent was not duly elected and enskinned by the established procedure and appropriate body as Wa Naa. The 3rd respondent can only be duly elected and enskinned if the meeting of Kingmakers for the election and enskinment was convened by the competent customary authority for the purpose.

The evidence in proof of the appellants' as petitioners' claims was launched by the 1st appellant who described himself as the Gbatere Na and a senior Prince at Wa. The summary of his testimony was that upon the death of a chief in the Wa Traditional Area, he is informed and he in turn informs the Wa Na. When a Wa Na dies, he as the head of all the Princes (the Nabikpon) in the Wala Traditional Area performs the following functions:

a) Acts as Wa Na until a new Wa Na is enskinned

b) Summons Princes to elect a new Wa Na. (He named the Princes as Busa Na; Kperisi Na; and Sing Na). Gulli Na which originally played no role in the process was later elevated and included in the list by Wa Na Kori.

Exhibit B which was initially identified by the 1st appellant as I.D 1 was subsequently tendered in evidence by the original 2nd petitioner in apparent proof of their assertion that the 1st appellant was the head of the Princes or Nabikpon. Exhibit B is a public record obtained from the Public Records and Archives Administration Department Tamale. The record is dated 17th July 1933 on the

subject of the Wala State Native Authority. Its significance to the dispute at hand is a reference in its Appendix G which states as follows:

"WE THE STATE COUNCIL OF WALA, HEREBY AGREE AND STATE THAT:

(i) At the death of any chief from Wa downwards affairs of town and Court are temporarily in the hands of the Nabikpon, i.e. **the eldest son except** in cases of mental incapacity.

(ii) In absence, illness, or for other good cause a Chief may appoint any elder whom he may think fit, to exercise his powers and perform the duties of his office for such period as occasion may demand."

The appendix bore the thumb-print of Wa Na Pelpuo III at the end of the document.

The appellants relied also on exhibit A which is a protest letter written by 1st appellant to the Wa Municipal Chief Executive when he learnt about the meeting being convened by the 1st respondent to elect a new Wa Naa.

The 3rd (petitioner) appellant is the Sing Naa. He granted a Power of Attorney to Naa Salia Bakfaora III, current Kulkpong Naa and a retired educationist to prosecute his petition. The Attorney testified before the judicial committee of the UWRHC and gave his perspective of the custom of nominating and election of a Wa Naa. He stated that his Donor was a Prince and a chief of the Jonjusi gate and a possible candidate to the Wa skin. According to this witness, discussions for choosing a Wa Naa when a vacancy occurs is undertaken by the sons of the vacancy gates. He named the Gates as Yijiihi (Busa), Najeri (Kperisi), Jonyuori (Sing). This witness did not mention the Guli (Nakpaha) gate and what significance, if any, it had in these affairs. During the interim however, while the discussions for the election of a new chief was ongoing, the Most Senior Prince (the Nabikpon) performs the function of the skin. This Prince must not necessarily be the biological son of the immediate deceased chief. According to him the custom has always been to consider the Busa Naa as the Nabikpon but should the Busa skin be vacant at the time, then the most senior of the existing princes becomes Nabikpon. The Attorney further stated that the 1st

appellant's position as Gbetore Naa is not elective but hereditary as Gbetore is an older settlement than Wa

It is apparent that the appellants' placed heavy reliance on exhibit B appendix G in support of their claim as the 'Nabikpon', whom they define as the most senior of the Princes. The words of the exhibit B (supra) are so clear and unambiguous they require no interpretation to be understood. The Colonial District Commissioner who recorded the proceedings conveyed a very clear description of the person who carries the responsibility of 'town and court' upon the death of any chief. The reference is made to the **eldest son** of the demised chief. (See exhibit B supra).

It is obvious from the drafting of the appendix G that the concept of a 'Nabikpon' in the Wala context is akin to a 'Gbong-Lana' in the Dagomba context. This is so because similar provisions were adopted when the Dagomba State Council was created under the Native Authority Ordinance (No 2 of 1932) following which the conference of Dagomba Chiefs adopted a Constitution for the State of Dagbon. The conference adopted a number of papers including an appendix H which made provision for events following the demise of a chief or the Ya Na as follows:

> *"At the death of any chief of Yendi, affairs of town and court are temporarily in the hands of **Gbong-Lana, i.e. the eldest son**, except in cases of mental incapacity."* See **Yakubu II v Abudulai (1984-86) 2 GLR 239 at 249, SC.**

It is clear from the expression used in both the 'Gbong-Lana' instance and that of the 'Nabikpon' that the reference was made specifically to the **eldest son** of the **demised chief** and not just any senior Prince.

These similarities are not coincidental given the common heritage of Mamprugu, Dagomba and the Wala as captured by **R.S.Rattray** in '**The Tribes of The Ashanti Hinterland Vol II, (supra) at page 452** as follows:

"*The tribe now known as Wala have long been under, at least the nominal, suzerainty of Chiefs who originally hailed from Mamprugu or Dagomba. The present Na (Chief) of Wa is the twenty-fourth of his line, tracing descent from Sorliya, the first Chief."*

It is pertinent to remember that whereas the son of a chief is a prince, it is not every prince who is a chief. If a prince who is not already a chief but by virtue of being the eldest son of the Wa Na becomes the holder of the title 'Nabikpon' upon the father's death that does not turn him into a chief. For a person to be a chief he must be nominated, elected and enskinned or installed as such in accordance with the relevant custom and usage. See Article 277 of the Constitution 1992 and s. 57 (1) of the Chieftaincy Act, (2008) Act 759.

It is trite law that where the evidence led by a party (such as exhibit B) is in conflict with his own testimony on a crucial issue, a trial court should not gloss over it and make a specific finding on that issue in favour of that party whose case contained the conflicting evidence on the issue. See **Atadi v Ladzekpo (1981) GLR 218.**

From the foregoing it is obvious that the clear meaning of exhibit B runs counter to the testimony of the appellants on the matter. In other words, the exhibit does not support their claim that 1st appellant is a 'Nabikpon'. This notwithstanding, it was still within the competence of the appellants at the trial, to lead cogent evidence to show that there had been some change in the custom which extended the concept of 'Nabikpon' beyond its definition in exhibit B. Were it the case that a 'Nabikpon' meant the most senior of the Princes as contended by the appellants, they were obliged under the Evidence Act to call evidence in proof thereof. This also the appellants failed to do. It is further pertinent to point out that even though the 2nd respondent appellant-appellant, the late B.K.Adama in the **In re Wa Na (2005-2006) case** (supra) was stated to have conducted the affairs of the election as the most senior prince he died before the appeal could be heard which appeal they eventually lost.

The overwhelming evidence on record shows that the original 1st petitioner who mounted the initial challenge was not the eldest son of the Wa Na Yakubu Seidu Solle II whose demise occasioned the enskinment of the 3rd respondent. Under cross examination, the original 1st petitioner traced his accession to his present position of 'Nabikpon' as by succession to his late brother Alhaji B.K.Adama who was so appointed by the Princes. The late B.K.Adama was never a Wa Na. The title

Gbatere Naa was only styled on the said B.K.Adama by the appellants. The appellants did not call nor name any of the Princes who supposedly participated or witnesses his said appointment as 'Nabikpon' and this we consider a serious lapse given the refutations and denials by the respondents about any such practice. Under cross examination the 1st appellant further explained that the position of 'Nabikpon' is not reserved for the Yiziri Na represented by the Busa Na but that he can come from Sing or any other gate provided such a person is a father to all the Princes. This answer does not only complicate the concept of 'Nabikpon', it takes it further away from the simple definition given in exhibit B, appendix G (supra). The appellants did not explain what was meant by father to all the Princes.

The evidence led in support of the appellants' claims is so unsatisfactory and contradictory it failed to reach the standard requirement of proof by the preponderance of probabilities as defined in s12 of NRCD 323, the Evidence Act (1975). The trial UWRHC rightly concluded that the appellants had failed to meet their evidential burden and therefore dismissed the petition. The NHC also rightly upheld the dismissal of the petition by the trial UWRHC on appeal.

THE RESPONDENTS' CASE

The respondents called four witnesses in support of their cross petition. Naa Brimah Seidu, Gulli Naa, and a kingmaker representing the Nakpaha of Guli gate testified for the respondents as DW1. This witness is a retired teacher of the Ghana Education Service and a former District Secretary for Wa District. He testified that the Tindana is not only a kingmaker but has the additional responsibility for convening the meeting for the nomination and election of a new Wa Na. This evidence is corroborated by Huseini Moomeen DW3 a Professional Teacher who hails from Suuriyiri. He is traditionally a Tindana.

The DW1 further stated that the Tindana has borne the responsibility for convening the meeting for nomination and election of the new Wa Na since the first chief of Wa in the person of Naa Soalle I from the Nakpaha gate of Guli. He also stated significantly that at the time of the enskinment of the 1st Wa Na Soalle I the Tindana of Wa was the sole Kingmaker. The witness enumerated other

instances when the Tindana convened the meetings for the nomination, election and enskinment of Wa Namine (chiefs). These include those for the election of the following Wa Namine; Seidu Kofi Wala; Sidiki Bomi and Momori. The meeting to elect the last Wa Naa Seidu Soale II was equally convened by the Tindana who happened to be the 1st respondent. The witness gave a vivid account of what happens when a Wa Na dies. According to him when a Wa Na dies it is the Tindana who will first be informed of the death and this is followed by him visiting the palace to ascertain the fact. When satisfied as to the death the Tindana would perform certain traditional rites by virtue of his office before issuing out any announcements. The evidence of DW1 was largely corroborated by DW3. The respondents had successfully discounted any lead role ascribed to a 'Nabikpon' as understood by the appellants' to summon the kingmakers for the selection of a new Wa Na. Indeed the fact that the evidence led by the appellants per exhihibit B favoured the position of the respondents the trial UWRHC was obliged to accept the latter's version of the narrative concerning the Nabikpon. This position of the law was rightly stated by **Ollennu J (as he then was**) in **Tsrifo v Dua VIII (1959) GLR 63 at pages 64 to 65** and the same cited with approval in **Osei Yaw & Anor v Domfeh (1965) GLR 418 SC** that where the evidence of one party on an issue in a suit is corroborated by witnesses of his opponent, whilst that of his opponent on the same issue stands uncorroborated even by his own witnesses, a court ought not to accept the uncorroborated version in preference to the corroborated one unless for some good reason (which must appear on the face of the judgment) the court finds the corroborated version incredible or impossible.

DW2 is John Bosco Bongkyere a former Registrar of the Wala Trditional Council who recorded the minutes of the meeting held on 19th January 2007 for the election of a Wa Naa. The witness stated under cross examination that the Kingmakers are a section of the Wala Traditional Council hence he was obliged to take down the minutes of their deliberations which he did. These minutes captured in exhibit 5 attest to the proper conduct of the deliberations which was attended by five out of the seven recognized Kingmakers, namely the Tindana Mahama Bayong, Yeri Naa Alhaji Mogtari Mustapha, Froko Osman Kasim, Naa Seidu Brima, Guli Naa, Naa Mahama Seidu Kunlugu II Kperisi Naa. The meeting

which was chaired by the Tindana, Mahama Bayong unanimously elected and proclaimed the 3rd respondent the new Wa Naa.

In contrast to the appellants the respondents had succeeded in discharging the burden to produce sufficient evidence on the balance of probabilities in order to avoid a ruling against them on their cross petition. Both the trial UWRH and NHC rightly found that the respondents had discharged their evidential burden and consequently entitled to judgment. We agree with the findings on the merits of the cross petition set up by the respondents by both the UWRHC and the NHC. We find no merit in the combined grounds of appeal and dismiss same.

What is the role of the Nabikpon and/or Tindana in the election of a Wa Naa?

Who is a Nabikpon? Does he have a place or role in the affairs of electing a Wa Na? From the record of appeal it is evident that the expression 'Nabikpon' is ordinarily ambiguous in the tonal context of the Wali language. Depending on how the word is pronounced it could either mean the head or most senior Prince/chief or simply the existing Chief's eldest son or Prince. Since the appellants' petition is premised on their claim that the 1st appellant is a 'Nabikpon' who has the prerogative to convene the meeting for the election of a Wa Na, he has the burden of proof on the claim. The appellants' interpretation of 'Nabikpon' is that such holder is the head of all the Princes and is not necessarily a biological son of the late previous chief. Exhibit B appendix G was made on 15th July 1933 and signed by the thirteen Divisional Chiefs and seven out of eight Judicial Councillors of the Wala State Council under the leadership of Wa Na Peripo III. Among the Judicial councilors who signed the document were the Widana and the Foriko. The position of Yerina was vacant at the time. Incidentally exhibit B was tendered by the appellants in purported proof that 'Nabikpon' meant the most senior of the Princes who is not necessarily the biological son of the deceased chief. The exhibit B is however devoid of any ambiguities as it clearly does not support the appellants' position. It simply provides that upon the death of a chief, the affairs of town and court would temporarily be in the charge of the Nabikpon i.e. the eldest son, except in cases of mental incapacity. Without any doubt the agreement adopted by Wa Na Pelpuo III together with the thirteen

Divisional Chiefs and the seven Judicial Councilors in 1933 was within the competence of the Council. Significantly, in appendix C of exhibit B passed that same 15th July 1933, the same thirteen Divisional Chiefs and seven Judicial Councilors and under the leadership of the same Wa Na Pelpuo III, resolved that if any changes are to be made to any custom it could only be done by the unanimous decision of the Wala State Council. There is no evidence of any customary decision changing the defining of 'Nabikpon' as provided in appendix G. I have already concluded that the appellants and in particular the 1st appellant has failed to prove that he is the son of the deceased Wa Na Yakubu Seidu Soalle II hence he cannot be the 'Nabikpon' envisaged in exhibit B appendix G. The appellants on their own showing have not exhibited such knowledge of their custom as to be worthy of credibility. The 3rd appellants' attorney could not give the name of any 'Nabikpon' who convened a meeting for the election of any Wa Naa yet he was insistent such role existed, not even the one who purportedly initiated the meeting of the kingmakers for the election of Na Mumuni Kore whom he knew very well as he succeeded his father who had abdicated. His reason was that he was too young then. The witness could equally not tell which 'Nabikpon' supposedly convened the meeting for electing Wa Naa Momori which is of a recent occurrence. (See page 166 of the ROA)

We find the resolutions passed by the Wala State Council in 1933 highly commendable as they helped to streamline the various traditional positions in the Council's area of control. But for the Council's explanation of what it meant by 'Nabikpon' this could be an open field for contest without end. As explained earlier in this appeal, a 'Nabikpon' in the Wala Traditional context carries the same meaning as 'Gbong-Lana' in Dagbon context and both refer to the demised chief's eldest son. The 1st appellant is neither a son nor the eldest son of the late chief, Wa Naa Yakubu Seidu Soalle II.

What role does the 'Nabikpon' play in the election of the Wa Na?

It would appear that in the light of our finding that the 1st appellant is not a 'Nabikpon' in the sense envisaged by exhibit B appendix G, providing an answer to this question would at best be an academic exercise.

We would now deal with the role of the Tindana in the election of a Wa Na. Without any doubt the respondents have led sufficient evidence on the issue.

DW1, Naa Brimah Seidu, Gulli Naa, and a kingmaker of the Nakpaha of Guli gate testified on the significant role of the Tindana in the election of the Wa Na. He told the committee that the Tindana is a kingmaker with the additional responsibility for convening the meeting for the nomination and election of a new Wa Na. This evidence is corroborated by Huseini Moomeen DW3 a Professional Teacher who hails from Suuriyiri and is traditionally a Tindana.

DW1 further stated that the Tindana has carried out this responsibility since the enskinment of the first chief of Wa, Naa Soalle I from the Nakpaha gate of Guli when he was the sole kingmaker. The witness gave a catalogue of other instances when the Tindana convened the meetings for the nomination, election and enskinment of Wa Namine (chiefs). These include those for the election of Wa Namine; Seidu Kofi Wala; Sidiki Bomi and Momori. The meeting to elect the last Wa Naa Seidu Soale II was also convened by the 1st respondent in his capacity as the Wa Tindana. The witness also gave an account of the role of the Tindana when a Wa Na dies. According to him when a Wa Na dies it is the Tindana who will first be informed of the death. The Tindana then visits the palace to verify the information. When the death is confirmed the Tindana would perform certain traditional rites by virtue of his office before issuing out any announcements. The evidence of DW1 was largely corroborated by DW3. On the whole the evidence led by the respondents on the role played by the Tendana by initiating the meeting for the enskinment process to commence is not only unassailable it is overwhelming. Both the trial UWRHC and the NHC correctly found in favour of the respondents. We affirm same and dismiss this ground of appeal.

The question of unsigned judgment, interlineations and handwritings on the record of proceeding as well as the rejection of a letter from the Frokos family for consideration.

The last major ground of appeal impugns the NHC reliance upon an unsigned judgment from the UWRHC to dismiss their appeal. Other issues were raised about interlineations and handwritings on the record of proceedings which

prejudiced the minds of the NHC. The appellants contend that an unsigned judgment cannot be considered a judgment in a proper legal sense. It would appear that appellants' are oblivious of the reality of preparing appeal records. Hardly would a judgment on appeal records bear the signatures of the judges, an obvious security measure. Of greater relevance and importance is the nature of the document under consideration. This being a judgment of a court the same is covered by section 175 of the Evidence Act 323 of 1975 which enacts:

"1. A copy of a writing which is authorized by law to be filed or recorded and has in fact been filed or recorded in an office of a public entity, or which is a public record, report, statement or data compilation is admissible to the same extent as an original to prove the content of the writing if-

(a) An original or an original record is in an office of a public entity where items of that nature are regularly kept; and
(b) The copy is certified to be correct by the custodian or other person authorized to make the certification and that certificate is authenticated or the copy is testified to be a correct copy by a witness who has compared it with an original,"

The petition which resulted in the present appeal commenced as JC/1/2007 before the UWRHC. The trial committee delivered its judgment on 29th January 2010. The aforesaid judgment bears the certificate of the Regional Registrar of the UWRHC Wa as a true copy in compliance with s 175 above. We find no merit in this ground and dismiss same.

The appellants' next issue is about interlineations and writings on the record of appeal (ROA) which according to them 'definitely and naturally prejudiced the minds of the NHC resulting in a miscarriage of justice.'

To begin with this is too sweeping a comment to make. The only hand written inscriptions which are hardly readable and can be found on the side lines of the written address by the counsel for the petitioners on page 285. The pages bearing these faint writings are pages 296, 299, 300, 301, 302,303,304,305, 306, 307, 309, 310 of the record. However, it is not enough that there are faint

writings the appellants have to show how those influenced or prejudiced the NHC in arriving at their decision. There is no evidence that the judicial committee of the NHC was in any way prejudiced by those inscriptions which are unreadable. Granted that the address of counsel is intended to highlight the points being canvassed in support of their case, the appellate court's duty is to evaluate the evidence on record and arrive at a conclusion one way or the other. The appellants have not shown how the NHC could and were prejudiced by the writings on their written addresses or statements. This ground of appeal lacks merit and is dismissed.

The last issue is that the UWRHC and the NHC erred in law when they rejected the letter written by the 'Frokos Family'

In the course of his testimony recorded at page 175 of the ROA, Mallam Daudi Abudulai Froko the petitioners' first witness (PW1) sought to tender a letter written by his family to various organizations. The respondents objected on grounds that he was not the author of the letter and that because the author was alive he is the rightful person to tender same. The committee ruled that the tendering be suspended until Alhaji Iddrisu Seidu Froko, the author thereof came to testify. Somehow or the other the author did not appear to tender the document. The committee by 'suspending' the tendering of the document made room for the appellants to revisit the issue but they failed to call the author to tender same. The appellant also specifically failed to file an interlocutory appeal against the ruling if they were dissatisfied with it. It was also not raised as a ground of appeal before the National House of Chiefs as clearly borne out by its absence from the Notice of Appeal on page 306 of the ROA. Since the appellants' contention was to dissociate the Frokos from the meeting convened by the 1st respondent, they were not fore closed by the refusal to accept the letter in evidence. It was open to them to lead other evidence which they failed to do. Yet, all this while, the appellants were represented by counsel. In contrast the trial UWRHC accepted the evidence of Osman Kasim Froko as a proper representative of the Froko's at the meeting.

It would appear that the reason for the failure to call Alhaji Iddrisu Seidu Froko the head of the Froko family to testify in these matters was due to ill health which was expatiated to be due to old age and senility a situation that may lead to inconsistent actions. (See the cross examination of PW1 at page 175 of the ROA). This gives added credence to the testimony of Osman Kasim Froko as having been mandated by the head of family to participate in the meeting.

We find this ground a ruse. It is dismissed.

The appeal lacks merit in its entirety and same is dismissed. The decision of the NHC is affirmed.

(SGD) J. B. AKAMBA
JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

(SGD) S. O. A. ADINYIRA (MRS)
JUSTICE OF THE SUPREME COURT

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