IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA, A.D.2014

CORAM: ANSAH JSC (PRESIDING)

ADINYIRA (MRS),JSC

DOTSE JSC

ANIN-YEBOAH JSC

AKAMBA JSC

CHIEFTANCY APPEAL

No.J2/2/2013

21ST MAY 2014

IN THE MATTER OF

1.	NANA YEBOAH-KODIE ASARE II	
	YONSOHENE & BENKUMHENE OF JAMASE	PLAINTIFF/
	HOUSE NO. YN 22, YONSO-ASHANTI	APPELLANTS
2.	NANA KWAME SARFO KANTANKA	RESPONDENTS
	KRONTIHENE OF YONSO, YONSO	RESPONDENTS

VRS

1. NANA KWAKU ADDAI

   BEDOMASE BRETUO ABUSUAPANIN

   YONSO

2. NANA OFORIWAA AMANFO

   BEDOMASE BRETUO BAAPANIN

   YONSO

3. NANA KWAME BROBBEY

   YONSO BEDOMASE GYASEHENE

4. NANA OWUSU ACHIAW

   GYASEWAHENE, YONSO

5. NANA AGYAPONG

   YONSO BEDOMASE BRETUO BAAMUHENE

6. OPANIN ATAKORA MANU YONSO

7. ADDAE BOATENG, YONSO BEDOMASE

   BRETUO KYEAME

8. FRANCIS YAW ADUSEI YONSO

DEFENDANTS/

RESPONDENT

APPELLANTS

APPELLANTS

JUDGMENT

MAJORITY OPINIONS

JONES DOTSE, J.S.C.

Article 277 of the Constitution, 1992 provides as follows:-

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

The Chieftaincy Act, 2008 (Act 759) also repeats verbatim the said definition of a Chief in section 57 (1) thereof.

From the above definition of a Chief, the following are essential ingredients and pre-requisites:-

i. The person must qualify to be a Chief, in that, **he or she must hail from the appropriate family or lineage**. In other words, to qualify to be a Chief, **you must first be a royal to start with.**

See also article 181 of the Constitution 1979 which also defined a chief in pari materia as the definition in article 277 of the Constitution 1992 already referred to supra. Despite the fact that the P.N.D.C Establishment Proclamation abrogated the Constitution, 1979, the same Proclamation recognised and retained the definition of a Chief contained in article 181 of the Constitution 1979.

This was the position until P.N.D.C Law 107 was enacted in 1985 which purported to amend section 48 (1) of the Chieftaincy Act, 1970, Act 370. It is unclear whether the amendment of this section 48 (1) & (2) of Act 370 by P.N.D.C Law 107 had any effect, since the retention of the original constitutional provision retaining article 181 of the Constitution 1979 was contained in the

P.N.D.C Establishment Proclamation 1981 as amended by P.N.D.C Law 42, section 53 (2) thereof.

In terms of interpretation, an ordinary statute like P.N.D.C law 107 cannot amend the P.N.D.C Establishment Proclamation. It follows therefore that the definition of a chief as contained in article 181 of the Constitution 1979 continued during all times material to the circumstances of this case, up to and including the coming into force of the Constitution 1992 on 7th January 1992.

The definition of a chief contained in article 277 of the Constitution 1992 will therefore be deemed applicable to the status of a chief at all times material to the circumstances of this case.

ii. The person must have been nominated as a Chief.

iii. The person must have been elected or selected as a Chief and finally

iv. The person must have been taken through the ceremony of enstoolment, enskinnment or installation as a Chief according to the relevant customary practices

The reason we have made reference to article 277 of the Constitution and the other constitutional and statutory provisions is to hone the issue that arises for determination in this Chieftaincy appeal. **This is the issue of whether a person who has no real connection or at all to royalty can aspire to Chiefly office either through his own machinations or by the deliberate acts of others such as has happened in this case.**

What then are the facts of this appeal?

FACTS

This is an appeal lodged by the Defendants/Respondents/Appellants/Appellants, hereinafter referred to as the Defendants against the decision of the Judicial

Committee of the National House of Chiefs dated ***5th April, 2006*** which confirmed an earlier decision of the Judicial Committee of the Ashanti Regional House of Chiefs, dated ***22nd December 1999*** in favour of the Plaintiffs/Appellants/Respondents/ Respondents, hereinafter referred to as the Plaintiffs.

The Plaintiffs on 7th February, 1997 claimed before the Judicial Committee of the Mampong Traditional Council hereafter referred to as (J.C.M.T.C) the following reliefs:-

1. A declaration that the privilege previously vested in the Yonso Bedomasi family to nominate, elect and install a Yonsohene was validly abrogated by Nana Adu Gyamfi Brobbey III the then Jamasihene when the said family rebelled against the Jamasi stool and proclaimed itself no longer subject to the traditional authority of the Jamasi stool.

2. A declaration that Nana Yeboah Kodie Asare II was lawfully elevated to the status of Yonsohene and Benkumhene of Jamasi by Nana Adu Gyamfi Brobbey III in the face of the said rebellion and all customary rites were duly performed to seal the elevation.

3. A declaration that the purported nomination election and installation of one Francis Yaw Adusei (the 8th Defendant) by the Yonso Bedomasi Bretuo family or any other person as Yonsohene is contrary to Ashanti custom and usage and that the same is therefore null and void.

4. A declaration that Nana Oforiwaa Amanfo, the 2nd Defendant herein is an Obaapanin of Yonso Bretuo Bedomasi family and not the queenmother of Yonso

5. An injunction to restrain the 2nd and 8th Defendants from acting or holding themselves out or allowing themselves to be held out as the queenmother and Chief of Yonso respectively.

On the 16th February 1999, the J.C.M.T.C rendered a well considered judgment in which they dismissed the claims of the Plaintiffs in its entirety in the following terms:-

> ***"From the evidence before the Committee, it is clear that Nana Jamasihene, the late Nana Adu Gyamfi Brobbey III, elevated the Nkotuahene stool of Jamasi to that of Benkumhene of Jamasi and that Nana Yeboah Kodie Asare II swore the oath of allegiance to the Jamasihene and his elders as Benkumhene of Jamasi but not as Yonsohene. The reliefs sought by the plaintiffs cannot therefore be granted and it is hereby dismissed with cost assessed at Eighty hundred thousand cedis (¢800,000.00)" emphasis supplied***

Dissatisfied with the judgment of the J.C.M.T.C, the plaintiffs appealed to the Judicial Committee of the Ashanti Region House of Chiefs, hereafter referred to as J.C.A.R.H.C, which on the ***22nd day of December 1999*** allowed the appeal lodged by the plaintiffs, and set aside the decision and findings of the trial J.C.M.T.C.

The Defendants naturally felt aggrieved by the decision of the J.C.A.R.H.C and also appealed that decision to the Judicial Committee of the National House of Chiefs, hereafter referred to as (J.C.N.H.C).

The J.C.N.H.C on the 21st day of June, 2006, almost six years after the J.C.A.R.H.C decision dismissed the appeal, therein prompting the Defendants to yet again appeal to this Court by leave of the National House of Chiefs which was given on 7th December, 2006.

GROUNDS OF APPEAL

1. The Judicial Committee of the National House of Chiefs erred by holding that 2 of the 3 panel members of the Judicial Committee of the Ashanti Regional House of Chiefs who sat on the matter did not act as a Judge in their own Courts and their judgment is not nullity.

2. The trial Court erred by holding that Jamasi Stool had capacity to disposes Defendants/Respondents/Appellants/Appellants of their Stool and confer same on Plaintiffs family, when it is wrong, unconscionable and contrary to custom.

3. The trial Court erred by affirming the judgment of the Judicial Committee of the Ashanti Regional House of Chiefs to the effect that it was Jamasi Stool which created Yonso Stool. (I believe the trial court is rather a reference to the J.C.N.H.C)

4. The judgment is against the weight of evidence on record.

5. Additional grounds of Appeal would be filed on receipt of the Record of Appeal.

As can be seen from the above grounds, the Defendants have appealed against the entirety of the decision of the J.C.N.H.C in which they seek a reversal of the said judgment and a restoration of the decision of the trial J.C.M.T.C.

FACTS IN SUPPORT OF THE ACTION

The plaintiffs initiated their action against the Defendants on the grounds that the installation of the 8th Defendant, as Yonsohene on 3rd February 1997 by the co-ordinated efforts of the other defendants was contrary to the customary powers exercised by Nana Adu Gyamfi Brobbey III reputed to be the overlords of the Defendant's predecessors in title who as it were destooled the predecessor of

the Defendants by name Baffour Kofi Kwarteng III for acts of rebellion against him as overlord.

In the statement of claim the plaintiffs contended that as a consequence of that rebellion, the Defendants predecessor was destooled as Yonsohene and Benkumhene of Jamasi, and in his place, the 1st Plaintiff has been elevated and installed as the Yonsohene and Benkumhene of Jamasi.

In their defence, whilst the Defendants conceded the constitutional relationship that existed between their predecessor Baffour Kofi Kwateng III the Yonsohene and the Jamasihene, Nana Adu Gyamfi Brobbey III, they denied any acts of rebellion by their predecessor in the manner stated by the Plaintiffs. They contended that Nana Adu Gyamfi Brobbey's action in purporting to destool the Defendant's predecessor was in total breach of custom. The defendants therefore contended that the **8th Defendant had been validly and lawfully nominated, elected and installed as Yonsohene to succed his late uncle Baffour Kofi Kwateng III.**

After an evaluation of the pleadings and evidence in great detail, the J.C.M.T.C identified the following issues as those germane to the resolution of the core issues in the case as follows:

1. Who were the first settlers (Jamasi or Yonso) and who settled first on Yonso lands – The Bedomasi Bretuo family or the Asona Odumasi family?

2. How was the title Yonsohene acquired by the Bedomasi Bretuo Royal family?

3. What customary position was given to Nana Yeboah Kodie Asare by Nana Adu Gyamfi Brobbey III on his elevation?

4. Who is the Obaapanin of Yonso and whether her installation was according to custom.

5. Has Nana Adu Gyamfi Brobbey the customary right to strip Baffour Kwarteng of all his titles if he actually rebelled – against him. These questions will have to be answered from the evidence adduced by both parties and their witnesses.

Having perused the grounds of appeal vis-à-vis the evidence in the appeal record together with the erudite submissions of learned Counsel for the parties, we are of the view that the following issues arise for determination in this appeal. These are:

1. Whether the allegation of bias has been adequately made against some panel members of the J.C.A.R.H.C by the Defendants.

2. Whether a chiefly status can be divested from one family and vested in another family by a mere verbal declaration by an overlord chief irrespective of how that stool was created

3. The Constitutional relationship between chiefs in this case, the Jamasihene and Yonsohene vis-à-vis a critique of the reliefs claimed by the plaintiffs before the J.C.M.T.C

4. The issue of concurrent findings made by the two appellate courts, viz, the J.C.A.R.H.C and J.C.N.H.C and whether on the strength of the authorities there is sufficient justification for this court to depart from those concurrent findings.

In the latter event, this phenomenon would be used to apply to the other issues formulated above and made applicable in general terms to the determination of the entire appeal.

1. BIAS

We have reviewed the evidence on this issue of bias on record and we have also reviewed the statements of case filed in the case as well as the decision of the J.C.N.H.C on the matter.

We are however of the view that this allegation of bias has not been well made out. As a result, we have no hesitation in dismissing this ground of appeal, and it is accordingly dismissed. This is because on the strength of the authorities, the defendants, failed to establish any cogent evidence to support their case of bias.

CONCURRENT FINDINGS OF FACT

In this appeal, it must be well understood that it is the J.C.M.T.C that is the trial court. It is they who must be considered to have been the court that made primary findings of fact.

Even though both the first and second appellate Judicial Committees all departed from the primary findings made by the J.C.M.T.C, and as it were cast a daunting task on the Defendants in their bid to overturn the concurrent findings made by these appellate Judicial Committees, the fact still remains that, as the trial court, it had advantages which the appellate Committee's did not have.

As a result, for these appellate Judicial Committee's to depart from the findings of the trial Judicial Committee, it must be established that their decision had been based on sound judicial reasoning and well established principles of law.

At the moment, it would however appear that because of the concurrent findings of fact by the two intermediate appellate Judicial Committee's, the Defendants as has already been stated must establish by clear legal principles, why those concurrent findings must be jettisoned in favour of the earlier decision of the J.C.M.T.C

In the judgment of the J.C.A.R. H.C they settled several issues which according to them would help them resolve the appeal.

One of these issues which they considered very important is the following:-

> *"Whether or not the title Yonsohene was vested in the Bretuo-Bedomasi family by the Jamasihene".*

In resolving the above issue, the J.C.A.R.H.C referred to portions of the judgment of the J.C.M.T.C and which states as follows:-

> *"it was after Mampong had settled at the present Mampong that Jamasihene arrived with his group. Therefore if plaintiff's claim that his ancestors migrated with Nana Adu Gyamfi then we hold the views that the Asona Odumasi clan came to meet the Bedomasi-Bretuo family already at Yonso.* ***It is therefore not accepted that the title Yonsohene was bestowed on the Bedomasi-Bretuo family by the Jamasihene."***
>
> *Thereafter, the J.C.A.R.H.C made the following statements which sought to cast doubts on the authenticity and veracity of the said findings as follows:-*
>
> *"We think that with the utmost respect to the committee below they over simplified the issue and arrived at that finding of fact without considering other relevant pieces of evidence on the record. For instance on the issue of whether the Bedomasi-Bretuo family settled at Yonso before the Jamasi and Odumasi people arrived, 8th Defendant, in cross-examination at page 105 of the record testified as follows:-*

Q. You said in your statement that Nana Jamasihene is your senior brother. How did you become brothers?

A. We were brothers from a certain place before they migrated and we came to them there."

With the above statement, the J.C.A.R.H.C reversed the findings of the J.C.M.T.C and stated to the contrary thus:-

> *"This evidence from the 8th defendant shows that the Jamasi people were the first to arrive in Jamasi before Bedomasi- Bretuo came to meet them. If on the Committee below's own finding that the Odumasi people came with the Jamasi people then it follows that the Odumasi people arrived in Yonso before the Bedomasi-Bretuo family."*

We are of the firm opinion that, the J.C.A.R.H.C had no business to depart from the findings made by the J.C.M.T.C on the above issue because of the following reasons:-

i. It is not in dispute that the Apaahene gave land to the two disputants to settle on.

ii. The Bedomasi-Bretuo family have been Chiefs at Yonso ever since the town was founded.

iii. The Plaintiffs have never been able to establish that their family members have ever been Chiefs at Yonso.

iv. The Defendant's witness DW4 – Nana Agyapong Ntrah, Krontihene of Apaa, corroborated the evidence of 8th and 2nd Defendants by affirming that it was his predecessors who gave land to Nana Oforiwaa Amanfo I and her subjects.

v. Indeed, during cross-examination of DW4 by the plaintiffs a very important question was asked and the answer given remains unchallenged and forms

part of the evidence on record which the J.C.M.T.C and indeed any critically minded adjudicator must of necessity take into consideration.

This is how the cross-examination went.

"Q. You have told this court that the land given to Nana Oforiwaa and her people was vacant. Do you want us to believe that there was nobody settling on the land?

A. ***Yes***

Q. Was Nana Oforiwa the 1st Chief of Yonso where the Bedomasi people settled?

A. Yes. She brought the Bedomasi Stool

Q. Will you agree with me that any settler who comes to stay after the Oyon river will have to go to beg for land from Nana Oforiwa

A. Yes"

Based on the above quotations from the cross-examination, it was quite legitimate for the J.C.M.T.C to have made the findings which they did which unfortunately was attacked by the J.C.A.R.H.C without any basis whatsoever.

At this stage of the opinion it will not be out of place to state that, for an appellate court to depart from the primary findings made by a trial court, it must put itself into the position of the trial court.

This it can do by referring and considering all the pieces of evidence led before the trial court, to wit viva-voce and documentary.

In this case, if the J.C.A.R.H.C had considered exhibit A, and the evidence of 8th and 2nd Defendants alongside that of DW4, they would have come to the

conclusion that the findings of the J.C.M.T.C stated below, were validly made and would not have departed from them.

After the complete review of the evidence on record, this is how the J.C.M.T.C gave reasons for their findings.

> *"From the evidence adduced before the Committee, it can be noted that both parties allegedly got their lands from Apaahene. The Apaahene or his representative will have been the decider of this issue. However, the Plaintiffs tendered in evidence, proceedings in a land case between Kwame Adu – 1st Plaintiff's grand-uncle and one Kobina Afuakwa. This was marked exhibit 'A'.*
>
> *A critical study of Exhibit 'A' reveals that the land dispute was a piece of land at Frepoti. The then Apaahene Nana Kwaku Ayeh gave evidence in the case and said and I quote: "My name is Kwaku Ayeh and I am chief of Apaa. In the olden days Wionsohene came to me and I gave him land. I gave Frepoti land to Plaintiff's grandfather Kofi Dite The boundary between Atwia and Apaa starts where the Frepo rises. The land up to Frapo to Plaintiffs grandfather. The land that the dispute is about belongs to Plaintiff". When you study this piece of evidence by Nana Kweku Ayeh, you will see that Nana Ayeh said specifically that in the olden days he gave land to Wionsuhene and then Frapo lands to the Plaintiffs grandfather Kofi Ditu. The question one will ask is who is this Yonsohene whom this land was given to?*
>
> ***From plaintiff's evidence and that of their witnesses and the Defendants and their witnesses they all accept the fact that the Bedomasi Bretuo family have been chiefs at Yonso ever since the town was founded. Throughout the proceedings plaintiffs could not establish any claim that any of their ancestors have***

***been Odikro or chiefs at Yonso**. If therefore the Apaahene claims he gave Yonso land to Yonsohene and Frapo lands to 1st plaintiff's great-grand uncle then it is clear that the land was given to the first Chief of Yonso who happens to be Nana Oforiwaa Amanfo. If 1st plaintiff's great-grand uncle was the Odikro the Apaahene wouldn't have been too specific.*

D.W.4, Nana Agyapong Ntrah, Krontihene of Apaa whose overlords gave the land to both Yonso and Jamasi collaborated the evidence of the 8th Defendant and D.W.3. He told the Court that Yonso land was given to Nana Oforiwaa Amanfo I and her ancestors by the then Apaahene who settled at Yonso long before the Jamasihene arrived with his group. This evidence was not challenged by the plaintiffs." Emphasis supplied.

After the above statement and reasons, the J.C.M.T.C in our view then proceeded to make logical deductions based on their appreciation of the evidence and relevant rules of custom. The J.C.M.T.C also made the following positive and specific findings which again find support from the totality of the evidence on record.

"From the evidence before Court, and also the history of Mampong shows that the Bedomasi Bretuo family came to meet Nana Akuamoah Panin (the then Mamponghene) at Akrofonso and settled there before Mampong moved to its present settlement. It was after Mampong had settled at the present Mampong that Jamaishene arrived with his group. ***Therefore if 1st plaintiff claims that his ancestors migrated with Nana Adu Gyamfi, then we hold the view that the Asona Odumasi clan came to meet the Bedomasi Bretuo family already settled at Yonso. It is therefore not accepted that the title Yonsohene was bestowed***

on the Bodomasi Bretuo family by the Jamasihene". Emphasized supplied.

It would thus appear that instead of attacking the judgment of the J.C.N.H.C, much strength is being spent on the judgment of the J.C.A.R.H.C, which really is not on appeal in this court.

The brief write up on that judgment was just to show that once the J.C.A.R.H.C fell into error by departing from the findings made by the J.C.M.T.C the J.C.N.H.C also fell into the same error by continuing the same error in departing from the valid findings of the J.C.M.T.C by following the decision of the J.C.A.R.H.C.

Based upon the said erroneous and perverse findings, the J.C.N.H.C stated in their judgment on this issue as follows:

> *"The traditional history goes on further to say that Nana Jamasihene conferred the title Yonsohene on the Bedomasi Bretuo family since all the major stools in the area were occupied by the Bretuo Clan which he himself belonged to. The Mampong Stool is also Bretuo as is well known in Ashanti history. It is also instructive to note that of the four clans the Bedomasi Bretuo family was the last to found their settlement at Yonso and it is equally instructive to note that none of the four clans comprising Yonso ever laid claim to the title "Yonsohene" from the onset.*
>
> ***From the above reasoned findings of fact by the appellate Committee below, we have no difficulty in coming to the conclusion that the right to confer the title Yonsohene on any of the four clans is the sole prerogative and customary obligations of the Jamasihene**. The issue whether or not Nana Kofi Kwarteng III was conferred with the title Yonsohene and the fact that he ruled as Chief in that capacity is not in dispute. That he later rebelled*

against the Jamasihene on the grounds that he Nana Kwarteng was at par with him following his purported elevation to the status of Obrempong is supported by the evidence on record. In the first instance the escalating rebellion of Nana Kofi Kwarteng III compelled the Mampong Traditional Council to convene a meeting to reconcile the two feuding chiefs, but they failed to resolve "the Jamasi/Yonso Constitutional Stalemate". The rebellion did not end there for in a letter written by Nana Kwarteng's Solicitor, he emphasized his claim "that the stools of Effiduasi, Jamasi and Yonso are on the same status as far as Mampong affairs are concerned." In deciding whether or not the Yonsohene had infact rebelled, the Appellate Committee found as follows:-

"…by claiming the same status as the Jamasihene, the Yonsohene had violated his oath of allegiance to the Jamasihene and that amounts to a rebellion"

Evidence further showed that when the intervention of Nana Attakorah Amaniampong II the Mamponghene could not change the entrenched position of the Yonsohene, the Jamasihene Nana Adu Gyamfi Brobbey III decided to elevate the 1st Plaintiff Nana Yeboah Kodie Asare II to the status of Benkumhene and by the prevailing custom the Yonsohene since the two customary offices had been fused and were therefore one and the same customary office."

Again, the decision of the J.C.N.H.C to the effect that, by the stroke of a verbal pronouncement, the rights of the defendants to the Yonso stool could be whittled away has been demonstrated by their own judgment to be illogical, inconsistent, uncustomary and wishful thinking.

"It is also instructive to note that the 8th Defendant who claims to have been customarily enstooled the Yonsohene accompanied the 1st Plaintiff Nana Yeboah Kodie Asare II to swear the oath of allegiance to Nana Jamasiehene as the Benkumhene of Jamasi. This was in 1986. ***Then in 1994, the elders of Yonso namely the Krontihene, Akwamuhene, Adontenhene, Manwerehene, Twafohene, Akyeamehene all of Yonso swore the oath of allegiance to the 1st Plaintiff as Yonsohene. In respect of the parties' overlord, Nana Adu Gyamfi Brobbey III, his letter Exhibit J, confirms the status of 1st Plaintiff as Yonsohene but not by a letter of appointment as contended by the Defendants in the Appellate Committee below. In our view a chiefly status is not a subject of appointment by a mere letter but through eligibility and the relevant customary process.***

From the evidence on record and as was rightly pronounced on by the Judicial Committee of the Ashanti Region House of Chiefs, the title Yonsohene was customarily and properly conferred on the 1st Plaintiff Nana Yeboah Kodie Asare II by Nana Adu Gyamfi Brobbey III, Jamasihene."

Indeed whilst the J.C.N.H.C is correct to state that chiefly status is not by appointment but through eligibility and relevant customary procedure as contained in article 277 of the Constitution 1992, their immediate statement that the Yonsohene was conferred on the 1st Plaintiff by the Jamasihene is an inconsistency and illogicality that must not be allowed to stand. It is unconstitutional and uncustomary.

What then is the legal position when a court is faced with the issue of departing from the concurrent findings made by two lower courts?

As has already been stated, the original findings in this appeal had been made by the J.C.M.T.C which had the advantage of hearing the witnesses viva-voce, seeing and appreciating their demeanor before coming to their conclusions.

The two appellate courts only had the benefit of the cold facts just as we have had in this court.

This court had the opportunity to re-visit the issue in the case of **Gregory V Tandoh IV & Hanson [2010] SCGLR 975 holding 2** where the principles upon which an appellate court such as our court could depart from concurrent findings and come to different conclusion was stated as follows:

> *"It was well-settled that where findings of fact such as in the instant case had been made by the trial court and concurred in by the first appellate court, i.e. the Court of Appeal, then the second appellate court, such as the Supreme Court, must be slow in coming to different conclusions unless it was satisfied that there were strong pieces of evidence on record which made it manifestly clear that the findings of the trial court and the first appellate court were perverse. However, a second appellate court, like the Supreme Court, could and was entitled to depart from findings of fact made by the trial court and concurred in by the first appellate court under the following circumstances:* ***First, where from the record of appeal, the findings of fact by the trial court were clearly not supported by evidence on record and the reasons in support of the findings were unsatisfactory; second, where the findings of fact by the trial court could be seen from the record of appeal to be either perverse or inconsistent with the the totality of evidence led by the witnesses and the surrounding circumstances of the entire evidence on record; third, where the findings of fact made by the trial court were consistently inconsistent with important***

documentary evidence on record; and fourth, where the first appellate court had wrongly applied a principle of law. In all such situations, the second appellate court must feel free to interfere with the said findings of fact, in order to ensure that absolute justice was done in the case. Achoro v Akanfela [1996-97] SCGLR 209 *and* ***Fosua & Adu Poku v Dufie (Deceased) & Adu Poku Mensah [2009] SCGLR 310 at 313 cited*** **"**

See also the unanimous decision of this court in **P.S. Investments Ltd. V CEREDEC [2012] 1 SCGLR 618,** where the court, again speaking through me and relying on respected judicial decisions held that:-

"The Supreme Court had good and solid grounds to interfere with the findings of fact made by the trial High Court and the Court of Appeal in the instant case and to depart from them because they were perverse and inconsistent."

Bringing the said principles home to the application of the instant appeal, reveals that indeed the findings which the first appellate Judicial Committee departed from and which were concurred in by the second appellate Judicial Committee, the National House of Chiefs, were not only perverse but also showed signs of inconsistency and were also inaccurate.

For example, it is clear that the appellate Judicial Committee's did not consider the entirety of the evidence on record else there was no way they would have departed from the findings made by the J.C.M.T.C which were not only based on Exhibit A which was tendered by the Plaintiffs, but also the evidence of the Defendants and their witnesses, especially D.W.4.

Secondly, the findings by the J.C.N.H.C to the following effect whilst correct in some respects also shows its illogicality and inconsistency.

"A brief history of the founding of Yonso summarized in the judgments of the Judicial Committees of the Mampong Traditional Council and the Ashanti Regional House of Chiefs shows that Jamasi was founded long before the arrival of the four clans, namely, Asona, Oyoko, Asenie and Bretuo. The Jamaishene was thus the immediate overlord of Yonso and each of them from the onset had their own chief and stool and was therefore independent of the others. The constitutional relationship between these clans were that none of them owes direct allegiance to the Mampong Stool save through the Jamasi stool. The undisputed evidence on record also shows that the name Yonso refers to the combined settlement of the four clans but not to any of the individual clans."

The conclusion reached by the J.C.N.H.C to the effect that it was Nana Jamasihene who conferred the title Yonsohene on the Defendants, i.e. the Bedomasi Bretuo family is not only perverse but illogical and also inconsistent with the evidence on record.

It has already been demonstrated quite convincingly from evidence on record that the Yonsohene was not conferred on the Defendants predecessors by the Jamasihene, but that they created their own stool and had since the founding of Yonso been the only clans that occupied the said stool.

It is therefore perfectly legitimate for this court to depart from the concurrent findings made by the two appellate Judicial Committee's and which we hereby do.

However, the crux of this appeal is the determination of the constitutional relationship between the Jamasihene and the Yonsohene and its effect on the status of the two chiefs vis-à-vis their rights and privileges. In view of the claims of one stool having the power to divest and vest etc. This no doubt will have

some direct bearing on the reliefs which the plaintiff's so craftily drafted in their case at the J.C.M.T.C.

CONSTITUTIONAL RELATIONSHIP BETWEEN CHIEFS, (JAMASIHENE AND YONSOHENE)

See section 76 (e) of the *Chieftaincy Act, 2008 (Act 759)* which states as follows:-

> "*In this Act, unless the context otherwise requires, "cause or matter affecting chieftaincy" means a cause, matter, question or dispute relating to any of the following*
>
> *(e) the constitutional relations under customary law between chiefs"*

A critical analysis of the reliefs which the Plaintiffs' claimed before the J.C.M.T.C reveals that the entire suit was one relating to the constitutional relationship between the Jamasihene and the Yonsohene as spelt out under section 76 (e) of Act 759 referred to supra.

For example, how else can relief one be understood if it is not a claim to the effect that the rights and privileges of the Defendant's Yonso Bedomase Bretuo family to nominate, elect, and install a Yonsohene had been validly abrogated by Nana Adu Gyamfi Brobbey III, the then Jamasihene because of acts of rebellion by the former against the latter.

Then the second relief is a further confirmation that because of the said alleged acts of rebellion, the 1st Plaintiff had been elevated to occupy the stool and positions previously occupied by the Yonsohene from the Bedomase Bretuo family.

Flowing from the above two reliefs, it would appear that the other three reliefs are all confirmatory to the fact of the constitutional relationships between the 1st

Plaintiff claiming to have been validly nominated, elected and installed as Yonsohene and therefore Benkumhene in contra distinction to the same position being occupied by the 8th Defendant. Similarly, the position of the 2nd Defendant as Queenmother is being seriously challenged by the Plaintiffs, even though her status as an Obaapanin of Yonso Bedomase Bretuo family has not been denied.

In our minds, the reliefs are properly cognizable as causes or matters affecting chieftaincy.

In this respect, it is important that, all constitutional provisions that have a bearing on the determination of a cause or matter affecting chieftaincy have to be put in proper perspective. It is in this context that article 277 of the Constitution 1992 becomes very paramount and operative. The same definition is contained in section *57 (1) of Act 759.*

We have observed that the J.C.M.T.C took all relevant customary practices applicable to the matter into consideration before coming to their decision.

If the plaintiffs should succeed on their claims as has been repeated supra, then every family or clan that own a stool, but is subservient to an overlord chief would be at risk. This is because it would take the subjective thinking of the overlord chief to consider an act by the incumbent occupant of the subordinate stool as an act of rebellion. This will automatically divest the chiefly status from that person and indeed the entire family and vest it in another person and or family of choice.

In our opinion, there can be nothing more arbitrary than the said conduct. If these are allowed to permeate and exist in our revered and respected chieftaincy institution, chaos and disaster will be the by products.

Who chooses the family or stool that is divested of their chieftly status and the family that is vested with the same status?

In this respect, we cannot but agree with the views of the eminent constitutional Law Professor Kofi Kumado in his article on ***"Chieftaincy and the Law in Modern Ghana"***, University of Ghana Law Journal, Volume XVIII 1990-1992, page 194 at 212 where he stated thus:-

> "*Fourthly the framers of the Constitution were painfully aware, as indeed most of us have been of the development by which some very wealthy and or prominent citizens, with only tenuous links or none at all to royal houses, have attempted to buy or bulldoze themselves into chiefly office with attendant tension and confusion. These attempts sometimes even led to the loss of human life. To prevent this, the constitutional definition required, not only that a person must be nominated, elected, and enstooled or enskinned or installed but that such a person must before going through the customary processes, "**hail from the appropriate family and lineage"** Thus a person does not become a chief even though he has been taken through the customary processes, if on the facts he or she is not a member of the appropriate royal family or lineage."*

Having held that the reliefs which plaintiff's claimed are causes or matters affecting chieftaincy, then the appropriate steps should have been taken under *section 29 (1) & (2) of Act 759* and not the arbitrary nature of the decision of Nana Adu Gyamfi Brobbey III the Jamasihene to divest or depose the Defendant's family of their chiefly status. See sections 15 (1) & (2) and 28 (1) & (2) of Act 370 of 1971 now repealed.

We have already stated that the constitutional provisions in article 181 of the Constitution 1979, on which Prof. Kumado wrote his paper are pari materia to the provisions in article 277 of the Constitution 1992.

It therefore follows that so far as the Yonsohene is concerned, the Jamasihene, not having been those who nominated, elected and installed him cannot purport to divest him and his family of that status and vest it in another family.

Indeed a careful reading of the reliefs which the plaintiff's claimed before the J.C.M.T.C reveals a crafty plot to take away the chiefly status of the Defendants as far as the Yonso stool is concerned. It s not surprising that the J.C.M.T.C saw through this mischievous attempt and boldly rejected it in all its forms.

We will therefore hold and rule that the constitutional relationship between the Yonsohene then occupied by the Defendant's predecessor Barfour Kofi KwartengIII and the Jamasihene then occupied by Nana Adu Ghamfi Brobbey III was such that, as far as the Yonso stool was concerned, the Jamasihene cannot vest that status in another family who do not have the appropriate royal lineage. In terms of hierarchy, the Jamasihene is the overlord of the Yonsohene, beyond that, any such brazen attempt to do a customary coup d'état by divesting them of their stool must be frowned upon and condemned. Due process must in all cases be followed according to law and procedure.

Again we are conscious of the fact that the constitutional relationship as to which stool is Nifa, Benkum, Adonten, Gyase etc are deeply rooted in custom and tradition. Some of these positions are rewards for some heroic deeds performed in times past. The evidence is clear that it was the Jamasihene who elevated the Yonsohene to the position of Benkumhene in addition to his occupancy of the Yonso stool.

From the evidence on record, it appears that Nana Jamasihene has the prerogative to elevate the status of any of his sub-chiefs to the position of

Benkumhene. This he has done by elevating the 1st Plaintiff. We cannot in this respect agree more with the conclusion reached in this matter by the J.C.M.T.C as follows:-

> *Nana Jamasihene has the traditional right to elevate any of his Adikrafo or sub-chiefs and even youngmen and women who have distinguished themselves in the service of his traditional area. He can create new stools to people of his choice but he cannot transfer an ancient hereditary royal status from one family to another.*

We agree with the above statement and endorse it.

Before we conclude this judgment, we want to make a brief comment on the length of time it has taken to conduct this case from the J.C.M.T.C to the Supreme Court.

From the record, the writ in the case was filed at the J.C.M.T.C on 7th February 1997 and judgment was delivered by the J.C.M.T.C on 16th February 1999. Thereafter, the J.C.A.R.H.C delivered their judgment on 22nd December 1999 within a period of eight months which is highly commendable.

However, the appeal from the J.C.A.R.H.C to the J.C.N.H.C all of which are located in Kumasi, was determined by the latter on 21st July 2006, a period of seven years. It has taken another eight years for this court to render judgment.

We are of the opinion that Nananom who have exclusive jurisdiction in causes or matters affecting chieftaincy must be expeditious in their determination of cases that come before them.

If there are any logistical issues inhibiting their smooth and expeditious discharge of this awesome responsibility they must speak and let their voices be heard. Else posterity will not treat them with kind words when violence which normally

precedes such protracted chieftaincy disputes sometimes leading to loss of lives, indeed does occur.

CONCLUSION

In the premises, we will allow the appeal against the judgment of the Judicial Committee of the National House of Chiefs, Kumasi dated 5th April 2006. We will accordingly set it aside and by inference the judgment of the JC.A.R.H.C dated 22nd December 1999 is also set aside.

We will in turn affirm the judgment of the J.C.M.T.C dated 16th February 1999 which we accordingly restore. Judgment is accordingly entered for the Defendants.

(SGD) J. V. M. DOTSE

JUSTICE OF THE SUPREME COURT

AKAMBA, J.S.C.

I have had the privilege of reading beforehand the erudite judgment by my able and respected brother Dotse JSC allowing the appeal. I concur in the decision that the appeal be allowed. I agree with the reasoning and conclusion therein advanced. My conclusion is further informed by the fact

that the Judicial Committee of the Mampong Traditional Council (simply MTU) which was the first trial tribunal in this matter dealt with the issues of fact in the petition adequately and arrived at its conclusion dismissing the appeal. The petitioners had failed to establish the basis for their claim that the privilege or right vested in the Yonso Bedomasi family to nominate, elect and install a Yonsohene was validly abrogated. The Chieftaincy institution has been given a pride of place in the Constitution 1992 by its article 270. This means that Nananom cannot escape from the requirements of the law and equity in the normal performance of their functions more particularly administrative and adjudicatory functions. The MTC found that the responsibility to nominate, elect and enstool a Yonsohene was the preserve of the Bedomasi Bretuo family of Yonso. From where does the Jamasihene suddenly get the power to abrogate what he had not conferred? The Constitution 1992 abhors capriciousness and/or arbitrariness but this appears to be the practice sought to be advanced and relied upon by the plaintiffs. The accusation of rebellion is an accusation of criminality which must be proved beyond reasonable doubt as required by section 13 (1) of NRCD 323. This is because a rebellion as defined by the Macmillan English Dictionary for Advanced Learners is an attempt to remove a government or leader by force; a refusal to obey your leader especially in politics; opposition to someone in authority or to accepted ways of doing things.

The MTC found as a fact that there was some disagreement between the Jamasihene and the Yonsohene which was amicably resolved by the Mampong Traditional Council. The decision was accepted by the parties and therefore binding on both Jamasihene and Yonsohene. Having

accepted the settlement, on what basis did the Jamasihene purport to replace Nana Adu Gyamfi Brobbey as Yonsohene? Besides did he have the authority to replace the Yonkohene, a duty reserved for the Bedomasi Bretuo family of which he was not a member?

It is therefore a travesty of justice for the Judicial Committees of the Ashanti Regional House of Chiefs (ARHC) and the National House of Chiefs (NHC) to overturn the rather very sound and well reasoned decision of the MTC. It is for these reasons and those advanced in the lead opinion of Dotse JSC that I concur that the appeal be allowed. The decisions of both the ARHC and the NHC are hereby set aside. The decision of the Mampong Traditional Council (MTC) is hereby restored.

(SGD) J. B . AKAMBA

JUSTICE OF THE SUPREME COURT

(SGD) S. O. A. ADINYIRA(MRS)

JUSTICE OF THE SUPREME COURT

DISSENTING OPINIONS

ANSAH JSC.

I had the benefit of reading the judgment of the majority in this appeal before hand, but try as I did, could not agree with their conclusion that the appeal against the judgment of the National House of Chiefs, should be allowed. That being so it became my duty to give the reasons for my stand. Even as I proceed to do so, I shall not purpose to repeat the background facts of this appeal as the majority have done so already in their judgment aforementioned. I may only refer to them as it becomes necessary for me to do so.

There could be no doubt that the appeal before us refers to **a cause or matter affecting chieftaincy,** statutorily defined as a cause, matter, question or dispute relating to

"(e) the constitutional relations under customary law between Chiefs."

(section 66 (e) of the Chieftaincy Act, 1971, Act 370.)

The National House of Chiefs held in its judgment, inter alia, that, "…we have no difficulty in coming to the conclusion that the right to confer the title *Yonsohene* on any of the four clans is the sole prerogative and customary obligation on the Jamasihene. The issue whether or not Nana Kofi Kwarteng III was conferred with the title Yonsohene and the fact that he ruled as chief in that capacity is not in dispute. That he later rebelled against the Jamasihene on the grounds that he Nana Kwarteng was at par with him following the purported elevation to the status of Obrempong, is

supported by the evidence on record. In the first instance the escalating rebellion of Nana Kofi Kwarteng III towards the Jamasihene, his overlord, compelled the Mampong Traditional Council to convene a meeting to reconcile the two feuding chiefs but they failed to resolve the Jamasi/Yonso Constitutional stalemate.

The President of the Jamasi Divisional Council Nana Adu Gyamfi III wrote in exhibit J on 30 May 1994, inter alia, that:

"(e) That for more than 25 years and prior to his abdication and in clear breach of his oath of allegiance the ex-Yonsohene Baffour Kofi Kwarteng III cut his customary link with the Adu Gyamfi Bretuo Stool of Jamasi by refusing to serve the Jamasihene and declaring that he would serve the Silver Stool of Mampong directly, albeit contrary to established custom. The Mampong Traditional Council has already decided that Yonsohene cannot serve the Silver Stool directly except through the Jamasihene his overlord.

(f) That throughout the rebellion of the Yonso Bedomasi Bretuo family against the Jamasi stool all the other Asafohene in Yonso remained loyal to the Jamasi stool in accordance with established custom.

(g) That in my characteristic long suffering and patient approach to problems I waited for over 25 years, for the Yonso Bedomasi Bretuo Royal family to repent and prevail upon the occupant of their Stool to remedy the breach of his oath of allegiance sworn to me.

(h) Since the above the title situation could not prevail forever and for the reasons stated above the title of Benkumhene and Yonsohene have for some time now been bestowed upon the Asona Royal family and the occupant of its Stool, Nana Yeboah-Kodie Asare II, following his swearing of the oath of allegiance to me".

However, on 14th July 1984, when the Mampong Traditional Council met under the Presidency of Nana Atakorah Amaniampong II, the Mamponhene, the Jamasi-Yonso Stool Affairs was on top of the agenda for the day. During the meeting, the President retired with his council members to consult among themselves on this issue after which the 'Kyeame' reported to the Council that there should be no litigation between the two chiefs and wanted to put his feet on the matter.

Beyond that, there was no evidence that the elevation made by the overlord Nana Jamasihene was reversed by the Mampong Traditional Council or ever at all.

Apparently, where a chief maintains that he no longer owes allegiance to his superior chief, he shows clear disrespect tantamount to what was commonly called 'rebellion' in this appeal, to the superior chief. In the olden days such rebellious conduct might attract harsh punishment to bring many an erring chief to order, thus ending the 'rebellion'.

According to the National House of Chiefs, the rebellion was not by that solitary act for, there was evidence that the solicitor for Nana Kwarteng III wrote to emphasize that stools of Effiduase, Jamasi and Yonso are on the same status as far as Mampong stool affairs were concerned.

The reasons for coming to the conclusion that Nana Kofi Kwarteng III rebelled were given as: "…. By claiming the same status as the Jamasihene, the Yonsohene had violated his oath of allegiance to the Jamasihene and that amounts to a rebellion." Evidence further showed that when the intervention of Nana Atakorah Amaniampong II the Mamponghene could not change the entrenched position of the Yonsohene, the Jamasihene Nana Adu Gyamfi Brobbey III decided to elevate the 1st plaintiff Nana Yeboah Kodieh Asare II to the status of

Benkumhene and by the prevailing custom, the Yonsohene, since the two customary offices had been fused and were therefore one and the same customary office."

The National House of Chiefs went on to disbelieve the claims of the 8th defendant that he had been customarily enstooled the Yonsohene because in 1986, he had accompanied the 1st plaintiff, Nana Yeboah Kodieh Asare III, to swear the oath of allegiance to Nana Jamasihene as the Benkumhene of Jamasi. Then in 1994 the elders of Yonso, made up of the Krontihene, Akwamuhene, Adontenhene, Manwerehene, Twafohene, Akyeamehene, all of Yonso, swore the oath of allegiance to the 1st plaintiff as Yonsohene.

On 30th May 1994, the overlord of the parties, the Jamasihene Nana Adu Gyamfi Brobbey III, wrote Exhibit J to confirm the status of the 1st plaintiff as the Yonsohene, and also that:

"In exercise of my right as overlord of all stools in Yonso and with the concurrence of all members of the Jamasi Divisional Council, the occupant of the Asona Royal Stool of Yonso was elevated by me to head the Benkum wing of the Jamasi Divisional Area and Yonsohene.

The above action was taken in order to fill the vacuum left by the Yonso Bretuo Bedomasi Royal Family's withdrawal of allegiance to the Adu Gyamfi Stool of Jamasi over 25 years ago contrary to established custom."

Throwing more light on what led to the facts in this appeal, the record has it that the President of the Jamasi Divisional Council, Nana Adu Gyamfi Brobbey III wrote further in Exhibit J that:

(e) That for more than 25 years, and prior to his abdication and in clear breach of his oath of allegiance, the ex-Yonsohene Baffour Kofi Kwarteng III cut his customary links with the Adu Gyamfi Bretuo Stoo of Jamasi by

refusing to serve the Jamasihene directly albeit contrary to established custom. The Mampong Traditional Council has already decided that Yonsohene cannot serve the Silver Stool directly except through Jamasihene his overlord.

(f) That throughout the rebellion of the Yonso Bedomasi Bretuo family against the Jamasi Stool, all the other Asafohene in Yonso remained loyal to the Jamasi Stool in accordance with established custom.

(g) That in my characteristic long suffering and patient approach to problems I waited for over 25years, for the Yonso Bedomasi Bretuo Royal Family to repent and prevail upon the occupant of their Royal Stool to remedy the breach of his oath of allegiance sworn to me.

(h) Since the above situation could not prevail for ever and for the reasons stated above, the title of Benkumhene and Yonsohene have for some now been bestowed upon the Asona Royal Family and the occupant of its Stool, Nana Yeboah-Kodie Asare II, following his swearing of the oath of allegiance to me."

The appellate National House of Chiefs went on to state that the evidence on record showed that the Judicial Committee of the Ashanti Regional House of Chiefs accepted it that the title of Yonsohene was customarily and properly conferred on the 1st plaintiff by the Jamasihene.

In consideration of the evidence before us, it was difficult to find any fault with the decision by the National House of Chiefs in its decision now under appeal before us.

The prevailing custom in Ashanti was that it is the prerogative of an undisputed overlord incumbent chief to elevate a deserving and appropriate sub-chief to another status.

A careful reading of the evidence on record shows that the Jamasehene did only confer the title on the 1st plaintiff but not in any rash manner; he did it after having waited for a period of about twenty-five years when efforts to reconcile himself and Nana Kofi Kwarteng III failed to produce the desired results. As the chiefly office could not reasonably be left empty for that length of time, the overlord chief exercised his customary prerogative and filled the vacuum by doing the reasonable thing under the prevailing circumstances, to wit, by conferring the title on the person most deserving of it – he conferred it on the Nkotokuasehene. He did not purport to wrest a right customarily reserved unto one stool and bestowed or conferred it on an undeserving stool. He only bestowed the title on the occupant of a stool that exhibited unalloyed loyalty to him.

I am of the opinion that the Jamasehene could hardly be accused of, or was guilty of any rash, unconstitutional, undemocratic conduct; especially when by his action he did not exercise his choice by picking from outside the family customarily entitled to occupy that office. He did what he did for the wing that should aid him in administering affairs in the traditional area had refused to function as was customarily expected of it so brazingly and without the least show of repentance all over a long period of time – a quarter of a century. How could any traditional area function customarily in that manner? A customary overlord worthy of that name and title ought to move in a swift effective manner to put things in the right manner, for that was the right and perfect way to rule a state in the customary sense of the word. It is by this that the customary constitutional relationship in a state should or ought to be.

For the above reasons we are of the view that the Judicial Committee of the National House of chiefs was right in their decision under appeal before us; consequently, I affirm their decision and dismiss the appeal.

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

ANIN YEBOAH JSC.

I had the privilege of reading beforehand the two opinions of my esteemed brothers. I am of the opinion that the appeal from the National House of Chiefs to this Court be dismissed. I therefore support the opinion of the President of this Court.

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

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