IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA- GHANA, A.D.2014

CORAM: ATUGUBA, JSC (PRESIDING)
ANSAH, JSC
ADINYIRA (MRS), JSC
GBADEGBE, JSC
AKOTO-BAMFO (MRS), J.S.C.
BENIN, JSC
AKAMBA, JSC

WRIT
NO.J1/10/2013

3RD JULY, 2014

1. **PAUL OBRONI**
2. **GEORGE AMANOR** } **PLAINTIFFS/RESPONDENTS**

VRS

1. **THE ATTORNEY-GENERAL**
2. **LOWER MANYA KROBO MUNICIPAL ASSEMBLY**
3. **SHAI-OSUDOKU DISTRICT ASSEMBLY**

} **DEFENDANTS /RESPONDENTS**

4. **NENE TEYE TITRIKU I**

5. **NENE SACKITEY II**
6. **NENE ASADA AHOR** } **DEFENDANTS /APPLICANTS**

RULING

ATUGUBA, JSC

On 20/3/2013 the plaintiffs issued a writ J1/10/2013 against the Attorney-General claiming as follows:

"1. A declaration that on a true and proper interpretation of Articles 4 and 11(4A)(5)(6) of the 1992 Constitution*, Akuse which formed an integral part of the erstwhile Osudoku Local Council* constitutes part of the Greater Accra Region, vide the Greater Accra Region Law, 1982, PNDCL 26 as amended by the Greater Accra Region (Amendment) Law, PNDCL 28 and *Executive Instrument 30 of 1969.*

2. An order directing the Ministry of Local Government and Rural Development and the Lands Commission to re-define the existing boundary map for the Greater Accra Region to conform precisely with PNDCL 26 as amended by PNDCL 28.

3. A declaration that LI 1983 of 19th October, 2010, which seeks to place Akuse within the Eastern Region of the Republic of Ghana is in violation or inconsistent with the letter and spirit of Articles 4, 11(4)(5)(6) and PNDCL 26 as amended by PNDCL 28 and to the extent of the inconsistency is null and void.)

4. Any further reliefs or directions which the court may deem appropriate to give full effect or to enable effect to be given to the letter and spirit of the 1992 Constitution in this matter generally and particularly Articles 4(1) and 11(4)(5)(6) of the Constitution."

Upon application the 2nd to 6th defendants were joined by this court to the said writ.

However on 7/3/2014 the 2nd, 5th and 6th defendants filed the following preliminary objection to the said writ:

> "**TAKE NOTICE** that the above-named 2nd, 5th and 6th defendants intends at the hearing of the instant action, to rely on the following preliminary objection viz:
>
> The very question or issue raised for consideration by the instant action has already been determined by the Court in a case binding on plaintiffs and therefore, the suit is incompetent and must be dismissed in limine.
>
> **AND TAKE NOTICE** that the grounds of the objection are as follows:
>
> 1. The substance of the Plaintiffs' action seeks to raise substantially the same questions as were adjudicated upon in the case of *Charles Mate Kole & Azago Kwesitsu I vrs Electroal Commission & Attorney-General* [2012] SCGLR 244.
> 2. The subject matter (status of Akuse whether as an Osudoku or Manya Krobo town) is the same.
> 3. The judgment of this Honourable Court in the case of *Charles Mate Kole & Azago Kwesitsu I vrs.* Electoral Commission & Attorney-General (supra) being a constitutional matter is binding on all citizens of Ghana including plaintiffs herein.
> 4. Even though article 2 of the Constitution empowers a person who alleges that an enactment or anything contained in or done, under the authority of that or any other enactment; or any act or omission of any person to be in violation of the Constitution, to bring an action in this Honourable Court to that effect, same does not warrant the repeated

filing of the same or similar actions which raise the same legal point(s), especially where the subject matter is the same.

5. The instant action is therefore an abuse of the process of the Court. Plaintiffs herein do not have either the right or capacity to raise for determination by the Court the same issues or questions as were resolved in the "Mate Kole & Azago Kwesitsu" case."

The plank upon which the plaintiffs seek to revisit this matter is evidenced by paragraphs 6 to 10 of their statement of case as follows:

"6. By the provisions of The Greater Accra Region Law, 1982 (PNDCL 26), the Greater Accra Region was created and by S.2 of PNDCL 26, the newly created Greater Accra Region compromised solely of the areas of authority of the Councils specified in the first column of the first schedule of the law and more particularly described in the 2nd schedule of the law and delineated in the 3rd schedule of PNDCL 26. The first schedule comprised of the following councils:

"(a) The earstwhile Accra Municipal Council

(b) The Tema District Council

(c) Erstwhile Ada Local Council

(d) Erstwhile Ga-Adangbe-Shai Local Council

Please see Exhibit "PO"

7. Subsequently, PNDCL 26 was amended by the Greater Accra Region (Amendment) Law, 1982, (PNDCL 28) which sought to include the "Erswhile Osudoku Local Council" as part of the Greater Accra Region. Unfortunately, PNDCL 28, was not as detailed as PNDCL 26 but there is no dispute about the fact that

PNDCL 28, expanded the boundaries of the Greater Accra Region with the inclusion of the area of jurisdiction then known as the Osudoku Local Council. Please see exhibit "PO1".

8. the Osudoku Local Council was itself established by the Local Government Ordinance 1951 (No. 29 of 1951) and its area of jurisdiction was defined as "The area of the Osudoku state but not East of 0°20' East Longitude of Greenwich". Thus the area known as the Osudoku Local Council can be determined by the survey and mapping of the area described in the said Local Government Ordinance which seeks to exempt the E of 0°20' East Longitude of the Greenwich. Please see Exhibit "PO2".

9. By the provisions of the State Lands (Akuse-Asutuare Sugar Project) instrument, 1969 (E.I.30), the then National Liberation Council acquired land described in the schedule therein in the "Yilo Krobo Osudoku District" which included Akuse Lands. Please see exhibit "P03".

10. An interpretation of the schedule contained in E.1.30 as shown on plan No. L.D.714/39102 indicates that the town of Akuse is located as having National Coordinates of 520000 Northings and 1310000 Eastings within the Osudoku Traditional Area. This places Akuse within the area of jurisdiction of the erstwhile Osudoku Local Council set up by the Local Government Ordinance (1951). These findings have recently been confirmed by the Survey and Mapping Division of the Lands Commission, in their letter dated the 15th of January, 2013. Please see Exhibit "PO4."

However this court had earlier in *Charles Mate Kole and Azago Kwesitsu I vrs. Electoral Commission & Attorney-General* [2012] SCGR 244 held as follows... "whether Akuse fell within the Greater Accra Region or Eastern Region, could not be resolved by the Supreme Court without resolving the nature, extent and area of the Osudoku State, an issue which clearly evinced a cause or matter affecting chieftaincy."

The crucial provisions of the "INSTRUMENT ESTABLISHING THE OSUDOKU LOCAL COUNCIL" made under s.3 of the Local Government Ordinance 1951 (No. 29 of 1951) are ss.5 and 9 of the said Instrument as follows:

> "3. From and after the tenth day of November 1952, there shall be a council to be known as the Osudoku Local Council for the area specified in section 6 of this instrument.
>
> x x x
>
> 5. The area of authority of the council shall be the area of the Osudoku State but not East 0.20^{o} East longitude of Greenwich"

It is quite clear from the foregoing that the constitutive Instrument of the erstwhile Osudoku Local Council which by PNDCL 28 amending PNDCL 26 was brought into the Greater Accra Region has not set out the territorial areas of the Osudoku State. An indication as to some of those areas is disclosed by the electoral wards set out in the Schedule referred to in s.9 thereof. There is no reflection of Akuse therein. But what is clear is that those wards are expressed to be part of the said Osudoku state.

Quite clearly then the complete ascertainment of the nature, extent and composition of the said Osudoku state is, as a customary state, a matter for the chieftaincy tribunals.

It follows therefore that the plaintiffs' new plank that Akuse is not beyond East 0.20° East Longitude of Greenwich does not necessarily per se mean that Akuse is within the Osudoku State. It may or may not be depending on the decision of the relevant competent Chieftaincy Tribunal and the cartographical limitation of East of 0.20° East longitude of Greenwich.

It follows that we are driven back to the position taken by this court in the aforementioned earlier ruling of this court in *Charles Mate Kole & Azago Kwesitsu I vrs Electoral Commission & Attorney-General*, supra.

For all the foregoing reasons the preliminary objection is upheld and the plaintiffs' writ is accordingly struck out.

(SGD) W . A. ATUGUBA
JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

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

(SGD) N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO- BAMFO (MRS)
JUSTICE OF THE SUPREME COURT

(SGD) A. A. BENIN
JUSTICE OF THE SUPREME COURT

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

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SYLVIA ADUSU (CSA) WITH HER KOFI AMETEPE FOR THE 1ST DEFENDANT/RESPONDENT.
GODFRED YEBOAH DAME (WITH BOYE AGYEKUM) FOR 2ND, 5TH AND 6TH DEFENDANTS/APPLICANTS.
CHRISTOPHER KOFI KOKA FOR THE 4TH DEFENDANT/RESPONDENT