

GHANA / JUDGMENT

DJANGMAH VRS DORKUTSO & ANOR (J2/01/2024) [2024] GHASC 46 (30 October 2024)

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IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA, AD – 2024

CORAM: SACEY TORKORNOO, CJ (PRESIDING)
OWUSU, JSC
L-JOHNSON JSC
MENZA-BONSU, JSC
ACKAH-YENSU, JSC
CHIEFTAINCY APPEAL
NO: J2/01/2024
30TH OCTOBER, 2024
NUMO OSROAGBO DJANGMAH
(SUBT. BY NUMO SOBUABEH
OSROAGBO)
HEAD AND LAWFUL REPRESENTATIVE
OF THE ROYAL FAMILY OF LOWEH ADAINYA
...
PETITIONER/
APPELLANT/
RESPONDENT
VRS
1. NUMO HUAGO DORKUTSO
HEAD OF LOWEH KPONE FAMILY
H/NO. A/45, OLD NINGO
2. NUMO TETTEH HUAGO
...
(SUBST. BY KWEI NORTEY ADDO
HUAGO)
H/NO. A/45, OLD NINGO
1
RESPONDENTS/
RESPONDENTS/

APPELLANTS

JUDGMENT

ACKAH-YENSU, JSC

INTRODUCTION

It is almost two (2) decades since the present conflict surrounding the paramountcy of the Great Ningo Traditional Area was submitted for judicial intervention. This, however, is not the first-time issues surrounding the stool have emerged for determination. The cases of *Huago & Others v Djangmah II & Others* [1997-98] 1 GLR 300; *Huago IV & Others v Djangmah II & Others* (1998-99) SCGLR 255 attest to the longevity of the Ningo Paramount Stool conflicts. The principal interrogatory which confronted the Judicial Committee of the Greater Accra Regional House of Chiefs (JCGARHC), through to the Judicial Committee of the National House of Chiefs (JCNHC), and now, the Supreme Court, is; which family should the Mantse of Ningo hail from? For ease of reference, the Petitioner/Appellant/Respondent shall be referred to as the “Respondent”, whereas the Respondents/ Respondents/Appellants shall also be referred to as the “Appellants”. For the Appellants, there are two ruling houses from which the occupant of the Ningo Stool must belong. They are, the Royal Adainya and Loweh Kpono families, whose succession is by rotation. The Respondent contends however, that “the Loweh Adainya Royal Family of Ningo is the sole royal family from which the Mantse of Ningo should hail, and 2 that it is the said Loweh Adainya family which has the sole prerogative of supplying the occupant of the Ningo Stool”. In a cause or matter affecting chieftaincy, the issue of the appropriate family to enstool a chief is no mean an issue, having found constitutional impetus in defining who a chief is. Article 277 of the Constitution, 1992 defines a chief as 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 the relevant customary law and usage.” A person thus, cannot be validated as a chief under our customary constitutional settings, unless that person is from the appropriate royal family. Not uncommonly, the Judicial Committee of the relevant Traditional Council, or Houses of Chiefs, and even this apex court, are confronted with situations to determine among competing families, who has the prerogative to nominate or select a person to be enthroned a chief of a traditional society in the Republic. In resolving such impasse, which is often shrouded in a mire of conflicting traditional and ancestral facts, the application of the law to the facts and evidence must involve a careful evaluation of all the material on record, and applying same to the evidence of recent memory. There is a tall list of judicial guidance on the proper approach to the evaluation of conflicting traditional evidence. The test has always been, and continues to be, that the same should be resolved by examining the conflict in the light of such recent facts as established by the evidence adduced by the parties. The Privy Council settled the principle in 1957 in the case of *Adjeibi-Kojo v Bonsie* [1957] 3 WALR 257, per Lord Denning as follows: “[T]he dispute was all as to the traditional history which had been handed down by word of mouth from their forefathers. In this regard it must be recognized that, in the course of 3

transmission from generation to generation, mistakes may occur without dishonest motives whatsoever...The most satisfactory method of testing traditional history is by examining it in the light of such more recent facts as can be established by evidence in order to establish which of two conflicting statements of tradition is more probably correct.” The above principle has been accepted and applied in various decisions requiring the evaluation of conflicting traditional evidence in our legal system. See such authorities like: *Ago Sai & Others v Kpobi Tetteh Tsrui III* [2010] SCGLR 763; *Hilodjie & Anor. v George* [2005-2006] SCGLR 974; *In Re Krobo Stool (No. 1)*; *Nyamekye (No. 1) v Opoku*

[2000] SCGLR 347; *In Re Taahyen & Asaago Stools*; *Kumanin II v Anin* [1998-99] SCGLR 399; *In Re Kodie Stool*; *Adowaa V Osei* [1998-99] SCGLR 23; *Achoro v Akanfela* [1996-97] SCGLR 209; *Adjei v Acquah* [1991] 1 GLR 13 This test remains useful in the present action.

BACKGROUND

On 16th November 2005, the Respondent petitioned the Judicial Committee of the Greater Accra Regional House of Chiefs for the following reliefs against the Appellants:

1. A declaration that the Plaintiff family is the only Royal family with the lawful responsibility to nominate, elect, enstool or install a paramount chief for the Great Ningo Traditional Area.
2. Perpetual Injunction to restrain the Defendants, their servants, agents and all those claiming through them from further interference with all matters relating to the 4 nomination, election, enstoolment or installation of a paramount chief for Great Ningo Traditional Area.
3. Perpetual injunction restraining the Defendants, their servants, agents and all those claiming through them from holding themselves out as the paramount chief of Great Ningo Traditional Area.
4. General damages. From the record, the present Respondent substituted the original Petitioner in the person of Numo Osroagbo Djangmah. The original 1st Respondent was sued as the Head of the Loweh Kpono Family of Ningo. The original 2nd Respondent is an elder/principal member of the same family. The original 2nd Respondent was substituted by Kwei Nortey Addo Huago, the 2nd Appellant herein. THE CASE OF THE RESPONDENT The Respondent's case as per the Petition is that, by the Great Ningo customary law and practice, the Loweh Adainya Royal Family of Ningo is the only family with the lawful authority to nominate, elect, enstool and install a paramount chief for the Great Ningo Traditional Area whenever the position is vacant. The Respondent contends, that the authority of the Loweh Adainya family of Great Ningo as the only family with the responsibility to install a paramount chief for the Ningo Traditional Area is rooted in antiquity. According to the Respondent, the Loweh Adainya family was the only royal family recognized by the colonial administration as the family with the responsibility to install persons to occupy the paramount stool, as documented in a book entitled "GREAT 5 NINGO STOOL AFFAIRS". Respondent averred, that the Appellants had threatened to install a new paramount chief in place of the former who hailed from the Respondent's family and who died recently. THE

CASE OF THE APPELLANTS In their defence, the Appellants challenged the contention of the Respondent that, it was only Respondent's Loweh Adainya Family that could nominate and appoint the occupant of the Ningo Stool. The Appellants averred that, the Supreme Court had pronounced, that there were two ruling houses in respect of the Paramount Stool in the Great Ningo Traditional Area, being the Royal Adainya and Lower Kpono families. According to the Appellants, succession to the stool, per the authorities, was by rotation. The Appellants further averred, that the Petition was frivolous and ought to be dismissed.

APPLICATION TO DISMISS THE PETITION Upon the settlement of pleadings, the Appellants applied to the JCGARHC to strike out the petition on grounds of res judicata. The thrust of the application was that, ascension to the Ningo Stool was by rotation between the Respondent's Loweh Adainya Family and the Appellants' Loweh Kpono Family. This contention, according to the Appellants, had been judicially conclusively determined. The application was upheld by the Judicial Committee of the GARHC. The Judicial Committee of GARHC in upholding the application reasoned as follows: "Next we now look at what was the reliefs brought in the previous action by petitioner's predecessor in office in the 1985 action and indeed what was the judgment of the Judicial Committee of this House in 1990. 6 Even though it appears that, that action was not particularly about the declaration being sought now, it is clear that this relief forms the basis for that litigation. That action was about whether an abdication was valid, but was fought on the basis that the petitioner then Nene Osroagbo Djangmah II and other current petitioner's predecessor in office was chief on the ticket of Lower Adainya Royal Family and that of Lower Kpono family ascended the stool in turns that is, by rotation and that since he had not validly abdicated, it was only after his death that the next house would have validly abdicated, it was only after his death that the next house would have the opportunity to install their candidate. The Judicial Committee found as a fact that indeed there are two (2) ruling houses in Ningo who take turns to install paramount Chief. Remember this is basically a fact-finding committee. The decisions even though was not on the main legal issue for determination was and is and shall remain the decision of the Judicial Committee of this House until it is specifically set aside or struck out or quashed. What the petitioner in this case is asking us to do now is to set aside this finding of fact and replace it with our own view. To our mind, this is re-litigating a matter that was brought to a close in 1990 as far as the Judicial Committee is concerned. It may be set aside on appeal or quashed by a superior court, but definitely it cannot be re-heard by this Judicial Committee. We shall therefore strike out the suit based on the Legal maxim of estoppel per res judicatum". The Respondent successfully appealed against the decision to the JCNHC. The JCNHC resolved contra, that the issue of rotation, had not been conclusively determined on the merits. The House reasoned that: 7 "In the instant case, it is clear from the record made available to us that rotation was not an issue before the trial Judicial Committee and therefore no evidence was specifically adduced on the matter. Consequently, the ruling of the Judicial Committee of the Greater Accra Regional House of Chiefs which struck out the petition on grounds of estoppel per rem judicatum is hereby set aside as unmeritorious". The JCNHC then remitted the suit to the JCGARHC to determine same on its merits.

DECISION ON THE MERITS BY THE JUDICIAL COMMITTEE OF THE GREATER ACCRA

REGIONAL HOUSE OF CHIEFS On 19th November 2018, the JCGARHC delivered its judgment. In its judgment, the Committee rejected the case of the Appellants, rather holding that by history, custom, and tradition, the Great Ningo Paramount Stool is occupied by male descendants of the Royal Family of Loweh Adainya. The Committee concluded in their judgment that “besides the Loweh Adainya Royal Family of Great Ningo, there is no other family in Ningo clothed with Authority to nominate, elect and install a paramount Chief for the Traditional Area.” The Committee further found that, ascension to the office of the Ningo Mantse rotated between two gates within the Loweh Adainya Family. THE DECISION OF THE JUDICIAL COMMITTEE OF THE NATIONAL HOUSE OF CHIEFS Dissatisfied with the decision of the JCGARHC, both parties appealed against the same to the JCNHC which delivered its judgment on the 15th of October 2020 in favour of the Respondent herein. The Respondent’s challenge was only in respect of the recognition of some two gates within the Loweh Adainya Family as per the JCGARHC’s decision. 8 In its judgment, the JCNHC upheld the Respondent’s appeal and dismissed the cross- appeal of the Appellants. The JCNHC reasoned that, there were no two gates within the Loweh Adainya Family for purposes of succession to the Stool. And in any event, the dispute between the parties involves the determination of which of the two competing families the chief must be a member of. The JCNHC however upheld the holding that it is only the Loweh Adainya Family that was entitled to enstool the Mantse of Ningo. Specifically, the JCNHC declared as follows:

1. “The Loweh Adainya Royal Family of the Ningo Traditional Area is (sic) only appropriate Royal Family clothed with the lawful responsibility to nominate, elect, enstool or install a Paramount Chief for the Great Ningo Traditional Area.
2. The Respondents/Respondents, their assigns, agents and all those claiming through them are perpetually restrained from further interference with matters relating to the nomination, election, enstoolment or installation of a Paramount Chief of the Great Ningo Traditional Area.
3. The Respondents/Respondents, their assigns, agents and all those claiming through them are perpetually restrained from holding themselves out as the Paramount Chief of the Great Ningo Traditional Area.” APPEAL TO THE SUPREME COURT Being dissatisfied with the judgment of the JCNHC and with the leave of that House, the Appellants launched the present appeal per a Notice of Appeal dated 29th November 2023 on the following grounds: 9
“i. The judgment is against the weight of evidence. ii. The Honourable Judicial Committee of the NHC erred in law and in fact when they failed to follow previous authority or departed from same without assigning any reason. Thus, contrary to the principles of stare decisis. (Please see in the particulars the previous decisions that the committee failed to consider before arriving at their decision). Particulars of error of law based on previous decisions.
 - a. In the Consolidated Ningo Paramount Stool Chieftaincy Dispute case of: TETTEH HUAGO & 4 OTHERS AND NENE TEI DJANGMAH IX & ANOR V SAMUEL NARH OSROAGBO & ANOR SUIT NOS. GAR/P3/84 NAD GAR/P3/85 Held: “History as well as the evidence adduced before us show conclusively that the right of succession to the Great Ningo Paramount Stool rotates,

that it goes by turn between the two Royal families of Loweh Adainya and Loweh Kpono” Please see page 377@378 of the record of appeal compiled by the Registrar Greater Accra Regional House of Chiefs to the Registrar National House of Chiefs. 10

- b. HUAGO IV & OTHERS V DJANGMAH II & OTHERS [1998-99] SCGLR 255@268, “There are two ruling houses in respect of the Paramount Stoll in the Great Ningo Traditional Area. These are the Royal Adainya and Loweh Kpono families. These two families have their own sets of kingmakers with a Seitse or a stool father for the paramount stool. Succession to the stool is by rotation and the occupant is also the spiritual leader of his people or the chief fetish priest of Djang shrine of Great Ningo”.
- c. THE REPUBLIC VRS
 - 1. THE ATTORNEY-GENERAL
 - 2. NENE OSROAGBO DJANGMAH II
 - 3. LOWER Kpono ROYAL HOUSE EX PARTE NENE TEI DJANGMAH IX The Court of Appeal in the above case re-echoed the Supreme Court decision mentioned above as follows: “On the 11th day of June, 1997, the Supreme Court delivered its judgment upholding the decision of the National House of Chiefs, Nene Osroagbo Djangmah II of Lower Adainya it appears took over as the head of the traditional authority of Great Ningo until his death in 2005. From the judgment of the Supreme Court, the situation is settled that there are two ruling houses in Great Ningo, the Lower Adainya and Lower Kponor, ruling in alternation of ‘Great Ningo.’” 11 Please see page 76 of the record of appeal
- d. It also failed to consider documentary evidence from the custody of statutory body, Public Records And Archives Department (PRAAD) Accra-Extract From Great Ningo Native Affairs File, Memorandum by the Secretary of state of Native Affairs in 1915. Please see page 192 of the Record of appeal which it is stated at page 195 of the record paragraph 6 that; “As was formerly common in this part of the colony the office of chief (Mantse) and priest and tribal fetish (wono) have been hitherto indivisible. As it is also common, chief is drawn in alternation from two tribes, Loweh and Loweh-Kpono... iii. The contention of the JCNHC that the Loweh Kpono being migrants who joined the Adainya’s after the Ningo (Djangmahman) area had already been founded and occupied by Nene Djangmah the first and sole occupant of the Ningo stool and his people has no factual basis and occasioned a grave miscarriage of justice. iv. The delay in giving reasons behind the judgment has occasioned a grave miscarriage of justice especially so when the then judicial committee members signed the judgment when they had become functus officio. v. Further grounds of appeal will be filed on receipt of a copy of the record of appeal (ROA)”. It needs to be placed on record, that no further ground was filed. 12 SUMMARY OF LEGAL ARGUMENTS OF THE APPELLANTS The Appellants’ principal argument is that, the JCNHC was in error in failing to follow the already settled position regarding the succession to the Ningo Stool. Appellants contend that by various judicial pronouncements, it had been settled that the succession to the Ningo Stool rotated among the Appellants’ family and that of the Respondent. This

position, according to the Appellants, had already been settled in cases such as:

- (a) Consolidated Suit: Nene Osragbo Djangmah II & 7 Others v Tetteh Huago & 5 Others; Nene Tei Djangmah IX & Anor v Samuel Narh Osroagbo & Anor GAR/P3/84 and GAR /P3 /85 (1990). In this suit, the Greater Accra Regional House of Chiefs pronounced that “History as well as the evidence adduced before us show conclusively that of succession to the Great Ningo Paramount rotates, that is goes by turn between the two Royal Houses of Loweh Adainya and Loweh Kpono”.
- (b) Huago IV & Others v Djanmah & Others [1998-99] SCGLR 255 at 268 where it was held that: “There are two ruling houses in respect of the Paramount Stool in the Great Ningo Traditional Area. These are the Royal Adainya and Loweh Kpono Families. These two families have their own sets of Kingmaker or with a Seitse a stool father. Succession to the stool is by rotation and the occupant is also the spiritual leader of his people or the chief priest of the Djange Shrine of great Ningo.”
- (c) The Republic v The Attorney General & Ors. Ex Parte Nene Tei Djangmah IX which also pronounced as follows: On the 11th day of June 1997 the Supreme Court delivered its judgment uphold the decision of the National House of Chiefs Nene Osroagbo Djangma II of Lower Adainya took over as the head of the Traditional Authority of Great Ningo until his death in 2005. From the judgment of the Supreme Court the situation is 13 settled that there are two ruling House in Great Ningo, the Lower Adainya and Lower Kpono ruling in alternation of Great Ningo.” It is the strong contention of the Appellants that these precedents were binding on the JCNHC, and their failure to follow the same must be reversed. The Appellants further submitted, that the JCGARHC got it wrong in finding that the Loweh Kpono were migrants who joined the Adainyas after the Ningo area had already been founded and occupied by Nene Djangmah the First. The Appellants contended per their Counsel, that even though there is evidence of migration, the same was internal. Finally, the Appellants argued, relying on section 36 of the Chieftaincy Act, 2008 (Act 759), that the JCNH having given its verdict on 15th October, 2020 could not have deferred its reasons for more than a year. Counsel submitted, that the panel that delivered the verdict as at 2nd of June 2021 had become functus officio, and could not therefore, have signed the judgment in June 2022. Counsel describes the judgment as “hurriedly half-baked judgment” and invites the Court to set same aside. SUMMARY OF LEGAL ARGUMENTS OF THE RESPONDENT First, the Respondent took challenge to the formulation of the second ground of appeal, on the issue of stare decisis. Counsel contended in the Statement of Case that, same were argumentative and not compliant with the Rules of this Court. Regarding the delay in giving reasons, the Respondent submitted, per his Counsel, that the said ground and the arguments thereunder, as urged on the Court by the Appellants, are premised on conjectures and presuppositions. Respondent also submitted that, on 15th October 2020 the JCNH delivered judgment in the matter and indicated that the full text containing the reasons could be accessed at a later date to be fixed by the Registrar. Counsel submits that, the delay in procuring a certified copy of the judgment did not render the reasoning 14 a

second judgment, as it were. And that, the date of certification of a judgment is totally different from the date the judgment was delivered. Counsel referred to the decision of the Supreme Court in the case of *The Republic v High Court (Commercial Division) Accra Ex Parte : Charles Zwennes & Philip Addison, Merlin Gaming Ghana Limited & Eric Gbeho* (Interested Parties) [2020] DLSC 9339, and submitted that the deferred reasoning was justified in case management. On the issue of stare decisis, the Respondent contended that the Appellants had misapprehended the cases relied on. Counsel pointed out that, none of those cases had to deal with the specific issue of whether or not succession to the Ningo Stool was rotational among the families of the parties. Counsel urged on the Court that, the pronouncements in those cases were mere obiter and not binding. On the corollary issue of res judicata, Counsel submitted that, the Appellants accepted the decision of the JCNHC that those issues were not res judicata as they had not been conclusively determined. No appeal was launched against the same by the Appellants and he can therefore not be heard to re-argue the same point.

THE IMPROPRIETY OF THE GROUNDS OF APPEAL

The Respondent took a preliminary issue with the formulation of the second ground of appeal. In his Statement of Case to this Court, Counsel for the Respondent contended, which we share in agreement, that the Appellants' second ground was not compliant with the formulation of grounds to this Court as per our Rules of Court. Rules 6(4) and (5) of the Supreme Court Rules, 1996 (C.I. 16) read as follows: "(4) The grounds of appeal shall set out concisely and under distinct heads the grounds upon which the appellants intend to rely at the hearing of the appeal, without any argument or narrative and shall be numbered seriatim; and where a ground of appeal is one of law the appellant shall indicate the stage of the proceedings at which it was first raised." "(5) No ground of appeal which is vague or general in terms or discloses on reasonable ground of appeal shall be permitted, except the general ground that the judgment is against the weight of evidence; and any ground of appeal or any part of it which is not permitted under this rule may be struck out by the Court on its own motion or on application by the respondent." It will be observed that the second ground of appeal (as already produced supra), merely refer to quotations or pronouncements from the cases the Appellants seek to impress on the Court as being binding on the JCNH without more. As provided in Rule 6(4) of C.I. 16, where the ground of appeal is one of law, the Appellants must disclose the stage of the proceedings at which it was first raised. Moreover, the Appellants were also expected to give the necessary particulars of the misdirection or error in law as per Rule 6(2)(f) of C.I. 16, which provides that "A notice of civil appeal shall. Set forth the grounds of appeal and shall state-(f) the particulars of any misdirection or error in law, if so alleged." While it has become too elementary legal knowledge on the proper formulation of grounds of appeal, and while we deprecate the format adopted by the Appellants, we shall, having regard to the critical issues that these grounds raise, and more fundamentally, in our zeal to effectively resolve this chieftaincy dispute once and for all, evaluate the import of the said grounds, the irregularities notwithstanding.

GROUND 4

We wish to commence our evaluation with the 4th ground of appeal. That ground attacks the judgment of the JCNHC on the supposition of a delay in assigning reasons to the 16 judgment on time thereby occasioning a miscarriage of justice. The substance of the

contention on this ground is captured in paragraph 4.4 (i), (ii) (iii) of Counsel for Appellants' statement of case, where he submits as follows: "My Lord the JCNHC gave its verdict on 15th October, 2020 but deferred its reasons to a later date. This happened at a time that the mandate of the Committee had come to an end and the JCNHC was been (sic) reconstituted. It is worth noting that the deferred reasoning behind the judgment was not delivered until 9th June, 2022, almost two years after the verdict had been delivered without including the reasons behind the judgment". Counsel then concludes that "The issue is whether or not the judgment delivered almost one and half years of leaving office as panel members is valid? In our opinion it is not. This is because at that stage they had become *Functus Officio*."

Counsel's thinking, with respect, is too simplistic and same not in accord with the law, and even the evidence on record. What are the true facts from the record? On the 15th of October 2020, the JCNHC delivered judgment in the matter but reserved its reasons for a later date. Specifically, this is what is captured in the record on that said day: "Judgment announced. Appeal succeeds and same is unanimously allowed. The cross appeal therefore fails and same is dismissed. We accordingly set aside the judgment of the Judicial Committee of the Greater Accra Regional House of Chiefs dated the 19th November, 2018. 17 Full Judgment and reasons to be deferred to a date to be fixed by the Registrar for copies to be obtained ...". Clearly, judgment in the matter whether described by the Appellants as a verdict or otherwise, was delivered on the 15th of October 2020 with the reasons reserved, a practice which is not uncommon to our current adjudicatory processes. The fact of a full judgment (embodying reasons) being certified at a later date does not detract from the actual date of delivery of the judgment. The invocation of Section 36 of the Chieftaincy Act, 2008 (Act 759) by the Appellants is thus wholly misplaced. The section enacts as follows:

- (1) Except as provided in subsection (3), where a vacancy occurs in the membership of a Judicial Committee of the National House, a Regional House or a Traditional Council otherwise than as a result of the expiration of the term of office of its members, the appropriate House or Council may fill the vacancy.
- (2) Where the proceedings of a Judicial Committee have not been completed before the filling of a vacancy, the Judicial Committee as re-constituted after the filling of the vacancy shall adopt the proceedings of the Judicial Committee as previously constituted in the cause or matter in question.
- (3) Where at the time of the expiry of the term of office of members of the National House, a Regional House or a Traditional Council, there is pending before the Judicial Committee of the relevant House or Council of which they are members a part-heard appeal or cause or matter relating to chieftaincy, the members shall for the purpose of completing the hearing and determination of the appeal, cause or matter,
 - (a) continue to hold office for a further period of not more than three months after their term of office has expired, and 18

- (b) where a matter still stands undetermined, the succeeding Judicial Committee may adopt the proceedings of the pervious Judicial Committee and proceed with the matter. The operative conditions from the above, within the context of the instant peculiar facts, are whether the proceedings before the original panel members of the JCNHC were not completed before they retired; or whether at the time the judgment was delivered the panel was functus officio? Clearly both questions will be answered in the negative, as on the date of delivery of judgment it was the same panel that heard the appeal and none other. The Appellants themselves concede on this point, but only refuse to describe the decision as a “judgment” because according to Counsel, the reasons were deferred. That submission, with respect, cannot actualize the judgment delivered on the 15th October 2020 as no judgment and/or imply the subsequent reasons being a distinct judgment which was signed by the same appeal panel. Infact, this recognition that the judgment is one and the only one as delivered by the JCNHC on the 15th of October 2020 is evident on the face of the Notice of Appeal filed by the Appellants on the 29th of November 2023. The material portion reads as follows: “TAKE NOTICE that the Appellant being dissatisfied with the whole decision of the JUDICIAL COMMITTEE (JCNHC) of the National House of Chiefs (JCNHC) more particularly as stated here and contained in the judgment of the JCNHC dated 15th day of 19 October, 2020 and having obtained leave on the 24th of November 2023 of the said JCNHC does appeal to the Supreme Court...” While we do encourage that judgments should embody the reasoning informing the conclusions reached, a judgment in which reasons are deferred to a later date must not be construed to be no judgment. That practice has for some time been pursued to ensure expeditious adjudication as part of case management, as observed by our brother Dotse JSC in the case of *The Republic v High Court (Commercial Division) Accra Ex Parte: Charles Zwennes (Applicant) & Philip Addison, Merlin Gaming Ghana Limited & Eric Gbeho (Interested Parties) [2020] DLSC 9339*, also cited by Counsel for Respondent: “One other serious complaint by the applicant which found expression in the grounds of this application is the fact that, by the reading of 9th December 2019 which the judge rendered, he reserved his reasons for the said judgment for a future date. This method of managing the case load in the court has virtually become an acceptable phenomenon of expeditiously disposing of cases albeit for the detailed reasons to be given later. This court itself has in the past couple of years adopted the same procedure to expeditiously bringing litigation to an end with expedition. Failure to render reasons for a particular decision when rendered is not and has never been one of the accepted and known grounds for the successful invocation of this court’s supervisory jurisdiction.” It is clear from the above analysis, that this ground of appeal is meritless and same is accordingly dismissed. GROUND TWO: 20 We will now evaluate the second ground of appeal which borders on the issues of stare decisis and res judicata. This ground is rendered as follows: “The Honourable Judicial Committee of the NHC erred in law and in fact when they failed to follow previous authority or departed from same without assigning any reason. Thus contrary to the principles of stare decisis”. The submission of the Appellants on this ground is that, there are certain decisions that had already been rendered by the courts which decisions were binding on the JCNHC and those decisions had settled that ascension to the paramount stool of the Great Ningo Traditional

Area rotated between the Loweh Adainya and Loweh Kpono Families. It therefore behoves on us to introspect these cases and ascertain their importance as regards the proposition of the Appellants. As a sequel however, it is essential to consider the doctrines of stare decisis and res judicata. STARE DECISIS The doctrine of stare decisis, or as loosely characterised by the common law legal tradition, judicial precedent, is a pertinent feature of the common-law system, and the Ghana legal system. In its literal sense, stare decisis means “stand by previous decisions”. It is therefore a practice that commands lower courts and lower adjudicating bodies to adhere to decisions of higher courts. Per its juridical nature, lower courts are bound by the decisions of superior courts. Indeed, in its traditional conception, there was no discretion for lower adjudicating bodies to refuse to apply such decisions. The obvious challenges, as per the history of the development of English law, partly accounted for the setting up of the Chancery Courts. The strict adherence to a decision of a superior court, whether per incuriam or not, appears to have now been jettisoned, by bold judges in distinguishing precedents and attaining 21 just judicial outcomes. It needs emphasis however that binding precedents serve very useful purposes in Common Law legal systems, including Ghana. Precedents guide the private ordering of legal affairs. They enable lawyers to easily advise and define the cause of action of their clients. They further ensure a fair, efficient, and effective adjudicatory system of disputes. Once a question of law has been settled by the Supreme Court, for instance, there cannot be said to be a re-litigation of the very same, but, just an application of it. Furthermore, precedents facilitate justice delivery as they ensure an expeditious determination of cases when judges are confronted with similar facts. The absence of precedent in some peculiar matters resulting in the paucity of guidelines in resolving conflicting dispositions has been acknowledged by this Court in a few cases. An instance is the case of *In Re Presidential Election Petition: Akuffo-Addo & Others v Mahama & Another* [2013] SCGLR (Special Edition) 78 where Dotse JSC remarked as follows “there is no known local precedent in this aspect of the law that we are requested to enforce and or interpret”. Without a doubt, sifting through a judgment to decide which aspect of it is binding, is even a major disadvantage regarding the operationalization of precedents. Another, is the challenge to, particularly, lower courts when confronted with situations where a decision is clearly per incuriam, but risks being quashed upon a departure not to follow an already binding precedent. Under our legal system, all questions of law decided by the Supreme Court, are binding on all courts lower than the Supreme Court including lower adjudicating bodies such as the Judicial Committees of the Houses of Chiefs. Article 129(3) of the Constitution 1992 provides: “The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so; and all courts shall be bound to follow the decisions of the Supreme Court on questions of law.” Similar provisions operate in terms of hierarchy from the Court of Appeal and the High Court regarding the binding nature of their decisions to courts only below them. It must be emphasised that the decisions of the Court of Appeal and the High Court will remain binding to the extent that they are not contrary to the decisions of the Supreme Court. There is a further exception regarding the Court of Appeal on the effect of its interlocutory decisions. Such decisions cannot be binding on a differently

constituted panel where the facts informing the earlier decision did not form part of the record of proceedings before the panel in the substantive appeal. On this point, the Supreme Court decided in the case of *FARMERS Services Co. Ltd. v Julisam Ltd. & Salifu* [2007-2008] SCGLR 491 as follows: “The Court of Appeal was bound by its previous decisions in terms of article 136(5) of the 1992 Constitution only when the decisions had been given on the merits in determining the issues before the court. A differently constituted Court of Appeal could not be expected to be bound by a ruling on an interlocutory application by another panel where the facts forming the basis of the ground of appeal had not formed part of the record of proceedings before the panel in the substantive appeal. Consequently, the ruling of the Court of Appeal on the interlocutory application had no binding effect on the panel that had determined the substantive appeal.” Regarding the High Court also, a Justice of the High Court is not bound by the decision of another Justice of the High Court although their decisions are binding on the lower courts. In *Asare v Dzeny* (1976) 1 GLR 473, the Full bench of the Court of Appeal, speaking through Azu Crabbe CJ (as he then was), held that: 23 “A judge of the High Court is not bound to follow the decision of another judge of co-equal jurisdiction; he may do so as a matter of judicial comity. This position of the High Court with regard to stare decisis was clearly expressed by Lord Goddard C.J. in *Police Authority for Huddersfield v Watson* [1947] KB 842 at p. 848, DC: “I think the modern practice, and the modern view of the subject, is that a judge of first instance, though he would always follow the decision of another judge of first instance, unless he is convinced the judgment is wrong, would follow it as a matter of judicial comity. He certainly is not bound to follow the decision of a judge of equal jurisdiction. He is only bound to follow the decisions which are binding on him, which in this case of a judge of first instance, are the decisions of the Court of Appeal...” A profound interrogatory on this discourse, is; what is a binding decision? Put differently, is it any pronouncement of the superior courts that is binding on the inferior courts? Thus, is it any pronouncement of the Supreme Court, that is binding on the Court of Appeal, the High Court and other lower adjudicating bodies? Certainly Not! As is stated under Article 129(3) of the 1992 Constitution, all courts shall be bound by the decision of the Supreme Court on questions of law. In any decision therefore, it is the point of law or the ratio decidendi that sets the precedent and is binding. As expatiated on in the case of *Republic v Director of Prisons & Anor. Ex Parte Shackleford* [1980] GLR

554. “It is the reason or principle on which a question before a court has been decided which is binding as a precedent. It is the ratio decidendi of a judgment of a superior court which sets a precedent for itself and inferior courts to follow”. So, the question to be asked is, what principle or question of law is discernable from the quotations in the suits referred to by the Appellants that may be applied to the instant 24 suit under the principle of stare decisis? What is the ratio decidendi (point of law) which may be gleaned from the quotations relied on by the Appellants which can set a binding precedent in this matter? In our view, the said quotations do not contain any questions of law which may serve as precedent capable of being subsequently applied under the principle of stare decisis. The quotes only state by way of obiter, that Chieftaincy is by rotation between Loweh Adainya and Loweh Kpono. It is

pedestrian law that a decision may be made up of the ratio decidendi and an obiter dictum (dicta). That is, the sinews of a judgment may entail some excurses before the actual holdings on the position of the law. Those excurses being obiter are not binding. As aforesaid, it is the actual holdings, or ratio that become binding. Therefore, the various references, expressions, comparisons, demonstrations to pave the way for a binding conclusion is not to be treated, in itself, as a holding which can have constitutional crystallisation as a binding decision on a question of law. The simplest approach to determining this distinction is by having regard to the principal issues that were put before the court; or yet still, a consideration of the reliefs being sought in the action. Such examination will lead one to tell what the court set out to decide. The present Appellants have strongly contended that, there were already binding precedents which the Committees below ought to have followed. Our understanding of the Appellants' contention is rather grounded in *res judicata*, a somewhat offshoot of *stare decisis* and not the strict *stare decisis*. This is particularly so as when Counsel for Appellants submitted at the concluding paragraph of his Statement of Case on this point at paragraph 4.2(vi) as follows: 25 "It is well settled that "if a court of competent jurisdiction has tried and disposed of a case their privies cannot, thereafter, bring an action on the same claim or issue" Counsel then confuses the legal point in his submission when he continued as follows: "It is against this background that the JCNHC erred in law when they failed to take into consideration the myriad of judicial precedents and went ahead to pronounce that rotation does not exist between the Loweh-Adainya and Loweh Kpono and Loweh Adainya are the only royals who could ascend to the paramountcy of Great Ningo." To be successful on a plea of *res judicata*, the proponent must satisfy the court that the issues or subject matter of the two disputes/or causes of action are the same. Next, that the parties and/or their privies are also the same. And finally, that the first suit had been conclusively been determined on its merits. It is only upon a successful satisfaction of these three salient principles that there could be a favourable finding on *res judicata* and the other party held to have been estopped from seeking a re-litigation. In the case of *In Re Asere Stool* (2005-2006) SCGLR 637 this Court held as follows: "Estoppel per rem judicatem is a generic term which, in modern law, includes two species. The first specie is called cause of action estoppel, which prevents a party to an action from asserting or denying as against the other party, the existence of a particular cause of action, the non-existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties....The second is called issue estoppel which is an extension of the same rule of public policy. This will arise where apart from cases in which the same cause of action or the same plea of defence is raised, there may be cases in which a party may be held to be estopped from raising particular issues, if those issues are precisely the same as the issues which have been previously raised and have been the subject of adjudication". 26 Similarly, the Court had this to say in *Ashie Neequaye v Adeo Kotey* [2010] SCGLR 348: "The plea of *res judicata* is a well-established part of our law and it is usually expressed to be based on a final judgment. In the case of *In re Sekyedumase Stool: Nyame v. Kese alias Konto* [1998-99] SCGLR 476 at pg 478, Acquah JSC as he then was, delivering the judgment of this court said: "My lords, the plea of *res judicata* is

never a technical plea. It is part of our received law by which a final judgment rendered by a judicial tribunal of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies and, as to them constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action” In the case of Dahabieh v. SA Turki and Bros [2001-2002] SCGLR 498, this court reiterated the above cited position of the law in the following terms, “it is well-settled under the rule of estoppel that if a court of competent jurisdiction has tried and disposed of a case the parties themselves and their privies cannot, thereafter, bring an action on the same claim or issue. The rule applies to issues actually dealt with in the previous litigation as well as those matters which properly belonged to that litigation and could have been brought up for determination but were not raised.” It will be recalled that, following the close of pleadings before the JCGARH, the Appellants successfully applied to the said Committee to strike out the suit on grounds of *res judicata* relying on the decisions which we shall soon interrogate. Dissatisfied, the Respondent appealed to the JCNHC which set aside the ruling of the JCGARH and remitted the suit to be determined on its merits. Instructively, following the decision of the JCNHC on this issue to the effect that there had not been any conclusive determination as to whether ascension to the Great Ningo Paramount Stool rotated between the families of the parties, the Appellants did not bother to launch a further appeal to same. Infact, the Appellants, per their Counsel, actually admitted the position taken by the JCNHC in his written submission to the JCNHC. The indirect concession of 27 the Appellants per his Counsel on this point is captured at page 325 of the Record of Appeal as follows: “When the preliminary objection was upheld by this Honourable court but overturned on appeal to the National House of Chiefs, I disagreed with the ruling but I decided not to allow my clients incur unnecessary expenditure that is why I did not appeal to the Supreme Court but rather submitted to this Honourable Tribunal” Notwithstanding the tardy approach of the Appellants, but having regard to the fact that an appeal is by way of re-hearing, we shall still examine each of these cases with a view to ascertaining whether there are binding decisions supportive of the Appellants’ position. CONSOLIDATED SUITS: TETTEH HUAGO & 4 OTHERS & NENE TEI DJANGMAH IX & ANOR V SAMUEL NARH OSROAGBO & ANOR, SUIT NOS. GAR/P3/84 AND GAR /P3/85 The aspect of the decision in the above case which the Appellants urge on this court is as follows: “History as well as the evidence adduced before us show conclusively that the right of succession to the Great Ningo Paramount Stool rotates, that it goes by turn between the two Royal families of Loweh Adainya nad Loweh Kpono.” We wish to remark from the outset that the above decision relied on by the Appellants is a decision of the JCGAHC. That decision was subsequently set aside by the JCNHC and a further appeal to the Supreme Court in the case of Huago & Others v Djangmah II & 28 Others [1997-1998] 1 GLR 300 was not successful. That is, the Supreme Court affirmed the decision of the JCNHC. It is therefore wrong for Counsel to have relied on that decision, in the fast place. The above case decided by the Supreme Court has often been cited in support of conditions for a valid customary abdication of a stool. In this case, the then Paramount Chief of Ningo, Nene Osroagbo, was alleged to have abdicated the Ningo Stool. The Loweh Kpono House consequently sought to install a new Paramount Chief. This was resisted on the basis that

there had not been any valid customary abdication. The principal issue before the Supreme Court therefore, was, whether there had been a valid abdication of the stool? The Supreme Court held, however, that there was no valid abdication. It is important to reiterate the fact that the aspect of the decision relied upon by the Appellants herein is actually a pronouncement in the judgment of the JCGARC whose decision was reversed by the JCNHC, and the same affirmed by the Supreme Court. There was no issue before the Supreme Court as to whether ascension to the Great Ningo Paramount Stool was by rotation. All that the Supreme Court, and indeed the JCGARHC as well as JCNHC sought to unravel, was whether the conditions for a valid customary arbitration of a chief had been met in relation to Nene Osroagbo Djangmah II who belonged to the Adainya family. After reviewing the authorities, the Supreme Court held that: “The conditions for a valid customary abdication of a chief were (i) voluntary renunciation of the stool; (ii) its acceptance by the stool elders or kingmakers; (iii) performance of the requisite rites and formalities; and (iv) publicity of the abdication. Accordingly, the judicial committee of the National House of Chiefs were justified in holding that the letter of abdication by the first respondent and its acceptance by the sietse, the stool father of Ningo, 29 could not by themselves be legitimately considered sufficient as a valid customary abdication. Accordingly, the first respondent was still the occupant of the Great Ningo paramount stool. *Boampong v Aboagye* [1981] GLR 927, SC applied”. The pronouncement the Appellants latch on in the case of *Huago IV & Others v Djangmah II & Others* [1998-99] SCGLR 255 is as follows at page 268 of the report: “There are two ruling houses in respect of the Paramount Stool in the Great Ningo Traditional Area. These are the Royal Adainya and Loweh Kpono families. These two families have their own sets of kingmakers with a Seitse or a stool father for the paramount stool. Succession to the stool is by rotation and the occupant is also the spiritual leader of his people or the chief fetish priest of the Djang shrine of Great Ningo.” This case, like the previous case, dealt with the same abdication issues and the court was not invited to decide on the rotational status of the Great Ningo Paramount Stool. Also, in *The Republic v The Attorney-General & Ors. Ex Parte Nene Tei Djangmah IX* (Unreported) Dated 27th January, 2011. CA. “On the 11th day of June, 1997, the Supreme Court delivered its judgment upholding the decisions of the National House of Chiefs, Nene Osroagbo Djangmah II of Lower Adainya it appears took over as the head of the traditional authority of Great Ningo until his death in 2005. From the judgment of the Supreme Court, the situation is settled that there are two ruling houses in Great Ningo, the Lower Adainya and Lower Kponor, ruling in alternation of ‘Great Ningo’. 30 As can be observed, it appears, that the obiter statement made in the previous decision was construed by the Court of Appeal as having settled on the issue of rotation or ruling houses. As already demonstrated, the issue before the court was not concerned with whether ascension to the Great Ningo Stool was by rotation among the Loweh Adainya and Loweh Kponor Families. To dispel any further controversy, we invoke our powers under Article 129(3) of the 1992 Constitution and depart from our earlier pronouncements which may suggest, that ascension to the Great Ningo Paramount Stool rotated among two ruling houses of Loweh Adainya and Loweh Kponor Families. This is principally because in neither of the two cases (consolidated) was the Court invited to deal with such an issue, and the

evidence put forward actually did not warrant the said pronouncements. What is even more remarkable, is that all that Counsel urges on the Court per his Statement of Case is, references to the quotations without more. On a controverted issue of *res judicata* or even if we are to stretch the argument to cover judicial precedent, Counsel does not point out to the Court the principal issues that were put before the Supreme Court; the nature of the evidence that was evaluated by the Court; the parties and or privies who were before the Court for the Court to arrive at a just determination that, indeed, the issue of rotation among the two families has actually been conclusively determined. Without a doubt, those were never the issues in either of the cases referred to and the pronouncements made were merely obiter and cannot stand in operation as estoppel against the Respondent. It is our firm holding therefore, that the issue of whether ascension to the Great Ningo Paramount Stool rotated between the Loweh Adainya and Loweh Kponor Families had already been conclusively settled by the courts is erroneous. To that extent, we find and 31 hold, that the Judicial Committee of the National House of Chiefs did not err in law and in fact in holding otherwise. GROUND 3: We shall now proceed to analyse the omnibus ground of appeal together with the third ground. The third ground is to the effect that: THE CONTENTION OF THE (JCNHC) THAT THE LOWEH KONO BEING MIGRANTS WHO JOINED THE ADAINYA'S AFTER THE NINGO (DJANGMAHMAN) AREA HAD ALREADY BEEN FOUNDED AND OCCUPIED BY NENE DJANGMAH THE FIRST AND SOLE OCCUPANT OF THE NINGO STOOL AND HIS PEOPLE HAS NO FACTUAL BASIS AND OCCASIONED A GRAVE MISCARRIAGE OF JUSTICE. The aspect of the decision of the Judicial Committee of the National House of Chiefs under attack is their pronouncement that: "We further observe that per the evidence on record, the Loweh -Adainya family and the Loweh Kpono family are two different and distinct families as they do not trace their ancestry to one common ancestor. The Loweh Kponos being migrants who joined the Adainya's after the Ningo (Djangmahman) area had already been founded and occupied by Nene Djangmah, the first and sole occupant of the Ningo Stool and his people." Counsel submits on behalf of the Appellants that this finding misled the Committee into rejecting the case of the Appellants. Appellants contend that if indeed the Loweh Kponos migrated to join the Adainyas, the Committee could have found where they migrated from, why only the Kponos were allegedly made regents any time a chief from Loweh Adainya died, and the said regent remained on the stool until he died before the Adainyas selected a Paramount Chief again. The Respondent on the other hand resisted 32 this contention, reasoning that, the dispute revolves around the issue as to which family should the Paramount Chief of Ningo hail and not really an intra-family dispute or a dispute between a faction of one family and its offshoot. For Respondent, the two families are very distinct and if they were the same clan there would not have been the contest in the first place. Whether or not these conflicting positions have had an impact on the central issue before the Committee below, in our view, does not appear to be the case, if the proper test is applied in resolving the conflict. As indicated in the introduction, in matters of this nature, the appropriate test to the evaluation of conflicting traditional evidence is by analysing the same in the light of such more recent facts as exposed by the evidence on record. In *In Re Krobo Stool (No. 1); Nyamekye (No. 1) v Opoku* [2000] SCGLR 347, this Court

expressed the test as follows: Since the parties had proffered conflicting traditional evidence in support of their respective claims, the law required that recent events supporting the claim of either party should sway the determination of the dispute. Thus, the evidence of traditional history tested against recent events, relied on by both the Kumasi Traditional Council and the National House of Chiefs in preferring the defendant's version of the founding of the Krobo Stool, was amply supported by the totality of the evidence on record." Similarly, in *In Re Taahyen & Asaago Stools; Kumanin II v Anin* (supra), this Court pronounced as follows: "To sum up, in assessing rival traditional evidence the court must now allow itself to be carried away solely by the impressive manner in which one party narrated his version and how coherent that version is; it must rather examine the events and acts within living memory established by the evidence paying particular attention to undisputed acts of 33 ownership and possession on record; and then to see which version of the traditional evidence, whether coherent or incoherent, is rendered more probable by the established acts and events; and finally, the party whose traditional evidence such established acts and events support or render more probable must succeed unless there exists on the record of proceedings, a very cogent reason to the contrary." From the case of the Appellants, succession to the stool rotated between the two families. What this simply means is that, following the demise of a sitting chief of the Ningo Stool, the next chief must come from the other family. In support of this contention, the Appellants submit that, four (4) chiefs of Ningo had actually hailed from the Loweh Kpono family. Indeed, in his evidence in chief at page 446 of the Record of Appeal, the 2nd Appellant claimed that since the institution of the Ningo Stool, 4 chiefs had come from his family. The record shows that the underlisted are the chiefs of the stool since its establishment:

1. Djangmah I
2. Djangmah II
3. Djangmah III
4. Djangmah Osroagbo
5. Tei Doku AgudaI
6. Osroagbo Djangmah
7. Addo Huago
8. Tekute Djangmah
9. Huago
10. Tei Djangmah I
11. Tei Doku Aguda II

12. Narh Osroagbo Djangmah 34 The 4 chiefs the 2nd Appellant identifies are Tei Doku Aguda; Addo; Huago and Tei Doku Aguda II. The record however does not support the contention of the Appellants in this regard. Even before any further analysis, as can be observed, to go by the case of the Appellants, majority of the chiefs belong to the Respondent's Loweh Adainyah family. Under cross-examination, it was revealed that, three out of these four chiefs actually hailed from the Respondent's family and the remaining one was a caretaker chief. TEI DOKU AGUDA I Under cross examination of the 2nd Appellant on this issue, this is what ensued: Q: You have said to this tribunal that the people of Ningo inherit patrilineally is that true? A: Yes. That is so. Q: The stool of Ningo belongs to Nene Djangmah who established Ningo or Dangmahman? A: That is true. Q: So, his children and their children inherit the stool Patrilineally? A: That is so. Q: You said Nene Tei Doku Aguda I was from Loweh Kpono 35 A: That is so Q: Who was his Father? A: His father's name was Tei (Tekuno's brother) Q: Is Tekuno from Loweh Kpono A: No. He is from Loweh Adainya Q: So, Nene Tei Doku Aguda's father is from Loweh Adainya, not so? A: Yes Q: So, Nene Tei Doku Aguda I according to Ningo traditional custom was born Loweh Adainya? A: That is so Further, RW1 testifying for the Appellants under cross-examination had this to say: Q: In Ningo inheritance is patrilineal, you inherit from your father, not mother, is that right? A: That is so Q: Nene Tei Doku Aguda I where did his father come from 36 A: He comes from Lowerdom from the very beginning Q: Did his father come from Lower Adainya? A: Yes. The subpoenaed witness, CW1, also admitted the fact of Nene Tei Doku Aguda hailing from Lower Adainya: Q: We were told yesterday by Mr. Tawaih that Nene Tei Doku Aguda came from Adainya or Loweh dom because his father came from Loweh Adainya? A: I agree with him The admissions by the Appellants on this issue alone renders very erroneous, the claim, that Nene Tei Doku Aguda, one of his four (4) listed chiefs belonged to the Loweh Kpono family. A similar situation also occurred with NENE ADDO KWEINOR & NENE HUAGO. Under cross-examination, this is the evidence elicited from the Appellants: Q: Those who came after Nene Tei Doku Aguda, Addo and Huago are the relatives of Nene Tei Doku Aguda I A: Tei's child is Huago and Addo 37 Q: It follows that Addo and Huago are from Adainya? A: That is so. Likewise, RW1 testified as follows under cross-examination on this issue: Q: So, Nene Tei Doku Aguda I, his son or grandson Huago Tei Doku II, they were chiefs of Ningo because they were from Loweh Adainya A: Yes, from their Patrilineal home The only chief which the evidence reveals to hail from Loweh Kpono was Nene Tei Doku Aguda III (Mantse Akwetey). However, the evidence shows that he was enthroned as a 'situational/caretaker chief'. His, was an ascension by consensus and not as of right. This is what happened under cross-examination of the 2nd Appellant in relation to him: Q: Before Tei Doku Aguda III was asked to take care of Ningo was there trouble in Ningo? A: Yes Q: Nene Tei Djangmah I house was burnt down, not so? A: That is so. Q: What happened thereafter? A: That brought about the dispute 38 Q: Nene Tei Djangmah I left Old Ningo because of this not so? A: Yes, that is so Q: The people of Loweh Adainya agreed with everybody else in Ningo that Mantse Akwetey should take care of Ningo not so? A: That is so Q: He took care of Ningo by consensus not so? A: He was installed a chief Q: Was it by Consensus? A: That was so Q: Loweh Adainya did not say no? A: That is so Q: In fact, it was their suggestion that for peace into Ningo, Mantse

Akwetey should take care of Ningo A: Because he is a grandchild of Djangmah, that is why the Loweh Adainya agreed that he should be installed chief. 39 Clearly, the evidence in living memory, as from the record per the testimonies of the 2nd Appellant, especially, and that of his witnesses, prove that about eleven out of the twelve chiefs who have ruled Ningo since the institution of the stool hailed from Loweh Adainya. The only exception, was Nene Tei Doku Agudu III who per the Appellant's own testimony was installed by consensus. The Appellants, at the trial, expressly admitted the following: i. ii. That inheritance in Ningo is patrilineal; That Nene Tei Doku Aguda I (whom the Appellants asserted to hail from Loweh Kpono and was supposed to have commenced the system of rotation) actually hails from Loweh Adainya because his father hails from Loweh Adainya. iii. That additionally, two of the chiefs who were asserted to hail from Loweh Kpono, i.e. Addo and Huago, are children of Tei Doku Aguda I, and therefore, in fact, also hail from Loweh Adainya. iv. That Nene Tei Doku Aguda I, Addo, and Huago became chiefs of Ningo on account of their patrilineal linkage (i.e. being members of Loweh Adainya). v. That Mantse Akwetey actually hailed from Loweh Kpono but became a chief by consensus. These recent facts, when weighed against the evidence on record on a balance of probabilities, supports the finding that the ascension to the paramount stool of the Great Ningo Traditional Council is the preserve of the Loweh Adainyah family. Finally, the Appellants argued quite forcefully, that the JCNHC erred in failing to consider documents from the Public Records and Archives Department Accra - Extract 40 From Great Ningo Native Affairs File, Memorandum by the Secretary of State of Native Affairs in 1995 where it is captured that "... chief is drawn in alternation from two tribes, Loweh and Loweh Kpono". Respondent chastises the Appellants in seeking to rely on the said archived documents. In applying the principles governing the evaluation of conflicting traditional evidence, the Court should, even in the face of such records, have regard to evidence in living memory or such recent facts as established before it. In *Hilodjie v George* [2005-2006] SCGLR 974, a similar issue arose where reliance was placed on writings by some respected jurists. The Supreme Court deprecated the approach of the Court of Appeal and held as follows per Wood JSC (as she then was): "The historical accounts, which the court resorted to, for an accurate and ready determination of the facts in issue-who first acquired the disputed land by settlement -were the textbook accounts or records of the authors Azu and Field, which were tendered in evidence at the Jackson Commission Inquiry. But we are told that those records were challenged at the enquiry, by no mean a person than Nene Azu Mate Korle, Paramount Chief of Manya Krobo...Since the accuracy of these textbooks accounts have been questioned, they are of doubtful authority...Also the trial judge's reliance on the lyrics of a song, in the light of the very text of the song as translated by the learned trial judge, where two people are laying claim to the Krobo Mountain, cannot be justified...In my opinion, in cases of this nature, historical accounts from other sources, textbooks accounts included, which are nothing more than a repeat of the disputed or inconclusive traditional evidence already adduced at the trial, ought to attract very minimal weight. I do not think such matters ought to be preferred to proven acts of effective ownership. In short, the Jackson Commission Report does not, in the context of this case, qualify as a fact in recent memory, let alone vital one". 41 "The clearly discernible principle

is that in cases of this nature, the most satisfactory contemporary facts that a court should look out for are undisturbed overt acts of ownership or possession exercised over the subject matter. That is not to say that other concrete acts do or may not qualify as acts in living or recent memory. Indeed, what may constitute a fact or an event in recent memory in one case, may not pass the test in another. Each case must therefore be dealt with on its own peculiar facts. Therefore, findings and decisions of courts of competent jurisdiction, may, appropriately qualify as evidence of facts in living or recent memory. But evidently, in land litigation, proven uninterrupted and unchallenged acts of possession, in the absence of some cogent evidence on the record to the contrary, as for example an unreserved acceptance of crucial parts of the other side's oral history, cannot be ignored or denied the deserved weight, given that in the first place, by the clear provisions of section 48 of the Evidence Decree NRC 323, such acts raise a presumption of ownership." We do not therefore struggle to find, on a balance of probabilities, that the case of the Appellants has not been proven, and the judgment of the Judicial Committee of the National House of Chiefs is not against the weight of evidence.

CONCLUSION

From our evaluation, it is our holding that the Loweh Adainya Royal Family has the preserve at custom to, nominate, select, elect, install and enstool a person as a chief for the paramount stool of the Great Ningo Traditional Area. The supposition that succession to the Ningo Stool is by rotation between the Loweh Adainya Royal Family and the Loweh Kpono Family is not grounded in the customs, traditions and historical accounts of the Ningo Traditional Area. As already pointed out in the judgment, the authorities 42 relied upon by the Appellants as having held in support of that supposition, were all obiter statements and same, to the extent of implying a holding of the customary position among the Ningos, is hereby set aside. Accordingly, the appeal fails in its entirety and the judgment of the Judicial Committee of the National House of Chiefs is hereby affirmed. (SGD.) B.F ACKAH-YENSU (MS.) (JUSTICE OF THE SUPREME COURT) (SGD.) G. SACKY TORKORNOO (MRS.) (CHIEF JUSTICE) (SGD.) M. OWUSU (MS) (JUSTICE OF THE SUPREME COURT) (SGD.) A LOVELACE-JOHNSON (MS.) (JUSTICE OF THE SUPREME COURT) (SGD.) PROF. H. J. A. N. MENSA-BONSU (MRS.) (JUSTICE OF THE SUPREME COURT) COUNSEL 43 KWESI AUSTIN ESQ. FOR PETITIONER/APPELLANT/ RESPONDENT LED BY AMARKAI AMARTEIFIO ESQ. ERIC ASSUMAN-ADU ESQ. FOR THE RESPONDENTS/RESPONDENTS/APPELLANTS 44

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