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**m- IN THE SUPERIOR COURT OF JUDICATURE,
HIGH COURT OF JUSTICE HELD AT SUNYANI
ON WEDNESDAY, 17TH DAY OF JUNE, 2009**

SUIT NO. LS. 28/96.

CORAM: E. A. ASSAN SITTING AS HIGH COURT JUDGE

THE ASSEMBLIES OF GOD CHURCH & ANOR.

VRS.

KWADWO OSEI & ANOR.

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HIGH COURT, SUNYANI

PARTIES PRESENT

MR. W.Y OPPONG FOR THE PLAINTIFFS PRESENT

DR. A.B.K ANANE FOR THE DEFENDANTS PRESENT

JUDGEMENT

Originally, the Plaintiffs, Assemblies of God Church, sued Kwadwo Osei of Kwasi-buorkurom, the Defendant, claiming title, recovery of possession, damages for trespass and perpetual injunction in respect of a Plot of land they acquired from the Drobo Traditional Council for a School Project. The two Stools, Drobo and Japekurom, joined the suit respectively as Co-Plaintiff and Co-Defendant because each claimed the disputed Plot as part of their respective Stool lands. Each stool demanded that the other Stool acknowledged that allodial ownership of the disputed land was vested in itself. The Critical issue for determination therefore is which Stool has the allodial title to the disputed land. It appears though that the litigation is not restricted to the disputed land but extends to the larger expanse of lands delimited by their respective traditional authorities.

The land which is the subject matter of dispute was described in Plaintiff's writ as Plot No. 42, Block C in Drobo and according to paragraph 5 of the statement of claim the Plot is captured in a site plan prepared by the Lands Commission but it is not covered by a lease. However in the Co-Plaintiff's statement of claim, paragraph 25, a much bigger area is being claimed by them and the boundary owners described therein are the Dormaa Paramount Stool, the Berekum Paramount Stool, La Republique de Cote d'Ivoire and the Stool lands of Asantehene occupied by Suma and Katwoma Paramount Stools. On the other hand the Co-Defendants, Japekurom, also counter-claimed for Gyaman land including townships of Japekurom, New Drobo and Kwasi Buorkurom sharing boundaries with Berekum, Dormaa, Awasu-Dwenem, Kwatwoma and Republic of Cote D'Ivoire. Thus Berekum, Dormaa, Kwatwoma and Cote D'Ivoire were mentioned by both Co-Plaintiff and Co-Defendant as their respective boundary owners. It is not unexpected therefore that witnesses representative of Berekum, Dormaa, Kwatwoma and Cote D'Ivoire might be called by the two contesting Stools to testify for them. The testimonies of such witnesses might be critical in the determination of the allodial owner in whom the disputed land is vested. Some traditional histories were also related by the contesting Stools regarding the course of their immigration from Akwamu to their current respective homelands, but as quaint as some of these stories are, it is not easy to reconcile and verify their authenticity. Considerable literature also form the basis of the respective claims of the two contesting Stools. It would appear then that the instant suit must be examined from three main perspectives, namely the folk stories surrounding the migration of the two contesting Stools from Akwamu, the testimonies of their respective witnesses and the available literature on the relationship between the two Stools in the course of their histories.

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 HIGH COURT

The Folk history of the Drobo Stool can be found in paragraphs 4,5,6,7,8,9,10,11,12,13,14,15,16,17 and 18 of Co-Plaintiff's statement of claim filed on 19/06/96 and they are as follows:-

4. The great Bono Kingdom migrated from Akwamu in the Eastern Region and settled at various places; the Drobohene was the Adontehene of this great Bono Kingdom.
5. When the Drobos settled at Assin-Fosu they purchased in those days many slaves from the slave market at Ankaase near Kumasi.
6. The then Drobohene Nana Feka Ahenkora purchased a young woman at Ankaase and named her after one of his ancestors called Takyi; consequently the young woman was called Takyiwaa whom Nana Feka Ahenkora married.
7. Owing to the fact this young woman used to break every earthen pot she used to fetch water, a tin (bonsua) was found for her to fetch water and she was called Takyiwaa Bonsua. The children of Nana Feka Ahenkora and Takyiwaa Bonsua included Takyi Anyaa and Ama Agyei.
8. The Co-Plaintiff adds that Nana Feka's wife Bonsuaa and her children followed him to settle at Ayakomaso near Fiapre, then Droboso and at Old Drobo.
9. Nana Drobohene gave his son Takyi Anyaa land to settle on at Mpuasu when the cultivation of onions was a prosperous occupation.
10. When the French and the British laid a boundary between them the great King of the Bono Kingdom happened to fall to the French in the then Ivory Coast whereas the Drobos fell on the side of the British.
11. The Drobohene was made Paramount Chief of Bono Kingdom by the King of Bono Kingdom and was the Omanhene of Drobo who owns and has been in possession and occupation of the land described in paragraph 3 supra from time immemorial.

12. Kwasi Amoa and Kwasi Buor were the children of Ama Agyei, daughter of Nana Feka Ahenkora and Takyiwaa Bonsua and when Taky. Anyaa died at Mpuasu, his nephew Kwasi Amoah inherited him. Soon thereafter there was along drought and the cultivation of onions failed.
13. Kwasi Amoah made a report of the condition at Mpuosu to his grandfather, the Drobohene and pleaded with the Drobohene to request the Krontihene, Nana Kwaku Ankama, who had settled at Fetetiho (now called Babianiha) and was mining gold to allow Kwasi Amoah also to go to Fetetiho to mine gold.
14. The Brobohene summoned his said Krontihene and in the presence of Kwasi Amoa put the request to Nana Kwaku Ankama who agreed and settled Kwasi Amoa at Pruano (spelt Puliano by the English).
15. Calamities however struck the inhabitants of Pruano; the women became infertile; death rate inexplicably increased and the gold mining business also failed; Nana Drobohene sent Kwasi Amoa and Nana Kwaku Ankama to Namase to look for a Mallam or Kramo to counter the ill-omen.
16. The Co-plaintiff adds that his emissaries found one Mallam called Jape, a non-Akan, who came with his wife and children to live at Pruano. He was able to eradicate the calamities at Pruano. All manner of persons who sought after this Mallam said they were going to Jape-Kurom hence the name Jape Kurom. This town became prosperous and the original name Pruano was lost. Jape introduced Mohammedanism to Japekurom.
17. The Drobohene first made Japekurom his Kyidomhene and later his Akwamuhene. The Japekuromhene held this latter position over the years until he was raised to Paramountcy by the Asantehene.
18. The Co-plaintiff contends that the elevation of the Japekuromhene to the position of Paramount Chief did not

affect the Co-plaintiff ownership of all the lands within the Drobo Traditional Area. Indeed Japekurom and Kwasibuorkurom (founded by Buor younger brother of Kwasi Amoah) are all on Drobo stool land.

From the above folk story it would appear that Japekurom and Kwasibuorkurom were originally founded by the Kwasi Amoah and Kwasi Buor grandchildren of Nana Feka Ahenkora the Drobohene and his wife Takyiwaa Bonsua whose daughter, Ama Agyei, gave birth to them. As grandchildren, they nevertheless owed allegiance to Nana Feka Ahenkora, their grandfather.

On the other hand the folk history of Japekurom and Kwasibour Kurom as pleaded by the defendants can be found on paragraphs 24, 25, 26, 27, 28, 29, 30, 31, and 32 of co-defendants statement of defence as follows:

24. The do-defendant says that the people of Japekurom now called the Mpuasu originally migrated from Akwamu and belonged to the Aduana clan and shared close family and blood relational ties with the people of Dormaa, Amasu and Bontoakou with whom they settled at various places including Esumeja, Asantemanso, Suntreso, Bomaa Hwidiem, Abrepredwase and Fetentaa on Sampa road.
25. Co-defendant's ancestors settled under the Mpuasu Mountains after defeating the aboriginal Kongs and Brokor or Nkorang settlers who had no proper chieftancy system. Subjects of codefendant stool settled with their Awasu-Dwenem clan relatives at Amanfoso near Dwenem before moving to settle around River Mpuasu (So named Because it looked like a small ocean and a lot of crocodiles were breeding in it) Codefendant ancestors later moved to the Area of River Pru known as Prulliano, and maintained and still maintain strong family relational ties with the Aduana stools of Akwamu, Asantemanso, Dormaa and the Gyamanhene/Bonohene now in the Ivory Coast.
26. Co defendant says during the migration of his ancestors with their stool, the occupant Nana Takyi Anyaa also called Takyi Panyin died on the way and was buried near Asantemanso

leaving his younger brother Takyi Kuma also known as Takyi Anyaa – hence the great oath of Japekurom being “Takyi Anyaa Akaakwanmu”. Nana Takyiwaa Bonsua who was then the Obaahemaa and mother of Nana Takyi Anyaa took over the leadership of the group. Nana Takyiwaa Bansua struck acquaintance with Nana Sakyi Ako at Wenchi Drobo and later befriended Nana Feka Ahenkorah at old Drobo and brought forth issues by name Kwasi Amoah and Kwame Feka.

27. Co-defendant says Nana Kumidaa was the mother of Nana Takyiwaa Bansua and Pokua Pomaa also known as Fosuaa who married the Ankaasehene and begot Eno Pokuaa, mother of Kwasi Buor, founder of Kwasibuorkurom stool. Another sister of Nana Takyiwaa Bansua by name Akosua Asaa also married the Chief of Kumawu and brought forth issues. Hence Co-Defendant stool was nick named Mpuasu Kotoko (Mpuasu people sons of Asante Kotoko).
28. Co-defendant says that Nana Takyiwaa Bansua whose name signified a hardworking woman leader-Baa-nsua- who traded in gold and other ornaments traveled to Wenchi Drobo where the Co-plaintiff's ancestors were subjects of Wenchi stool and engaged in the occupation of producing Doo (burnt herbs for making Amonkye- a local soap) hence the name Doobo people now Drobo people. Nana Takyiwaa Bansua later saved the life of Nana Sakyi Ako who faced customary fine (Appah Tow) for having had sex with one of the wives of the Wenchiene. Nana Takyiwaa Bansua managed to get the Aduana clan royals under the authority of her uncle the Bonhene at Bontoukou-Hene to contribute to pay for the head of Nana Sakyi Ako which was 120 Mpredwan Kotos and the latter was accepted as a refugee on Gyaman lands.
29. The Co-defendant says that the Bonhene/Gyamanhene asked the Sumahene to settle the refugee Drobo Chief

between Suma and Koti near River Bisa on Suma stool land now known as old Drobo. The Co-plaintiff's ancestor showed his gratitude by serving the Bononene but never to take control of any booty gained from the wars. This is borne out by the Twensi (talking drums) and Abentia (traditional horn) given to the new comer Nana Takyi Ako by the Bonhene.

30. Co-defendant says that after the death of Nana Sakyi Ako, the people of Drobo were very hard pressed financially so the former stool loaned the Drobo stool a mourning cloth (Kobene) hence the oath (Ntam) of Drobo is Drobohene Kobene.
31. Co-defendant says that after the demarcation of the Ghana, Ivory Coast boundary the members of the erstwhile Bono Kyidom left on the Ghana side of the border including the Co-defendant stool, Drobos, Awasis, Sumas and Kwatwoma, remained in Gyaman which was a tributary to the Golden stool. It was around this time that the Drobo stool was elevated as a Paramount stool by the Colonial Administrator without regard to history custom and traditions.
32. Co-defendant says that after the restoration of the Ashanti Confederacy witnessed the disintegration of the Drobo Native Authority with the creation of Paramounties for component states such as Seikwa, Suma, Nsawkaw and Kwatwoma. It was during this time in 1942 that the Colonial Administration was granted a piece of land at FAAGO on Japekurom stool land by same stool for the building of a Court house and school. Later on the Colonial administration pressurised the Drobohene to move from the village old Drobo on Suma stool land to a more central place at FAAGO on Japekurom stool land. Relevant correspondence and maps to be tendered at trial to be known as New Drobo".

From the pleadings of the Co-defendant quoted above it does not appear that the Drobo people were part of the Bono or Gyaman Kingdom that originally migrated from Akwamu in the present day Eastern Region of Ghana to their respective present abode in the Brong Ahafo Region. The Drobo people came out in those pleadings as refugees from Droboso in the Wenchi Kingdom who in spite of their subordinate status, gained prominence as fighters in the Bono Kingdom and were by mistake or accident of history raised to their current Paramount status by the Colonial authorities after the demarcation of the Ivory Coast-Ghana border. It is however conceded that a prominent Japekurom queenmother, Nana Takyiwaa Bansua had a child by Nana Feka Ahenkora of old Drobo whose name was Kwasi Amoah. It would be recalled that in the pleadings of the Co-plaintiff, Kwasi Amoah was rather said to be the grandson of Nana Feka Ahenkora and his wife, Nana Takyiwaa Bonsua and was settled at Pruano by his grandfather through his Krontihene, Nana Kwaku Ankama, to prospect for gold. Pruano eventually became known as Japekurom following the settlement of a Mallam, Jape, who was reputed to have worked to assuage calamities that befell Pruano the oral histories of Drobo and Japekurom as respectively recounted by the two protagonists in their pleadings have therefore remarkable similarities and differences. One remarkable difference is that whereas the Co-Plaintiff synthesizes the history of Drobo and Japekurom such that Japekurom is seen as virtual indivisible part of Drobo, the account of Co-defendant tends to emphasise the point that, notwithstanding the relationship between them, the Drobos were actually strangers who assumed Paramount status in the Gyaman state in Ghana by default. It is nevertheless contended by the Co-defendant in paragraph 31 of their pleadings that the Kyidom wing of the Bono Kingdom which remained in Ghana after the demarcation of the Ghana Ivory Coast border included themselves, the Drobos, Awasus, Sumas and Kwatwomaa but out of that lot the Drobos were elevated to Paramount status by the Colonial authorities.

So much for the oral history of the Co-plaintiff and Co-defendant. I will now turn to the evidence adduced by their witnesses. As I have noted above both Co-plaintiff and Co-defendant mentioned in their pleadings that Dormaa Ahenkro and Berekum are their boundary owners. Oheneba Osei Abonsra II, the Akyempemhene of Dormaa Traditional Council testified as first Plaintiff witness and he did so on behalf of the Dormaa Traditional Council. He testified that Dormaa Ahenkro and Drobo share boundaries at Nsesreso for Dormaa and Kwame Peprakurom for Drobo. He said beyond that boundary Dormaa again shares boundary with Berekum up to Asenso Forest Reserve. He said Atuna which is in the vicinity of the boundary between Drobo and Dormaa is part of Drobo land. Under cross-examination this witness said he was unaware of the Migration of Dormaa, Drobo and Japekurom but he knew

that the Dormaahene and Jamanhene are brothers. He was also unaware of any litigation between Drobo and Atuna.

The other boundary owner of the Drobo stool is Berekum whose Paramount chief himself, Nana Yiadom Boakye Owusull who ascended to his stool in 1941 testified as the third Plaintiff witness. In short his evidence was that Berekum shares boundary with Drobo, Dormaa and Seikwa and that the boundary with Drobo is at Nkwaduasua pillar and Tain Forest Reserve. He admitted though that Botokurom and Nkyekyemamu, two villages on Berekum stool land, are populated by Japekurom and Berekum citizens. Nevertheless Berekum does not share boundary with Japekurom. Indeed at the time of his installation Japekurom was subservient to Drobo. The third Plaintiff witness admitted that New Drobo was a recent creation because at the time of his ascension to the throne of Berekum it did not exist. He maintained that a pillar at Nkwaduase marked the boundary between Berekum and Drobo.

The two other witnesses who testified for the Co-plaintiff as second and fourth Plaintiff witnesses were a technical officer in the Berekum Town Planning Unit and a citizen of Drobo, Solomon Evans Takyi. The fourth Plaintiff witness, Evans Takyi said he acquired his Plot No. 88 from the Co-plaintiff and despite interferences with his development of the Plot by the Defendant and the Co-defendant he still retained ownership of his Plot on which he has built his house. Incidentally Plot No. 88 is adjacent to the disputed Plot. He rejected the suggestion that the matter between him and the defendant which was eventually, resolved in his favour had nothing to do with title to his building Plot. The second Plaintiff witness, Thomas Appiah, technical Officer of the Town Planning Department also confirmed that the disputed Plot No. 42, Block C is in the Drobo layout which he tendered as exhibit Q. He disagreed with counsel for the defendants that exhibit Q was not an approved layout due to protestations of the Co-defendant.

It would be noted that whereas the evidence of 2nd and 4th Plaintiff witnesses relate to Plot No. 42, Block C and where it is situated, the 1st and 3rd Plaintiff witnesses testified to the boundaries of Dormaa and Berekum with Drobo. The latter denied that they had any boundary with the Codefendant, Japekurom although, admittedly, the 3rd Plaintiff witness, the then Berekum Paramount Chief, testified that citizens of Berekum and Japekurom inhabit two villages, Botokurom and Nkyenkyemamu. Again, the 1st Plaintiff witness, representative of the Dormaa Traditional Council, also testified to a close affinity between Dormaa and Gyamanhene as well as Japekuromhene.

In all the Co-defendant also called five witnesses. The first and second defendant witnesses, Nana Kwabena Amponsah II and Nana Kyere Gyeabour, were the Aduana Chief of

Awasu Dwenem and Chief linguist of Atuna respectively. They both testified that their people were part of the Gyaman migration from Akwamu which also included the Bono of Ivory Coast and Dormaa. They said Drobos were not part of the migration but their Chief who was originally a refugee from Droboso was settled in Gyaman precisely on Suma land and became part of the Gyaman vanguard army under the Songorehene. The Drobos were not to take part in the spoils of war. Nevertheless after the demarcation of the Ivory-Coast-Ghana border, the Colonial authorities made the Drobohene leader of the Gyaman Chief doms including Awasu Dwenem, Atuna and Japekurom without any control of land. They testified that Japekurom provided the Colonial authorities land to build a Court house where the Drobohene sat and eventually was also settled by Japekurom at Faago, the location of the disputed Plot. They said Faago belongs to Japekurom.

Although the two witnesses acknowledged that the Drobohene was at a certain time in their history their overlord, they nevertheless denied that they were caretakers of their land for the Drobohene.

The story of the fourth defendant witness, the Gyamanhene of Ivory Coast Nana Adinkra Kwasi Agyeman was not significantly different from the testimony of the 1st and 2nd defendant witnesses. He also maintained that old Drobo was originally a settlement of refugees from Droboso in Wenchi who was excluded from the spoils of war despite serving in the Gyaman Vanguard army. He denied that the Gyaman Paramount Chief made Drobohene Paramount Chief of the Gyaman state in Ghana after the demarcation between Ivory Coast and Ghana in 1896. He testified that Japekurom are the land owners of Baabianiha Kwasibuorm and New Drobo up to Dwenem.

The fifth defendant witness, Nana Boakye Yaw II, Senior linguist of the Otumfour Asantehene testified on behalf the latter. He testified that the Drobohene once owed allegiance to the Asantehene and that the letter inquired into the affairs between Drobo and Japekurom. Those affairs had to do with Japekurom's resentment against being under Drobo local authority, the location of a Court house at Drobo and payment of rent by tenant farmers to Japekurom. With respect to the continued stay of Japekurom in the Drobo local authority that matter was put in a abeyance whereas the issue of Court house was resolved by Japekurom releasing land for a new Court house. With respect to Drobohene's complaint about payment of rent by strangers to Japekurom, the resolution was that voluntary payment should hold but involuntary payment should be reported to the Otumfour. The fifth defendant witness said Japekurom settled Drobohene in New Drobo so the owner of New Drobo is Japekurom. Under cross-examination the 5th Defendant witness admitted that Drobohene was the Adontehene of

the Gyaman King who migrated from Akwamu. Again Japekurom used to be the Akwamuhene of Drobo but notwithstanding the latter's Paramount status as far back as 1896, that did not give him authority over Japekurom land.

With the exception of the 4th defendant witness who still believes that he has authority over Gyaman lands in Ghana, the other three witnesses of the Co-defendant acknowledge that after the demarcation of the boundary between Ivory Coast and Ghana in 1896, Drobo assumed paramount status over erstwhile Gyaman settlements' in Ghana albeit under the authority of British colonial administration and amidst persistent conflicts between Drobo and the other Jaman Chiefdoms.

The third defendant witness, Patrick Amoah testified as the Regional stool lands Officer of Brong Ahafo Region. He testified that stool land revenue was being paid to Japekurom Traditional Council.

The literature relied upon on by the co-plaintiff and co-defendant for their claims to the disputed land and land occupied by each other is enormous. They range from long proceedings of the meeting of committee of Privileges to judgments, a variety of letters, maps etc. From the literature, there is no doubt that long before Japekurom was granted paramountcy in 1981, Drobo had since 1896 been a paramount stool exercising authority over various Chiefdoms including Japekurom, Suma and Dwenem. Before 1896, Drobo was part and parcel of the then Gyaman state which lay astride parts of Ghana and Ivory Coast with their King or paramount Chief headquartered in Ivory Coast after the demarcation of 1896. Through conquest the Asante Kingdom extended as far as to the Gyaman state and as of 1935 when the Asante confederacy was restored by the colonial Government Drobo, though a paramountcy in its own right, was subservient to the Asantehene. Drobo's authority over Japekurom was acknowledged by the Asantehene who had occasions to settle disputes between them.

As at 1942, Drobo had a native court at old Drobo where the Drobohene sat to dispense justice among citizens of its constituent towns and villages including Japekurom. Complaints about the distance and perceived ill treatment by the Drobohene's court culminated in the relocation to a more central area near Japekurom. It is the contention of the co-plaintiff that the relocation of his court and subsequent settlement at new Drobo was a decision based upon its own authority as a paramount stool and allodial owner of the land. On the other hand, the co-defendant also contends that the land on which Drobo township was built was acquired from it as the allodial owner because Drobo's over lordship then was for the convenience of colonial administration but exclusive of land ownership. It seems to be

acknowledged on both sides that the place where the Drobo township developed was known as Faago. During locus inspection the co-defendant showed the court an old half-damaged pillar which they claimed as landmark of the land they allocated to Drobo.

The evidence of the co-defendant and some of their witnesses that Drobo was a refugee from the kingdom of Wenchi who was settled in the erstwhile Jaman state but participated in battles among the vanguard of the Jaman army or fighters without right to the spoils of war belongs to legend and myth. The so-called classification of Drobo as Adontewa rather than Adonten of the Gyaman army took a different trajectory as Drobo achieved reputation in battles and had, after 1896 demarcation of the Ghana Ivory Coast boundary, been accepted among its peers and the colonial administration as heard-chief equivalent to paramountcy. It would be recalled that after 1896 the paramountcy of the Jaman State became part of Ivory coast and the void created among the remnants of the Gyaman people in Ghana was filled by Drobo with the acquiescence of the remnants and the colonial authorities and also recognised by the Ashanti Kingdom. That was truly historical and any pretence at ascribing a subordinate or even nondescript status, Adontewa, to Drobo would be inconsequential and futile.

Indeed, with the exception of that bit about Takyiwaa Bonsua having been originally purchased as a slave, married and adopted into the Drobo chiefs family the synthesising story of Drobo and Japekurom as told in the pleadings of the co-plaintiff seems more coherent and credible than the account of similar story in the pleadings of the co-defendant. In spite of the significant differences in the two stories about the migration of Drobo and Japekurom from Akwamu they converge on the issue of Kinship between the two; both accept that Japekurom is son to Drobo.

It is undeniable that as paramountcy the chief of Drobo had his seat in old Drobo which is more than twenty-five miles away from both New Drobo and Japekurom. It was from that headquarters that the Drobohene sat in his court to settle disputes and administered justice among his subject from the subordinate Chiefdoms including Japekurom, Dwenem and even Suma until Suma seceded and gave its allegiance to the Ashanti Kingdom, hence Suma is described by the co-plaintiff as Asantehene's land occupied by Suma. At the time Drobohene sat in his court at old Drobo his peers were the Berekumhene and Dormaahene, paramount chiefs, who presumably also sat in their own native courts to dispense justice to their people. That is why those paramount chiefs perceive Drobohene as their boundary owner and not Japekurom even though Berekumhene admitted in his testimony that Japekurom citizens are

his neighbours and Dormaahene, through his representative also acknowledged Kinship with Japekurom.

Notwithstanding that Japekurom was long established before New Drobo and that the relocation of the old Drobo court to its present location was at least partly in response to pressures from Japekurom, the evidence is not absolutely clear that Japekurom formally granted the land for the Drobo court and the new Drobo township. It seems clear though that without its acquiescence the location of the new Drobo court and the township would not have succeeded. This was acknowledged in a letter dated 20/10/42 by N. Ross, Acting District Commissioner, to the Chief Commissioner in which he stated in paragraph 4 thereof as follows:

- "4. It is essential that the Drobo Division should have a more convenient centre as its headquarters. I have to refer your Honour to the Map showing the Divisional Boundaries in Ashanti in which the actual village of Drobo is shown to be a small land of Jaman land situated in the midst of the Kumasi division. For some years attempts have been made to transfer the Drobohene's court to near Japekurom. This has always been defeated through the jealousy of the Japekurom people. There was some chance of success in achieving this transfer after the commission of inquiry had finished its proceedings. After several meetings and a great deal of coaxing I succeeded in getting the Japekurom people to assist in clearing a site near Japekurom. The Japekuromhene also had to be persuaded to play his part in the building of the new Court House and Offices. If he did not help in this building it was likely that the other elders would not be keen to contribute their share....."

I think it would be more accurate to say that Japekurom ceded land to Drobo for the Court and the township under the overarching authority of the colonial administration Faago which constitutes the nucleus of the land ceded to Drobo is conterminous with Kwasihour Kurom and the disputed plot is in Faago. I find that Faago is part and parcel of Drobo, more precisely of Drobo New Town. Old Drobo is more than 25 miles from New Drobo.

Again the preeminence of Japekurom with respect to land contiguous to both New Drobo and Japekurom was evident in the land dispute settled by a panel comprising Commander J.A. Kyeremeh, Regional Commissioner, Nana Boakye Tromo III, Omanhene of

Duayaw Nkwanta and Reverend Major J.K. Owusu, Army Chaplain, Burman Camp on 31st January 1973. The dispute was about the siting of a new Market against the will of Japekurom where a viable market was already thriving. Japekurom claimed ownership of the proposed location whose development would lead to the desecration of the remains of their forbears buried there. They resented and opposed the development of the new market without prior consultation with them. The matter was resolved with the New Drobo Traditional Council making a fresh approach to Japekurom to formally release the land for the market. The settlement was sealed with drinks provided by the Regional Commissioner as well as the swearing of oaths by their respective linguists and mutual handshake between them. Could there be any better evidence of Japekurom's authority over land contiguous to New Drobo than the ceding of land for the new market currently located in New Drobo.

Notwithstanding Japekurom's possession and erstwhile authority over their land including Faago and therefore New Drobo township, Drobo, nevertheless claims allodia title to those very lands over a long period. Co-plaintiff's claim is not only based on the legend of their migration from Akwamu alongside their former overlord, the Bono or Gyaman Paramount Chief and Kinship ties with Japekurom but also upon somewhat autonomous paramount status achieved after the demarcation of the Ghana-Ivory Coast boundary in 1896. The evidence is overwhelming that under the British colonial administration spanning a period of over fifty years Drobo was a traditional state with Japekurom occupying a subordinate status as Kyidom or Akwamu. Indeed, until 1981 when it achieved equal status with Drobo as a paramountcy, Japekurom was the Akwamu of Drobo. The critical question though is whether Drobo's overlordship entailed title to the lands in possession of its constituent chiefdoms including Japekurom.

Both co-plaintiff and co-defendant agree that Japekurom, originally known as Prulliano, was actually founded by Kwasi Amoah whom the co-plaintiff regard as the grandson of the Drobo chief and his wife. On the other hand, it is the claim of codefendant that the founder of Japekurom was the son of their queen mother and a Drobo chief. Notwithstanding co-plaintiff's acknowledgement that Kwasi Amoah actually founded Japekurom, he claims that Kwasi Amoah was settled there by his Krotihene, Nana Kwaku Ankama under his direction. There is however no evidence on record that Kwasi Amoah and his successors ever paid any tribute to the co-plaintiff from the gold that was being prospected at Japekurom. Indeed even with respect to farm lands in Japekurom and its outlying villages, the evidence is that strangers who occupied those lands were paying rent to Japekuromhene and that became a cause of complaint to the Asantehene by the Drobohene. The undeniable evidence on record is that

conveyance of trama was valid to confer title on the purchasers. Even with respect to Kaase stool lands which are contiguous to Kumasi it was held in GYEABOUR II AND OTHERS VRS ABABIO [1991] 2 GLR 416 per the judgement of Adjabeng J.A. as follows:

"Under Ashanti Custom and usage the allodial title in land attached to a sub stool was vested in the particular sub stool. In practice it was the sub stool occupant who allocated the plots or parcels of land as vendors or lessors to those who needed them and the paramount stool occupant only indorsed the allocation or signed the relevant documents as a confirming party. The subordinate stool which made the allocation took two-thirds of the proceeds of revenue from the transactions while the paramount stool which confirmed the allocation took only one-third of the proceeds..... The customary practice of the paramount stool ratifying or confirming a grant by the sub stool was because of the political jurisdiction which the occupant of the paramount stool exercised in the area in order to ensure uniformity of action in relation to stool lands and to prevent unnecessary litigation. The practice of confirmation would consequently not make the ownership of the lands attached to the sub stool rest in the occupant of the paramount stool".

Yes until 1981 Drobo was the undoubted paramount stool exercising traditional political dominion over Japekurom and other Chiefdoms subordinate to it but that did not confer substantial rights to the stool lands of the subordinate chiefs on Drobo.

In S.K.B. Asante's book Property Law 1844-1966 the learned author described the nature of the allodial interest in land on page 9 as follows:

"The full panoply of the stool's radical, allodial or absolute title came into play in respect of stool land unencumbered by the subject's usufruct. Here ownership is absolute in every sense of the world, admitting of no legal limitations on use, duration and alienation. This was the highest proprietary interest known to customary scheme of interests in land, and although the tenets of traditional beliefs abhorred wanton abuse and alienation, the stool was neither accountable to, nor restricted by a superior temporal authority in its enjoyment of such lands. The economic significance of the beneficial

in Japekurom and Kwasi Bourkurom has been completely extinguished. In the same breath, by ceding Faago to Drobo, Japekurom's interest therein has been completely extinguished. I therefore declare co-plaintiff owner of New Drobo Township including the disputed plot No.42 Block C. Similarly I also declare codefendant owner of townships of Japekurom and Kwasi Bourkurom. Subject to the foregoing declarations the claims of the co-plaintiff and co-defendant are hereby dismissed. Parties to bear their own costs.

The plaintiff and the defendant did not testify in this case. Indeed I took charge of the suit following the Court of Appeal's order of 29/11/05 that it be remitted to the High Court for a trial de novo. On 20/02/07 following consensus between Counsel and both sides I allowed the parties to adopt the previous proceedings before the High Court, Sunyani presided over by Gyaesayor J. (as he then was) and to adduce further evidence. The co-defendants opted to lead further evidence and that is how come that the Gyamanhene of Cote d' Ivoire and the Asantehene's Chief linguist testified as the fourth and fifth defendant witnesses. Even though the co-plaintiffs did not opt to adduce further evidence, they were allowed to tender extract of an archival record on Drobo Native Affairs exhibit 'PP' whose only significance was the acknowledgement by the Asantehene that Japekurom was Akwamuhene of and subservient to the Drobohene as of 1946.

Notwithstanding that the plaintiff, Assemblies of Gods Church and the defendant, Kwadwo Osei did not testify in this matter, for the avoidance of doubt and having regards to the declaration of title to New Drobo in favour of co-plaintiff. I hereby also declare ownership of the disputed plot No.42 Block C in favour of the Plaintiff. There shall be no order as to costs

SGD.

E. A. ASSAN

JUSTICE OF THE HIGH COURT

CERTIFIED TRUE COPY

HIGH COURT, SUNYANI