

IN THE SUPERIOR COURT OF JUDICATURE, IN THE COURT OF APPEAL KUMASI,

ASHANTI REGION, GHANA A.D.2012

CORAM: JUSTICE MARIAMA OWUSU JA [PRESIDING]

JUSTICE FRANCIS G KORBIEH JA

JUSTICE IRENE C DANQUAH JA

CIVIL APPEAL CASE NO:H1/12/2011

DATE: 27TH JULY, 2012

THE ASSEMBLIES OF GOD CHURCH ... PLAINTIFF/RESPONDENT/CROSS-APPELLANT

DROBO TRADITIONAL COUNCIL ... CO-PLAINTIFF/RESPONDENT/CROSS-APPELLANT

VRS

KWADWO OSEI ... DEFENDANT

NANA AMPAABENG KYEREMEH ... CO-DEFENDANT/APPELLANT/

CROSS-RESPONDENT

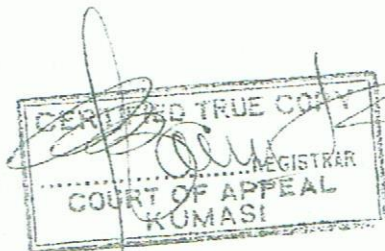
JUGDMENT

IRENE C DANQUAH JA:

The High Court, Sunyani, in its judgment of 17th June, 2009 which is the subject matter of this appeal and cross-appeal held as follows:

"The ceding of Faago by Japekrom to Drobo was perhaps a specie of the latter's residual interest as a paramount stool from 1896 until 1981 in relation to Japekrom and Bourkrom. With the creation of Japekrom as a paramountcy Drobo's residual interest in Japekrom and Kwasi Bourkrom has been completely extinguished. In the same breath by ceding Faago to Drobo, Japekrom 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 Co-Defendants owner of townships of Japekrom and Kwasi Buorkrom. Subject to the foregoing declarations the claims of the Co-Plaintiff and Co-Defendants are hereby dismissed."

The court further held that:



"Notwithstanding that the Plaintiff, Assemblies of God's 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 the Plaintiff. There shall be no order as to cost."

Dissatisfied with the said judgment, the Defendants and Co-Defendants appealed and the Plaintiff and Co-Plaintiff cross-appealed.

In this appeal, there was an original trial and a retrial of the action at the court below. Both the original trial and retrial involved the Omanhene of Drobo Traditional Area and the Assemblies of God Church on one side as Plaintiffs and the Chief of Japekrom and a resident of Kwasiourkrom near Japekrom as Defendants. Since both the Plaintiff and the Defendant are relying on the right of ownership of their grantor stool namely, the Drobo Stool and the Japekrom Stool respectively it would be appropriate to give a brief history of this matter. Until 1896 when the British and the French colonialists in West Africa set a boundary between their respective spheres of influence in West Africa, the Drobohene was not an Omanhene. The Drobohene was an Adontenhene, a divisional chief of the Bonehene. Japekrom and Kwasiourkrom were ordinary sub-chiefs within the Bono Kingdom under the Bonehene. The boundary split the Bono Kingdom into two with part falling within the French sphere of influence as part of Ivory Coast while another part fell within the British sphere of influence as part of the Gold Coast.

Within the part that fell into the British sphere of influence were the areas where the Adontenhene, Japekromhene, Kwasiourkromhene among others had been living. When the boundary was set in 1896, the Bonohene's seat of government fell into Ivory Coast and he lost all authority over his subjects living on the British side of the boundary. Though not an Omanhene at the time the boundary was set the Adonten division of the kingdom (Drobo) became a new state called Jaman (Gyaman) State in the Gold Coast. Chiefs of Suma and Kwatwoma who hitherto used to serve the Bonehene as sub-chiefs and who were not within the Adonten Division of the of the Kingdom were made by the British government to serve the Drobohene as the new Omanhene. However Suma and Kwatwoma were permitted to withdraw allegiance to the Drobohene and live in their own by the Ashanti Confederacy Committee. The Chief of Japekrom however continued to serve the Drobohene as a sub-chief, first as the Kyidomhene and later as the Akwamuhene until he was raised to the status of Omanhene by the Asantehene whereby he no longer served the Drobohene as sub-chief.

Kwasibourkrom at all material times was a sub-chief serving Japekrom so in 1981 when Japekromhene was made the Omanhene, Japekrom ceased to serve the Drobohene and Kwasiourkrom continued to serve Japekromhene.

In 1896 when the Bono Kingdom was split into two, the Drobohene was living at old Drobo, a place north of Japekrom and Kwasiourkrom.

The Drobohene continued to live at Old Drobo until 1942 or thereabout when he moved south to settle at a place very close to Japekrom and Kwasiourkrom which became New Drobo with Japekrom and Kwasiourkrom still serving him. The Drobohene was at New Drobo when Japekrom and Kwasiourkrom ceased to serve him and began to live independently when Japekrom attained the paramountcy.

The land which is the subject matter of dispute was described by the Plaintiff in his writ as Plot No 42 Block 'C' at Drobo on Drobo Stool Land. The Plaintiff claim against the defendant was for recovery of possession of the said land, general damages for trespass and an order of perpetual injunction. The Co-Plaintiff claim however was in respect of a much bigger area having a common boundary with Dormaa Paramount Stool, Berekum Paramount Stool La Republic de Cote D'Ivoire and the Stool Lands of the Asantehene presently occupied by the Suma and Kwatwoma Paramount Stools. The Co-Plaintiff further sought for an order of recovery of possession of the said portions in possession of the Defendant and Co-Defendant or in the alternative an order that the Japekrom Paramount Stool acknowledge the ownership and title of the Co-Plaintiff to the said land and an order that the Japekrom stool and all its subjects now in possession of any portion of Drobo stool land seek grants from the Drobo Traditional area in respect of the lands they are in possession from the Co-Plaintiff.

On the other hand, the Co-Defendant also counter-claimed for the land in Gyaman including the townships of Japekrom, New Drobo and Akwasibuorkrom sharing boundaries with Berekum Stool Lands in the South at Nkwaduasua Dormaa Stool Lands in the South-West, Awasu-Dwenem Stool Lands in the North-East, Awasu-Dwenem Stool Lands in the East; Kwanwoma Stool Lands in the North at Adamsu, and La Republique de Cote D'Ivoire in the North-West. The Co-Defendant further claimed recovery of possession of portion of the lands in possession of the Plaintiff and Co-Plaintiff or in the alternative an order that the Drobo Stool acknowledges the ownership and title of the Co-Defendant in the said land and an order that the Drobo Stool and all its subject in possession of any portion of the Mpuasu-Japekrom stool lands seek grants in respect of their respective lands from the Co-Defendant.

The claims of the Co-Plaintiff and the Co-Defendant were based on traditional history especially concerning their origin. Both stools claim to have migrated from Akwamu. The Co-Plaintiff averred that the Bono Kingdom migrated from Akwamu in the Eastern Region and settled at various places including Assin Fosu. The Drobohene was then the Adontenhene of the Bono Kingdom. Nana Feka Ahenkora, the then Drobohene purchased a young woman at Ankaase whom he eventually married. The young woman who was called Takyiwaa Bonsua bore him children including Takyi Anyaa and Amma Agyei. Nana Fekaa, followed by his wife Takyiwaa Bonsua and their children settled at Ayakomaso near Fiapre, then Drobo and at Old Drobo Nana Fekaa settled his son Takyi Anyaa on land at Mpuasu, where the latter cultivated onions. Upon

the demarcation of the boundary by the French and the British, the great Bono Kingdom fell to the French side in the Ivory Coast and the Drobos fell on the side of the British. The Drobohene was made the Paramount Chief by the king of Bono Kingdom as the Omanhene of Drobo who owns the land and has since been in possession of the lands being claimed by the Co-Defendant.

On the other hand, the Co-Defendant in respect of the origin of Japekrom and Kwasibuorkrom claims that the people of Japekrom now Mpuasu originally migrated from Akwamu and settled under the Mpuasu Mountains after defeating the aborigine Kongs and Brokor or Nkorang settlers. In the course of their migration, the Co-Defendant's ancestor and occupant of the stool called Nana Takyi Paneni died leaving his younger brother Takyi Kumah also known as Takyi Anyaa. Nana Takyiwaa Bonsua who was then the Obaahemaa and mother of Takyi Anyaa took over the leadership of the group. Nana Takyiwaa Bonsua who was a hardworking woman traded in gold and ornaments and travelled to Wenchi Drobo where she struck an acquaintance with Nana Sakyi Ako at Wenchi Droboso where the Co-Plaintiffs ancestors were subjects of the Wenchi Stool and engaged in the production of Doo (burnt herbs for making Amonkye- a local soap). Hence the name Doobo people now Drobo people.

At Wenchi Drobo, Nana Takyiwaa Bonsua later befriended Nana Feka Ahenkora at old Droboso and brought forth issues by name Kwasi Amoah and Kwame Fekaa. Nana Takyiwaa Bonsua

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 Wenchihene by getting the Aduana royals under the authority of her uncle the Bonohene at Bontonkou-Herebo to contribute to pay for the head of Nana Sakyi Ako. The latter was accepted as a refugee in Gyaman lands. The Bonohene/Gyamanhene asked the Sumanhene to settle the refugee Drobo chief between Suma and Kofi near River Poisa on Suma stool land known as Old Drobo. To show their gratitude, the ancestors of the Co-Plaintiff served the Bonohene under the Sonkorehene who was the Adontenhene of Gyaman king by fighting for the Bonohene but never to take control of any booty. After the demarcation of the Ghana-Ivory Coast boundary the members of the erstwhile Bono Kingdom who were left on the Ghana side of the border including Co-Defendant stool, Drobos, Awasua, Suma and Kwatwoma remained in Gyaman, a tributary of the Golden Stool. It was around that time that the Colonial Administrator without regard to history, custom and traditions elevated Drobo stool as a paramount stool.

The restoration of the Ashanti confederacy witnessed the disintegration of the Drobo Native Authority with the creation of paramountcy for component states such as Seikwa, Suma, Nsawkaw and Kwatwoma. In or about 1942, the Colonial Administration was granted a piece of land at Faago on Japekrom Stool land for the building of a court house and a school. Later, the Colonial administration pressurized the Drobohene to move from the village of old Drobo on Suma stool land to a more central place at Faago on Japekrom stool land.

The Co-Defendant relied on estoppels against the Co-Plaintiff by virtue of an agreement before the Regional Commissioner of Brong Ahafo dated 31st January, 1973 proceedings and judgment of the High Court in 1983, proceedings and Committee of Inquiry (Brong Ahafo Region) appointed under E. 1.90 of 1972, Drobo State Affairs-Special Committee's Report dated 15th December, 1960, Executive Instrument 89 and 96 of 1960 and Legislative Instrument No. L.I 1369 of 1989 for putting forth the claim in this action. Co-Defendant averred that the Drobos are strangers and late-comers to Gyaman lands and who occupied old Drobo and New Drobo under the express permission of the Gyamanhene/Bonohene and the Co-Defendant stool respectively and thus has a mere occupational licence. Old Drobo and New Drobo settlements unlike the Co-Defendant stool has been of independent paramount status with its own lands.

In the course of the trial a lot of documents were tendered by the parties. The Plaintiff and co-plaintiff called four witnesses including the then Berekum Paramount Chief who testified that his stool shares no boundary with Japekrom. However he testified that the citizens of Berekum and Japekrom inhabit two villages Botokrom and Nkyekyemamu which are Berekum villages but with Nkyekyemamu mostly inhabited with citizens of Japekrom. The 1st Plaintiff witness who is the Chief of Akontanim and also the Akyempemhene of Dormaa Traditional Council and who gave evidence as a representative of the said Traditional Council testified that Dormaa stool shares no boundary with Japekrom but with Berekum at where a pillar which is now Dormaa-Ahenkro. He testified that there has been interactions/affinity with Japekrom in recent times. He could not give

any reason for these interactions save that it was at the instructions of the Dormaahene. He testified further that Dormahene and Gyamanhene of Cote D'Ivoire are brothers. The evidence of PW2 and PW4 were in respect of the disputed plot i.e. No.42 Block 'C'.

The Defendant and Co-Defendant called five witnesses. The first witness nana Kwabena Amponsah II (DW1) and Nana Kyere Gyeabour (DW2) who are the Aduanahene of Awasu Dwenim and Chief Linguist of Atuna respectively.

The gravamen of their testimonies are that their people were part of the migrants from Akwamu. Having conquered the original inhabitants they took over their lands and possessed them hence the name Gyaman meaning literally "you have left your home and seize some ones land."

The Drobos were not part of this group of migrants and their leader one Sakyiama was a refugee from Wenchi who was a great warrior.

The Co-Defendant/Appellant filed only one ground of appeal which reads:

"(1) The judgment is against the weight of the evidence."

The Plaintiff and Co-Plaintiff in their cross-appeal filed seven grounds of appeal but argued only one which reads;

"The learned trial judge erred in failing to draw the necessary inferences from the evidence that prior to the demarcation in 1896 the whole Gyaman land belonged to the Gyamanhene as allodial owner and that when the demarcation placed him on the French side of the border he lost his allodial to the territory which fell on the British side and that it is the Drobohene who succeeded to all the rights and privileges pertaining to the position of an Omanhene over the territory which fell on the British side and that it is the Drobohene who succeeded to all the rights and privileges pertaining to the position of an Omanhene over the territory,"

In arguing the ground of appeal and the cross -appeal supra, Counsel for the Defendant referred to certain portions of the pleadings of the parties and contended that the Co-Defendant alleged in par 32 of his defence that it was during the time of the restoration of the Ashanti Confederation which witnessed the disintegration of the Drobo Native Authority by the creation of Paramounties such as Seikwa, Suma Nsonkaw and Kwatwoma, that the Colonial Administration around 1942 was granted a piece of land at Faago on Japekrom Stool land by the stool for the building of a Court house and a school.

Later the Colonial Administration pressurized the Drobohene to move from the village of Old Drobo on Suma Stool land to a more central place at Faago on Japekrom stool land. Counsel

argued that this averment was admitted in paragraph 17 and 18 of the Reply filed by the Co-Plaintiff who stated that originally the seat of the Co-Plaintiff was at Old Drobo but as a result of agitation of the Chiefs mentioned supra, the Drobo state decided to move its headquarters south to the heart of the people and consequently moved from Old Drobo to the present Drobo. This was further confirmed in the testimony of the Co-Plaintiff when he stated that "on 92 North, was the original home of Drobohene but later moved my capital to a new area marked 92". The Co-Defendant concurred in his evidence by stating further that the Drobohene took residence with Gyasehene Kwasi Ankama anytime he came to Japekrom when the Court rotated between Japekrom and Drobohene for 3 months. It was this that Bosea Gynantwi III also known as Kofi Bona approached Nananom with two bottles of schnapps "Pentu" for land to build a house because Old Drobo is far. A pillar was then fixed and he was given 5 acres which will contain about 20 houses. Therefore Counsel contended that the High Court was wrong to agree with Thomas Appiah, the Technical officer of Town Planning Department that the disputed plot No.42 Block 'c' is in Drobo layout tendered as Exhibit Q which the court found to be approved. He referred to Exhibit 28 which was a letter of the Acting Deputy Director of Town and Country Planning in Brong Ahafo which requested the District planning Officer of Berekum/Jaman District to suspend action of Japekrom Kwasibukrom and new Drobo plan "*until further notice*". He contended that no evidence was led to counter the instructions of the Acting Deputy Director supra. He concluded therefore that the trial judge erred by accepting Exhibit Q and relying on it since it never received any statutory planning. In respect of the land which the judge held that

Japekrom ceded to Drobo, Counsel argued that Japekrom did not cede all the land at Faago to New Drobo but gave only 5 acre of land which was marked by pillars and which was seen by the trial judge when he visited the scene. Counsel for the Defendants again referred to Exh 36 being a site plan of an oil palm plantation of James Osei Kwadwo a member of the Japekrom Stool evidencing that he was in occupation of the land long before the Plaintiff came to make adverse claim that he had purchased same from the Drobo Stool. Counsel faulted the judge that having found that the "paramount statehood is not synonymous with allodial interest in land and that the elevation of the Drobo stool to paramount status after 1896 does not make him become willy-nilly allodial owner of the stool lands attached to its subordinate Chiefdom is absolutely misconceived' ought to have declared Japekrom stool the allodial owners of the land. Counsel commented that the case of *Ofori Attah III and Others vrs Mensah [1958] 3 WALR 32* cited by the judge has no bearing on the case at hand as Drobo did not create Japekrom Stool but the evidence is that Japekrom was placed under Drobo Stool for administrative purposes. He submitted that Drobo therefore has no residual interest in Japekrom lands. Counsel further referred to the case of *Ayisi vrs Sakyamabea (1958) 3 WALR 92 Holding IV* which the judge cited and submitted that going by that authority the conclusion the judge should have arrived at was to have limited the absolute alienation to the spot allocated to the Drobo Stool and marked by the pillars and not the entire stool lands of Japekrom at Faago.

In response, Counsel for the Plaintiff/Cross-Appellants made submissions in answer to the appeal and in support of the cross-appeal.

Counsel for the Plaintiffs began his argument by posing the question that between the Drobohene as Co-Plaintiff and the Japekromhene as Co-Defendant which of the two has allodial title to the vast stretch of land from Berekum and Dormaa Ahenkro stool lands to the territory of the Bonohene Kingdom now in the Ivory Coast, Suma and Kwatwoma Stool lands?

Counsel argued that Japekromhene roots his title to the land in which plot No.42 Block C falls as the allodial owner from time immemorial whilst the Drobohene claims he succeeded the Bonohene as the new Omanhene in the Bonehene's Adontenhene and succeeded to the allodial title the Bonohene lost on the British side of the boundary. Counsel took pains to give a background to how traditional land was acquired through conquest and argued that the Bonohene in his migration from Akwamu in the Eastern Region towards the North to now Brong Ahafo Region conquered the people he met and thus acquired allodial title to the lands where he established his kingdom till 1896 when the split came about. Counsel then proceeded to narrate the traditional history pleaded by each of the two chiefs to support his adverse claim to allodial title as well as the documentary and all evidence of the parties and witnesses. Counsel referred to Exhibit H which is a record of proceedings of a meeting of the Committee of privileges held at Kumasi. Counsel further referred to Exhibit 8 at page 23-32 in volume 2 of the record which contains proceedings of the meeting of the Committee of Privileges held at Kumasi on Tuesday

18th June 1935 where it came to light that the Drobohene and Japekromhene were among the sub-chiefs of the Bonohene who lived on the conquered land. But Counsel conceded that Japekrom did not participate in that proceeding. Counsel also referred to Exhibit 'M' at page 38 of the record which contains a 1904-5 list of Chiefs in Drobo Division where it is indicated that the Drobohene was Kwajo Busia and the Chief of Poliano or Japekrom was Kwabina Faka, an Odikro and sub-chief under the Drobohene. Counsel argued that as at 1896 history shows that Japekrom did not have a paramount status as an incident of which he could have owned allodial title to the land he claimed in this suit against his overlord the Drobohene before the Asantehene made him a Paramount Chief in 1981. He submitted that the claim made by Kwadwo Osei in his Statement of Defence that allodial title to Japekrom and Kwasibourkrom land from time immemorial has been for Japekrom is not supported by veritable history. Counsel further submitted that the trial judge was not looking at the case from the proper angle when he said about Drobohene that the Paramount Statehood is not synonymous with allodial interest in land. He submitted that in this case the Drobohene claimed allodial title not as a Paramount Chief simpliciter but as a Paramount Chief who succeeded Jamanhene who acquired the title by conquest. He argued further that instead of the trial judge seeing the movement of the Drobohene from Old Drobo to settle at New Drobo in its right context as an ordinary incident of Drobohene's allodial title to the land on which Japekromhene had been living, the judge put an erroneous interpretation to it as amounting to Japekrom ceding the land to Drobohene. He continued that the judge should have drawn the correct inference from the incident of the hooting

at the British Commissioner by Kwame Mensah shortly after the demarcation of the boundary and what was said about Japakrom as a subject of Jamanhene. At the time of the hooting Japekrom was a village on Drobohene's land. And therefore the Drobohene's claim to allodial title commenced from the day he became Omanhene in 1896 and inherited the lands belonging to the Bonohene. Therefore Drobohene moved to occupy Faago which was part of his own land as Omanhene at Faago which was not ceded to the Drobohene as was stated by the trial judge. He submitted that if the incident meant a "ceding" of the land to Drobehene, the British Colonial Administration which knew the elements of creation and transfer of interest in land would have ensured that a document was prepared to evidence the "ceding" or transfer of the interest to the Drobohene. Counsel submitted that the Chief Commissioner's letter at page 110 of the record shows that the moving from Old Drobo to Faago was a simple act of the Drobohene moving to settle at a more convenient part of his own land near Japekrom. The letter mentioned "*the jealousy of the Japekrom people*" which gives the idea but not as a claim of opposition that allodia title to the place was vested in Japekromhene. He submitted that it explained why in spite of their initial unwillingness, the Japekrom people assisted in clearing a site near Japekrom. Counsel in conclusion submitted that from the foregoing, it is clear that the judge was right in declaring at page 115 of the record that the Drobohene is the owner of New Drobo including the disputed Plot No.42 Blk 'C' but was totally wrong in doing so on the basis that Japekromhene ceded Faago to Drobohene and Japekromhene's interest became completely extinguished. Counsel further submitted that similarly the trial judge erred when he held that;

"I also declare Co-defendant owner of the townships of Japekrom and Kwasibourkrom."

His reason being that from the evidence it is clear that Japekrom and Kwasibourkrom lands belong to Drobohene as part of the conquered land he inherited from the Bonohene in 1896. Counsel therefore indicated that there was no need to argue the other grounds of the Cross-Appeal in view of the submissions made by him supra.

This is a case the history of which is over a century ago. As it is based on traditional history, there is no doubt that the narration of the history would be chequered with additions and subtractions as the facts are handed down from one generation to the other. Nevertheless, both parties in their effort to assist the trial Court tendered several documents filling two volumes in this appeal. However we noticed that both Counsel for the Plaintiffs and the Defendants made virtually little use of the documents tendered in evidence. The arduous task is therefore placed on this Court to sift through these documents to ascertain their relevancy to the issue in controversy in this appeal.

If we understand the parties well, the appeal of the Co-Defendant simply put is against the decision of the trial court which declared the Co-Plaintiff the owner of New Drobo Township

including Plot No. 42 Block C and dismissed the counter claims of the Defendant and Co-Defendant. The cross-appeal of the Plaintiff and the Co-Plaintiff is against that part of the decision which declared the Co-Defendant as owner of Japekrom and Kwasiourkrom.

It is not in dispute that both the Co-Plaintiff and Co-Defendant were until 1896 when the British and the French Colonialist in West Africa demarcated the boundary were sub-chiefs of the Bono Kingdom. The Drobohene was an Adontehene and Japekrom and Kwasiourkrom were sub-chiefs within Bono Kingdom. It is also not in dispute that after the boundary was set in 1896 the Bono Kingdom was split into two with part falling into the French territory of influence and the other within the British territory of influence. Drobo, Japekrom and Kwasiourkrom among others fell to the British territory whilst the seat of government of the Bono Kingdom fell into the French territory of Ivory Coast.

It was after the demarcation that the Drobohene was made an Omanhene by the British. In the statement of claim of the Co-Plaintiff at paragraph 11, he averred that;

"The Drobohene was made paramount Chief by the king of Bono Kingdom and it was the Omanhene of Drobo of Droboso who owns and has been in possession and occupation of the land described in paragraph 3 supra from time immemorial."

The Co-Defendant denied this averment and put the Co-Plaintiff to strict proof of same. The Co-Defendant on the other hand stated that the Drobos are stranger and late-comers to Gyaman land who occupied old Drobo and New Drobo on the express permission of the Gyamanhene/Bonohene and thus have a bare occupational licence to old Drobo and New Drobo Settlement.

In the course of the trial, Adinkra Kwasi Agyeman, who described himself as the “**Bonohene in Cote D'Ivoire**” and “**Jamanhene**” gave evidence as DW4. He testified inter alia as follows:

“I did not appoint him (Drobohene) as a paramount chief. He was Adontewaa. At the time of the demarcation of the boundary between the French and the British, the Drobohene was not an Omanhene. I testified in a land dispute between Drobo and Dwenem. I also elected somebody to testify in another land dispute between Drobo and Japekrom. I had nothing to do with the status of Drobohene.”

This piece of evidence was given on 12th March, 2008. There is no evidence on record that DW4 was challenged that he did not appoint the Drobohene as a paramount chief (Omanhene). Prior to this piece of evidence in 1960, before the Special Committee set up in respect of “**Drobo State Affairs**”, which spans pages 281 to 283 of Volume 2 of the Exhibits Record, reference was made to a written evidence received by the committee from Jamanhene through his linguist Yaw

Boateng dated 22nd December, 1960. The Committee quoted extracts from the said letter which read:

"That I am the head of Brongs and I seize this opportunity with great delight to reconstruct the Traditional positions of the two chiefs in order that you might make your decision and final conclusion this vital issue. [SIC]

That the truth that I know is that Japekromhene and his elders who are now known as Mpuasus were directly Royals of the Jaman Stool. They had already settled at Mpuasu as royals to Jamanhene, Nana Agyeman Panin when Drobos who met them from Droboso in Wenchi area were led to greet the Omanhene Nana Agyeman Panin by a sword Bearer to Nana Omanhene and Royal to Mpuasu Stool in the person of one Kwame Marfo who was then staying at Mpuasu. That the Drobohene, his elders and subjects later settled at Old Drobo that time the Japekromhene and his subjects had already settled under the mountains, now known as Mpuasu. That to my knowledge and believe the Japekromhene and his subjects were Royals. They were not subjects to Drobohene and were not in any way placed under the Drobo Stool."

The Committee commenting on the Jamanhene's evidence said;

"Unfortunately, the Drobohene did not challenge that evidence but accepted all in full and added that he had no cause to refute because the Jamanhene and his linguist are truthful witnesses."

The terms of reference of the Special Committee was

"To examine the Petitions of Japekromhene for separate State and Paramount Status and the Petitions of the Drobohene against the claims of Japekromhene and to advise the Regional Commissioner as to how best the dispute between the two chiefs can be amicably be settled."

In concluding their report, the Committee at page 282 and 283 of Volume 2 of Exhibits stated again that;

"Unfortunately, the Drobohene did not produce by way of witnesses to corroborate his evidence. No documentary evidence was also produced inspite of lengthy time given him by the Committee. It is most disappointing that under cross examination by Japekrom and the Committee the Drobohene admitted almost every piece of evidence established by Japekrom. The only evidence refuted is that of ill treatment."

The dispute between the two chiefs supra as gathered from the Special Committees report was that: - The Japekromhene and others claimed that they originally migrated from Akwamu as independent people and Royals to the Jamanhene whilst the Drobos came from Droboso a village near Techiman. That they settled at Mpuasu independently and later the Drobos came and settled at Old Drobo. Japekrom further claimed that their area of authority over the villages and towns of Mpuasu, Japekrom, Kwasi Bourkrom, Bosokrom, Nkyenkyemamu, Jankwabrakrom, Kojo Kesekrom and Basakrom. And that for convenience of administration the then chiefs of Sima, Kwatwoma, Nsokor Seikwa, Atuna, Dwenim and Mpuasu chose to serve the Drobohene, subject to break away of Nsokor and others during the Ashanti Confederacy. These and others were the reasons why Japekrom wanted a separate state to be granted to it by the then Government. Then again in 1973, another Committee headed by Commander J.A. Kyeremeh, then the Regional Commissioner also sat on a dispute between Drobohene and Japekromhene concerning the siting of a market [see page 113 of Volume 1 of Exhibits Record]. The complaint of Japekrom was that before consultations could be finalized as to whether the existing market at Japekrom could be improved upon by the Government to serve the needs of the localities within the area, agents of New Drobo went to the site and began clearing it allegedly with Government's authority and as a result, sacred graves of their ancestors were desecrated. Japekrom therefore sued Drobohene. The Committee in their report identified the following issue that led Japekrom to take the matter in Court as follows:

1. *That they owned the land in dispute.*
2. *That they were not properly consulted for their assent to be given before entry was made on the land.*
3. *That as a proof of their ownership of the land they were consulted on previous occasions when lands were required for official purposes, and they exercised their prerogative of pouring libation at the sites where the present Court-House and Secondary School are.*

At page 2 of the report (p.44 of Exhibit Record Vol.2) the Committee stated as follows:-

“In order that the controversy over improper consultation might not mar the success of the settlement it was decided that it should not be unreasonable if the New Drobo side made a fresh approach to the Japekrom side of the Government’s intention to build a central market on the site, in as much as they the New Drobos confirmed the previous instances of the customary performances by the Japekrom people cited above” [Emphasis ours]

The Committee continued as follows:

“As the Japekrom side denied being properly approached by the New Drobo Traditional Council for the land in question it was felt that a fresh request formally

made by the later was very desirable. This was readily done by the New Drobo side and was favourable received by the Japekrom side. [Emphasis again ours]

We took pains to go through the evidence supra since, it would assist the court in deciding the issue at hand meaningfully since the traditional history as narrated by the parties conflicted each other as to which of the history is the most accurate so as to be reliable as the most probable. In ADJEIBI-KOJO VRS BONSIE 3WALA –page 257, Lord Denning reading the judgment of the court in Holding (1) held that;

“the most satisfactory method of testing traditional history is by examining it in the light of such more recent acts as can be established by evidence in order to establish which of the two conflicting statements of tradition is more probably correct-----.”

This position was reiterated by the majority decision of the Supreme Court in AGO SAI & OTHERS VRS KPOBI TETTEH TSURU III reported in [2010] SCGLR 762 holding (1) per Atuguba, Ansah and Baffoe-Bonnie JJSC that:-

"It was well-settled that where in a land suit, the evidence as to the title to the disputed land was traditional and conflicting (as in the instant case) the surest guide was to test recent acts to see which is preferable."

In the instant case there are categorical statements made by the two separate committees set up by the Government to investigate dispute between the Drobo Stool and Japekrom Stool. As can be discerned from those pieces of evidence, it is clear that not only did Japekrom attempt to gain its administrative independence from Drobo as soon as the country gained its independence from the British Colonialist but asserted its rights in respects to land of Japekrom and its environs including some villages within the area. From the reports of the two Commissions referred to supra, it is clear that Drobo on these occasions admitted Japekrom's rights to the lands in contention. Further it is clear that Drobo did not dispute the history as narrated by Japekrom especially the fact that they were first to settle in the area. Concerning recent acts, Drobo conceded the fact that Japekrom exercised rights as owner of the land when the Court house and the Secondary School were being built at New Drobo.

It is to be noted that Japekrom did not hesitate to sue Drobo when certain acts were taken by Drobo which the former considered to be adverse to its rights of ownership and possession.

It must be stressed that it is the Co-Plaintiff's case that he derived his allodial interest in the lands he is claiming because he was made the Omanhene by Gyamanhene after the demarcation of the boundary between the French and the English colonialist. He claimed further that by that status acquired from Gyamanhene he automatically became the allodial owner of all lands including Japekrom and specifically Faago which were under Gyamanhene. In our view these assertions fell flat considering the evidence of the Gyamanhene before the Special Committee as well as his evidence in this action. As we stated earlier, the Drobohene did not challenge the Gyamanhene when he stated in no uncertain terms that he did not make the Drobohene the Omanhene. Not only that but he confirmed the history narrated by Japekrom that Japekrom is the original occupant of the area before Drobo people came to that area.

Then again in the evidence of DW3, the Regional Lands Officer of Brong Ahafo Region, he stated that Japekrom Stool had been receiving revenue through Japekrom Traditional Council – See Exhibit 42, 43, 44, 45, 46 and 47 in Vol. 2 of Exhibits Record Book. Though the witness was challenged that some of those exhibits were not signed, we find Exhibit 45 and 47 signed by the Administrator of Stool Land being payments to Japekrom Traditional Council as Stool Lands revenue for 1996 and 1998 respectively.

In 1942, the Acting District Commissioner N. Ross in a letter to the District Commissioner's Office Wenchi stated that;

"There is considerable excitement in the Drobo Division as a result of the rebellion of the Akwamuhene and forty years ago his refusal to serve the Drobohene would almost certainly have been the occasion for bloodshed."

As gathered from the letter under reference the Japekromhene was trying to break away from serving Drobohene to serve the Golden Stool. In paragraph 3 thereof it was stated that:

"The rest of the Drobo Division obtains little wealth from cocoa and the tendency has been for the population to drift to the neighbourhood of Japekrom, where there is more money to be had. It is probable that one of the reasons for the Japekrom people attempting to gain independence is the fact that they enjoy a superior economic position to the rest of Drobo and feel annoyed at having to provide financial support for a stool in whose affairs they have minor influence by Native Custom."

The letter stated further that arrangements had been made to meet the complaint of the Japekrom people as follows:

"It had been agreed that the Drobo Court should function periodically at Japekrom for the benefit of litigants in that area and a new site for a new court house had actually been cleared in the outskirts of Japekrom."

At page 298 Exhibit Vol.2 N. Ross again wrote to the District Commissioners Office headed "*Petition of Ex-Drobohene Kwaku Nketia*" dated 20th October, 1942. In paragraph 3 thereof it is stated that the actual village of Drobo is shown to be in *a small island of Jaman land situated in the midst of Kumasi Division and for some year attempts have been made to transfer the Drobohene's Court to near Japekrom.* [Emphasis mine]

N. Ross continued that;

"This has always been defeated through the jealousy of Japekrom people. There was a 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 Japekrom people in clearing a site near Japekrom. The Japekromhene 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 am glad to report that the

building of the new Court House has now commenced and it is hoped that it will be finished without incidence."

From the above excerpts quoted from documents dated several decades ago, it is clear that the assertion of Drobohene that he was elevated by the Jamanhene after the demarcation of the boundary by the British and French is not correct. The Jamanhene had consistently refuted that claim. The claim of the Co-Defendant that the Drobohene was elevated to the Omanhene status by the British was for administrative purposes is more probable this is because from the PROVINCIAL RECORD BOOK-WESTERN PROVINCE and ASHANTI marked Exhibit 71 and found at page 236 of the record (Exhibit Vol. 2) at page 239 to 240 this is what is written that;

"The status of the Jaman Chief was altered by the division of their territory between the French and English. Those whose territory fell under the British Government could no longer be subservient to an Omanhene residing in French Territory. The chief of Drobo (The advance guard of the Jaman army) was created the independent Omanhene of British Jaman and the Stool of Suma (Wirimi), Bedunkra (Saikwa) and Seketea made subservient to the stool of Drobo."

The creation of Drobo as an independent Omanhene was obviously made by the British Government. The above fact is buttressed by the evidence of the Omanhene of Berekum

Traditional Area during the One Hundred And Thirty-Fifth sitting - Wednesday 23rd July, 1975 before the Committee of Inquiry (Brong-Ahafo) at page 197 (Exhibit Vol.2) at page 15 of the report when Nana Yiadom Boakye II the Omanhene in his evidence stated that;

"When several Ahafo and Brong Chiefs were placed under Berekum, we never took any part of their revenue accruing from their Stool lands."

From the inquiry it came out that Berekum was elevated to an Omanhene status by the British breaking them away from Ashanti for administrative purposes. Therefore there was evidence that the British for the purposes of effective administration in that part of the country elevated some sub-chiefs to the status of Omanhene and Drobo was one such chiefs. From those pieces of evidence referred to supra it is clear that Japekrom right from the time they were put under Drobo by the British asserted their rights for an independent status and also the rights over their lands including the construction of the Court House and the offices. The British recognizing the land system in the then Gold Coast handled Japekrom diplomatically in their resistance to the construction of the Court House and Office on their land when Drobo was given the status of Omanhene by "**coaxing**" and persuasion instead of use of force.

The fact that Drobo had a small area of possession was not in doubt as it was described as a "**small island of Jaman land.**" Thus in our view Drobo's assertion that his status as Omanhene

gave him allodial title over the lands of the villages that came under him fell flat when his alleged grantor – the Jamanhene denied ever handing over his lands that fell within the British territory to Drobo when it gained the Omanhene status bestowed on it by the British. Indeed the evidence of the Berekumhene that he never took revenue of stool lands accruing from the villages that were put under Berekum paramountcy is a very good guide to the traditional position.

In principles of Customary Land Law in Ghana (1962) Chapter 2, Ollennu stated at page 23 of his book as follows:

“Thus both the Native Court who were the repositories of the customary law, and the Land Court who had before it the evidence of custom given in that case, held that by customary law, the head of or a quarter or the occupant of the sub-stool, as the case may be, and his elders, are the proper persons entitled to administer and deal with stool lands,-----“

Ollennu was considering the decision in the case of Onano Vrs. Mensah Supreme Court (Land Division), Accra 21st December, 1945 unreported.

At page 24 of Ollennu's book supra when he was considering concession Enquiring Nos. 242 (Axim) and 1780 (cc) (1903 Ren 281 he said:

"The question was, who was the proper person to grant concession of stool land, the head stool or subordinate stool. It was held by the full court that it was the subordinate stool but the subordinate stool could delegate its authority to the head stool to execute the concession."

These statements of Ollenu supra were relied on by the Court of Appeal in the case of GYEABOUR II & OTHERS VRS ABABIO [1991] 2GLR 416.

In that case the main issue that the Court of Appeal identified as the issue for determination by the trial court was whether from the evidence on record the allodial or absolute title of Kaase land which the sixth Appellant called Baeisakwan Stool lands and the Respondent called the Kaase Stool lands is vested in the Golden Stool as the paramount stool of Kumasi Traditional Area whose occupant then was the sixth Appellant.

After considering several other cases the court of appeal per Francois JSC, Amuah and Adjabeng JJA held at page 435 of the report as follows:-

"It is clear from the above discussion, therefore that the ownership by a sub-stool of land attached to the stool is not a custom of land tenure peculiar to Ashanti. It is

customary law rule which has assumed a national character. And in my view, it must not be toyed with or else confusion and chaos not only in Ashanti, but also in many parts of the country will result. It is also clear that the customary practice of the head chief ratifying or confirming a grant by a sub-stool is because of the political jurisdiction which the head chief exercises in the area in order "to ensure uniformity of action in relation to stool lands, to establish good records in all dealings in stool lands and to prevent unnecessary litigation-----."

Thus we can safely conclude that from the excerpts of documentary evidence quoted supra, the evidence before this court and the authorities cited supra we are unable to accept the claim of Drobo that it holds the allodial title to Japekrom and its surrounding villages. As we pointed out earlier, the Jamanhene consistently has denied conferring the Omanhene status on Drobo or for that matter putting him in his stead as the allodial owner of lands he held before the demarcation of the boundary in 1896 including Japekrom and its villages. From the Gyeabour case supra, the custom pertaining in Ashanti and Other parts of the country including Brong as per the answer of the Berekumhene supra, the Paramount Stool do not have control of lands belonging to the sub-stool. Even before Japekrom attained independent status of Omanhene in 1981, it had asserted its right over the Japekrom lands when the Court House and Office buildings were being constructed by the British Government and more recently is Japekrom's residence when Drobo

without recourse to Japekrom attempted to clear a site for the new market. Drobo eventually had to approach Japekrom for its consent before the market was sited on Japekrom land.

Drobo before the committee headed by Commander Kyeremeh in 1973 had confirmed instances of customary performances by Japekrom at the sites when the Court House and Secondary School were being constructed by the pouring of libation.

Now coming back to Faago, it is clear that but for the fact that Drobo had the area demarcated into building plots ostensibly for grants to individuals at a consideration, which amounted to setting up of an adverse claim, Japekrom would not have had any cause to bring its counter-claim against Drobo in respect of its occupation of the area called New Drobo or Faago. This is because Japekrom concedes it granted about 5acre of its lands to the Drobohene for the construction of his palace when the need arose for him to have a more central place to stay for effective administration of the villages brought under him when the British Government raised Drobo to an Omanhene status. Japekrom claims the right given was a license and not because Drobo was the allodial owner of the land. In our view that elevation of Drobo to an Omanhene by the British could not under customary law give him a right of allodial ownership in the lands of the Stool of the sub-chiefs that were brought under him.

Looking at the totality of the evidence before us, and in the interest of justice we would have to interfere with the decision of the trial judge as the Co-Plaintiff could not in our view prove his right to the allodial title to Faago lands and to the lands claimed by him in this suit. At best Drobo's interest in the area it occupies at New Drobo is that of a licensee and as a licensee Drobo cannot dispose off or grant any land without the permission or consent of the licensor in this case, Japekrom.

Accordingly we will set aside the part of the judgment which declared the Co-Plaintiff owner of New Drobo Township including the disputed Plot No.42 Block C in view of the ample evidence that the land on which New Drobo is situated belong to Japekrom. We further set aside the declaration made in the disputed Plot No.42 Block C in favour of the Plaintiff.

However we would refuse to allow recovery of possession of New Drobo Township by the Co-Defendant in view of the long occupation of the Drobohene and citizens of Drobo based upon the license granted the Drobohene by the Co-Defendant. Accordingly we declare ownership of the land described in relief 23 (a) of the counterclaim in the Co-Defendant. We will however allow the alternative relief (b) and order that the Drobo Stool acknowledges ownership and title of the Co-Defendant to the lands listed under relief 23 (a) of the Counter-claim. We further order that the Drobo Stool and all its subject now in possession of any portion of the Mpuasu-Japekrom Stool lands seek grants of their respective lands within Mpuasu-Japekrom Traditional Area in their

possession from the Co-Defendant Stool. Since the fortunes of the Defendant is tied to the Co-Defendant, his counter-claim equally succeed. To this extent the appeal of the Co-Defendant is hereby allowed and the cross-appeal of the Plaintiff and Co-Plaintiff refused.

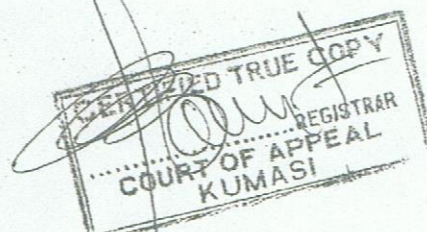
(SGD)

IRENE C DANQUAH
[JUSTICE OF APPEAL]
(SGD)

I agree

MARIAMA OWUSU (MS.)
(JUSTICE OF APPEAL)
PRESIDING

I also agree



(SGD)

JUSTICE FRANCIS KORBIEH
(JUSTICE OF APPEAL)

COUNSEL:

**1. MR. NKETIA APPRAKU - PLAINTIFF & CO-PLAINTIFF/RESPONDENT/
LED BY MR. W.Y. OPPONG CROSS-APPELLANT**

**OBENG-MANU JNR. WITH HIM - CO-DEFENDANT/APPELLANT/CROSS-
OHENEWAA BOATENG RESPONDENT**