IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: LOVELACE-JOHNSON (MS.) JSC (PRESIDING)

PROF. MENSA-BONSU (MRS.) JSC

KULENDI JSC

ACKAH-YENSU (MS.) JSC

ASIEDU JSC

CIVIL APPEAL

NO. J4/12/2023

19TH JULY, 2023

TOGBE LUGU AWADALI IV .... PLAINTIFF/APPELLANT/RESPONDENT

VS

1. **GLORYLAND ESTATE**
2. **TORGBUI ABORDOR VIII**

DEFENDANTS/RESONDENTS/APPELLANTS

JUDGMENT

ASIEDU JSC:-

Introduction:

My Lords, this appeal is against the judgment of the Court of Appeal, sitting at Ho, in the Volta Region, delivered on the 8th day of July 2022. In the said judgment, the Court of Appeal set aside the judgment of the High Court sitting at Sogakope, in the Volta Region which was entered, on the 19th day of February 2021, in favour of the 2nd Defendant/Respondent/Appellant (hereafter referred to as the Defendant/Appellant) against the Plaintiff/Appellant/Respondent (who will also be referred to as the Plaintiff/Respondent).

Facts:

The facts of this case are that the 2nd Defendant granted to the 1st Defendant, an Estate Developing Company, a parcel of land situate, lying and being at Dabala junction particularly, between Dabala junction and Dabala township directly opposite the Star Oil Filling Station at Dabala junction. The Plaintiff is the Head and Lawful Representative of the Anyigbe Clan of Agave and also the Head of the Awadali Family. The Plaintiff claims that the land in question forms part of the larger land belonging to the Anyigbe Clan and that he, being the Head and Lawful Representative of the Anyigbe Clan as well as the Head of the Awadali Family, is the only authority that can alienate parcels of land belonging to the Anyigbe Clan. The Plaintiff therefore, by an amended writ of summons, claims against the Defendants:

> *(1) Declaration of title to ALL THAT PARCEL OR PIECE of land situate, lying and being between Dabala Junction and Township and opposite the Star Oil Filling Station directly, which is the subject matter of this suit and which forms part of the larger tract of lands Declared by the Supreme Court of the Gold Coast Colony in the suit titled CHIEF DOH & CHIEF ADOGO VRS AFIANU, AGBLEDJORWU & AHIAKU as Anyigbe Clan lands, bounded on one side by Tsila Clan lands, on the second side by Sevie lands, on the*

third side by Avenor lands, on the fourth side Mafi lands, on the fifth side by Fieve lands and on the sixth side by the Volta River and also adjudged by the Tongu District Native Appeal Court, Sogakope on the 29th November, 1957 in the suit titled HONU ADIGBLI & ANOTHER VRS AVAFIA AVUSU II & ANOR as alienable by the Awadali Family of Agave of which the Plaintiff herein is the Head and Lawful Representative.

(2) An order for the recovery of possession of the land in dispute.

(3) General Damages for Trespass.

(4) An order of Perpetual Injunction restraining the 1st Defendants, herein by themselves, their and each of their servants, agents, assigns, workmen and privies from dealing with the land in dispute inclusive of all the land, adjudged by the Supreme Court of the Gold Coast Colony in the suit titled CHIEF DOH & ADOGO VRS AFIANU, AGBLEDJORWU & AHIAKU as belonging to the Anyigbe Clan and from disturbing the quite enjoyment of the same by the Plaintiff and the Awadali Family of Agave in any manner, whatsoever.

(5) An Order of Perpetual Injunction restraining the 2nd Defendants, herein by himself, his and each of their servants, agents, assigns, workmen and privies from alienating any part of the land, adjudged as being Anyigbe Clan lands by the Supreme Court of the Gold Coast Colony in the Suit titled CHIEF DOH & CHIEF ADOGO VRS AFIANU, AGBLEDJORWU & AHIAKU and as alienable exclusively by the Awadali Family of which the Plaintiff herein is the Head and Lawful Representative and from disturbing the quite enjoyment thereof of same by the Plaintiff and the Awadali Family of Agave.

(6) Cost.

In his statement of defence, the 2nd Defendant/Appellant included a counterclaim against the Plaintiff/Respondent for:

a) Declaration that the Plaintiff is not the head and lawful representative of the Anyigbe clan of Agave.

b) Declaration of title to ALL THAT PARCEL OR PIECE of land situate, lying and being between Dabala Junction to Agbakope which is the land in dispute, on the southern side of the main Dabala Junction to Agbakope road which forms part of the larger tract of land adjudged as Anyigbe Clan lands by the Supreme Court of the Gold Coast Colony in the suit titled Chief Doh and Chief Adogo vrs Afianu, Agbledjorwu and Ahiaku bounded on one side by Tsila clan lands, on the second side by Sevie lands, on the third side by Mafi lands, on the fifth side by Fieve lands and on the sixth side by the Volta River and also adjudged by the Tongu District Native Appeal Court, Sogakope on the 29th November, 1957 in the suit titled Honu Adigbli and Another versus Avafia Adusu.

c) Perpetual injunction restraining the Plaintiff family by himself, agents, assigns, privies, workmen and anybody claiming through them from dealing in any manner, whatsoever with the land the subject matter of this dispute.

d) Estoppel on grounds of Limitation Act, res judicata, laches and acquiescence.

e) Recovery of possession.

f) General Damages for trespass.

Judgment of the High Court:

After considering the evidence adduced by the parties, the trial High Court Judge dismissed the claims of the Plaintiff/Respondent and entered judgment for the Defendant/Appellant on the counterclaim filed by the 2nd Defendant. In particular, the learned trial Judge held that the Plaintiff had failed to prove that he is the Head of the

Anyigbe clan and also the Head of the Awadali Family. Consequently, the Court held that the Plaintiff does not have any right to alienate the land in question as it is part of the Anyigbe clan lands under the control of the 2nd Defendant. Aggrieved by the judgment therefore, the Plaintiff filed an Appeal to the Court of Appeal.

Judgment of the Court of Appeal:

After reviewing the evidence on record, the learned Justices of the Court of Appeal, made a determination to the effect that there is sufficient evidence on record in proof of the case put forth by the Plaintiff. In particular, the Court of Appeal held that there is evidence in proof of the Plaintiff's assertion that he is the Head of the Anyigbe clan of Agave and the Head of the Awadali Family. The Court also held that the Awadali Family headed by the Plaintiff is the sole authority that can alienate portions of the land of the Anyigbe clan. The Court of Appeal therefore set aside the judgment of the High Court and dismissed the counterclaim of the 2nd Defendant and entered judgment in favour of the Plaintiff herein on the 8th July 2022. It is against this judgment that the 2nd Defendant/Appellant had filed an appeal to this court.

Notice of Appeal:

In his Notice of Appeal, the 2nd Defendant/Appellant seeks relief in the nature of *"an order setting aside the judgment of the Court of Appeal, Ho and judgment entered in favour of the 2nd Defendant/Respondent/Appellant"*. The relief sought by the Appellant is premised on the following grounds of appeal stated in the Notice of Appeal:

> *"(a). That the judgment is against the weight of evidence.*
>
> *(b). That the Court of Appeal woefully failed to adequately consider the totality of the evidence of the 2nd Defendant/Respondent/Appellant thereby occasioning substantial miscarriage of justice.*

(c). That the Court of Appeal erred by holding that Plaintiff/Appellant/Respondent is the head of the Anyigbe clan and the head of the Awadali family with the power to alienate Anyigbe clan lands.

(d). That the Court of Appeal erred by holding that there is sufficient evidence to deny the 2nd Defendant/Respondent/Appellant his claim to the headship of the Anyigbe clan.

(e). That the Court of Appeal erred by holding that Plaintiff/Appellant/Respondent is the head of the Anyigbe clan (hlortator) which title the Supreme Court held in Republic vrs High Court, Denu, Ex parte Awadali IV [1993-1994] GLR 561 is a chieftaincy title.

(f). Additional grounds of appeal to be filed upon the receipt of the record of proceedings."

It must be placed on record that the 2nd Defendant/Appellant did not file any additional grounds of appeal as indicated in his Notice of Appeal. Hence, the determination of this appeal is based solely on the grounds of appeal stated in the Notice of Appeal.

Consideration of Appeal:

My Lords, grounds (b), (c) and (d) are interrelated and will therefore be subsumed and discussed under ground (a) which is that "*the judgment is against the weight of evidence*". This ground of appeal has been explained in various judicial decisions to imply an invitation to the Appellate Court such as this court to review the evidence given before the trial Court, both documentary and oral evidence alike, and come to a determination as to whether in the light of the evidence adduced at the trial, the court came to the correct conclusions taking into consideration the relevant laws applicable. Further, by this ground of appeal, the Appellant is understood to be saying that there are pieces of evidence on record which were ignored by the trial court and that if those evidence had been properly analysed and assessed critically, the trial court would have entered judgment in favour of the Appellant. In this wise, the authorities are to the effect that a duty is cast upon the Appellant to point out those pieces of evidence which should have

been applied in his favour but ignored by the trial court. Thus, in **Duodu vs Benewah [2012] 2 SCGLR 1306**, this court held that:

> "It is well settled that; an Appellate Court is entirely at liberty to review the evidence on record and find out whether the evidence supported the findings made by the trial court. The Appellate Court must not disturb the findings of the trial court if they are supported by the evidence…. The Supreme Court's duty as the final Appellate Court, is also to review the evidence on record to ascertain whether the findings were supported by the evidence on record, there being no concurrent findings of facts from the lower courts. And the duty of the Appellant is to demonstrate that the Court of Appeal was in error in reversing the findings of facts made by the trial judge."

In the instant matter, the Court of Appeal, departed from the findings of facts made by the trial High Court. Indeed, the Court of Appeal set aside the findings of facts made in favour of the Defendant/Appellant by the High Court and made findings of facts in favour of the Plaintiff/Respondent herein as a result of which judgment was entered in favour of the Plaintiff/Respondent. The position of the law has been succinctly expressed in **Koglex Ltd vs. Field [1999-2000] 2 GLR 437**, to the effect that:

> *"Where the first Appellate Court had confirmed the findings of the trial court, the second Appellate Court was not to interfere with the concurrent findings unless it was established with absolute clearness that some blunder or error resulting in a miscarriage of justice was apparent in the way in which the lower court dealt with the facts. Instances where such concurrent findings may be interfered with included where the findings of the trial court were clearly unsupported by the evidence on record or where the reasons in support of the findings were unsatisfactory; where there was improper application of a principle of evidence or where the trial court had failed to draw an irresistible conclusion from the evidence; where the findings are based on a wrong proposition of law and that if that*

proposition be corrected, the findings would disappear; and where the finding was inconsistent with crucial documentary evidence on record."

Thus, where, as in the instant matter, the two lower courts have made different findings of facts variously supporting the case of each of the parties, it becomes more incumbent upon the second Appellate Court such as this court to painstakingly scrutinise the evidence placed before the trial Judge to enable it determine which of the different findings made by the two lower courts bear support from the evidence on record. And, nothing stops the second Appellate Court from making its own independent findings as far as the evidence adduced will allow. See **Continental Plastics Engineering Co. Ltd. vs. IMC Industries-Technik GMBH [2009] SCGLR 298 at pages 307 to 308.**

Weight of Evidence:

Under this ground of appeal, it has been argued on behalf of the Defendant/Appellant that the 2nd Defendant is the divisional chief of the Anyigbe clan and therefore the head of the clan. Counsel referred to exhibit '3' where, according to the 2nd Defendant, his predecessor led the clan to redeem the Anyigbe clan's lands including the land in dispute which were pledged.

In response to the above submission, Counsel for the Plaintiff/Respondent submitted that *"having failed to appeal against the decision of the High Court, Sogakope, that 'he failed to prove that he is the Head of the Anyigbe clan', the 2nd Defendant/Appellant and his Counsel cannot by pass the Court of Appeal and now urge the Supreme Court to set aside the decision of the High Court, on this score."*

Indeed, the finding that the 2nd Defendant is not the head of the Anyigbe clan was made by the trial High Court Judge. At page 414 of the record of appeal, the learned trial Judge stated, among others, that *"the next major issue that falls due for resolution and which perhaps holds the key to how the final verdict should go is the issue: whether the Plaintiff or the 2nd*

Defendant is the head of the Anyigbe clan?" After analysing the evidence presented by the parties, the learned trial Judge stated in respect of the 2nd Defendant at page 419 of the record that:

> *"In similar vein, I find the proof offered by the 2nd Defendant in support of the claim to his headship insufficient, the exhibits 2 and 4 are issues bordering on the office of Divisional Chief which I hold is distinct from the Hlortator office even though as I conceded earlier on, the two positions could be occupied by one and the same person. But in the case of the Hlortator, there must be evidence of a duly nominated, appointed and enstooled as such in accordance with the customs of the Agave Traditional Area. The exhibition of other judgments which showed that Togbe Abordor represented the clan or acted in various capacities does not relate to the current 2nd Defendant but his predecessors. I am in the circumstances unable to declare him as the head of clan (Hlortator) of the Anyigbe clan upon the balance of probabilities as the law requires."*

After the delivery of the judgment by the learned trial Judge, the aggrieved Plaintiff filed an appeal against the judgment to the Court of Appeal, Ho on the 12th day of March 2021.See page 423 of the record. There is however no evidence on record that the Defendant/Appellant herein filed a Notice of Intention to seek variation of the judgment which is akin to a cross appeal before the Court of Appeal. Rule 15 of the Court of Appeal Rules, 1997, CI. 19 provides that:

> *"15. Notice for variation of judgment*
>
> *(1) It is not necessary for the respondent to give notice by way of cross-appeal, but if a respondent intends on the hearing of the appeal to contend that the decision of the Court below should be varied, the respondent shall give, within one month after service of the notice of appeal, written notice in the Form 7 set out in Part One of the Schedule of that intention to every party who may be affected by the contention.*

(2) The respondent shall clearly state in the written notice the grounds on which the respondent intends to rely and within the same period shall file with the Registrar of the Court below five copies of the notice, one of which shall be included in the record.

(3) Omission to give the written notice shall not affect the powers of the Court, but the Court may consider it a ground for adjournment of the appeal on the terms that, as regards costs or otherwise, the Court considers just."

Thus, notwithstanding the fact that judgment might have been entered in favour of a party, if findings of fact are made which he disagrees with or certain legal pronouncements are incorrectly made by the trial Judge, a party should not stay his hands from taking steps to have the wrong findings of fact or wrong application of the law corrected just because judgment had been entered in his favour. Rule 15 of the Court of Appeal Rules, as quoted above, provides a window of opportunity to have a wrong finding of fact or a wrong application of the law corrected on appeal by the successful party who has been served with a Notice of Appeal by filing a Notice for Variation of the Judgment so delivered. Whiles, a wrong application of the law may be corrected; without seeking a variation of a wrong findings of fact in particular before the Court of Appeal, a successful party at the trial Court will be precluded from contesting such findings of facts before the final Appellate Court, such as the Supreme Court if he had spurned the opportunity to challenge such unfavourable findings just because he had emerged victorious before the trial court. In the instant matter, it was opened to the 2nd Defendant/Appellant herein to contest, before the Court of Appeal, the finding of fact made by the trial Judge that the 2nd Defendant was not the head of the Anyigbe clan of Agave and that the evidence adduced by him could not prove his claim to the headship of the Anyigbe clan. This finding not being one of law but of fact, the 2nd Defendant cannot skip the Court of Appeal and appeal to this Court. Counsel's argument on this finding will therefore be rejected.

As stated above, it has been submitted that the 2nd Defendant is the divisional chief of the Anyigbe clan and also the head of the Anyigbe clan as well and that this claim is buttressed by the case of Fia Abordor III and Others vrs. Mankralo D. A. Fenuku, exhibit 3 herein. The said exhibit 3 was received in evidence and can be found at page 146 of the record. It is a case which was partly decided by the District Court at Sogakope on the 27th June 1975. One Fia Abordor III and other persons, successfully, sued Mankralo D. A. Fenuku for an order to redeem Anyigbe tribal land which had been pledged to Mankralo Fenuku. Exhibit 3 does not disclose that it was Fia Abordor who led the clan to redeem the land. Exhibit 3 does also not mention the names of the other persons who, together with Fia Abordor III, instituted that action. Exhibit 3 has got nothing to do with the 2nd Defendant herein and the capacity in which the action was instituted in exhibit 3 is not disclosed on the said exhibit. It is the view of this court that even if it is the 2nd Defendant himself who instituted the action in exhibit 3 to redeem the property of the clan which had been pledged, that act per se will not create any interest in the property in favour of the 2nd Defendant in his personal right and neither will it make the 2nd Defendant the head of the clan. Indeed, family property redeemed by a family member continues to bear the stamp of family property on it. Thus, in **Manukure & Another vs. Aniapam and Others [1976] GLR 339**, it was pointed out that:

> "Where a member of a family either redeemed pledged property from a pledgee of the family or bought family pledged property, he would be held to have redeemed the pledged property for the benefit of the family, unless he distinctly informed members of his family that he intended to redeem or purchase the property for his own individual or beneficial use."

The reason behind this principle is not difficult to find. Family property given in pledge can only be redeemed by members of the family. Therefore, if a member of the family redeems a property which had been pledged by the family, he is deemed to have done

his duty as a member of the family and the property thus recovered remains family property and does not lose its family character. The claim by the 2nd Defendant that he is the head of the Anyigbe clan is in no way buttressed by exhibit 3 contrary to the submission by his Counsel.

Counsel has, again, submitted on behalf of the Defendant/Appellant that all the cases tendered by the Plaintiff/Respondent as evidence of his claim to the headship of both the Awadali family and the Anyigbe clan do not support that claim and therefore the Court of Appeal erred in holding otherwise and declaring a right in the Plaintiff/Respondent to alienate the Anyigbe clan's lands.

The first case which was tendered by the Plaintiff/Respondent as exhibit 'A' is titled Togbe Lugu Awadali IV vs. Dr. Bernard Kwasi Glover & Another. This case can be found at pages 79 to 83 of the record of appeal. It is a case decided by the High Court, Ho on the 19th day of July 2005. In that case, the Plaintiff/Respondent's capacity to sue was challenged. The High Court found and held that, the Plaintiff/Respondent herein who was the Plaintiff in exhibit 'A', is the Head of the Anyigbe clan as well as the Head of the Awadali family and therefore the Plaintiff/Respondent had capacity to alienate Anyigbe lands. It has been submitted on behalf of the Defendant/Appellant herein that he was not a party to the judgment in exhibit 'A' and for that matter cannot be bound by that judgment. On this submission, the Court of Appeal expressed itself at page 635 to 636 as follows:

> *"It is not in doubt that there is this judgment which has made a finding that the Plaintiff is the head of the Anyigbe clan and that of the Awadali family. But should such findings in this judgment be binding on third parties who were not parties to this case and did not know of any such case? If it does not, does it mean anytime the capacity of a party, in our case the Plaintiff, is raised he gathers his witnesses all over again to prove his capacity? The answer to us should be in the affirmative if we are not to breach the natural justice*

rule. In this case where Dr. Glover is not in any way related to the Anyigbe clan and the Defendant knew nothing about that case, it is our view that as stated by the trial Judge, it was the duty of the Plaintiff to lead further evidence of his headship"

The response by the Plaintiff/Respondent to the above submission by Counsel for the Defendant/Appellant, which this court agrees with, is that, as shown above, the judgment in exhibit 'A' was discounted by the Court of Appeal and did not influence the Court of Appeal in any way in coming to its judgment which is under attack. It therefore does not lie with the Defendant/Appellant herein to make the argument concerning exhibit 'A' as if it was taken into consideration and relied upon by the first Appellate Court in arriving at its conclusion that the Plaintiff/Respondent is the head of both the Awadali family and the Anyigbe clan and therefore he has the sole right to alienate the Anyigbe clan's land.

It must be noted that in exhibit 'A', reference was made to a Power of Attorney executed by the Plaintiff herein, together with Torgbe Abordoe III, said to be the predecessor of the 2nd Defendant herein and Torgbe Aka Agroboni II. This Power of Attorney was not attached to exhibit 'A' but it was tendered by the 2nd Defendant as exhibit '6'. It can be found at page 152 of the record. This Power of Attorney, allegedly made on the 24th March 1982, conferred rights on one Torgbe Havi Amermonu II, regent of Kpekpo, to represent the donors in respect of the lands of the Anyigbe clan at Kpekpo, Tokplokpo and Kudzekorpe. For this reason, Counsel for the 2nd Defendant posed the questions that: "if Plaintiff is the head of Awadali family and the Anyigbe clan as he claims, why was Plaintiff giving Power of Attorney together with the heads of the two other gates of the clan? How come Plaintiff alone did not give the said Power of Attorney based on his claim that he is the head of the Awadali family and the head of the Anyigbe clan?" One fact which was lost on Counsel as indicated in the above questions is that the alienation of family or stool land by customary law, is not done by one person acting alone. In order for the alienation of family lands or stool lands to be valid, it ought to be done, in the case

of family land, by the head of family acting with the consent and concurrence of some of the principal members of the family and, in the case of the stool land, by the occupant of the stool acting with the consent and concurrence of some of the principal elders of the stool. Thus, in **Dotwaah and Another vs. Afriyie [1965] GLR 257 SC**, this court held that:

> "The head of family or the successor is an indispensable person in the alienation of family land; an alienation of family property by the head of family or a successor, purporting to be with the consent and concurrence of the principal members of the family, is voidable at the instance of the family, if they act timeously; but a conveyance made by any other member without the head of family or the successor, as the case may be, is void ab initio."

Again, in **Fori vs. Ayirebi and Others [1966] GLR 627 SC**, this court pointed out at page 639 that:

> "By customary law, alienation of stool land by deed is effected by the occupant of the stool executing the deed with the consent and concurrence of his elders and councilors; that requisite customary consent is evidenced by some of the principal elders and councilors signing as witnesses to the deed"

It was submitted by Counsel for the 2nd Defendant that the execution of exhibit '6' by the Plaintiff together with two other leaders of the Afegame and Agbofeme gates of the Anyigbe clan contradicts the Plaintiff's assertion that the Anyigbe clan's land are alienable exclusively by the Awadali family. It must be noted however that what triggered the instant suit by the Plaintiff is the alienation of the land in dispute by the 2nd Defendant without reference to the Plaintiff, who is the head of the Awadali family and the head of the Anyigbe clan. It is akin to alienation of stool or family land by a principal member of the stool or family without reference to the head of family or the occupant of

the stool. Certainly, the alienation of such lands must be made by the head or stool occupant with the consent of some of the principal elders or members.

It implies therefore that, since the Power of Attorney under discussion was giving authority to Torgbe Havi Amermonu II to deal with the Anyigbe lands, there was nothing wrong with the Plaintiff acting together with the principal members of the Anyigbe clan in executing the said Power of Attorney. We wish to state also that the fact that the Plaintiff executed the Power of Attorney together with some of the principal members of the Anyigbe clan does not imply that the Plaintiff is not the head of the Awadali family and the head of the Anyigbe clan.

In proof of his claim to the headship of the Awadali family and the Anyigbe clan in general, the Plaintiff/Respondent herein also tendered exhibit 'B' which can be found at page 84 and 85 of the record. This exhibit is the judgment of the Tongu District Native Appeal Court, Sogakope. The parties were Honu Adigbli & Avafia Abordor vrs Avafia Adusu II & Abadadzie Aguze. It was delivered on the 29th November 1957. The judgment was delivered from an appeal against the judgment of the East Tongu Native Court 'B', Dabala, dated the 22nd day of December 1956. The plaintiffs/appellants and the defendants/respondents in exhibit 'B' were found by the Native Appeal Court to be *"members of the Anyigbe tribe of Agave and the land in dispute belongs to the Anyigbe tribe."* The court in exhibit 'B' *"concluded that Avadali family are the head of the whole of the Anyigbe tribal land and therefore the power to alienate rests in them (Avadali family)".*

Counsel submitted that the judgment in exhibit 'B' does not support the claim of the Plaintiff to the headship of the Awadali family and the Anyigbe clan. One thing is however clear from the judgment in exhibit 'B' and that is that the Awadali family was declared to be the head of the whole Anyigbe clan and that the power to alienate the Anyigbe clan's land rests in the Awadali family. In this respect the Court of Appeal held in its judgment at page 636 of the record that:

"We have stated that the Honu Adigbli case was very definitive in its finding that the Avadali (Awadali) family is the head of the Anyigbe clan lands and the power to alienate also vests in them. This suit was not between an Anyigbe clan member and a non-member for us to understand the usage of the Awadali as referring to the whole Anyigbe clan (the trial judge calls it generic) but suits were within the Anyigbe clan members. The Honu judgment specifying Awadali family as head we understood the reference to the Awadali family as it exists currently with the other families within the Afegame and Agbofeme. Since, to our mind there is no convincing evidence that questions the Plaintiff's headship of the Awadali family and the judgments he tendered relate to his ancestors who he succeeded, we find on the balance of probabilities that he is the head of the Anyigbe clan and head of his Awadali family with the power to alienate the Anyigbe clan lands. In coming to this conclusion, we did not lose sight of the contention of the 2nd Defendant that the Plaintiff is not from the Awadali family but relates only maternally. We wondered the value of this contention by the 2nd Defendant at this time. ***We were wondering because there is no doubt that as far back as 1983, the Plaintiff was recognised by the Agave Traditional Area Chief List. He is recorded there as Togbe Lugu Awadali IV even though as a sub-divisional chief and Togbe Abordor VI as Divisional. Is it now that the 2nd Defendant will want to question the Plaintiff as being an Awadali? In fact, in exhibit 'A' the Plaintiff is said to have been installed in 1978.The Plaintiff is Togbe Lugu Awadali IV and until legal processes are instituted to remove him, he continues to be so." (****Emphasis is ours****).***

The above finding made by the Court of Appeal, is deeply rooted in the evidence on record and we have no cogent reason, as a second Appellate Court, to upset it. It must however be stated that it is the judgment in exhibit 'C' that was appealed which culminated in the judgment in exhibit 'B'. Indeed, in exhibit 'C', the trial Native Court found and relied on the evidence given by one Avafia Lugu, the Prominent figure in

Anyigbe tribe then, that the Plaintiffs therein who are the ancestors of the 2nd Defendant in the instant action were "*not the main bodies who faces action involving the Anyigbe tribal land during the time of the land litigation other than he Lugu Ahiaku*". This was a direct indictment on the capacity of the Plaintiffs in exhibit 'C' to institute the action on behalf of the Anyigbe clan. Counsel for the Defendant/Appellant had tried to water down this finding by arguing that in exhibit 'D' the action was brought against the heads of the three gates of the Anyigbe clan.

However, the difference is noticeable; in that, whereas in exhibit 'C' the action therein was filed by the Plaintiffs whose capacity was put in doubt, in exhibit 'D', the suit was brought against the Defendants therein. Hence, whereas a Defendant cannot choose his Plaintiffs, that is not the case when a person comes to sue. It is a Plaintiff who chooses his defendants. Hence, Counsel's argument that in exhibit 'D' decided in 1910, Ahiaku, who the Plaintiff in the instant action claims to be his ancestor was not sued as the head of the Anyigbe clan but was made the 3rd Defendant therein does not attract this court. Ahiaku, as a defendant in exhibit 'D' neither had the right to decide the position in which the plaintiffs therein should place him on their writ of summons nor had he the right to decide how he should be described on the plaintiffs' writ of summons.

The next judgment which was tendered by the Plaintiff/Respondent herein is the judgment in exhibit 'D'. In respect of this judgment, Counsel submitted on behalf of the 2nd Defendant/Appellant that *"the case of Chief Doh and Chief Adogo vs. Afianu, Agbledzowu and Ahiaku does not support Plaintiff's claim as the head and lawful representative of the Awadali family and the Anyigbe clan with authority to alienate the lands of the clan."* The evidence on record shows that in exhibit 'D', one Ahiaku was sued as the 3rd defendant. Under cross examination, the 2nd Defendant in the instant suit admitted that the said Ahiaku, 3rd defendant in the suit was a chief with the stool name Lugu Ahiaku and that he was the predecessor of the Plaintiff herein. In exhibit 'E', tendered by the Plaintiff herein, which

is a judgment bearing the title Chief Sakpaku & Others vs. Chief Lugu Ahiaku which can be found at page 127 to 130 of the record, the defendant therein Chief Lugu Ahiaku, who has been admitted by the 2nd Defendant in the instant matter to be the predecessor of the Plaintiff in this case, called one Abordor to testify on his behalf as a witness. The said witness Abordor gave the following evidence to the court which can be found at page 128 of the record:

> *"I am the Asafohene of Lakpo. I have been Asafohene for 10 years. I belong to the Anyigbe tribe. My village is situate on Awadali's land. I succeeded Gomado as Asafohene. He was my paternal uncle. My ancestor Efie was the first man to settle on the land. He obtained the land from Lugu I. Efie lived at Adutor. He was deputed by Lugu I to go and live at Lakpo where the fetish La was. The fetish belongs to the Anyigbe tribe. There is a creek called Kla. There are three villages at Lakpo. The fetish is still there. My father was born there. He was called Agbitor. I pay tolls to Lugu. I pay tolls in connection with the Kla creek. There are Agor trees on the land. I pay tolls for felling Agor trees … I collect the tolls and pay to Lugu. I saw the plaintiff for the first time at Accra. Plaintiffs have never come to demand tolls from me. The people who live in Lakpo village are Tsilao and Fieve tribe. I have never seen Avenor people on the land. I have never seen any farm belonging to the plaintiffs on the land. I know Gobenu land. My villages are not on Gobenu land. I know Kumehor. I know him at Gobenu. He had cattle. I have never seen his cattle grazing at Lakpo."*

The witness, whose evidence has been quoted above is admitted by the 2nd Defendant herein to be his grandfather. It is clear from the evidence quoted above that Abordor, the grandfather of the 2nd Defendant acknowledged that Lugu Ahiaku is the head of Awadali family as well as the Anyigbe clan. The payment of tolls to Lugu is evidence not only of his headship over the Awadali family but also over the Anyigbe clan as a whole. It was this same Lugu Ahiaku who was the head of the Awadali family mentioned in the

judgment of Tongu District Native Appeal Court, Sogakope dated 29th November 1957 in the suit titled: Honu Adigbli & Avafia Abordor vrs Avafia Adusu II & Abadadzie Aguze wherein it was ***"… concluded that Avadali family are the head of the whole of the Anyigbe tribal land and therefore the power to alienate rests in them (Avadali family)".***

We therefore agree with counsel for the Plaintiff/Respondent when he submitted that *"undoubtedly, Lugu Ahiaku was the head of the Awadali family and also the head of the Anyigbe clan and so it invariably confirms that the Plaintiff/Appellant/Respondent who is his successor is also the head of the Awadali family as well as the head of the Anyigbe clan."*

In respect of ground (d), the fourth ground of appeal, counsel for the 2nd Defendant/Appellant states that *"the Court of Appeal erred by holding that there is sufficient evidence to deny the 2nd Defendant/Respondent/Appellant his claim to the headship of the Anyigbe clan."* Counsel submitted, among others, that *"while Plaintiff's exhibits A, B, C, D and E failed to establish Plaintiff's claim to the headship of the Awadali family and the Anyigbe clan, the 2nd Defendant's Exhibits 1, 2, 3, 4, 5, 7 and 7A seamlessly established that the 2nd Defendant is the head and lawful representative of the Awadali family and for that matter the Anyigbe clan"*. Our analysis of the evidence adduced before the trial Judge rather confirms the findings made by the Court of Appeal to the effect that it is rather the Plaintiff who is the head of the Awadali family and also the head of the Anyigbe clan.

It ought to be pointed out that the finding that the 2nd Defendant is not the head of the Anyigbe clan was positively made by the trial Court. At page 421 of the record, the learned trial Judge concluded in respect of the 2nd Defendant's claim to the headship of the Anyigbe clan that: *"the 2nd Defendant also failed to prove that he is the head of the Anyigbe clan or Hlortator which in itself is a cause or matter affecting chieftaincy…"*. This finding of fact was accepted by the 2nd Defendant just because judgment was entered in his favour by the trial Judge and therefore when the Plaintiff appealed to the Court of Appeal against the judgment of the trial Judge, the 2nd Defendant/Appellant herein did not find it fit to

file a Notice of Variation against this finding made by the trial Judge. We think that being a finding of fact to which the 2nd Defendant do not agree, he should have taken the opportunity to appeal against same before the Court of Appeal. In respect of this same headship of the 2nd Defendant to the Anyigbe clan, the Court of Appeal found that:

> *"There is evidence also that his father was not the head of the Anyigbe clan. This evidence came from the 2nd Defendant himself. He was cross examined on the exhibit 2 tendered by him and it came out that in this exhibit, 2nd Defendant's father was described simply as divisional chief and Honu Adigbli was described simply as the head of the Anyigbe clan. By this exhibit therefore the 2nd defendant cannot claim headship of the Anyigbe clan since his father who he succeeded was not the head. There is again uncontested evidence from the Plaintiff that in a suit filed by the father of the 2nd Defendant and one Akorli Afokpa against the Plaintiff in the Denu High Court, the Defendant's father described himself as a principal member of the Anyigbe clan and not as the head of the clan. The suit is Republic vs High Court, Denu: Ex parte Awadali IV [1993-1994] 1 GLR 561. How then can the 2nd Defendant who succeeded his father now claim to be the head of the Anyigbe clan when his father was not? In that suit the Plaintiffs were seeking a court order to restrain the Plaintiff in the instant case from holding himself as the head of the Anyigbe clan and dealing in the clan's lands in that capacity."*

The above finding by the Court of Appeal is amply supported by the evidence adduced before the trial Judge. This court is therefore not persuaded by the arguments made in attack of the judgment of the Court of Appeal on the findings made in respect of the headship of the Plaintiff/Respondent herein to both the Awadali family and the Anyigbe clan. The Defendant/Appellant's appeal on these grounds are therefore dismissed.

Amendment of writ and statement of claim:

Next, Counsel for the Defendant/Appellant has set out and argued, beginning from page 49 to 53 of his Statement of Case filed on the 28th November 2022, a ground of appeal which he has captioned as ***"amendment of writ of summons and statement of claim without leave of the court"***. This ground of appeal, we are told, is an offshoot of the first three grounds of appeal set down and argued together by Counsel as appears on page 23 of the Statement of Case, where Counsel stated that "respectfully, the first, second and third grounds of appeal will be argued together" and at page 26 of the Statement of Case, Counsel stated that:

"respectfully, the arguments in support of the three grounds of appeal will be under the following headings:

> *(i). Whether cases tendered by the Plaintiff viz Togbe Lugu Awadali IV vs. Dr. Bernard Kwasi Glover & Another, Honu Adigbli & Avafia Abordor vrs Avafia Adusu II & Abadadzie Aguze, Chief Doh and Chief Adogo vs. Afianu, Agbledzowu & Ahiaku and, Chief Sakpaku & Others vs. Chief Lugu Ahiaku established that Plaintiff's ancestors were heads of the Anyigbe clan and the Awadali family and that Plaintiff succeeded his ancestors as head of the Anyigbe clan and the Awadali family with the power to alienate the Anyigbe clan lands.*
>
> *(ii) Amendment of writ of summons and statement of claim without leave of the court*
>
> *(iii) Filing of invalid and defective Witness Statement".*

A ground of appeal in the nature of ***"amendment of writ of summons and statement of claim without leave of the court"***, has nothing to do with facts but everything to do with law. Therefore, neither can it be subsumed under the omnibus ground of appeal that the judgment is against the weight of evidence, which is the first ground of appeal on the Notice of Appeal nor can it be brought under any of the second and third grounds of appeal as stated on the Notice of Appeal. Being legal in nature, it should have been set

out independently and distinctly as a ground of appeal on its own. It cannot ride at the back of any of the grounds of appeal to attain success. This ground of appeal runs contrary to the provisions in rule 6 sub-rules (4)(5) and (6) of the Supreme Court Rules, 1996, CI.16 which state that:

> (4) **The grounds of appeal shall set out concisely and under distinct heads the grounds on which the appellant intends to rely at the hearing of the appeal**, without an argument or a 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) A ground of appeal which is vague or general in terms or does not disclose a reasonable ground of appeal is not permitted, except the general ground that the judgment is against the weight of evidence **and a ground of appeal or a part of it which is not permitted under this rule, may be struck out by the Court on its own motion or on an application by the respondent.**
>
> (6) **The appellant shall not, without the leave of the Court, argue or be heard in support of a ground of appeal that is not specified as a ground of appeal in the notice of appeal.**

Thus, we hold, once again, that a ground of appeal, such as the ground that the: *"amendment of writ of summons and statement of claim without leave of the court"* which seeks to complain, in effect, that a party had amended his writ of summons and statement of claim without the leave of the court is purely legal in nature and does not rest on the facts adduced before the trial Judge; such a ground, shall be set out in the Notice of Appeal as a distinct and independent ground of appeal and it cannot be legally brought under the omnibus ground that the judgment is against the weight of evidence. Consequently, we proceed to strike out the instant ground of appeal as it offends rule 6 sub-rules (4)(5) and

(6) of the Supreme Court Rules, 1996, CI.16. See **Atuguba & Associates vs. Scipion Capital (UK) Ltd & Holman Fenwick Willan LLP [2018-2019] 1 GLR 1**.

It is on record that the Plaintiff's writ of summons and the statement of claim was issued on the 6th day of June 2016. See page 1 of the record of appeal. It is also on record that on the 7th July 2016, Torgbui Abordor VIII filed a motion together with a supporting affidavit for an order to join him to the suit as 2nd Defendant. See pages 9 to 11. On the 15th July 2016, the High Court, sitting at Sogakope granted the said application in the following terms:

> *"Application is granted as prayed. Applicant to cause the order to be noted in the cause book. Plaintiff is ordered to serve the writ of summons and statement of claim and serve the applicant (sic) within 14 days from today. Thereafter the suit to take its normal course."*

See pages 12 and 13 of the record of appeal.

Before this application was filed and the order for joinder made, the 1st Defendant, Gloryland Estates, had purportedly filed a process it called '*Notice of Entry of Appearance*' and a '*Statement of Defence*' as appear on pages 6 and 7 of the record. The said Notice of Entry of Appearance and Statement of Defence filed will be a subject of discussion hereinafter. The Notice of Entry of Appearance was filed on the 15th June 2016 whiles the Statement of Defence was also filed on the 29th June 2016. No Reply was filed by the Plaintiff/Respondent herein to the Statement of Defence filed by the 1st Defendant.

Indeed, in the order for joinder, the Plaintiff/Respondent was directed to serve the writ of summons and the statement of claim filed, on the 2nd Defendant within 14 days. However, it is on record that the Plaintiff proceeded to file an amended writ of summons and an amended statement of claim in which various substantive amendments had been made. These amendments were done without the Plaintiff first seeking the leave of the court.

Counsel for the 2nd Defendant had, in his Statement of Case, raised various questions about the amendment effected by the Plaintiff herein. He submits that *"the order for joinder does not entitle the Plaintiff to amend the writ of summons by effecting amendments in the amended writ of summons pursuant to an order for joinder."* According to Counsel, the only thing that should appear on the writ and statement of claim is the name of the 2nd Defendant who had been joined. Counsel submits that *'by amending the writ of summons and adding other reliefs instead of adding just the name of the 2nd Defendant makes the amended writ of summons incurably bad'*. Counsel also submits that by introducing new matters instead of repeating the averments in the original statement of claim and adding just the name of the 2nd Defendant, makes the amended statement of claim incurably bad. Finally, Counsel says that the *'Plaintiff cannot rely on a defective amended writ of summons and a defective amended statement of claim*".

A party such as the 2nd Defendant/Appellant herein who has been served with an irregular process during proceedings owes it as a duty not only to himself but to the court also to take the necessary legal steps to have the said process set aside, else, he would be bound if he acted on it. Thus, Order 81 rule 2(1) of the High Court (Civil Procedure) Rules, 2004, CI.47 (as amended) provides that:

> *"2. Setting aside for irregularity*
>
> *(1) An application may be made by motion to set aside for irregularity any proceedings, any step taken in the proceedings or any document, judgment or order in it, and the grounds of it shall be stated in the notice of the application."*

In the instant matter, once the amended writ of summons and its accompanying amended statement of defence was served on the 2nd Defendant, he had a duty to file a motion on notice to have the said offending process set aside for irregularity under Order 81 rule 2(1) of CI. 47 for the reason that the amendment was made without leave of the court.

This Court will reject the 2nd Defendant's contention, through his counsel, that the amended writ of summons and its amended statement of claim are incurably bad. Under Order 81 rule 1(1) such offending processes are ***"treated as an irregularity and shall not nullify the proceedings or any document, judgment or order in it."***

Order 81 rule 2(2) of the Rules of the High Court is clear that:

> *"No application to set aside any proceeding for irregularity shall be allowed unless it is made within a reasonable time and the party applying has not taken any further steps after knowledge of the irregularity."*

After receiving service of the writ and statement of claim amended without leave of the court, the 2nd Defendant went ahead to file his statement of defence and participated in the trial from that stage till judgment was given in his favour by the trial High Court Judge. Having taken these steps through out the trial, the 2nd Defendant had waived his right to complain about the irregular process. As observed in **Republic vs. Adamah-Thompson & Others; Ex parte Ahinakwa II (substituted by) Ayikai (No.2) [2013-2014] 2 SCGLR 1396** that:

> *"Even though the legal points raised by counsel for the defendants/appellants in support of his contention that contempt of court proceedings against the defendants/appellants had been improperly commenced by the respondent, appeared impressive, logical and sound, they were untenable and would therefore be rejected, having regard to the provisions in Order 81 of the High Court (Civil Procedure) Rules, 2004, CI. 47. Under rule 1(1) of Order 81, failure to comply with the rule would not nullify proceedings. Under rule 2(1), a party affected by any proceeding considered by him as irregular, was enjoined to apply by a motion to have the said proceeding set aside. However, he was denied such right by rule 2(2) if he had taken any fresh step in the matter. Fresh step would include any step taken to comply with the terms of the alleged irregularity."*

Finally, as observed by Atuguba JSC in **Mensah Larkai vs Ayitey Tetteh (substituted by) Tetteh Quarcoo; Mensah Larkai vs Tetteh Quarcoo & Ayaa Cudjoe (Consolidated) [2009] SCGLR 621** at 632 to 633:

> *"It is true that the formal motion for substitution was never moved or granted. Nonetheless, it is very clear from the record of appeal that the suit was tried throughout as a consolidated suit with Nii Paul Ayitey Tetteh as substituted by Arthur Hammond Tetteh Quarcoo, without objection… In those circumstances, the said substitution ought to be deemed as having been effected, unhampered by any formalistic procedure otherwise the rules will become masters rather than servants."*

Further, in **Major Mac Dorbi & Another vs. Richard Adom Frimpong & 2 Others, Civil Appeal No. J4/45/2011 Dated 30th January 2013**, this Court speaking through Atuguba JSC stated that:

> "From the record of appeal and the Court of Appeal held it to be fundamental, W.O. Saviour did not enter appearance let alone file a defence. He however participated to the hilt in the proceedings and emerged from them as a victorious counter claimant. As to this we wish to point out that the battle for substantial, as opposed to technical and fastidious justice, has been irreversibly won. At the time of the institution of the consolidated suits herein, as noted by Kanyoke J.A. in the Court of Appeal, the new High Court (Civil Procedure) Rules 2004, C.I. 47 had come into force. The comprehensive terms of Order 81 rule 1(1) and 2(2) have indubitably given statutory stamp to the ancient maxim *cuilibet licet renunciare juri pro se introducto*, i.e. a person can waive what the law has ordained for his own advantage. In Obeng v. Boateng (1966) GLR 689 Amissah J.A. did not invalidate the participation in the proceedings of certain third parties who had filed no appearance thereto."

For the above reasons therefore the ground of appeal, that *"amendment of writ of summons and statement of claim without leave of the court"*, even if valid, is unattractive to us. It is therefore dismissed.

Next, counsel for the 2nd Defendant/Appellant argued a ground of appeal captioned "filing of invalid and defective witness statement". Under this so-called ground of appeal, counsel argues that the lawyer for the Plaintiff signed the Witness Statement filed by the Plaintiff and that that constitutes a violation of Order 38 rule 1 of CI.87. Counsel says that when this fact was brought to the attention of the Plaintiff's lawyer, he only caused the last page to be re-filed after the Plaintiff had signed it. Counsel argues that it is the whole of the Witness Statement filed on the 4th July 2018 that is defective. Counsel concludes that the Plaintiff had no Witness Statement before the Court.

We hold that the argument about the non-signing of the Witness Statement, suffers from the same flaw as the argument on the filing of the amended writ of summons and amended statement of defence without the leave of the court. The said Witness Statement was served on the 2nd Defendant herein, no formal objection was raised against the said Witness Statement by the filing of an application under Order 81 rule 2(1) of CI. 47 to have it set aside. On the contrary, counsel received the Witness Statement and took further steps by cross examining on it among others. It is therefore too late in the day for Counsel to complain about any defect in the Witness Statement. If any such defect exists at all, it is a mere irregularity under Order 81 rule 1 (1) of CI. 47 which does not nullify the proceedings and to the extent that the 2nd Defendant and his Counsel had taken various steps after being served with the Witness Statement rule 2(2) of Order 81 debars them from complaining.

Besides, as stated in relation to the ground of appeal on the amended writ and statement of claim without the leave of the court, this ground of appeal cannot be accepted for the very fact that it was not set out as a separate ground of appeal considering the fact that it

raises a legal issue and hence, cannot be subsumed under the omnibus ground of appeal that the judgment is against the weight of evidence as counsel had sought to do. This so-called ground of appeal therefore runs contrary to rule 6 sub-rules (4)(5)(6) of the Supreme Court Rules, 1996, CI.16. Consequently, this ground of appeal cannot be entertained by the court and it is hereby struck out.

In the final ground of appeal, the 2nd Defendant says that *"the Court of Appeal erred by holding that Plaintiff/Appellant/Respondent is the head of the Anyigbe clan (hlortator) which title the Supreme Court held in* ***Republic vrs High Court, Denu, Ex parte Awadali IV [1993-1994] GLR 561*** *is a chieftaincy title".* Under this ground of appeal, Counsel argued that the issue of whether or not the Plaintiff is the head of the Anyigbe clan has been ruled to be a cause or matter affecting chieftaincy and that the Court of Appeal lacked jurisdiction to determine that matter.

Before the High Court, the Plaintiff/Respondent herein did not indorse on his amended writ of summons and amended statement of claim any relief in the nature of a declaration that he is the head (hlortator) of the Anyigbe clan. The reliefs indorsed on the writ was for a declaration of title to land, recovery of possession, general damages for trespass and an order of perpetual injunction. On the contrary, it was the 2nd Defendant/Appellant herein who indorsed on his counterclaim reliefs for declaration that the Plaintiff is not the head and lawful representative of the Anyigbe clan of Agave, declaration of title to land, perpetual injunction, recovery of possession and general damages for trespass.

The trial High Court, correctly in our view, refused to consider the claim that the Plaintiff is not the Head (Hlortator) of the Anyigbe clan in line with the decision of this court in the Republic vrs High Court, Denu, Ex parte Awadali IV (supra). At page 410 of the record, the learned trial Judge observed as follows:

"Now, before proceeding to analyse the various claims, it is my view that even the first issue of 'whether or not the Plaintiff or the 2nd Defendant is the head and lawful representative of the Awadali family does not arise and (it is) irrelevant towards the resolution of this case. This is so because from the writ of summons taken, the Plaintiff did not indicate that he was suing as a representative of the Awadali family but he issued the writ in the following terms:

'Togbe Lugu Awadali IV, Head and Lawful Representative of Anyigbe clan of Agave …'"

In the judgment which is the subject matter of this appeal, the Court of Appeal only made pronouncement on what already exists. The Court of Appeal did not make a determination as to whether or not the Plaintiff herein was the Hlortator of the Anyigbe clan. At page 637 of the record, the Court of Appeal observed, in connection with the case of Republic vrs High Court, Denu, Ex parte Awadali IV (supra) that:

"In that suit, the Plaintiffs were seeking a court order to restrain the Plaintiff, in our instant case, from holding himself as the head of the Anyigbe clan and dealing in the clan lands in that capacity. So, at this point in time, the status quo was that Plaintiff was acting as the head of the clan and dealing with the clan lands. In the circumstances, do we deny him the headship and leave the clan without any head? We do not think so."

The effect of the above holding by the Court of Appeal is that it refused to grant the first relief indorsed on the 2nd Defendant's counterclaim and rather decided to allow the status quo remain as it was prior to the filing of the writ of summons and the counterclaim in the instant action. This ground of appeal is therefore without any merit. The evidence on record, supports the stance taken by the Court of Appeal. A critical analysis of the case of Republic vrs High Court, Denu, Ex parte Awadali IV (supra) reveals that, the Plaintiff in the instant suit was already the head of the Anyigbe clan of Agave. However, the Respondents in that action, enstooled one Kuma Akorli Aforkpa as the head or hlortator

of the Anyigbe clan. The within-named Plaintiff, who was the Applicant in that case, therefore summoned the Respondents therein before the Agave Traditional Council. An arbitration was held, after which the Agave Traditional Council found, as stated at page 569 of the report as follows:

> *"(1) That the introduction and acceptance of Kuma Akorli Aforkpa as the head (tator or hlortator) of the Anyigbe clan is null and void since Togbe Adzove VI has no legal or customary right to accept and give recognition to a newly enstooled chief of this arbitration panel.*
>
> *(2) That the purported enstoolment of Kuma Akorli Aforkpa was null and void ab initio* ***since there is already an accredited and well-recognised name, Avadali IV of the Anyigbe clan of Agave, in the person of Togbe Lugu Avadali IV.***
>
> *(3) That in the absence of the Awormefia, the proper body to accept and give recognition to a newly enstooled chief should be Togbe VI together with the chiefs of this arbitration panel.*
>
> *(4) That a copy of this judgment is ordered to be served on Kuma Akorli Aforkpa for him to comply by not pretending to be a chief to avoid embarrassment to himself."*

It was after the above finding by the Agave Traditional Council that the Respondents, being aggrieved, took out a writ of summons before the High Court, Denu, for the reliefs stated at pages 564 to 565 of the record, as follows:

> *"(a) A declaration that the first plaintiff is the present head/hlortator of the whole Anyigbe clan or family comprising Anyigbe Afegame, Anyigbe Afevime and Agbofeme of Anyigbe clan and is entitled to manage all the lands and other properties of the Anyigbe clan family.*
>
> *(b) A perpetual prohibitive injunction restraining the defendant from posing or claiming to be the head/hlortator of the Anyigbe clan and dealing with the properties of the Anyigbe clan in the said false capacity.*

(c) General damages suffered by the plaintiffs as a result of the false claims of the defendant as head/hlortator of the whole Anyigbe clan."

1st Defendant's Notice of Appearance:

Before concluding on this matter, we have observed an anomaly in the proceedings which deserves our comment. It can be found at page 6 of the record. We noticed that when the 1st Defendant herein was served with the writ of summons, one Prince Kofi Jason, who described himself as the General Manager of the 1st Defendant filed what he termed as *"Notice of Entry of Appearance".* This process was signed by the said Prince Kofi Jason, in his capacity as the General Manger, who went ahead to prepare and file a Statement of Defence on behalf of the 1st Defendant. See page 7 to 8 of the record. We gather from the affidavit filed in support of a motion on notice which can be found at pages 45 to 47 of the record that the 1st Defendant is a limited liability company whose full name is "Gloryland Estates and Reality Limited." Being a limited liability company therefore, the General Manager has no right to file an Appearance and a Statement of Defence on its behalf. A limited liability company can prosecute a civil action only by a lawyer as stated in Order 4 rule 1(2) of the High Court (Civil Procedure) Rules, 2004, CI.47 that:

"A body corporate shall not begin or carry on proceedings except by a lawyer, unless permitted to do so by an express provision of any enactment."

We find no evidence on record to the effect that Counsel for the Plaintiff took steps to have the said Notice of Appearance and Statement of Defence filed on behalf of the 1st Defendant set aside; and the matter was prosecuted to the end on the strength of the said Notice of Appearance. It is on record however that Counsel for the Defendants, later, filed a Notice of Appointment of Lawyer on behalf of the 1st and 2nd Defendants who conducted the prosecution on behalf of all the Defendants. See page 21 of the record.

As already pointed out, it is not the Court of Appeal in the instant matter that determined that the Plaintiff/Respondent herein is the head of the Anyigbe clan of Agave. The headship of the Plaintiff/Respondent already exist before the instant action was filed. The Court of Appeal only acknowledged a fact and nothing more. Indeed, the 2nd Defendant herein is estopped from endorsing the first relief on his counterclaim since that same relief was the subject of determination in the Ex parte Awadali IV and which this Court determined to be a cause or matter affecting chieftaincy.

Conclusion:

We are satisfied, that the judgment of the Court of Appeal, is supported by the evidence adduced before the trial High Court. In view of the fact that the 2nd Defendant/Appellant is a member of the Anyigbe clan, we set aside the award of nominal damages of GH₵20,000.00 against the 2nd Defendant. The appeal is therefore dismissed. The judgment of the Court of Appeal delivered on the 8th day of July 2022 is hereby affirmed subject to the variation in the award of nominal damages against the 2nd Defendant.

S. K. A. ASIEDU

(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)

(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)

(JUSTICE OF THE SUPREME COURT)

E. YONNY KULENDI

(JUSTICE OF THE SUPREME COURT)

B. F. ACKAH-YENSU (MS.)

(JUSTICE OF THE SUPREME COURT)

COUNSEL

ANTHONY DESEWU ESQ. FOR THE PLAINTIFF/APPELLANT/RESPONDENT.

DR. JOE ATTIPOE ESQ. FOR THE DEFENDANTS/RESPONDENTS/APPELLANTS.