

REPUBLIC OF GHANA

**VOLTA REGIONAL
HOUSE OF CHIEFS**



7th April, 2025

SUIT NO. VRP.6/2017

BETWEEN;

**1. GABRIEL AKOTO
2. CEPHAS AKOTO**

PETITIONERS/RESPONDENTS

VRS: -

**1. ENOS ADIKO
2. TOGBE AMEWORKUNU DANKU
3. ROLAND ADIKO
4. MANKRADO TOMAGBETANU
5. TOGBE KOMLA ABREDU
6. AMETSITSI PHILIP KOFI GAMESE**

RESPONDENTS/APPELLANTS

RE: "THE ROTATIONAL SYSTEM OF TANYIGBE PARAMOUNTCY"

*In case of reply the
number and date of this
letter should be quoted
Tel No. 0243864547/0265925607*

Email.vrhc11@yahoo.com

GPSA: VH - 0020 -4310

My Ref. No. VRP.6/2017/2

Your Ref. No.



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P.O.BOX HP 3
HO - GHANA

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RESPONDENTS/APPELLANTS

**SUMMONS TO PARTIES BY REGISTRAR TO SETTLEMENT OF
RECORD UNDER C1 27 RULE 19**

You are hereby invited to the office of the undersigned on Monday, 14th April, 2025 at 9:30 am in the forenoon to settle records in the matter above.

Please, endeavor to attend.

Counting on your co-operation

A handwritten signature in blue ink, appearing to read 'Muhammed Ikillu'.

Muhammed Ikillu
(Ag. Registrar)

GABRIEL AKOTO & ORS
TANYIGBE

ENOS ADIKO & 5 ORS
TANYIGBE

Cc:
The Registrar
National House of Chiefs, Kumasi

**IN THE JUDICIAL COMMITTEE OF THE VOLTA REGION HOUSE
OF CHIEFS HELD ON FRIDAY 21ST MARCH, 2025**

PANEL:

1. TOGBI GBORDZOR III	-	CHAIRMAN
2. TOGBE ADRAKPANYA III	-	MEMBER
3. TOGBEGA SEI II	-	MEMBER

LEGAL COUNSEL: CEPHAS KWADZO MOTEY, ESQ.

SUIT NO. VRP.6/2017

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RESPONDENTS

JUDGMENT

A. INTRODUCTION

1. By an amended Petition filed on the 14th of February, 2019, the Petitioners prayed for the following reliefs:
“
 - a. That the nomination, selection, confinement and enstoolment of Roland Adiko of the Kodivi clan by the respondents as Paramount Chief of Tanyigbe Traditional Area be declared as null and void.
 - b. That Togbe Etoe Kodzo II be recognised as the properly enstooled paramount chief of Tanyigbe Traditional Area.



- c. General damages for breach of the laid action and procedure of installation of a Paramount Chief of Tanyigbe Traditional Area.”
2. Respondents had earlier entered appearance on the 31st of January 2019 to the initial Petition filed on 19th December, 2017, however, they filed per Counsel an amended Entry of Appearance and Statement of Case pursuant to Rule 5 of C.I 27 on the 11th day of March, 2019.

Summary of Petitioners' case:

3. Per their amended Petition, Petitioners averred that they are the Kingmaker and Stool father respectively of the Doku-Dzehe stool of the Anyidoto clan of Tanyigbe-Anyigbe in the Tanyigbe Traditional Area while 1st and 2nd Respondents are an elder and stool father of the Kodi-Ayefior stool of the Kodivi clan who are holding out the 3rd Respondent as the Paramount Chief of Tanyigbe Traditional Area.
4. According to Petitioners, the occupancy of the paramount stool of Tanyigbe Traditional Area rotates between the Doku-Dzehe stool of the Anyidoto clan and Kodi-Ayefior stool of the Kodivi clan which rotation has been confirmed by the Research Committee of the Volta Regional House of Chiefs in a letter addressed to the National House of Chiefs.
5. It is the case of Petitioners that the immediate past Paramount Chief of Tanyigbe Traditional Area, Togbe Kwasi Adiko V, from the Kodivi clan was enstooled in 1951 on the Kodi-Ayefior stool. The said Togbe Kwasi Adiko V succeeded Fiaga Kormi Ekpe Akoto III of the Anyidoto clan. That in accordance with the customs and traditions of the Tanyigbe Traditional Area, the Anyidoto clan enstooled a new chief in the person of Togbe Etoi-Kodzo II on 29th April, 2017 to succeed Togbe Kwasi Adiko V who died on 28th August, 2015.
6. However, the Respondents for no good reason refused to acknowledge the new Paramount Chief from the Anyidoto clan contrary to the customs and traditions of the people of Tanyigbe-Anyigbe in the Tanyigbe Traditional Area.



7. It is the case of Petitioners that the 1st and 2nd Respondents have purportedly enstooled one Roland Adiko (3rd Respondent) as a rival chief to the already legally enstooled Togbe Etoi-Kodzo II in contravention of the customs and traditions of the people of Tanyigbe-Anyigbe in the Tanyigbe Traditional Area.

Summary of Respondents' case:

8. Respondents, per their Statement of Case, denied vehemently the averments contained in Petitioners' pleadings and put the Petitioners to strict proof of all these averments.
9. Respondents averred that the 3rd Respondent was duly nominated, selected, elected and installed by the accredited elders and kingmakers of the Kodi-Ayefior stool of the Kodivi clan and with the involvement of all the four (4) divisions of the Tanyigbe Traditional Area namely; Etoe, Anyigbe, Atidze and Dzafe.
10. It is the case of the Respondents that there is no rotation between the Kodivi clan and the Anyidoto clan in respect of the Paramountcy of Tanyigbe. The Respondents reiterate that the position of the Paramount Chief of Tanyigbe does not rotate between the Kodi-Ayefior stool of the Kodivi clan and the Doku-Dzehe stool of the Anyidoto clan and contend that the Paramount stool is distinct from and has nothing in common with the Doku-Dzehe stool which is a divisional stool, and since the Doku-Dzehe stool is a divisional stool, it cannot rotate with the Paramount Kodi-Ayefior stool of the Kodivi clan; the paramountcy of Tanyigbe is therefore the exclusive preserve of the Royal Adiko family of the Kodivi clan.
11. Respondents contended further that the basis of the Report of the Research Committee of the Volta Regional House of Chiefs is flawed and customarily untenable and hence same is not legally binding as it was just a recommendation to date, adding that the Report of the Research Committee of the Volta Regional House of Chiefs which is the basis of the Petitioners' claim is of little or no consequence at all since the said Research Committee Report is not final as same was never backed or supported by a resolution from the Regional House of Chiefs.



12. According to the Respondents, the Kodivi clan, being dissatisfied with and opposed to the said Research Committee Report, filed an application for certiorari to the High Court, Ho to quash the said Report but the said application however stalled due to the death of Lawyers of both parties.

13. It is again the case of the Respondents that pursuant to their migration from Glime (Notsie) to their present settlement, the people of Tanyigbe have had a total of six (6) paramount chiefs over the years and all of them including the present one hail from the Kodivi clan. The Respondents stated that the said Paramount Chiefs since their settlement in the current location were. (i) Togbe Kodi Adiko I (ii) Togbe Fiakpoe Adiko (iii) Togbe Apatsi Adiko III, (iv) Togbe Goto Kosi Adiko IV. (v) Togbe Kwasi Adiko V and the present one Togbe Kodi Adiko (VI), the 3rd respondent herein.

14. According to Respondents, the said Togbe Kormi Ekpe Akoto II was never a Paramount Chief but he only acted as Regent for Togbe Adiko IV before and after his death. The Respondents stated further that the said Togbe Kormi Ekpe Akoto was not taken through any customary rites as regards nomination selection, election and installation as he only acted as a Regent. It is the case of the Respondents that the purported installation by the Petitioners herein of the said Etoi-Kodzo was contrary to all known customs and traditions of the people of Tanyigbe as the said "installation" was done by only one out of the 16 clans in Tanyigbe. The Respondents averred that even Tanyigbe Anyigbe alone cannot install a Paramount Chief so it is impossible and uncustomary for a clan in Anyigbe to purport to do so. Respondents therefore concluded that the purported and alleged installation of someone by the Petitioners is not only a nullity but a complete sham as same offends all known time honoured customs, usages and traditions of Tanyigbe. The Respondents added further that the Petitioners and their cohorts are not the accredited kingmakers of the Tanyigbe Paramount Stool and hence their purported installation of the chief is not only a sham but distorts the history, customs and practices of the good people of Tanyigbe.



15. The Respondents averred finally that since the ascendancy of the 3rd Respondent to the paramountcy of the Tanyigbe Traditional Area was in conformity with customs and tradition, the Petitioners are not entitled to any of the reliefs sought in their petition or at all.

16. Gleaning from the pleadings of the parties the following issues stand out, as rightly addressed by learned Counsel for the parties in their respective written addresses, the resolution of the first of which automatically and invariably resolves the other. These issues are:

- i. Whether or not the paramountcy of Tanyigbe Traditional Area is rotatory/ or rotates between the Kodi-Ayefior stool of the Kodivi clan and the Doku-Dzehe stool of the Anyidoto clan.
- ii. Whether or not the Kodi-Ayefior stool owns the customary right to the Tanyigbe Paramount stool.

B. BURDEN OF PROOF AND ANALYSIS:

17. **Section 11(1) of the Evidence Act, 1972 (NRCD 323)** provides that:

“The burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.”

18. NRCD 323 further provides in **Section 11(4)** that:

“In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.”

19. In the case of **MAJOLAGBE V. LARBI & ORS [1959] GLR 190-195**, the learned trial Judge, Ollennu J (as he then was) stated thus:

“Proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way e.g. by producing documents, description of



things, reference to other facts, instance or circumstances, and his averment is denied he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness(es). He proves it by producing other evidence of facts and circumstances, from which the court can be satisfied that what he avers is true.”

20. Also, in the case of **ZAMBGRAMA v. SEGEBEDZI (1991) 2 GLR 221 CA**, the Court of Appeal stated that:

“A person who makes an averment or assertion, which is denied by his opponent, has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the fact(s) he asserts can be properly and safely inferred. The nature of each averment or assertion determines the degree and nature of that burden.”

21. In the case of **ACKAH VS. PERGAH TRANSPORT LTD & OTHERS CIVIL APPEAL NO. J 4/5/2009** the Supreme Court stated that:

“It is a basic principle of the law of evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail.”

22. The Supreme Court in the case of **IN RE ASHALLEY BOTWE LANDS; ADJETEY AGBOSU & ORS V. KOTEY & ORS [2003-2004] 1 SCGLR 420** also held thus:

“Under the provisions of the Evidence Decree, 1975 (NRCD 323), the burden of producing evidence in any given case was not fixed, but shifted from party to party at various stages of the trial depending on the issues(s) asserted and/or denied”.

23. The Respondents did not Counterclaim hence this Judicial Committee shall rely on the decisions of the Supreme Court, in particular, the decision of **IN RE ASHALLEY BOTWE LANDS** supra to determine the burden of persuasion and proof in this case. The Supreme Court noted as follows:

“The effect of section 11(1) and 14 and similar sections in the Evidence Decree, 1975 may be described as follows: a litigant who is a defendant



in a civil case does not need to prove anything; the Plaintiff who took the defendant to court has to prove what he claims he is entitled to from the defendant. At the same time, if the court has to make a determination of fact, or of an issue, and that determination depends on evaluation of the facts and evidence, the defendant must realize that the determination cannot be made on nothing. If the defendant desires the determination to be made in his favour, then he has the duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour. The logical sequel to this is that if he leads no such facts or evidence, the court will be left with no choice but to evaluate the entire case on the basis of the evidence before the court, which may turn out to be the only evidence of the Plaintiff. If the court chooses to believe the only evidence on record, the Plaintiff may win and the defendant may lose... ”.

24. In light of the above, Petitioners are expected to adduce sufficient, cogent and admissible evidence to show that, in fact, the Tanyigbe paramount stool is rotatory, that is, that ascension to the paramount stool of Tanyigbe rotates between the Kodi-Ayefior stool of the Kodivi clan and the Doku-Dzehe stool of the Anyidoto clan; and that after the death of Togbe Kwasi Adiko V, it is their family/clan, the Anyidoto clan, not the Kodivi clan that must enstool or present a new paramount chief. Respondents, on the other hand, are also expected to adduce cogent, sufficient and admissible evidence to show that the paramountcy of Tanyigbe is the sole preserve of the Adiko family of the Kodivi clan or the Kodi-Ayefior stool.

25. It is noteworthy that in the determination of any chieftaincy dispute, where a challenge has been mounted against the “appropriate” family and or lineage where a nominee or candidate hails from, it is incumbent on the Chieftaincy Tribunal to determine that issue first. This view was expressed by the Supreme Court in the case of **NANA YEBOAH-KODIE ASARE II & OTHERS VRS. NANA KWAKU ADDAI & OTHERS, Chieftaincy Appeal No. J2/2/2013 dated 21st May, 2014**, as follows:

“A Chief is a person who hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a Chief or queen mother in



accordance with relevant customary law and usage. The person must qualify to be a Chief, in that, he or she must hail from the appropriate family or lineage. In other words, to qualify to be a Chief, you must first be a royal to start with."

26. The Supreme Court puts it differently in the recent case of OPANYIN ANTWI MANU & ANOR VRS. NANA AFRAKOMA II & OTHERS, unreported, Chieftaincy Appeal No. J2/02/2021 dated 4th May, 2022 as follows:

"... although Petitioners' action started as a stool rotatory Petition, from the way it was couched and later amendments at the JCNHC, the claim was, in substance, an action to determine whether the Yaa Ansaa or the Yaa Botwe Family owned the customary right to the Akwamu Amanpon stool. The issue deserves all premium because a determination as to the right lineage and family is paramount to the further determination of whether an individual has been validly nominated, elected or enstooled. That hurdle cannot just be side step in any chieftaincy dispute."

27. From the Supreme Court decision just cited above, this Judicial Committee notes that determining the issue whether or not the Kodivi clan and its Kodi-Ayefior stool owns the customary right to the Tanyigbe paramountcy or whether or not the Tanyigbe paramountcy is rotatory deserves all premium since that will lead to the ultimate determination whether or not 3rd Respondent of the Kodivi clan or Etoi Kodzo of the Anyidoto clan has been validly enstooled. Since the issue of the right lineage or clan (and whether the paramount stool is rotatory or not) is inextricably linked to the determination of whether one of the persons is the valid occupant of the paramount stool or not, we will consider the issues together and *seriatim*.

28. In resolving these issues, therefore, two main questions arise. The first question is **what is Petitioners' evidence before this Judicial Committee of a rotatory stool in Tanyigbe?** The Petitioners testified per Cephas Akoto who filed a witness statement on the 2nd of November, 2020 and a supplementary witness statement on the 4th of October, 2022 pursuant to leave granted on 26th August, 2022. Petitioners did not call any witness. According to Cephas Akoto's testimony for and on behalf of the Petitioners and in line with the Petitioners' pleadings, he is the Zikpuitor



(stool father) of the Doku-Dzehe stool. According to his testimony, occupancy of the paramount stool of Tanyigbe Traditional Area rotates between the Doku-Dzehe stool of Anyidoto clan and Kodi-Ayefior stool of the Kodivi clan and that, the fact of the rotational occupancy of the paramount stool of the Tanyigbe Traditional Area between these two clans was confirmed by the Research Committee of the Volta Regional House of Chiefs in a letter addressed to the National House of Chiefs. He tendered a copy of the letter detailing the Research Committee's findings marked as Exhibit CA. He testified that the immediate past Paramount Chief of the Tanyigbe Traditional Area was Togbe Kwasi Adiko V who was from the Kodivi Clan. Togbe Kwasi Adiko V was enstooled in 1951 on the Kodi-Ayefior stool. He passed away in 2015. Prior to Togbe Kwasi Adiko V's occupancy of the Kodi-Ayefior stool, Fiaga Kormi Ekpe Akoto III of the Anyidoto clan was the chief which clearly goes to show that succession to the paramountcy is rotated between the Doku-Dzehe stool of Anyidoto clan and Kodi-Ayefior stool of the Kodivi clan.

29. According to his testimony, the Gold Coast Chiefs List of 1928-29 demonstrates indisputably that the Divisional Chief was Fiaga Akoto and he ruled until 1951 when he died. He tendered a copy of the Gold Coast Chiefs List as Exhibit CA1. He further testified that even before the Research Committee of the Volta Regional House of Chiefs confirmed the existence of the rotational system between the Anyidoto clan and Kodivi clan in respect of succession to the Kodi-Ayefior stool, there is a plethora of significant documentary evidence that on the 8th day of October 1951, the Zikpuitor of Tanyigbe reported the death of Togbe Kwami Ekpe Akoto II, Divisional Chief of Tanyigbe and same was reported to the Senior District Commissioner's Office on the 23rd of October 1951. He tendered a copy of the deaths, abdication and election of chiefs document dated 23rd October 1951 as Exhibit CA2. He also testified that on the strength of the established rotational system in terms of the occupancy to the Kodi-Ayefior stool and in accordance with the customs of the Tanyigbe Traditional Area, Theophilus Winfried Kwasi was elected and installed under the stool name of Togbe Adiko V as the Divisional Chief of Tanyigbe in the Asogli State on the 28th day of December 1951. The installation of Togbe Adiko V was communicated to the Senior District Commissioner's Office in a letter dated 24th February 1952. He tendered a copy of the letter on the election and installation of chiefs as Exhibit CA3. It was his testimony that in accordance with the customs and traditions of the



Tanyigbe Traditional Area, the Anyidoto clan enstooled a chief in the person of Togbe Etoi - Kodzo II on the 29th day of April 2017 to succeed Togbe Kwasi Adiko V who was from the Kodivi clan and passed on the 28th of August 2015. He again testified that the Respondents' own brochure, that is, the funeral brochure of the late Togbe Kwasi Adiko V, clearly demonstrates that Adikos took over from the Akotos, and as early as 1886, the chief of Tanyigbe who represented the town at the meeting held in Creepi (Peki) to discuss the issues of British colonization was Togbe Akoto I and he was succeeded by Togbe Goto Kwasi from the Adiko side. He testified further that the existence of the rotational system is over 100 years old. He tendered a copy of the list of people who attended the meeting at Creepi as Exhibit CA4. According to him, contrary to the assertion of the Respondents that Togbe Kormi Ekpe Akoto III was never a paramount chief but only acted as Regent for Togbe Adiko IV before and after his death, at all material times Togbe Kormi Ekpe Akoto III was fully, completely and legitimately installed as a chief who ruled for about 38 years, that is from 1913 to 1951 as a Paramount Chief of Tanyigbe Traditional Area, but was considered a Divisional Chief subservient to the Asogli Paramount Stool of the Asogli State. That there is overwhelming evidence in the form of facts, figures, photos and videos showing that Togbe Kormi Ekpe Akoto III was a legitimately installed Paramount Chief. A video recording showing the homage paid by Simon Premeh, the Secretary to the entire Tanyigbe Traditional Area, recognizing, affirming and addressing Togbe Kormi Ekpe Akoto as Fiaga (Paramount Chief) in a public gathering of chiefs, elders and Asafos of Tanyigbe was tendered as Exhibit CA5. He tendered Exhibit CA6 which is the funeral brochure of the late Togbe Kwasi Adiko V. These pieces of documentary evidence in relation to the first question, the burden of which was on the Petitioners to adduce, were attached to the supplementary witness statement of Cephas Akoto which was filed pursuant to leave granted as aforementioned.

30. The second question is **what is Respondents' evidence before this Judicial Committee of the Kodivi clan owning the customary right to the Tanyigbe paramount stool?** Or put differently, **what is Respondents' evidence that the Tanyigbe paramountcy is the sole preserve of the Kodi-Ayefior stool of the Kodivi clan?**



31. Although the burden of proving that the paramount stool being rotatory is on the Petitioners, the burden of proving that the Kodivi clan owns the customary right to the paramount stool is on Respondents. See section 14 of NRCD 323 and **IN RE ASHALLEY BOTWE LANDS** case supra. In this regard, Respondents also testified per Zikpuitor Enos Adiko-Mensa (1st Respondent) for himself and all except the 5th Respondent per his witness statement filed on 9th February, 2021. Respondents called two witnesses in the persons of Togbe Kwami Adegbie V (DW1) and Tsiami Adolf Yao Ayitey (DW2) who both testified per their respective witness statements filed on 18th December, 2020.

32. According to the testimony of Zikpuitor Enos Adiko-Mensah (1st Respondent) which is also in line with the pleadings of Respondents and worth re-echoing, the Anyidoto clan of Tanyigbe Anyigbe holds and occupies the position of the divisional chief of Anyigbe and the current chief of the Anyigbe division is Togbe Kwami Akoto V. According to his testimony, Anyigbe is one of four divisions of the Tanyigbe Traditional Area and the other three divisions are Etoe, Atidze and Dzafe. Tanyigbe Anyigbe is the seat of the Paramountcy and from time immemorial, the Kodi stool of the Kodivi clan has been the only stool upon which the Paramount chief of Tanyigbe Traditional Area is nominated, selected, and enstooled. The occupant of the stool is always selected from the Kodivi clan and his installation is based upon his acceptance by the kingmakers drawn from the sixteen (16) clans of Tanyigbe along with other traditional leaders occupying statutory traditional positions such as all the 4 divisional chiefs, the Mankrado, the Anyinuo, the Ganuo, the Tufia etc. It has never rotated with any other stool, not especially the Doku-Dzehe stool of the Anyidoto clan nor has the Kodi stool ever been occupied by any member of the Anyidoto clan. Occupants of the Kodi stool have exclusively been descendants of the Kodivi clan and no other. These two stools are distinct just as the two clans are distinct and have no relation or connection with each other whatsoever. He tendered a document titled “The Paramount Chieftaincy System of the People of Tanyigbe” as Exhibit 1.

33. According to his testimony, the Respondents will rely on Exhibit 1, the contents of which clearly state the history, customs and the various chiefs of Tanyigbe and persons who for various reasons at certain periods in the history of Tanyigbe have occupied positions that may be regarded as



Caretaker chiefs of Tanyigbe. It is therefore his testimony that the Paramountcy of the good people of Tanyigbe is the exclusive preserve of the Adiko royal family of the Kodivi clan of Tanyigbe.

34. In consonance with his pleadings, he listed 6 names he indicated were paramount chiefs since their migration from Glime (Notsie) to their present settlement who all hail from the Kodivi clan, the sixth being the current Togbe Kodi Adiko VI, 3rd Respondent herein, who is the present occupant enstooled after the death of Togbe Kwasi Adiko V. He testified that in-between the period that the chiefs were reigning there were circumstances such as old age of the substantive chief or governmental interferences that led to the appointment of caretaker chiefs, thus, between the reign of Togbe Kodi Adiko I and Togbe Kwasi Adiko V there have been seven (7) caretaker chiefs who he named including himself as, from the Anyidoto clan; Toe Kodzo; Akuasa Apaka; Kwami Ekpe Akoto and from the Kodivi clan; Ephraim Komla Ketetsie; Enos Yao Adiko-Mensa; Tekle Mensah Adiko; and Johnson Yao Adiko. According to him, the circumstances under which the above caretaker chiefs came into being are explained on Pages 21 to 32 of Exhibit 1 and that, all the other six (6) caretaker chiefs had one thing in common, none was taken through any formal customary rites of nomination, selection, confinement and enstoolment as a Chief and they all started the performance of their roles as Chiefs when the substantive Chief under which they were appointed was alive.

35. It is therefore his testimony that the report of the Research Committee of the Volta Region House of Chiefs in 1984, which is the basis of the Petitioners' claim of a rotational chieftaincy system in Tanyigbe is of little or no consequence at all as the said Report is an affront to the time honoured tradition, culture, history and usages of the good people of Tanyigbe. He also noted that the said Report is not final or conclusive on their customary practices as the Report was never backed or supported by a Resolution from the Volta Region House of Chiefs and thus remains only a recommendation which the rightful kingmakers, chiefs and people of Tanyigbe are opposed to. He added that the basis of the Research



Committee Report is flawed and customarily untenable and hence same is not and cannot be legally binding on the good people of Tanyigbe.

36. According to his testimony, since the Kodivi clan was dissatisfied with and opposed to the said Research Committee Report, the clan leaders filed an application for certiorari to the High Court, Ho to quash the said report but the application however stalled following the death of the lawyers of both parties.
37. It is his testimony that following the death of Togbe Kwasi Adiko V, the chiefs and people of Tanyigbe agreed that there would not be an installation of a paramount chief until after the burial and the funeral rites of the late chief after which the kingmakers will initiate the installation process of a new chief. He tendered, among others, Exhibits 2, 3 and Exhibit 4, a letter written by kingmakers to the chiefs, elders and clans. According to him, to ensure an orderly installation of a new Paramount chief, the divisional chiefs, the opinion leaders, representatives of the sixteen (16) clans and all persons holding statutory traditional positions met to draw the path for the installation of a new Paramount chief and the Committee granted audience to all persons who had any issue relating to the Paramount chief's installation in Tanyigbe to raise their concerns before the said committee. He tendered as Exhibit 5, the minutes and deliberations of the said Committee. It is his case that it was at the said meeting that the Akoto family or the Petitioners herein informed the Committee that they had already installed a chief and that they knew they had erred and prayed the Committee to fine them as a way of punishment and accept the person they had installed as the Paramount chief of Tanyigbe but their request was rejected outright and the Committee went into the issue of whether there was any rotational system in Tanyigbe and at the end of the deliberation concluded that there was no rotational system between the Kodi stool of the Kodivi clan and the Doku-Dzehe stool of the Anyidoto clan.
38. According to his testimony, following the completion of the said deliberations by the kingmakers, the 3rd Respondent was duly nominated, selected, confined and installed by the accredited Kingmakers and elders



of Tanyigbe onto the Kodi Paramount stool and this was done with the involvement and full participation of all the four (4) Divisions of the Tanyigbe Traditional Area. He tendered a pendrive containing video recordings of the said process as Exhibit 6.

39. This Judicial Committee will now proceed to the resolution of the issues **whether the stool is rotatory, or whether it is the sole preserve of the Kodivi clan**, which determination will lead to the ultimate determination of the issue **whether or not 3rd Respondent of the Kodivi clan or Etoi Kodzo of the Anyidoto clan is the rightful paramount chief of Tanyigbe**.
40. The undisputed fact remains from both the pleadings and testimonies of the Petitioners that the Petitioners' Anyidoto clan and invariably their Doku-Dzehe stool, after the death of Togbe Kwasi Adiko V, nominated, selected, elected and enstooled one Togbe Etoi Kodzo because, according to the Petitioners, it is their turn to ascend the paramount stool on rotatory basis. It must however be noted from the outset that the Petitioners' main challenge is not that members of the Kodivi clan or the 3rd Respondent (being the clan's choice) cannot ascend to the paramountcy. Their challenge is to the "appropriate clan" to ascend the paramountcy after the death of Togbe Kwasi Adiko V since according to them the stool is rotatory. It therefore appears to our minds that just as the Petitioners hold Etoi Kodzo as the rightful heir from their Anyidoto clan to ascend to the Tanyigbe paramountcy, so do the Kodivis who hold 3rd Respondent as their rightful heir to ascend to the said Tanyigbe paramountcy. Again, and for the avoidance of any doubt whatsoever, the Petitioners' dispute and challenge only touches and concerns 3rd Respondent's enstoolment from the Kodivi clan after they the Petitioners had enstooled a paramount chief from the Anyidoto clan following the death of Togbe Kwasi Adiko V who hailed from the Kodivi clan. The main dispute before the Judicial Committee, therefore, bothers on which of the claims is more probable and or more discernible and acceptable on the preponderance of probabilities.
41. The Respondents in this trial have sought to rely mainly on traditional oral evidence which they claim is backed by or contained in their Exhibit 1 although they have also relied on Exhibits 2 to Exhibit 5 which primarily draw on references from Exhibit 1, while Petitioners, on the other hand,



have relied heavily and essentially on documentary evidence as contained in their Exhibits CA to CA6.

42. In **RICKETTS V ADDO**, [1975] 2 G.L.R. 158 at 166, C.A, it was held that traditional evidence in causes relating to pedigree, inheritance, boundaries of land and family land transactions, etc. was admissible as an exception to the hearsay rule. Thus, traditional evidence, although a creature of the common law, has been codified under the Evidence Act of 1973 (NRCD 323). The law provides two statutory exceptions to the hearsay rule with respect to traditional evidence in section 128 and section 129 of NRCD 323. Section 128 provides that:

"Traditional evidence over family history given by a person is admissible if it concerns: birth, marriage, divorce, relationship by blood, marriage or adoption, ancestry or other similar fact of his family history".

43. The Privy Council has stated in the case of **ADJEIBI-KOJO V. BONSIE** [1957] 3 WALR 257, PC, that:

"The most satisfactory method of testing traditional evidence is by examining it in light of such more recent facts. This is done in order to establish which of two conflicting statements of tradition is more probably more correct. The courts weigh the traditional evidence alongside facts of recent ownership or possession concerning the contested subject matter."

44. In the **ADJEIBI-KOJO VRS BONSIE** case supra Lord Denning settled the principle as follows;

"The dispute was all as to the traditional history which had been hailed down by word of mouth from their forefathers. In this regard it must be recognized that in the cause of transmission from generation to generation mistake may occur without dishonest motives whatsoever. The most satisfactory method of testing traditional history is by examining it in the light of such mere recent facts as can be established by the evidence in order to establish which of the two conflicting statements of tradition is more probably correct".



45. The criteria set out by the courts through case law are the facts in recent years as established by evidence, recent acts, possession, and accepted facts. Learned Counsel for the parties have referred us to several judicial decisions on the subject in particular to decisions such as; Ago Sai & Ors vrs. Kpobi Tetteh Tsah (2010) SCGLR 763, Hilordjie & anor vrs. George (2005 - 2006) SCGLR 974, In Re Krobo Stool (No.1), Nyamekye (No.1) vrs Opoku (2000) SCGLR 347, In Re Kodie Stool Adowaa vrs. Osei (1998-99) SCGLR 23, Achoro vrs Akafela (1996-97) SCGLR 209, Adjei vrs Acquah (1991) 1 GLR 13 in which the above principles were applied. Learned Counsel also referred us to the decision in the case of **IN RE TAAHYEN & ASAAGO STOOL KUMAIN II VRS ARIN (1998-99) SCGLR 399** where the Supreme Court stated as follows:

“To sum up, in asserting rival traditional evidence the Court must not allow itself to be carried away solely by the impressive manner in which one party narrated his reason and how coherent that version is; it must rather examine the events and acts within living memory established by the evidence paying particular attention to the undisputed acts of ownership and possession on record and then to see which version of the traditional evidence, whether coherent or incoherent is rendered more probable by the established acts and events and finally the party whose traditional evidence, such established acts and events, support or render more probable must succeed”.

46. Learned counsel for the Respondents also referred us to the case of **BENG VRS POKU (1965) GLR 167**, where it was held inter alia that; "Where claims of parties to an action were based on traditional history which conflicted with each other, the best way of resolving the conflict was by paying due regard to the accepted facts in the case which were not in dispute and the traditional evidence supported by the accepted facts was the most probable"; and to the unreported Supreme Court case of **NUMO OSROAGBO DJANGMAH (SUBT BY NUMO SOBUABEH OSROAGBO) VRS NUMO HUAGO DORKUTSO & NUMO TETTEH HUAGO, CHIEFTAINCY APPEAL NO. J2/01/2024 (UNREPORTED) DATED 30TH OCTOBER, 2024** in which the Apex Court in quoting **Hilordjie V George (2005-2006) SCGLR 974** with approval stated as follows;



"In applying the principles governing the evaluation of conflicting traditional evidence, the court should, even in the face of such records, have regard to evidence in living memory or such recent facts as established before it. In *Hilodjie v George* (2005-2006) SCGLR 974, a similar issue arose where reliance was placed on writings by some respected jurists. The Supreme Court deprecated the approach of the Court of Appeal and held as follows per Wood JSC (as she then was):

"The historical accounts, which the court resorted to, for an accurate and ready determination of the facts in issue-who first acquired the disputed land by settlement-were the textbook accounts or records of the authors Azu and Field, which were tendered in evidence at the Jackson Commission Inquiry. But we are told that those records were challenged at the enquiry, by no means a person than Nene Azu Mate Korle, Paramount Chief of Manya Krobo... Since the accuracy of these textbooks accounts have been questioned, they are of doubtful authority ...Also the trial judge's reliance on the lyrics of a song, in the light of the very text of the song as translated by the learned trial judge, where two people are laying claim to the Krobo Mountain, cannot be justified ...In my opinion, in cases of this nature, historical account from other sources, textbooks accounts included which are not more than a repeat of the disputed or inconclusive traditional evidence already adduced at the trial, ought to attract very minimal weight. I do not think such matters ought to be preferred to proven acts of effective ownership. In short, the Jackson Commission Report does not, in the context of this case qualify as a fact in recent memory, let alone vital one".

"The clearly discernible principle is that in cases of this nature, the most satisfactory contemporary fact that the Court should look out for are undisturbed overt acts of ownership or possession exercised over the subject matter. That is not to say that other concrete acts do or may not qualify as acts in living or recent memory. Indeed, what may constitute a fact or an event in recent memory in one case, may not pass the test in another. Each case must therefore be dealt with on its own peculiar facts. Therefore, findings and decisions of Courts



of competent jurisdiction, may, appropriately qualify as evidence of facts in living or recent memory. But evidently, in land litigation, proven uninterrupted and unchallenged acts of possession, in the absence of some cogent evidence on the record to the contrary, as for example an unreserved acceptance of crucial parts of the other side's oral history, cannot be ignored or denied the deserved weight, given that in the first place, by the clear provisions of section 48 of the Evidence Decree NRCD 323, such acts raise a presumption of ownership".

47. The traditional history recounted in Exhibit 1 is the fact that there were 5 paramount chiefs since the migration of the people of Tanyigbe from Glime and all 5 up to Togbe Kwasi Adiko V hailed from the Adiko family of the Kodivi clan. Respondents argue fiercely that these facts constitute recent events in living memory and should be preferred. However, Petitioners have also provided contrary evidence in Exhibits CA to CA6 that the Adiko family of the Kodivi clan did not rule in succession from Adiko I to Adiko V. There is therefore no consensus as regards the oral traditional history put forth by the Respondents in Exhibit 1.

48. The known position of the law is that where oral evidence contradicts unimpeached documentary evidence, the courts should lean towards the documentary evidence more. In the case of **FOSUA & ADU POKU V ADU POKU MENSAH [2009] SCGLR 310**, the Supreme Court held that:

"the settled principle of law is that documentary evidence should prevail over oral evidence, especially if the document is proved to be authentic".

49. And more importantly in the case of **AMIDU ALHASSAN AMIDU & ANOTHER V. MUTIU ALAWIYE & 6 OTHERS, CIVIL APPEAL NO. J4/54/2018 DATED 24TH JULY, 2019**, it was held that:



"The settled rule of the law of evidence is, that where oral evidence conflicts with and is inconsistent with documentary evidence that has not been impeached on legal grounds or through cross-examination, then a court must prefer the documentary evidence to the oral testimony."

50. Petitioners in proof of their claim to a rotatory paramountcy have relied on Exhibit CA which is a letter from the Volta Regional House of Chiefs with reference number, VR/HC.211/TJ/Vol.3/49 dated 3rd September, 1984. The letter is titled "LIST OF PRINCIPAL STOOL/SKINS-VOLTA REGION (TANYIGBE TRADITIONAL AREA)". The letter was addressed to the Registrar of the National House of Chiefs in Kumasi, copied to Togbe Kwasi Adiko V and Togbe Kofi Akoto IV and signed by Francis H. Yaw Toya for the Regional Registrar. The content of the letter itself reads:

"In response to National House of Chiefs Circular No. NH/ADM.81/29 of 27th October, 1983, Togbe Kwasi Adiko V, Fiaga of Tanyigbe Traditional Area submitted his list which was forwarded to you under cover of my letter No. VR/HC.211/TJ/Vo.3/39 of 13th February, 1984.

The said list was later challenged by Togbe Kofi Akoto IV on the grounds that there were two stools which alternated between "Kodivi and Anyidoto/ Akoto" clans.

The Research Committee of this House therefore conducted investigations into the matter and at its final meeting with both parties at the E.P Middle School, Ho Kpodzi, on 28th August, 1984 the Research Committee took a firm decision that from data collected through various means it was established that there are two stools- "KODI AYEFIOR" and "DOKU DZEHE"- in the Tanyigbe Traditional Area. These two stools alternate the Fiaga status between the Kodivi and Anyidoto/ Akoto clans.

The Research Committee therefore directed that the Senior Research Assistant should correct the Tanyigbe list to reflect the two stools and the rotatory system of succession and to re-submit same to the National House of Chiefs to replace the previous one referred to above.



Accordingly, I forward herewith the corrected list of Principal Stools for the Tanyigbe Traditional Area for your further action'.

51. Attached to Exhibit CA, is a document titled "LIST OF PRINCIPAL STOOLS/SKINS-V/R. TANYIGBE TRADITIONAL AREA" dated 28th August, 1984, referenced in the last paragraph of Exhibit CA and signed for the Regional Registrar by the said Francis H. Yaw Toya. The attached list has written at the bottom thereof the following:

"This list has been amended by the Research Committee of the Volta Region House of Chiefs to reflect the two stools which alternate the Fiaga Status Rotationally".

52. Respondents have urged strongly on this Judicial Committee to hold that Exhibit CA was a mere recommendation which required ratification and also that Exhibit CA and its attachment are fake and not genuine. Is Exhibit CA a recommendation requiring ratification? Is Exhibit CA fake? From the contents of Exhibit CA, it is clear that then Paramount chief of Tanyigbe, the late Togbe Adiko V, in response to a circular by the National House of Chiefs submitted a list of principal stools in the Tanyigbe Traditional Area through the Volta Regional House of Chiefs. However, Togbe Kofi Akoto IV challenged the list submitted by Togbe Kwasi Adiko V and the Research Committee of the Volta Regional House of Chiefs conducted investigations by way of a fact finding into the challenge put up by Togbe Kofi Akoto IV. From the terms of Exhibit CA, the Research Committee met with both parties, that is, the representatives of the Akotos and the Adikos. The result of the investigations is what is contained in the attachment to Exhibit CA which is the amended list arrived at pursuant to findings of fact made by the Research Committee with Exhibit CA stating clearly without ambiguity, when and how and the persons involved during the fact finding by the Research Committee. Exhibit CA, thus, in compliance with the circular from the National House of Chiefs and the challenge to the earlier list submitted by Togbe Kwasi Adiko V through the Regional House, simply conveyed the final amended list after its findings from data collected and gathered between the two factions and directed the National House to correct the list, which direction was nothing else other than for the National House of Chiefs to replace the earlier list with the amended list (attached to Exhibit CA).



53. The attachment to Exhibit CA and the terms of Exhibit CA do not suggest that Exhibit CA was a mere recommendation requiring ratification of any sort, but a finding of fact being reported to the National House of Chiefs from data gathered between the two parties by the Research Committee of the Regional House of Chiefs after it met with both parties at Ho Kpodzi. The following transpired during cross examination of Cephas Akoto by Counsel for the Respondents on 20th July, 2023:

“Q. You will agree with me, or will you not, that the Doku-Dzehe Stool is an exclusive property of the Doku- Dzehe Family of Tanyigbe Anyigbe?

A. Yes, it is for the Doku-Dzehe family.

Q. It is correct therefore that the Doku-Dzehe Stool is an exclusive family property of the Doku-Dzehe family

A. Yes, but concerning the paramountcy we (Petitioners) rotate with Kodi-Ayefio Stool.”

54. The following transpired on 1st July, 2024 during cross examination of Cephas Akoto by Counsel for Respondents:

“Q. In paragraph 5 of your witness statements, it is your contention therein that the occupancy of the Paramount Stool of the Tanyigbe Traditional Area is rotational?

A. Yes, that is so.

Q. And this rotation is between the Doku-Dzehe Stool of Anyigbe Clan and Kodi-Ayefior Stool of the Kodivi Clan, not so?

A. That is so.

Q. You contend further that the Research Committee of the Volta Region House of Chiefs found this as a fact and addressed a letter to the National House of Chief, is that right?

A. That is so.



Q. Which Committee precisely did this Research, can you tell us?

A. A Committee of the Volta Region House of Chiefs led by Toya, the Research Officer at the time.

Q. In fact you attached as Exhibit CA, a letter you claimed to be a copy of the Research Committee's findings?

A. That is so.

Q. Have a look at Exhibit CA.- is that a copy of the Research findings?

A. Yes, it is a copy.

Q. Who signed that letter?

A. Regional Registrar of the Volta Regional House of Chiefs.

Q. I am suggesting to you that Exhibit CA is not a copy of the Research findings but a letter from the then Registrar of the Volta Regional House of Chiefs to the Registrar of the National House of Chiefs.

A. It is a letter as well as a Research finding. Attached to the letter is a list of the Principal Stools of Tanyigbe.

Q. You had indicated that this Research Committee came out with a finding, which buttresses your contention of a Rotational Paramountcy in Tanyigbe?

A. The Committee led by Toya they wrote this letter and the same letter is a Research finding.

Q. Since you are aware that Toya led this Committee, can you tell us the composition of this Committee?

A. Please I cannot.



Q. I am suggesting to you that you have no findings to buttress your position of a rotational occupancy.

A. I disagree.

Q. Though you have not sighted a copy of these findings, can you tell this court whether the said findings were confirmed by this August House, that is Volta Regional House of Chiefs, by way of a ratification?

A. I cannot answer.

Q. I am suggesting to you that no such findings exist apart from a reference to an investigation into the Tanyigbe rotational Chieftaincy issues.

A. I said earlier that the Exhibit is a letter and finding and it was based on that finding that they wrote to the National House of Chiefs that the Tanyigbe Paramountcy is rotatory.

Q. I am suggesting to you that there is no consensus in Tanyigbe Traditional Area following investigation into the rotatory Paramountcy system that the Doku-Dzehe Stool alternates with the Kodi – Ayefior Stool.

A. There was a consensus. It is stated in the letter that both parties met at Ho-Kpodzi and it was made known to them that the Tanyigbe Paramountcy is rotatory and they should understand that and they both understood.

Q. You just indicated to the Court that “which they all understood”, which people are you referring to and what did they understand?

A. They all understood that the Paramountcy is rotatory and it was the representatives of the Doku-Dzehe and the representatives of the Kodivi clan who were present at that meeting.”

...



“Q. I am suggesting to you that Enos Yao Adiko Mensah was not installed in accordance with the customs, usages, history and custom of the people of Tanyigbe.

A. I disagree. He was properly installed in accordance with customs and he reigned from 1963 to 1966 when he was destooled.

Q. I am suggesting to you that Enos Yao Adiko Mensa was, during the absence of the substantive Paramount Chief, appointed as a caretaker Chief.

A. I disagree. He was even gazetted as Chief.

Q. Are you aware that Tanyigbe has a history of caretaker Chiefs?

A. There was no such thing. I have never heard of a caretaker Chief. I only heard of a Regent. When Togbe Adiko returned, he was working in Kumasi so there was the need for a Regent since he could not be coming from Kumasi all the time. Then Tekle Mensa was made a Regent.

Q. You will agree with me that the Chieftaincy institution in Tanyigbe as far as the Paramountcy is concerned abhors a vacuum or a seeming vacuum at any point in time?

A. Yes. That is so. That is why a document presented shows that when Kwame Ekpe Akoto died on 8th October, 1951, he was succeeded by Winfred Theophilus Kwasi Adiko V on 24th December 1951 in order not to create a vacuum.

Q. So you will agree with me that in your answer not to create that vacuum, during the reign of Togbe Kwasi Adiko V when he was in exile, the said vacuum was filled by Enos?

A. Yes from the same clan since Togbe Kwasi Adiko V was not dead.



Q. And again, when Togbe Kwasi Adiko was in Ghana and in Kumasi which is far from Tanyigbe, in order not to create a seeming vacuum, Tekle Mensa was appointed to act as a caretaker Paramountcy Chief.

A. When Enos was destooled, he wanted to continue to act as a Paramount Chief, so since Togbe Kwasi Adiko V was alive, the town has to get a regent, Tekle Mensa.”

....

“Q from Tanyigbe history since you came from Glime Notsie up till the reign of Togbe Kwasi Adiko V who died in August 2015, how many Paramount Chiefs have you had as a Traditional Area.

A. From that time up to Togbe Adiko V, we had five (5).”

55. The following also transpired on 24th October, 2024 during cross examination of Cephas Akoto by Counsel for Respondents:

“Q. In your evidence in Chief as per your supplementary witness statement filed on 04/10/2022, you referred to a copy of Research Committee findings which you annexed as Exhibit “CA”, is that the case?

A. Yes.

Q. Can you kindly read the heading of Exhibit “CA”?

A. Yes [heading read]

Q. Attached to your exhibit” CA”, is a document titled, list of principal stools/skins in Tanyigbe Traditional Area. is that the case?

A. That is so.

Q. To the best of your knowledge, was this list confirmed by the Volta Region House of Chiefs?

A. Yes.



Q. You will agree with me, will you not that your contention that the Paramountcy of Tanyigbe is rotatory is based on this?

A. Yes.

Q. This list, Exhibit "CA", when one looks at it, it presupposes that it has amended an earlier list?

A. Yes. During the reign of Togbe Adiko V, in the PNDC era, the Government requested for the Chiefs list and what was presented did not reflect the rotatory nature of the Paramountcy so it was challenged by Togbe Kofi Akoto, a Divisional Chief, at the time. This is the reason the list was amended as we have it now to reflect the true state of the rotatory nature of the Paramountcy.

Q. Can you tell this Court, how the challenge was mounted by Togbe Akoto, the Divisional Chief?

A. When Togbe Akoto got to know that the earlier list did not reflect the true rotatory nature of the Paramountcy, he brought the matter to the House of Chiefs in 1983 and it was after the House conducted its research that was what brought about Exhibit "CA".

Q. Do you have any records to show of this action mounted in this House?

A. Counsel asked an earlier question about an amendment which I answered. The Research Committee wrote in their document to indicate their reason for the amendment. That is to say, an earlier document had been produced which was amended by Exhibit "CA".

Q. Do you have that earlier document?

A. Upon seeing Exhibit "CA" which is an amendment, there is no need to look at the earlier one. I have not seen the old one.

Q. Kindly have a look at this document and tell us if that was the list that triggered the amendment?

A. I have never seen it before.



Q. I am suggesting to you that, though you claimed not to have seen the original list before, the original list stipulates that the Paramountcy in Tanyigbe is not rotatory.

A. I made us aware that an earlier document was produced which did not reflect the rotatory nature and this was why Togbe Akoto put up the challenge and the Research Committee findings came up with the amendment.

Q. In the history of caretaker Chiefs in Tanyigbe, how many people from the Akotos have occupied that position?

A. There has not been any caretaker Chief from the Akotos.

Q. Apart from your Exhibit "CA", which you relied on as the basis of your claim to the rotatory Paramountcy, can you tell this court, which other documents are a pointer to that effect?

A. Yes. There are several documents. Exhibit CA1, CA2, CA4, CA5, CA6, and other list of documents on record."

....

"Q. I am suggesting to you that Togbe Akoto was referred to as Fiaga in your Exhibit CA1 because at the time in history, he was a caretaker Chief.

A. I disagree. I have mentioned earlier that when it is the turn of the Kodivi Clan, if the Paramount Chief is unavailable, it is only a person from that clan who can be a caretaker, not from another clan.

Q. In your Exhibit CA2, Togbe Kwame Ekpe Akoto II is referred to as a Divisional Chief of Tanyigbe, is that correct?

A. Yes, because we were under Asogli State at that time. Therefore, all other Chiefs were referred to us Divisional Chiefs. Which is why we mentioned in Exhibit CA3 that at the time Togbe Kwasi Adiko V was installed, he was referred to as a Divisional Chief because Tanyigbe was under Asogli state. One historical document produced by Yoyo on the amalgamation in Ewe land for easy rule by the British mentioned this.



Q. I am suggesting to you that your Exhibits CA1, CA2 and CA3 are not a true reflection of Tanyigbe's history as regards their migration and settlement at their present place.

A. They are true reflection.

Q. I am suggesting to you that, these documents, i.e. exhibits CA1, CA2 and CA3 have been procured by you to lay a force claim to the Paramountcy of Tanyigbe?

A. It is not true. I have mentioned that Exhibit CA3 talks about the installation and death of Adiko V. These are documents that talks about our history.”

...

“Q. I am suggesting to you further that this Togbe Etoi Kodzo was one of the caretaker Chiefs of Tanyigbe?

A. He was not a caretaker. When you look at Exhibit CA 4, he went to sign that document as a Paramount Chief.

Q. Will you agree with me that, to be properly installed as the Paramount Chief of Tanyigbe, the candidate must have gone through an elaborate process of being nominated, selected, elected, confined and enstooled in accordance with laid down customs, traditions and usages of Tanyigbe people by the Kingmakers?

A. Yes, when it is your turn.

Q. And you will agree with me that this process must have the participation and concurrent of all the 16 clans of Tanyigbe?

A. It is not a laid down rule. All the 16 clans did not participate in the installation process of Enos Adiko, the 1st Respondent.

Q. You will agree with me that the 1st Respondent acted as Paramount Chief in the absence of Togbe Kwasi Adiko V, when he had gone to exile?

A. No. I disagree. He did not act; he was installed properly as a Chief.



Q. I am suggesting to you that all the 16 clans whose participation in the valid installation of a Paramount Chief of Tanyigbe was dispensed with in respect of the 1st Respondent because he was an appointed caretaker Chief.

A. He was not a caretaker Chief. He was installed as a Chief. In the document of the Respondents, they never mentioned that he was a caretaker Chief."

...

"Q. A stool from your family is referred to as the Doku Dzehe stool, correct?

A. Yes.

Q. And that of the Adikos is called Royal Kodi Stool, Correct?

A. It is called Kodi Ayefior Stool.

Q. You will agree with me, will you not, that Kodi Ayefior Stool was brought from Glime/Nortsie?

A. No. I disagree. Tanyigbe people were not having stool in Glime. Tanyigbe stools were all created when we were at Gboxome. They were created in the 1800s.

Q. I am suggesting to you that the creation of the Kodi Ayefior Stool long predicated the creation of the Doku Dzehe Stool.?

A. I disagree. They were all created around the same time.

Q. I am suggesting to you further that the Doku Dzehe stool was a creation of recent history?

A. No. I disagree. If Etoe Kodzo was signing documents in the 1800s, it cannot be recent.

Q. I am suggesting to you that a stool is a historical, traditional and a customary creation?

A. It depends.



Q. I am suggesting to you that with reference to your Exhibits CA1 to CA4, that a creation of a stool or status is not by a doctored, questionable and baseless records of the untutored colonial masters.

A. I disagree. The Stools were not created by Colonial masters. I mentioned earlier that the stools were created in the 1800s.

Q. The Paramountcy of Tanyigbe Traditional area is not rotatory. Therefore, your contention is baseless. I suggest it to you.

A. It is rotatory. All the documents before the court show that the Paramountcy is rotatory. Respondents have not brought any documents to show that they are the only ones who ascend the Paramountcy.”

56. The following also transpired during cross examination of 1st Respondent by Counsel for the Petitioners on 21st November 2024 being cross examination:

“Q. In paragraph 9 of your witness statement, this is what you say [read by Counsel]

A. Yes.

Q. Do you still stand by this your testimony in paragraph 9?

A. Yes.

Q. Have a look at Exhibit CA2 attached to the Petitioners' supplementary witness statement. Have you seen it?
[WITNESS SHOWN EXHIBIT CA2]

A. Yes, I have.

Q. Exhibit CA2 is a letter dated 23rd October, 1951 written by the Senior District Commissioner, Correct?

A. That is correct.



Q. And the heading of Exhibit CA2 is "Death, Abdication and Election of Chiefs". Is that correct?

A. That is correct.

Q. Paragraph 1 of CA reads "I have the honour ..." [read]. Is that correct?

A. That is correct.

Q. So when you say in paragraph 9 of your witness statement that from time immemorial it is only the Kodi's who have ascended the Tanyigbe Paramountcy, that is bare-faced lie?

A. It is not a lie because the document Counsel is making reference to is not saying Akoto was installed according to the customs and Traditions of Tanyigbe.

Q. In Exhibit CA3 dated 24th February, 1952, the Senior District Commissioner wrote this letter to the Chief Commissioner of the Colony in Cape Coast. Is that correct?

A. That is correct.

Q. Paragraph 2 of Exhibit CA3 reads...[read]. Is that statement correct?

A. That is correct.

Q. In Exhibit CA3, do you see the word "Fiaga" before the name of Togbe Adiko V?

A. No, I have not seen it.

Q. When you sought to say Togbe Akoto was not a Paramount Chief in 1951 because he had no "Fiaga" before his name, it was an afterthought.

A. As a matter of fact, the people of Tanyigbe know that there is a Paramount Chief and there are Divisional Chiefs and I am saying



that Togbe Akoto was never a Paramount Chief of Tanyigbe. If the author of the document did not see it fit to write, that is not my concern.”

• • •

“Q. When Togbe Kwame Ekpe Akoto II died on the 8th of October 1951, he was not replaced with another Akoto, but Togbe Adiko V. I am putting that to you.

A. Togbe Kwame Ekpe Akoto II was a caretaker Chief for Adiko family. So after his death, the people of Tanyigbe asked that Adiko family give them a candidate to be installed and Togbe Adiko V was one of the three (3) candidates.

Q. As far as Exhibit CA2 dated 23rd October, 1951 is concerned, Togbe Kwame Ekpe Akoto II was never described as a caretaker Divisional Chief of Tanyigbe. I am putting it to you.

A. The Exhibit CA2 cannot describe him as such because Kwame Ekpe Akoto II was working as a caretaker for Adiko.

Q. Togbe Kwame Ekpe Akoto II, can you tell the Committee, when he became your purported caretaker Divisional Chief?

A. He started his caretaker job in 1913 at the time when Togbe Goto Kosi Adiko IV was a Chief of Tanyigbe.

Q. Can you tell the Committee when you were born?

A. 1st July, 1937.

Q. So in 1913 when you claim Togbe Kwame Ekpe II became a caretaker Chief, you were not born. Is that correct?

A. Yes, I was not born.



Q. Have a look at Exhibit 1 attached to your witness statement. It is a document with a title "The Paramount Chieftaincy system of the people of Tanyigbe" is that correct?

A. That is correct.

Q. This is supposed to be a compilation based on oral tradition, existing records, and firsthand account by citizens who witnessed some of the events that were referenced. Is that correct?

A. That is correct.

Q. Of the people referenced, one of them listed as number 8 is one Mr. Enos Yao Adiko Mensa who is described as Zikpuitor of the Kodi stool/historian. Is that correct?

A. That is correct.

Q. The said Enos Yao Adiko Mensa is you, not so?

A. Yes. That is me.

Q. This purported compilation is dated December, 2019. Is that correct?

A. That is correct.

Q. Do you know when this Petition was filed at the Registry of the Volta Regional House of Chiefs?

A. Yes, in 2017.

Q. So you see, it was when the Petition was pending and you had notice of the petition that you hurriedly put up this compilation to become your evidence before this Committee. I am putting that to you.

A. As a matter of fact, our history is oral so we realized that there is the need to put it on record. That is why we came out with this book and every book in history starts from a certain date.



Q. Have a look at Exhibit CA attached to the supplementary witness statement of Cephas Akoto. This Exhibit CA is dated 3rd September, 1984. Is that correct?

A. That is what is on the document.

Q. Exhibit CA is a document emanating from the Volta Regional House of Chiefs, is that correct?

A. Yes.

Q. In the 3rd Paragraph of Exhibit CA, it states... [read]. Not so?

A. Yes, that is what it says but I have made an observation that the document was only stamped but that is not how the Regional House of Chiefs normally writes its letters. Also the list attached was not the list shown to us on that date when we were invited at E.P. Kpodzi.

Q. In paragraph 1 of Exhibit CA, and I read [read]. Is that what is written there?

A. That is what it says, yes. But as I have indicated, the document is fake. It is not emanating from the House of Chiefs.

Q. And this document has a reference number VR/HC211/TJ/VOL.3/49 and addressed to the Registrar of the National House of Chiefs and signed for the Regional Registrar, Francis Yao Toya. Not so?

A. Yes. That is what is on the document, but that is not the truth.

Q. Look at the very first word on the document attached to Exhibit CA. You will see Tanyigbe as the Traditional Area. Correct?

A. That is correct.



Q. When you come to the other end of that document, they have written there “**System of Succession**”. Is that correct?

A. Yes.

Q. And the system of succession recorded “**Rotatory**”. Correct?

A. Yes.

Q. The last statement at the bottom of that document reads... [read]. Is that what is there?

A. Yes.

Q. And the document is dated 28th August, 1984 and signed for the Regional Registrar of the Volta Regional House of Chiefs, Francis Toya. Correct?

A. Yes.

Q. Have a look at Exhibit CA1 attached to the supplementary witness statement of Cephas Akoto. It has an extract with heading “**GOLD COAST CHIEFS LIST-1928-1929**”. Is that correct?

A. Yes.

Q. When you come to the column of the “**Division**”, you have “**Tanyigbe**”, not so?

A. Yes, correct.

Q. The column with the heading “**title**” has the title “**Fiaga**”, is that correct?

A. Yes.

Q. And the name appearing there is “**Akoto**”, is that correct?

A. Yes, but is not all that glitters that is gold. When the names of the Chiefs were being written, because he was the one present, that was why his name was written but he was a caretaker Chief since 1913.”



57. The following also transpired on 21st November, 2024 during cross examination of DW1, Togbe Kwame Adegbie V, by Counsel for the Petitioners:

“Q From your previous testimony, are you aware that the Kodivi clan and the Akotos had an issue with the list of Chiefs submitted by Togbe Kosi Adiko V on 13th February, 1984 to the Volta Regional House of Chiefs?

A. I am not aware.

Q. Are you also aware that on 28th August 1984, a meeting took place at E.P. Middle school at Ho kpodzi between the Kodivi and the Anyidoto/Akoto clans?

A. I am not aware.

Q. As at the 18th day of December, 2020, when your witness statement was filed at the Registry of this court, did you know about the findings of the Research Committee of the Volta Region House of Chiefs dated 3rd September, 1984?

A. Yes.

Q. Did you get the opportunity to read what is in that Research Committee findings or report?

A. Yes, I read it.

Q. Can you identify that as being exhibit CA.

A. Yes it is.

Q. Can you tell the Judicial Committee who was the Paramount Chief/Fiaga of Tanyigbe until August 2015?

A. Togbe Kosi Adiko V.

Q. Do you know when he became the Fiaga of Tanyigbe?

A. 1951.



Q. Do you know whom he succeeded?
A. Yes. That was Togbe Goto Kosi Adiko IV.

Q. Do you know Fiaga Togbe Kwame Ekpe Akoto II?
A. I heard his name before but I do not know him.

Q. Do you know when or the period within which the said Togbe Kwame Ekpe Akoto II reigned in Tanyigbe?
A. He was not installed as a Chief. He was a caretaker Chief. So he had no title as the I or the II. At the time he was made a caretaker Chief, Togbe Goto Kosi Adiko IV was alive.

Q. When Togbe Kosi Adiko V died in August 2015, a funeral brochure was prepared having a biography. As a Chief of Adegblevi Clan, have you seen that biography/funeral brochure?
A. No, I did not see it but I am now seeing Togbe's funeral brochure and picture in the court.

Q. Do you know the people who performed the funeral of Togbe Kosi Adiko V.
A. Yes, the elders of Tanyigbe from the 16 clans of Tanyigbe.

Q. In preparing for the funeral of Togbe Kosi Adiko V, did you play any role?
A. Yes.

Q. I am putting it to you that in the biography of Togbe Kosi Adiko V, it is stated under the heading "**Installation and Reign**" that "Togbe was installed Fiaga of Tanyigbe Traditional Area, 28th December, 1951 after the death of Togbe Kwame Ekpe Akoto II".
A. Yes, I agree that it was after the death of Togbe Kwame Ekpe Akoto that Togbe Kosi Adiko was installed but I am saying that Togbe Kwami Ekpe was not installed as a Chief so he has no title.



Q. When you say that Togbe Kosi Adiko V took over from Togbe Goto Kosi Adiko IV, it is incorrect and I am putting it to you that it is incorrect as same is not borne out of his biography, Exhibit CA6.

A. That is how I know it.

Q. You know as someone who played a role in the funeral of Togbe Adiko V, that his funeral biography correctly captured the person he succeeded. I am putting that to you.

A. I already told you that I have not seen the brochure until today, so I know nothing about it.

Q. I am further putting it to you that, contrary to your claim that it is only the Kodi Clan which is the only Paramount Stool of the Tanyigbe Traditional Area, the Exhibit CA clearly shows that he took over from an Akoto.

A. I was not the author of the biography so I know nothing about it.

Q. Look at Exhibit CA2, which is a document dated 23rd October 1951 communicating the death of Togbe Kwame EKPE Akoto II to the Chief Commissioner of the Colony in Cape Coast. Have you ever seen it?

A. No. I was not born then. Today is the first time I am seeing it."

58. The cross examination of DW2, Adolf Yao Ayittey, by Counsel for Petitioners on 22nd November, 2024 went as follows:

"Q. Can you tell the Committee how long you have held the traditional position as the Tsiamiga?

A. About 30 years.

Q. So, I will be correct to say you know Togbe Adiko V?

A. Yes.



Q. Do you have an idea when the said Togbe Adiko V died?

A. Yes.

Q. When was this?

A. August 2015.

Q. Do you have an idea when the said Togbe Adiko V became the Chief of Tanyigbe?

A. 1951.

Q. Do you know that upon the death of Togbe Kwame Ekpe Akoto II on 28th October, 1951 that Togbe Adiko V took over?

A. Yes I know it was after the death of Togbe Ekpe Akoto that Togbe Adiko V was installed but I do not know Togbe Akoto to have any title as the II.

Q. As the Chief's spokesperson (Tsiamiga), did you become aware that the Gold Coast list of Chiefs between 1924-1928 had one Togbe Akoto as the Fiaga of Tanyigbe.

A. Yes it is and I heard of it.

Q. When you testify before this panel that from time immemorial that it is only the Adikos who have held the position of the Paramount Chief, that is not borne out of historical documentary evidence before this Committee. I put it to you.

A. What I have said is the truth. It is the Adikos that I know that were Paramount Chiefs of Tanyigbe are; Kodi Adiko, Fiakpui Adiko, Apatse Adiko, Goto Kwasi Adiko, Kosi Adiko V before the current 6th. I do not know anybody installed from the Akoto side as Fiaga aside the Adikos I have mentioned earlier. There is no Fiaga among the Akotos.



Q. In 2015, when Togbe Adiko V died, did you play any role as Tsiamiga in the preparation for his funeral?

A. Yes, I participated in all the meetings leading to the funeral preparations.

Q. As at 2015, I will be correct to say you had your sight properly functioning, correct?

A. Yes it was better than it is currently.

Q. Did you know that a funeral brochure was created to celebrate the funeral of Togbe Kosi Adiko V?

A. Yes.

Q. I am putting it to you that at the “**biography**” column of the funeral brochure of Togbe Kosi Adiko V it is stated...” [read]. I put that to you.

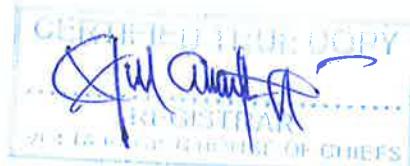
Q. Yes it is in the funeral brochure like that.”

By Court:

Q. Who prepared this funeral brochure?

A. **Answer by 2nd Respondent (Togbe Ameworkunu Danku).**
“There was a funeral planning Committee.
Tameklo, Esq: It is on the funeral brochure.”

59. As can be seen from the above testimonies from both parties and the witnesses, there will be no need for a further elaboration. It is noteworthy that at the time of Exhibit CA, there was even no dispute in respect of the Tanyigbe paramountcy because the occupant of the stool in the person of Togbe Kwasi Adiko V was alive. He submitted a list against which there was a protest and after all the parties’ representatives met with the Research Committee and from available data gathered, his list was amended. Togbe Kwasi Adiko V was copied in that letter, Exhibit CA, with the attached amended list. Did Togbe Kwasi Adiko V challenge this letter or the amended list done pursuant to Togbe Akoto’s challenge? There is no such evidence on record that he challenged same. In the meantime, the Respondent’s key witness, Enos Adiko-Mensah (that is, 1st Respondent)



was part of the meetings at Ho Kpodzi where “**a firm decision**” was reached “**from data collected through various means**” and “**it was established that there are two stools- “KODI AYEFIOR” and “DOKU DZEHE”- in the Tanyigbe Traditional Area... which (stools) alternate the Fiaga status between the Kodivi and Anyidoto/ Akoto clans**”[Emphasis is ours]

60. There is not a single evidence on record that Enos Adiko Mensah challenged the “firm decision” taken during that fact finding nor is there any evidence on record that any of the attendees from amongst the Adikos challenged this “firm decision” or the amended list. There is equally no evidence on record contradicting this final list or amended list which reflects the rotatory system of the Tanyigbe paramountcy. There is also no evidence on record or proof of the fact that Exhibit CA and its attachment are fake and not emanating from the Volta Regional House of Chiefs. As previously noted in this Judgment, he who alleges must prove. Once the Respondents claim Exhibit CA and its attachment are fake, the burden shifts to them to prove that indeed they are fake, but this they have failed to do. At the time Togbe Kwasi Adiko V was copied with the findings in Exhibit CA and the amended list, if he had any issues with the said documents or the contents thereof, he would have protested or rejected same just as Togbe Kofi Akoto IV rejected his. 1st Respondent’s claim before this Judicial Committee now, after having kept mute since 1984, that Exhibit CA and its attachment are fake, is clearly an afterthought.

61. Also, apart from the unsubstantiated claim of Exhibit CA and its attachment being fake, according to the Respondents in both their pleadings and the witness statement of 1st Respondent, when they were dissatisfied with and opposed to the said Research Committee Report, they filed an application for certiorari to the High Court, Ho to quash the said Report but the said application however stalled due to the death of Lawyers of both parties. Again, one would have expected that the High Court processes would have been tendered as proof of the Respondents’ protest against the said amended list but there is no record before this Judicial Committee to substantiate their claim of a protest. Moreover, with all due respect to the Respondents, cases pending before law courts in this country do not stall because lawyers handling those cases have died, especially when the law courts have not died and do not die; and even where Judges presiding over cases die, litigant’s cases do not die with those Judges. This Judicial Committee therefore rejects the claim of



Respondents of Exhibit CA being fake when their own representatives including 1st Respondent partook in the fact finding without any protest and even failed to tender the so called certiorari application before this Judicial Committee as evidence of their rejection of the said Exhibit CA.

62. Petitioners also tendered Exhibit CA1 being a Certificate of Authentication from the National Archives of Ghana by Jessie Adamafio, Assistant Archivist, certifying an Extract from the Gold Coast Chiefs' List, 1928-29 as a true copy. Exhibit CA1 has the reference number ADM. 8/4/4 page 54 and is dated 22nd August 1977. At page 54 of the Gold Coast Chiefs Lists, Exhibit CA1, we have under the column "State" being "Ho", under the column "Division" being Tanyigbe spelt "Taingbe", under the column "Town or Village" being "Gborgame", under the column "Title" being "Fiaga", and under the column "Name" being "Akoto". Gleaning from the said exhibit, there is evidence from the list that some were "Tefia" meaning sub chiefs. Akoto was listed as Fiaga, that is paramount chief (which at the time would be properly referred to as Divisional chief of Tanyigbe because Tanyigbe was a division under Ho State as seen per Exhibit CA1. Clearly, this information was available as of the year 1977 when said information was authenticated by the Assistant Archivist.

63. Petitioners also tendered Exhibit CA2 which is a letter dated 23rd October 1951 from the Senior District Commissioner's Office of P.O.BOX 47 HO titled "DEATHS, ABDICATION AND ELECTION OF CHIEFS" which letter was information to His Honour the Chief Commissioner of the Colony in Cape Coast of a report he had received from the Assistant District Commissioner of Ho. It is important to quote that letter in full. It states as follows:

"I have the honour to inform you that the Assistant District Commissioner, Ho has reported as follows: -

" I have the honour to inform you that the Zikpuito of Tanyigbe has reported the death of Togbe Kwami Ekpe Akoto II, Divisional Chief of Tanyigbe, which took place on 8th October, 1951.

" 2. The deceased Chief was a member of the Asogli State Council and of the Native Authority. Item 5 on page 81 of the Chiefs List 1941 refers."



2. I shall be grateful if the necessary notice in the gazette may be published in due course."

64. A look at Exhibit CA2 shows that it was signed by the Acting Senior District Commissioner and was received in Cape Coast on 25th October 1951 as per the stamp on its face. Then there is a notification stamp on the letter showing that this notice of death was published in gazette No. 87 of 30/11/51 N. No 2245 page 1050.

65. Petitioners also tendered Exhibit CA3 which is a letter with serial or reference number No.8.0062/142 dated 24th February, 1952 from the Senior District Commissioner's office at same address in Ho as Exhibit CA2. Exhibit CA3 was also signed by the Acting Senior District Commissioner and addressed to His Honour the Chief Commissioner of the Colony in Cape Coast. The letter is titled "ELECTION AND INSTALLATION OF CHIEFS" and its content reads:

" I have the honour to inform you that the Assistant District Commissioner, Ho has reported as follows:-

" I have received intimation that Mr. Theophilus Winfried Kwasi has been elected and installed, under the Stool name of Togbe Adiko V as the Divisional Chief of Tanyigbe in the Asogli State on the 28th of December, 1951.

" 2. As far as I can ascertain the enstoolment of Togbe Adiko V has the full approval of the people of Tanyigbe and was performed in accordance with native law and custom. Togbe Adiko V was introduced to me early in January.

" 3. I recommend that the enstoolment of Togbe Adiko V be recognized by Government and that he be published as a member of the Asogli State Council and of the Native Authority. Item 5 of page 81 of the Chiefs List 1941, refers."

2. I recommend that the report be accepted and shall be grateful if the necessary notice in the gazette may be published in due course."



66. This Judicial Committee has noticed the relationship and correlation between the contents of Exhibit CA2 and Exhibit CA3. Exhibit CA2 relayed information from no ordinary person other than the Zikpuitor (“stool father”) of Tanyigbe himself on the death of the Chief of Tanyigbe. Exhibit CA2 did not state that the Zikpuitor’s official information was with regards to the death of a regent or caretaker chief of Tanyigbe. From Exhibit CA2, we ascertain the status of the deceased chief, who was named as Togbe Kwami Ekpe Akoto II and the fact that he was a member of the Asogli State Council, a position occupied by Divisional Chiefs then under Asogli state. Exhibit CA2 also instructed that the deceased’s death be accordingly published per a “notice in the gazette” [emphasis ours]. We also see that Exhibit CA3 accords the new (Paramount chief)/ Divisional Chief, Kwasi Adiko V, the same level, status and candour and recommending that he be published as a member of the Asogli State Council and of the Native Authority, the same membership, status and position held by his predecessor, Togbe Kwami Ekpe Akoto II whose death was announced by the Zikpuitor of Tanyigbe per Exhibit CA2. The question that arises here is whether caretaker chiefs and or regents also had/ have their names published in the gazette at any point in time? Are they ever gazetted upon assuming the role of caretaker chiefs or regents? Are the deaths of caretaker chiefs or regents published per notices in the gazette? We will answer these in the negative. If the Zikpuitor of Tanyigbe says the Chief of Tanyigbe is deceased, that identity cannot be changed to be that of a caretaker chief of Tanyigbe, and this death occurred on 8th October 1951 as per the then Tanyigbe Zikpuitor’s official communication contained in Exhibit CA2.

67. Petitioners again tendered Exhibit CA4 which document is a Treaty between Charles Riby Williams, District Commissioner of the Volta River District on behalf of William Brandford Griffith, Esquire, Companion of the Most Distinguished Order of Saint Michael and Saint George, Governor of the Gold Coast Colony, and King Kwadjoe Dieh and his people for the incorporation of the country and territory of Crepee within the Gold Coast Colony. On page 339 under Article III is the name “Akoto, Chief of Taiengbe” who was in attendance for the signing of that Treaty on 7th October, 1886 at Peckie. We glean from that Exhibit CA4 that there were names which had designations as ‘king’, others as ‘sub kings’. The name Akoto was however designated as “Chief of Taiengbe”.



68. Petitioners also tendered Exhibit CA6 which is the Funeral Brochure of the late Togbe Kwasi Adiko V who from the record died as recent as the year 2015. In his biography at page 5 of the said brochure, we have the following stated under the heading “**INSTALLATION AND REIGN**”:

“Togbe was installed Fiaga of Tanyigbe Traditional Area on 28th December, 1951 after the death of Togbe Kwami Ekpe Akoto. His grandfather, Togbe Goto Kwasi Adiko IV had earlier- on ruled as Chief of Tanyigbe”.

69. At page 30 of the brochure, Exhibit CA6 is the tribute of the Volta Region House of Chiefs which states in paragraph 2 of the said tribute thus:

“Togbe Kwasi Adiko V was gazetted as the Paramount chief of Tanyigbe Traditional Area in 2011 and was very happy to be sworn into the Volta Regional House of Chief as a permanent member per LI 1946 on 8th November 2012”.

70. As can be gleaned from the tribute by the Volta Regional House of Chiefs for the late Togbe Kwasi Adiko V, the late Togbe was inducted as a member of the Volta Regional House of Chiefs in 2012 under the now repealed LI 1946. Under the repealed LI 1946, now LI 2409, only a paramount chief, not a regent or caretaker chief is accorded such status and membership. As previously noted in relation to Exhibit CA2 and Exhibit CA3, both Togbe Kwami Ekpe Akoto II and Togbe Kwasi Adiko V were recognized and described as Divisional Chiefs respectively of Tanyigbe and members of the Asogli State Council and Native Authority, a position, membership or status reserved only for Divisional Chiefs as they were described at the time because Tanyigbe was then under Asogli State. Exhibit CA1, is the Gold Coast Chiefs List, an official government record from the National Archives. Exhibit CA2 and Exhibit CA3 are official government records and or official government correspondence respectively on the death of Kwami Ekpe Akoto II and the enthronement of Kwasi Adiko V after the former’s demise. These Exhibits just mentioned are not mere publications by some jurists, text book writers or publicists on the history of Tanyigbe hence this Judicial Committee cannot gloss over these pieces of documentary evidence offered in proof of the Petitioners’ claims.



71. From the said Exhibit CA6, even the tribute of Honourable Benjamin Komla Kpodo, (described in the said Exhibit CA6 as the Member of Parliament for Ho Central Constituency) at page 40 of the brochure reads from Paragraph 4 as follows:

“The late Togbe Kwasi Adiko V was a man of many parts. He was a committed and dedicated leader, a seasoned educationist, and an astute administrator. Indeed, Togbe was one time a government appointee at the Ho District Assembly. Togbe Adiko V succeeded Togbe Akoto IV as Paramount Chief of Tanyigbe...”

72. Counsel for the Respondents enquired under cross examination from Cephas Akoto the following on the 21st July, 2023:

“Q. Do you know one Mr. Ben Kpodo, the sitting member of Parliament of Ho central?

A. Yes, I know him.”

73. As to the purport of that question from Counsel, this Committee can only make an inference that the said Ben Kpodo is no less a person of repute who wrote that tribute with knowledge of the history of his people. From Exhibit CA2, Exhibit CA3 and Exhibit CA6, it cannot be lost on this Judicial Committee that Togbe Kwasi Adiko V took over the reigns of Tanyigbe Traditional Area as Paramount Chief from Togbe Kwame Ekpe Akoto II. Reading the whole of Exhibit CA6, particularly at page 53, one would notice that same was prepared by a Funeral Planning Committee which even had 1st Respondent, Enos Adiko- Mensah as a member. The central planning committee has a chairman and co-chairman and about 30 members. Notable amongst the names on the central planning committee are Major Gen. (Rtd) H.K Anyidoho who is a renowned and well respected retired military General in Ghana and “ngoryifia” (development chief) of Tanyigbe, Honourable Benjamin Kpodo who was the then Member of Parliament for Ho central and a native of Tanyigbe, Togbe Blu-Katte (who appears in court proceedings and announces himself as representing a party in these proceedings), Roland Adiko who is the 3rd Respondent and now “paramount chief of Tanyigbe” whose installation has culminated in this suit. We also have among the names, a Mr. Daniel Adiko, Miss Ivy



Adiko, Mr. Eric Adiko, Miss Stella Adiko, Mrs. Dinah Adiko amongst others. Among the members of the protocol/ tributes/history/security, we have 3rd Respondent, and about two other Adikos among others. There is no record before this Judicial Committee that, 1st Respondent who has testified that the Akotos listed in his witness statement were mere caretaker chiefs for the Adikos, did inform his Adiko family or the Funeral Committee that what was stated in the published official Biography of the late Togbe Kwasi Adiko under the heading “Installation and Reign” to the effect that the said late chief took over from the late Togbe Kwami Ekpe Akoto was untrue. He did not deny the contents of Exhibit CA6 nor did he deny that that information as stated there is true. In fact, Exhibit CA6 is the kind of historical artefact in recent and living memory that cannot be overlooked. It weighs very heavily on the minds of this Judicial panel since such publications by committees, families and stools are taken very seriously within our traditional settings especially in the absence of any challenge.

74. The argument of Respondents that the Akotos were mere caretakers is not sound and same is unsupported by any evidence on record. A chief cannot “succeed” a caretaker. It is only a chief who, properly nominated, elected selected and enstooled can “succeed” a deceased chief and be accorded the same status and published in the gazette. A caretaker only fills a vacuum and does not succeed a chief. Again, it is not lost on this Judicial Committee that the role of a caretaker chief ceases automatically a substantive chief is present so it cannot be lost on anyone that Kwami Ekpe Akoto was not a caretaker whose death was announced by the Zikpuitor of Tanyigbe and whose death will require notice to the Governor and a publication in the gazette and even find space in the biography account of the late Togbe Kwasi Adiko V in Exhibit CA6. If Exhibit CA2 was information from the Zikpuitor of Tanyigbe that Togbe Kwami Ekpe Akoto II, the Divisional Chief of Tanyigbe who was a member of the Asogli State Council and Native Authority was dead, and his death was to be published in the gazette, and if Exhibit CA3 was information about the enstoolment of the new Divisional Chief of Tanyigbe who was also to become a member of the Asogli State Council and Native Authority, and if Exhibit CA dated 1984 states that from data gathered and firm decision reached between



the representatives of the Akotos and Adikos, the paramountcy of Tanyigbe is rotatory, thereby confirming the Gold Coast Chiefs List, Exhibit CA1, CA2, CA3, and the information stated in Exhibit CA6 of the late Togbe Adiko V having taken over the reigns as paramount chief after the death of Kwami Ekpe Akoto II, and indeed Exhibit CA1 being a Gold Coast Chiefs List also states that Akoto was Fiaga of Tanyigbe as per official government records, then this Judicial Committee cannot give less credence and or less weight to these unassailable pieces of documentary evidence which allude to Akotos having been paramount chiefs of Tanyigbe or the fact that Togbe Kwasi Adiko V took over from Ekpe Akoto II or that a finding of fact was made by the Volta Regional House of Chiefs that the paramountcy of Tanyigbe is rotatory.

75. It is reiterated for the avoidance of doubt that the Petitioners' documentary evidence including the biography of the late Togbe Kwasi Adiko in Exhibit CA6 as well as the corroborating tribute of the Honorable Ben Kpodo only go to show that Akotos were legitimate paramount chiefs as recorded even in the Gold Coast Chiefs List and that Adiko V took over from an Akoto, that is, Kwami Ekpe Akoto II. The Volta Regional House of Chiefs Report, Exhibit CA, to the National House of Chiefs dated 1984 goes to confirm the rotatory system of paramountcy in Tanyigbe. Obviously, events of 1951 and 1952 will count as events in recent and living memory and so will those of 1984 and 2015 or 2016 when the late Togbe Adiko V died and was buried and his official biography published by his family and community per the funeral planning committee.

76. Admittedly, Togbe Kwasi Adiko V, from the record, reigned for 64 years and even the tribute by the Chiefs, Queenmothers and Elders of Tanyigbe traditional area at page 32 of Exhibit CA6 at paragraph 1 thereof makes the key observation that: "The installation of Togbe Kwasi Adiko V as paramount chief of Tanyigbe Traditional Area, dates back to 1951, when many of us occupying various positions as leaders and elders in the community, today, were either very young or were not born at all". It is therefore not surprising that these historical documents and records have been lost on most of the younger generation in Tanyigbe. In fact, even Respondent' own witness, DW1 testified that they were not born and did not witness some of these events, save for the documents available.



77. Respondents rely heavily on Exhibit 1 which was tendered by 1st Respondent. Exhibit 1 is titled “**The Paramount Chieftaincy System of the People of Tanyigbe**”. Exhibit 1, published in December 2019 is stated under the heading “Authorship” to be a compilation of the oral history of the people of Tanyigbe based on “accounts by citizens who witnessed some of the events that were referenced”. Listed at number 8 of the list of authors of Exhibit 1 under “Authorship” is Mr. Enos Yao Adiko-Mensah who is designated as “Zikpuitor of the Kodi Stool/ Historian”. At number 8 of the list of authors is Togbe Amewakunu Danku IV who is not just a Divisional Chief of Tanyigbe but 2nd Respondent in this suit.

78. Page 11 of Exhibit 1 at point number 3 states: “1. Togbe Kodi Adiko I: Oral history and existing documentation do not provide evidence of any Fiaga of Tanyigbe who preceded Togbe Kodi Adiko I of the Kodivi Clan. All existing accounts place Togbe Kodi Adiko I as the first Fiaga of Tanyigbe. This is the account that has been transferred from generation to generation...”. The list continues of the chiefs Respondents claim to be the only paramount chiefs of Tanyigbe. In fact, Exhibit 1 is a copious foundation of the pleadings and witness statements of Enos Yao Adiko-Mensah and Respondents’ witnesses. However, these were contradicted by the witnesses’ own testimonies under cross examination.

79. If Enos Yao Adiko-Mensah is indeed a historian as stated in Exhibit 1, then the statement in Exhibit 1 just quoted above that “oral history and documentation do not provide evidence of any Fiaga of Tanyigbe who preceded Togbe Kodi Adiko I of Kodivi” cannot be accurate in the face of documentary evidence available to this Judicial Committee, in particular the Gold Coast Chiefs List which states Akoto as Fiaga in its 1928-29 list. At page 20 of the said Exhibit 1 is stated the list of “Interim leaders/ Caretaker Chiefs” with Kwami Ekpe Akoto as one of them which cannot be factual in view of the findings already made in this Judgment.

80. This Judicial Committee finds that Exhibit 1 is not only inaccurate, but an absolute falsehood and a distortion of documentary pieces of evidence on the actual line of succession of Fiagas of Tanyigbe. Exhibit 1 is the kind of distortion of a peoples’ history that should not be encouraged. It is a dangerous and cancerous compilation which, without doubt, came into



being as a result of this very suit. Published in December 2019, two (2) years after this Petition was issued on 19th December, 2017, and without any recourse to historical records which are clearly documented, this Judicial Committee cannot place any serious weight on Exhibit 1. Exhibit 1 is an afterthought, a concoction and an absolute fabrication designed purposely for the trial of this suit. Exhibit 1 can, at best, be described as a self-serving document which should not have been given any due consideration or weight by any adjudicatory body.

81. A careful reading of Exhibit 1 will reveal that compilation of the so called “oral history and traditions” of the Tanyigbe paramountcy was not the source of motivation of the said Exhibit 1 at all. The source of motivation of Exhibit 1 is this very suit and the targets being the two Petitioners, Cephas Akoto and Gabriel Akoto and their Dzoku- Dzehe clan. For instance, at pages 39 of Exhibit 1 under the caption “Attempts to Project the Doku-Dzehe Stool as a Paramount Stool”, this is what the authors say at paragraphs 48 and 49 thereof:

“48. In the early 1980s, there was a directive from the government of Ghana to compile and submit recognized stools and their occupants (position and status) to the Volta Region House of Chief. Togbe Kwasi Adiko V with his chiefs and elders in response to the directive, compiled and submitted the list accordingly. However, Togbe Kofi Akoto IV installed as Anyigbe divisional chief on 5th April 1972 and the occupant of the Doku Dzehe stool at the time along with a section of the Akoto family disagreed with the ranking of the Doku Dzehe stool as a divisional stool. They preferred the stool to be ranked as a paramount stool...”

49. “To seek redress to this matter, the Akotos made a case at the Volta Region House of Chiefs. The Research Committee of the House was tasked to research into the matter to enable the House to arrive at an informed resolution. Without thorough investigation by the Committee, they concluded that the paramountcy was rotatory between the Adiko family and the Akoto family. The conclusion of the Research Committee was refuted by the Kodivi clan and a protest was registered against the recommendation. Unfortunately, the process did not continue to its logical conclusion. Since the Committee was a Research Committee, its conclusions



were considered as recommendations and not legally binding, therefore no changes were ever effected to the stools; the traditional structure of Tanyigbe remained the same”.

82. Then at page 51 of Exhibit 1 under the caption “Attempts to impose a Rotatory Chieftaincy System on Tanyigbe”, paragraph 61 reads;

“61. After the death of Togbe Kwasi Adiko V, and immediately after the performance of his funeral rites in April, 2016, two brothers (Cephas Akoto and Gabriel Yao Akoto) of the Akoto family, and an elder of the Defeme clan of Tanyigbe Anyigbe, Gilbert Abokpa Adzasu, independently without the knowledge, support and involvement of any of the kingmakers and elders of Tanyigbe purported to install one Wonder Akoto as a Paramount Chief of Tanyigbe.”

“63. The two Akoto brothers; Cephas Akoto and Gabriel Yao Akoto, have no kingmaking role in Tanyigbe... ”.

83. Then we have the other succeeding paragraphs of Exhibit 1 which all lead to the conclusion earlier intimated that the document was a motivation for this chieftaincy Petition before this Judicial Committee. The contents of Exhibit 1 only mirror Respondents’ pleadings and the evidence in chief of 1st Respondent as contained in his witness statement which was filed two or more years after the publication of Exhibit 1 and two years after the filing of the petition.

84. The irresistible conclusion from the records, however, is that the Tanyigbe paramountcy is not the sole preserve of the Kodivi clan or the Kodi Ayefior stool. The paramountcy of the Tanyigbe Traditional Area per evidence on record is rotatory between the Doku-Dzehe stool of the Anyidoto clan and the Kodi-Ayefior stool of the Kodivi clan. There was no objection raised against the admissibility of Exhibits CA, CA1, CA2, CA3, CA4 and CA6. They were not also contradicted under cross examination. Moreso, if the Respondents claim that Exhibit CA is fake, which assertion Petitioners deny, Respondents ought to have produced the alleged authentic version of Exhibit CA. This they failed to do. We agree with learned Counsel for the Petitioners when he asserts in his written address that DW1 has admitted the findings by the 1984 Research Committee contained in Exhibit CA and



its attachment which categorically says the paramountcy is rotatory although he has been mostly evasive in the face of hard documentary evidence knowing that a direct answer to the questions posed by learned counsel for the Petitioners during cross examination would have been prejudicial to the case of the Respondents on whose behalf he testifies. It is trite law, however, that an evasive answer or traverse is not a traverse as same amounts to an admission. In the Nigerian case of **ORIANWO V. OKENE (2002) 14 NWLR (PT. 786) 156**, the Nigerian Supreme Court held that where a witness evades a question under cross-examination, the court could presume that the answer to the question if given, would be prejudicial to the case of the party on whose behalf the witness testified.

85. DW2 has accepted the contents of Exhibit CA1 and the funeral brochure, Exhibit CA6, as true. We tend to agree with learned Counsel for the Petitioners in his contention that such admission does not only positively affect the credibility of those documents, but also shows there is no dispute as to the factuality of what the true state of affairs were as of 2016 when Exhibit CA6 was published. It further undermines the rival case of the Respondents in Exhibit 1 while lending weight to the case of Petitioners as documents that have not been controverted when Counsel for Petitioners cross-examined him.
86. It is a basic principle in the law of evidence that no evidence is necessary to prove an admitted fact. Under **Section 7(3) of NRCD 323:**

“Unless otherwise provided by this or any other enactment, corroboration of admitted evidence is not necessary to sustain any finding of fact or any verdict.”

87. In **ADJETEY AGBOSU & ORS VRS KOTEI NIKOI & ORS (2003-2004) SCGLR 420**, it was stated that;

“Where a party's testimony of a material fact was not challenged under cross-examination the rule of implied admission for failure to deny by cross-examination would be applicable and the party need not call further evidence of the fact”.



C. CONCLUSION

88. From the foregoing, and in consideration of the plethora of authorities from the Superior Courts, we find and hold that events in living memory and recent history of Tanyigbe supported by incontrovertible and unassailable documentary proof point to the fact that the Akotos of the Doku-Dzehe clan were not caretaker chiefs but paramount chiefs and that the late Togbe Kwasi Adiko V succeed Togbe Kwami Ekpe Akoto II.

89. This Judicial Committee also finds and holds that the Tanyigbe paramountcy is rotatory as supported by Petitioners' documentary evidence.

90. It follows therefore from the above that the paramountcy of Tanyigbe is not the sole preserve of the Kodivi clan as contained in Respondents' Exhibit 1.

91. This Judicial committee also finds and holds accordingly that in view of the findings above, it was the Anyidoto clan, not the Kodivi clan which ought to have presented a candidate for the paramountcy after the death of the late Togbe Kwasi Adiko V. Accordingly, 3rd Respondent, Roland Adiko, ought not to have been enstooled after the death of the late Togbe Kwasi Adiko V since in the scheme of the rotatory system, he does not hail from the "appropriate" clan/ lineage to be paramount chief after the late paramount chief, Togbe Kwasi Adiko V.

92. By reason of the aforesaid, this Judicial Committee declares the enstoolment of 3rd Respondent, Roland Adiko, as null and void and we will proceed to set aside the nomination, election, selection and enstoolment of 3rd Respondent, Roland Adiko, as Paramount Chief of Tanyigbe Traditional Area.

93. Based on the above, this Judicial Committee finds and holds that the Anyidoto Clan is the "appropriate" clan to have nominated and enstooled a candidate to ascend the paramountcy of Tanyigbe after the death of Togbe Kwasi Adiko V of the Kodivi clan and since they have already enstooled Etoi Kodzo, this Judicial Committee holds for the Petitioners.



94. The claim of Petitioners thus succeeds in its entirety.

95. Cost of GH¢20,000 in favour of Petitioners.

SGD
TOGBE GBORDZOR III
CHAIRMAN

SGD
TOGBE ADRAKPANYA VI
MEMBER

SGD
TOGBEGA SEI II
MEMBER

SGD
CEPHAS KWADZO MOTEY, ESQ
LEGAL COUNSEL
21/03/2025

