IN THE JUDICIAL COMMITTEE OF
NATIONAL HOUSE OF CHIEFS
KUMASI ASHANTI REGION
A.D 2026

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SUIT NO. NHC 1/NR/2019

IN THE MATTER OF PETITION BY:

1. CHAMBA SEIDU NANGUBINT KONLAN
2. CHAMBA MAKINYUAN LIBAAR

BOTH DECEASED
SUBST. BY NAMTEM ABRAHAM LIBAGTGIB (DECD)
SUBST.BY CHAMBA JAKPER JOLLY (DECD)
SUBST.BY NAAM BIIKA (DECD)
SUBST. BY NYANIB YOAGBAT
(FOR HIMSELF AND ON BEHALF OF THE JAMONG FAMILY OF BUNKPURUGU, NORTHERN REGION) == PETITIONERS/RESPONDENTS CROSS-APPELANTS

-VRS

1. ABDULAI MAHAMI SHERIGA
   NAYIRI OF MAMPRUGU TRADITIONAL AREA NALERIGU, NORTHERN REGION

2. ALHAJI ABUBA NASINMONG
   BUNKPRUGU, NORTHERN REGION === RESPONDENTS/APPELLANTS RESPONDENTS

3. CILLAS YENUMAAN
   FOR AND ON BEHALF NAMPAUK ROYAL FAMILY

CORAM

NANA EFFAH-APENTENG	(CHAIRMAN)
KING PROF. ODAIFIO WELENTSI III	(MEMBER)
NANA YAW AGYEI II	(MEMBER)
OKOTWAASUO KATAMANTO OWORAE AGYEKUM III	(MEMBER)
NANA OWUSU SAKYI III	(MEMBER)

ALEX OBENG-ASANTE ESQ (COUNSEL/ RECORDER)

DATE: 24TH FEBRUARY 2026

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JUDGEMENT

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INTRODUCTION

This is an appeal against the unanimous decision of the Judicial Committee of Northern Regional House of Chiefs delivered against the Respondents/Appellants/Respondents and in favour of the Substituted Petitioner/Respondent/Cross-Appellant on 29th August 2019. For purposes of convenience and ease of reference, we shall hereinafter interchangeably refer to the Judicial Committee of Northern Regional House of Chiefs as "the JC-NRHC" or "the trial Judicial Committee" or "the Tribunal below". The substituted Petitioner/Respondent/Cross-Appellant shall be referred to as "the Respondent/Cross-Appellant" and the Respondents/Appellants/Appellants shall be known and called "the Respondents/Appellants". We wish to hereinafter, characterize the notice of appeal as "the NOA", and the 856-paged record of appeal shall hereinafter be referred to as 'the ROA"

THE RESPECTIVE CORE CLAIMS ANIMATING THE PETITION AND CROSS-PETITION

The Petitioners, speaking through their attorney Zacchaeus Jayur Katugu claimed that: (1) the ancestor of the Jamong family by name Toojak founded the Bunkpurugu community in 1818; (2) the eldest son of the said ancestor called Jamong Toojak became the first chief of the Bunkpurugu community, and subsequently, he was introduced to the then Nayiri whereupon the latter conferred the title of Bunkpurugu Naba on him; (3) the second and third successive chiefs of Bunkpurugu were Yoagbat Toojak and Nyankpen Libagtib; (4) Yoagbat Toojak and Nyankpen Libagtib were members of the patrilineal family originated by their ancestor, Jamong; (5) the Jamong family is the only royal family in Bunkpurugu from which a candidate must be nominated and subsequently presented to the Nayiri for enskinment as Bunkpurugu Naba; and (6) the purported nomination, selection and enskinment of the 2nd Respondent/Appellant as Bunkpurugu Naba in 2007 was improper and uncustomary on the grounds that he is not a member of the Jamong royal family. Thus, in their amended petition filed on 8th August 2017 pursuant to an order of the JC-NRHC dated 10th May 2016, the Petitioners sought the following reliefs:

(a) The process of nomination, election and subsequent enskinment of the 2nd Respondent/Appellant by the 1st Respondent/Appellant as Naba of Bunkpurugu is unlawful.

(b) An order of perpetual injunction to restrain the 1st Respondent/Appellant, his servants, agents, cronies howsoever or otherwise, from holding out the 2nd Respondent/Appellant as the Naba of Bunkpurugu.

(c) An order of perpetual injunction to restrain the 2nd Respondent/Appellant either by himself or his servants, agents, cronies howsoever or otherwise, from holding himself out as the Naba of Bunkpurugu.

(d) Any further order or orders as may be just and equitable in the circumstances.

The 1st and 2nd Respondents/Appellants presented a common defence to the petition and claimed that the Bunkpurugu skin is composed of three royal families, namely the Jamong, Jafok and Nampauk families, members of which are eligible to contest for succession to the skin whenever it becomes vacant. The 2nd Respondent/Appellant in particular claimed that the Bunkpurugu community was founded by Jajin, a member of the Jafok family, and furthermore, he claimed that members of the Jamong, Jafok and Nampauk families have one thing in common, which is that, they are all from the same father called Nyaan who was a Louk clansman. It was the case of the 2nd Respondent/Appellant that Nyaan had eight children, the youngest of whom was Jamong, and further, he claimed that the descendants of all the eight children of Nyaan are entitled to contest and be enskinned as Bunkpurugu Naba; he mentioned the eight families originated by the children of Nyan to be the Nampauk, Jafok, Jamong, Majikibe, Jatong, Saubinant, Jakong and Jakpakir families. The 2nd Respondent/Appellant also claimed that: (1) he is a member of the Jafok family and that fact entitled him to participate in the contest for succession to the Bunkpurugu skin; (2) he was validly nominated, selected and enskinned by the 1st Respondent/Appellant as Bunkpurugu Naba which processes, according to him, were customary and lawful; (3) Lambong Tapang, a member of the Jafok family succeeded Nyankpen Libagtib as Bunkpurugu Naba in 1986;(4)after the demise of

Lambong Tapang, he was validly nominated, selected and enskinned as the next Bunkpurugu Naba, after he had contested with ten other candidates and won; and (5) some of the contestants were members of the Jamong family.

The 1st Respondent/Appellant, who prosecuted his case through his attorney, Tarana John Wuni Grumah, particularly claimed that: (1) Lambong Tapang was initially enskinned as chief of Bunkpurugu, but later his enskinment was set aside by the then Nayiri, whereupon Nyankpen Libagtib was enskinned to replace him; (2) the enskinment of Lambong Tapang in 1986 was customary and proper (3) the enskinment of the 2nd Respondent/Appellant was also customary and proper. At the tail end of their amended statement of defence filed on 27th July 2015 with the leave of the JC-NRHC the 1st and 2nd Respondents/Appellants cross-petitioned against the Petitioners and sought the following reliefs:

(a) A declaration that the petitioners are estopped by conduct from petitioning against the nomination, selection and enskinment of the 2nd Defendant by the 1st Defendant.

(b) A declaration that the 2nd Defendant has been validly nominated, selected and enskinned [as] Bunkpurugu Naba by the 1st Defendant.

(c) Perpetual injunction restraining the petitioners from interfering in the traditional administration of the Bunkpurugu Traditional Area

The 3rd Respondent/Appellant, prosecuting his case through his attorney, Manasseh Kombat, claimed that: (1) the Bunkpurugu community is populated by members of the Louk clan which, according to him, is made up of ten royal families, namely the Nampauk, Jafok, Saubinant, Jakun, Jamong, Jatong, Jakpakir, Majikibe, Tuarbobik and Taana families; (2) around 1652, Chamba Nampauk from the Nampauk family and who was a resident of Lokpur, became the chief of Bunkpurugu and he was the chief of the entire Louk clan; (3) successive chiefs of Bunkpurugu after Chamba Nampauk were: Chamba Barinaba from the Jafok family, Nabikukur from the Nampauk family and Nabinangban from Nampauk family, all of whom resided in Lokpur and were enskinned by the Nayiri; (4) Toojak Jamong succeeded Nabinangban and at that point in time members of the Louk clan had settled at Bunkpurugu; and (5) succession to the Bunkpurugu skin is by contest among eligible candidates from the ten royal families. At the tail end of the statement of defence filed on 22nd July 2015, the 3rd Respondent/Appellant also cross-petitioned against the Petitioners as follows:

(a) A declaration that the Jamong royal family is not the only family in Bunkpurugu with capacity to present candidates for the selection and enskinment as chiefs of Bunkpurugu.

(b) A declaration that succession to the Bunkpurugu skin is by contest from qualified candidates from 10 royal families in the Louk clan in Bunkpurugu/Nankpanduri to wit: the Nampauk, Majikibe Jatong, Jakpakir, Tour, Bobik, Jakoung, Jafok, Jawaak, Jamong and Saubinant royal families and not by rotation among gates of the Jamong royal family.

(c) A declaration that the Petitioners are estopped by conduct from petitioning against the nomination, selection and enskinment of the 2nd Respondent/Appellant by the 1st Respondent/Appellant.

(d) A declaration that the 2nd Respondent/Appellant has been validly nominated, selected and enskinned [as] Bunkpurugu Naba by the 1st Respondent.

(e) [An order of] perpetual injunction restraining the Petitioners from interfering in the traditional administration of the Bunkpurugu Traditional Area by the 2nd Respondent/Appellant"

THE DECISION OF THE JC-NRHC

The trial Judicial Committee, having evaluated the evidence placed before it, found and concluded at pages 47- 48 of its judgment dated 19th August 2019 as follows:

> "In the light of the facts, the evidence and the law as presented before Nanima therefore, the petition succeeds in full and all the reliefs sought by petitioner are hereby granted. The cross-petition of 1st and 2nd Respondents/Appellants fails in its entirety and all the reliefs sought are hereby dismissed. The cross-petition of 3rd Respondent/Appellant succeeds in part and relief(a) of the said cross-petition is granted whilst reliefs (b), (c) (d) and (e)are dismissed
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> In sum, the petition wholly succeeds. The enskinment of the 2nd Respondent/Appellant as Bunkpurugu Naba by the 1st Respondent/Appellant is hereby declared null and void. It is further declared that, following the enskinment of Lambong Tapang, succession to the Bunkpurugu skin is by rotation between the Jamong and Jafok families and the Jafok family having succeeded on the last occasion, it is the turn of the Jamong family to succeed. It is also declared that, the Nampauk family represented by the 3rd Respondent/Appellant, has never succeeded to the Bunkpurugu skin following its establishment and therefore not a royal family of the Bunkpurugu skin with right of succession to the skin
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> **<u>Consequential orders</u>**
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> 1. The Petitioner as head of family of the Jamong royal family, shall consult with members of the family to settle on a suitable nominee for enskinment as Bunkpurugu Naba by the 1st Respondent/Appellant. If they are unable to settle on any particular person or if there is no consensus among them, then they are to present the nominee of the family to the 1st Respondent to select a successor from among them.
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> 2. The 2nd Respondent/Appellant shall hand over all skin regalia and other property of the skin to the 1st Respondent/Appellant to enable him carry out his traditional functions as the enskinning authority."

Upon reading the 48-paged judgment of the JC-NRHC, we discovered that the unanimous decision of trial Judicial Committee was anchored on thirteen (13) primary findings of facts captured at pages 37-38 thereof. The trial Judicial Committee found and concluded that: **(1)** the Bunkpurugu skin was founded by Jamong Toojak who was the first chief of Bunkpurugu and established the Jamong royal family, **(2)** after Jamong Toojak, the second and third chiefs of Bunkpurugu namely Yoagbat Toojak and Nyankpen Libagtib, both hailed from the Jamong royal family, **(3)** the Jamong royal family

preserved Bunkpurugu skin in themselves from its inception until 1986 when Lambong Tapang succeeded to the skin, **(4)** the Jamong royal family, never filed a petition before the Judicial Committee of the Northern Regional House of Chiefs against the enskinment of Lambong Tapang, **(5)** the Jamong royal family instead addressed a petition to the then PNDC Secretary for Chieftaincy Affairs who then referred the said petition to the Northern Regional House of Chiefs as an administrative body and not the Judicial Committee as a judicial body.

The JC-NRHC further found and concluded that: **(6)** the Jamong royal family eventually recognized the enskinment of Lambong Tapang for which reason they performed his funeral as the chief of Bunkpurugu and then contested for the skin, **(7)** apart from the Jamong and Jafok royal families, no other family has succeeded to the Bunkpurugu skin ever since it was founded sometime in the 19th century, **(8)** the Bunkpurugu skin is a separate and distinct skin from the skin of Lokpur in Togo and royal families of the Lokpur skin cannot claim royalty to the Bunkpurugu skin, unless they succeeded to the Bunkpurugu skin, **(9)** succession to the Bunkpurugu skin is patrilineal, **(10)** Succession to the Bunkpurugu skin is rotatory among existing royal families, **(11)** the last Bunkpurugu Naba, Lambong Tapang hailed from the Jafok royal family and as such it is the turn of the Jamong royal family to succeed, (**12**) the 2nd Respondent/Appellant hails from the Jafok family and as such his enskinment is a violation of the rotational system, **(13)** in any case, the 2nd Respondent/Appellant has no royal lineage and was therefore not qualified to be enskinned as Bunkpurugu Naba as none of the persons mentioned by him.

This Tribunal relies on the case of **Oxyair Ltd, Darko v Woods & Others [2005-2006] SCGLR 1057** (per Date-Bah JSC at 1068) and presume the above-listed 13 findings of fact to be right, unless, in the instant appeal, the presumption is displaced by the Respondents/Appellants or the Respondent/Cross-Appellant, as the case may be

ANALYSIS AND DETERMINATION OF THE APPEAL AND CROSS-APPEAL

Having perused the record, we are of the considered view that the real issues for determination in the instant appeal are as follows:

(a) Whether or not the evidence adduced by the respective attorneys of the Petitioners and 1st Respondent ought to be expunged from the record on account of the unstamped powers of attorney by which the attorneys testified at the trial.

(b) Whether or not the decision of the trial Judicial Committee ought to be set aside by reason of the participation of the official Counsel for the JC-NRHC in the proceedings.

(c) Whether or not the judgment of the JC-NRHC was against the weight of the evidence respectively adduced by or on behalf the Respondents/Appellants

(d) Whether or not the finding by the JC-NRHC that the Jamong family is not the only royal family in Bunkpurugu was against the weight of evidence.

Issue (a): a point of law regarding unstamped powers of attorney viz Exhibit A and Exhibit 6.

We have crafted the issue under reference from the NOA filed jointly by the 1st and 2nd Respondents/Appellants on 30th August 2019, wherein they set out the particulars of the alleged misdirection or error of law as follows:

"That the respective attorneys of the Petitioners who at various stages prosecuted the petition were not clothed with capacity to institute the petition for and on behalf of the Petitioners"

It is worthy to note that at the inception of the instant appeal, Stephen Azantilow Esq was representing the 3rd Respondent/Appellant, and E.K. Musah Esq was representing the 1st and 2nd Respondents/Appellants. Somewhere along the line, Joseph Kaponde Esq became Counsel for the 1st Respondent/Appellant and E.K. Musah Esq also became Counsel for the 2nd and 3rd Respondents/Appellants. Again, it bears stating that at the trial, E.K. Musah Esq represented the 1st and 2nd Respondents (the 1st and 2nd Respondents herein). This Tribunal deems it necessary to point out the facts about some of the Respondents/Appellants changing or switching Counsel, so as to avoid confusion of thought, particularly in considering the written submissions filed in this appeal.

The written submissions filed by Joseph Kaponde Esq was silent on the point of law regarding the unstamped power of attorney, though the 1st Respondent/Appellant had raised that issue with the 2nd Respondent/Appellant in the joint NOA filed on their behalf by E. K. Musah Esq way back on 30th November 2019. Therefore, the 1st Respondent/Appellant is deemed to have abandoned that point of law raised concerning the unstamped power of attorney (Exhibit A) by which the attorney for the Petitioners testified at the trial. It would seem that in his written submissions, Counsel for the 1st Respondent/Appellant chose to be tactically or strategically silent on that point of law because, as it turned out, the power of attorney by which Tarana Wuni Grumah gave evidence for and on behalf of the 1st Respondent/Appellant was also not stamped. (See Exhibit 6). We have also noted that the 3rd Respondent/Appellant raised no such point of law concerning any of the unstamped powers of attorney in his NOA, for which reason his Counsel argued no such point of law in his written submissions. Nevertheless, in law, nothing stopped Counsel from arguing that point of law.

Arguing the point of law under reference, E.K Musah Esq contended at the relevant portions of pages 31-34 of his written submissions that the unstamped power of attorney (Exhibit A) was legally inadmissible, in the sense that the condition for its admissibility was not satisfied. In support of this contention, Counsel referred to the unreported decision of the Court of Appeal, delivered on 24th March 2016 in the case of Kwame Perbi v Nii Kwame Perbi II & 5 Others (Civil Appeal No. H1/236/2015). Relying on this unreported case, Counsel posited that the general principle of law is that documents that are not stamped in accordance with the Stamp Duty Act 2005 (Act 689) ought not to be admitted in evidence.

This Tribunal has noted that in the case of Kwame Perbi v Nii Kwame Perbi II & 5 Others supra, the Court of Appeal referred to earlier decisions of the superior courts on the subject, namely: (1) the case of Nartey v Mechanical Lloyd Assembly Plant Assembly Plant [1987-88] 2GLR 314 SC which is to the effect that an unstamped document is worthless for evidential purposes; (2) the case of Ricketts & Another v Addo & Another and Ricketts v Borbor & Others (Consolidated) [1975] 2 GLR 158 CA, plus the case of Mansah v Asamoah [1975] 2 GLR 225 CA, both of which state that an objection to the tendering of an unstamped document ought to be taken as same cannot be waived by the parties (3) the case of Antie & Adjuwah v Ogbo [2005-2006] SCGLR 494, plus the case of Amonoo v Dee [1975] 1 GLR, both of which are to the effect that in practice, the court may allow an unstamped document to be tendered in evidence where the party seeking to tender it gives a positive

indication to get it stamped if given time, subject to the condition that the document must be stamped before the conclusion of the trial, failing which the court will not consider in its judgment

E. K. Musah Esq also referred to a passage from page 309 of the book titled: "Practice and Procedure in the Trial Courts and Tribunals in Ghana (2nd Edition.), authored by the learned jurist S.A. Brobbey JSC (rtd), where the author relied on the repealed Stamp Act 1965, Act 311 (as amended by the NLCD 160 of 1967) under which the case of CILEV v Black Star Line Ltd [1968] GLR 480 was decided. Counsel pointed out that in the literature so referenced, the learned author expresses the view that: (1) as a general rule, a power of attorney should be stamped, being a document requiring a stamp and same should not be received in evidence unless it has been stamped; (2) a stamp duty legislation is purely a revenue matter and has nothing to do with the validity of the document required to be stamped; and (3) an unstamped power of attorney may be received in evidence, provided the duty and penalty are paid to the Registrar, or alternatively, Counsel for the party seeking to tender it undertakes that the duty and penalty will be paid before the order of the court is drawn up.

The other case relied on by Counsel was the unreported decision of the Court of Appeal delivered 26th February 2019 in the case of Kofi Atta Gyamfi v Yaw Botah (Attorney of Madam Afia Konadu) & Another (Suit No. H2/02/2019), where the court held, among other things, that the power of attorney in issue in that case ought to have to been stamped, even though the requirement of stamping was purely a revenue matter and would not affect the validity of the document. Relying on this and the other decided cases mentioned above, Counsel submitted that Exhibit A ought not have been admitted in evidence and relied on by the JC-NRHC, in so far as the condition for its admissibility, as set down in the above-mentioned case, was not satisfied. Notably, Counsel, nevertheless, conceded that the requirement of stamping is for the purpose of generating revenue for the state, and nothing more. Counsel also said, the fact that at the trial no objection was raised to the tendering of the unstamped power of attorney, was not fatal to the position taken by the 2nd Respondent/Appellant in relation to Exhibit A. Based on this and the other arguments above, E.K. Musah Esq urged this Tribunal to expunge the entire evidence adduced by the attorney for the Petitioners from the record because, according to him, the attorney lacked authority to testify for and on behalf of the Petitioners.

On his part, Counsel for the Respondent/Cross-Appellant pointed out that at the trial, E.K. Musah Esq, who was then representing the 1st and 2nd Respondents/Appellants (the 1st and 2nd Respondents herein), never objected to the tendering of the unstamped power of attorney in evidence, and that being so, the JC-NRHC accordingly admitted and marked it as Exhibit A. Observably, Counsel conceded that ordinarily, the power of attorney (Exhibit "A") ought to have been stamped, yet he contended that in the adjudication of chieftaincy disputes, strict compliance with the rules is relaxed, and thus, for him, what did matter most at the trial were the facts and the documentary evidence corroborating the facts adduced by the parties.

Counsel for the Respondent/Cross-Appellant submitted further that although the exercise of judicial function imposed a duty on the JC-NRHC to explore the facts and apply the law, there was an equal duty imposed on the trial Judicial Committee to do substantial justice between the parties, unhampered by technical procedural rules. Counsel referred to the case of ABDLMASHI VRS AMARH [1972] 2 GLR 414 to anchor his position. It was, therefore, the contention of Counsel that, JC-NRHC dutifully dealt with facts and ascertained the truth of the issues raised in the pleadings,

and therefore, any omission by a party to the proceedings should not lead to the defeat of that party 'case. According to Counsel, the argument centered on the unstamped power of attorney (Exhibit A), as canvassed for and on behalf of the 2nd Respondent/Appellant, dwelt on a mere technicality.

Counsel for the Petitioner/Cross-Appellant also relied on the case of CILEV v Black Star Line Limited [1968] GLR 480, as E.K. Musah Esq did as indicate above. Winding up his submissions, Counsel contended that the mere fact that Exhibit A was not stamped as required, had no effect on the merits of the case. Counsel contended that in the instant appeal, what matters most are the customs and practices relating to succession to the Bunkpurugu skin. Based on this and the other arguments canvassed above, Counsel urged this Tribunal to dismiss the point of law raised by the 2nd Respondent/Appellant concerning the unstamped power of attorney on the ground that same lacks merits.

In the analysis and determination of the merits or otherwise of the respective arguments detailed above, for a start, we must ask and find an answer to this long critical and fundamental question: does failure of Counsel for the Respondents to raise an objection when Exhibit A was being tendered in evidence precludes the 2nd Respondent/Appellant from raising the point of law about it in the instant appeal? We hold the considered view that this highly contested point of law must be considered within the context of the decision of the Supreme Court in the case of **Juxon-Smith v KLM Dutch Airlines [2005-2006] SCGLR 438,** where Woode JSC (as she then was), stated at 447-448 thus:

> **"And so, to the question: is a party who had at the trial allowed a document to be admitted into evidence without objection, estopped on appeal, from raising for the first time, objections in law to its admissibility? The answer must, of course, be in the negative. Legal objections raised at such hearings are appeals on points of law, not facts. Consequently, the rules (both the general rule and the exceptions) in respect of appeals on points of law govern the conduct of these matters. The rule is that where a point of law is raised, it must be one which was relied on at the trial but was wrongly determined (unless, of course, there are special circumstances justifying the omission, as for example, the appellant was taken by surprise), is one of such rules. So also, the rule that if a party fought a case on a question of law and lost, he cannot, on appeal, fight it on grounds which were open to him at the trial on the pleadings and the evidence.**
>
> **One of the well-known exceptions to these general rules is that, where the point being urged for the first time is of substantial importance and can be conveniently be argued without further evidence being taken being taken by the appellate court (which in any event in exercise of its powers of re-hearing has then become seised with all the powers, authority and jurisdiction of the trial court), the party will not be barred from raising those legal points. Thus, where the legal point being argued for the first time is premised on facts on which no evidence has already been led, the appellate court would disallow it. Indeed, this court has, times without number, allowed such substantial legal points to be argued for the first time on appeal. For these reasons, it is legally permissible for a party who has allowed a document to be admitted into evidence without objection, on appeal, to request for its exclusion**

on legal grounds, particularly, substantial legal points, provided of course those points can be disposed of without the need for further evidence. The blanket argument that it is not open to an appellant to argue on legal grounds for the exclusion of documents which have been improperly received into evidence without any objection at the trial, is therefore a complete fallacy. Equally misleading is the allied argument that an appellate court would have no right to interfere with the status of such documents" (Emphasis is ours

Thus, in light of the general rule laid down in the opinion expressed by Wood JSC (as she then was) reproduced above, it would seem that, the 2nd Respondent/Appellant is estopped from raising, for the first time in the instant appeal, the point of law regarding the unstamped power of attorney (Exhibit A). However, as we appreciate it, the exception to the general rules advances the cause of the 2nd Respondent/Appellant for the following reasons: (1) this point of law raised for the first time in the instant appeal is of substantial importance (2) the status of Exhibit A as an unstamped document speaks for itself such that this Tribunal can dispose of the point of law raised about it without the need for further evidence; Counsel for the Petitioner/Cross-Appellant conceded that, indeed, Exhibit A is an unstamped document. For these reasons, we hold that the point of law raised about the status of Exhibit 'A' in the instant appeal is well-grounded in law.

What remains to be analyzed and determined is the issue as to whether or not this Tribunal must exclude the Exhibit A from the record and thus expunge the entire evidence founded on it from the record. As clearly stated at the tail end of the opinion expressed by of Woode JSC (as then was) in the case of Juxon-Smith v KLM Dutch Airlines supra, an appellate court has the right to interfere with the status of an unstamped document. For instance, in the recent decision of the Court of Appeal, delivered on 27th January 2022 in the case of **Opanain Kwasi Acheampong v Amma Dapaah alias Amma Ketewa (Civil Appeal No.H1/16/2020)**, the Court expunged the entire evidence of the attorney for the defendant/ appellant from the record, on the grounds that the power of attorney by which the attorney testified was not stamped in accordance with the Stamp Duty legislation. The Court held, per Asiedu JA (as he then was) that:

"**It follows therefore that once the power of attorney donated by the Defendant to Kwame Duodu Dapaah Samuel was not stamped in accordance with the Stamp Duty Act, the said power of attorney cannot, lawfully, be admitted in evidence and equally it cannot be used as the basis for the Kwame Duodu Dapaah Samuel to testify for and on behalf of the Defendant/Appellant in the instant suit.**

The evidence given by Kwame Duodu Dapaah Samuel on behalf of the Defendant/Appellant can therefore not be allowed to stand on the records and is therefore expunged therefrom with the concomitant result that there is no evidence on record to support the case of the Defendant/Appellant herein together with her counter-claim" (Emphasis is ours)

Observably, the decision in the case of CILEV v Black Star Line Limited supra, which sought to be relied on by the respective Counsel for the 2nd Respondent/Appellant and the Petitioner/Cross-Appellant, is of no relevance to the extent that it endorsed the practice of allowing an unstamped document to be admitted in evidence, subject to the payment of the requisite duty and penalty before

judgment is delivered has been deprecated by a decision of the Supreme Court in the case of **Lizori Limited v Mrs Elizabeth Boye and Another [2013-2014] 2 SCGLR 889,** where the Court held, per Benin JSC that there was no discretion vested in the trial court to admit an unstamped document in the first place and ask the party to pay the duty and penalty thereafter. Similarly, in the case of **Francis Appiah-Mensah v Gifty Anane -Wireko [2023] 185 GMJ 745 SC,** the Court held, per Koomson JSC at page 761, that:

> **"It is to be noted that, the Court, in Suit No. J4/80/2022 entitled Nii Aflah v Benjamin Kwaku Boateng dated 22nd March 2023, in a unanimous decision, put the admissibility of unstamped documents to rest. The Court, in its quest to bring clarity and finality to the law by dealing a death blow to the inconsistencies in cases like Antie & Adjumah v Ogbo [2005-2006] SCGLR; Lizori Ltd v Boye & School of Domestic Science and Catering [2013-2014] 2 SCGLR 889, Woodhouse Ltd v Airtel Ghana Ltd [2017] held, per Kulendi JSC that:**
>
> > **...we are of the considered opinion that the law on the admissibility or otherwise of unstamped documents or instruments as enunciated in the cases of Lizori and Woodhouse are more accurate precedents of the proper construction of Section 32 of the Stamp Duty Act, 2005 (Act 689)**
>
> **Exhibit C, having not been stamped ought not to have been admitted into evidence and relied on in accordance with section 32 (6) of the Stamp Duty Act,2005 (Act 689)"**

Nananom, if as a fact-finding chieftaincy Tribunal, we have to strictly follow the above-cited decisions relating to unstamped powers of attorney, then in all fairness to the parties before us, we must equally apply the effect of those decisions to Exhibit 6, which is an unstamped power of attorney by which Tarana John Wuni Grumah testified for and on behalf of the 1st Respondent/Appellant. This document too was admitted in evidence without objection by Counsel for the Petitioners. Notably, in the NOA, the Petitioner/Cross-Appellant raised no point of law about Exhibit 6, but nothing legally prevents this Tribunal to suo motu raise a point of law about its admissibility and its telling effect on the entire evidence adduced by the Tarana for and on behalf of the 1st Respondent/Appellant. We are justified in raising this point of law by the decision in the case of **Tidana v Chief of Defence Staff (No.2) [2011] SCGLR,** where it was held that:

> **"...A court adjudicating any matter might raise a point of law on its own motion. In the instant proceedings the point of law raised was jurisdictional. Even through the court ought to have offered the parties the opportunity to address it on the point raised, the point raised was clearly unanswerable to admit of any legal argument. Under the circumstances, it would therefore be an exercise in futility for counsel on both sides to address the court on the point raised**" (Emphasis is ours)

Indeed, the fact that Exhibit 6 was not stamped in accordance with the Stamp Duty Act is beyond disputation, and therefore, we consider it pointless to invite the respective Counsel representing the parties in the instant appeal to address us on it. Thus, ordinarily, the binding decisions in the case of Opanain Kwasi Acheampong v Amma Dapaah alias Amma Ketewa (supra) and Francis Appiah-

Mensah v Gifty Anane -Wireko (supra) should compel us to expunge the entire evidence of Zacchaeus Jayur Katugu (the attorney for the Petitioners) and that of Tarana John Wuni Grumah (the attorney for the Nayiri, the 1st Respondent) from the record. However, as a fact-finding Tribunal, we restrain ourselves from adopting such a radical approach which, in our considered view, only serves to obscure the bigger and real issues in controversy in the instant appeal, namely the structure of royalty in Bunkpurugu and succession to skin. In the instant appeal, the copious evidence proffered Zacchaeus Jayur Katugu and Tarana John Wuni Grumah, and that of the witnesses who testified at the trial on these bigger and real issues need to focussed on rather that the issue of unstamped powers of attorney.

Therefore, we are unable to accept the invitation extended to us to expunge the entire evidence adduced by the attorney for the Petitioners from the record, and similarly, we are not in the position to expunge the evidence of the attorney for the 1st Respondent/Appellant from the record given the peculiar circumstances of the case before us. For the avoidance of doubt, we have taken the decision to save the entire evidence adduced by the respective attorneys for the Petitioners and the 1st Respondent (the Nayiri). Our position is fortified by the law that requires us to consider the substance of the case before us and not to stick to legal technicalities regarding the two valid but unstamped powers of attorney on record namely, Exhibit A and Exhibit 6. (See the following cases: **Kyere v Kanga [1978] 1 GLR 83 CA (Full Bench), Nyamekye v Tawiah [1979] GLR 265 CA**, **Pomaa v Fosuhene [1987-88] 1 GLR 244 SC, Darko v Amoah [1989-90] 2 GLR 214 SC** and **Antwi Manu & Another v Nana Afrakomah II & 3 Others [2022] 178 GMJ 445 SC).**

The case of **Darko v Amoah** (supra) particularly posits that where succession to a stool (and by extension a skin) is at stake, the fullest consideration must be given to the merits. Thus, a chieftaincy Tribunal such as ours, to borrow the words of Francois JSC in **Darko v Amoah**, "must resist attempts to shut off issues of substance in gambit aimed purely at avoiding the real issues in controversy". In the recent decision of the Supreme Court in the case of **Antwi Manu & Another v Nana Afrakomah II & 3 Others [2022] 178 GMJ 445 SC,** the Court held, per Amegatcher JSC at page 502, among other things, that:

> "**It is important to state that proceedings before the judicial committees of the Houses of Chiefs are fact-finding ventures. Therefore, to re-echo Court's rightful words in Darkoh v Amoah [1989-90] 2 GLR 214, members of the traditional courts must place more confidence in their traditional role as chiefs and as repositories of the customary law and not be carried away by technical rules and procedure preferred by counsel.**

Based on the above legal considerations, we are not minded to adopt the radical and technicality-driven approach preferred by Counsel for the 2nd and 3rd Respondents/Appellants which certainly operates to obscure the real issues in controversy. In this regard, we accept the invitation extended to us by Counsel for the Petitioner/Cross-Appellant not to stick to the technicality-driven argument preferred by E. K. Musah Esq which revolves around the unstamped power of attorney (Exhibit A), given the peculiar circumstances of the instant case. Indeed, the history of the Bunkpurugu chieftaincy dispute and the need to determine feud on the merits also justifies our decision not to sacrifice substance of the matter on the altar of technicalities.

Notably, in the introductory part of the unanimous decision of the JC-NRHC, Nanima made certain candid and pertinent observations about the tension-ridden, protracted, and precarious nature of the Bunkpurugu chieftaincy dispute before them, and particularly, at pages 3 and 6 of the judgment (found at pages 766 and 768 of the ROA) the trial Judicial Committee observed that:

> "The Bunkpurugu skin, has historically been mired in confusion, chaotic processes of enskinment and violence and perhaps needlessly so… [page 3]
>
> This Committee has taken time to delve into the history and the facts of this matter in order to shine a light into the heart of this intractable chieftaincy dispute which has for several decades been a scar on the chieftaincy institution in the country" [page 6]
> (Emphasis is ours).

The trajectory of the Bunkpurugu chieftaincy dispute need to be recounted, at least, from 1931. We have noted that in or around 1931 Yoagbat Toojak of the Jamong family (the then Bunkpurugu Naba) appointed his sibling, Toojak Jamong to be acting for him as Bunkpurugu Naba. Members of the Jafok family, led by Parimaak Gong, opposed that move and that resulted in disturbances in the community. On 19th July 1931, a memorandum of agreement was executed by the feuding parties, wherefore all the relevant stakeholders decisively resolved the dispute and had the structure of royalty documented. It was resolved, among other things, that the Jamong family is the only royal family in Bunkpurugu. Consequently, the Nayiri of the day formally enskinned Yoagbat Toojak as Bunkpurugu Naba, and he reigned from thence to 1968.

Circa 1969, the dispute got reignited when Nyankpen Libagtib of the Jamong family was nominated to be selected and enskinned by the then Nayiri as the next Bunkpurugu Naba. The main characters in the reignited chieftaincy dispute were Nyankpen Libagtib of the Jamong family and Lambong Tapang of the Jafok family, but in the end, Nyankpen Libagtib prevailed and the Nayiri of the day enskinned him as the new Bunkpurugu Naba. Nyankpen Libagtib reigned from 1969 to 1984.

In or around 1986, the smouldering dispute got inflamed once again when it became necessary for the then Nayiri to enskin a new Bunkpurugu Naba following the demise of Nyankpen Libagtib. Lambong Tapang renewed his claim to royalty and entitlement to be enskinned as the new Bunkpurugu Naba, which claim was disputed, resisted, or challenged by the Jamong family. Notwistanding the protest or resistance, the Nayiri enskinned Lambong Tapang as the new chief of Bunkpurugu. The Jamong family wrote to the then PNDC Secretary for Chieftaincy Affairs, complaining that Nayiri had imposed Lambong Tapang, whom they claimed was a non-royal, on the Bunkpurugu skin. However, the Secretariat chose not to address the issues raised in the petition, but rather referred it to the Northern Regional House of Chiefs, as an administrative body, to resolve the matter. The resolution of the matter did not see the light of day till Lambong Tapang died in 2005.

In April 2007, the Nayiri (the 1st Respondent/ Appellant) nominated, selected, and enskinned the 2nd Respondent/Appellant as the new Bunkpurugu Naba, which event compelled the Petitioners to file a petition at the JC-NRHC on 18th June 2007. After a fully-fledged trial, the Judicial Committee unanimously entered judgment against the Respondents/Appellants, nullified the purported

enskinment of the 2nd Respondent/Appellants, and made the consequential orders reproduced earlier in this opinion.

We have painstakingly tracked the trajectory of the Bunkpurugu chieftaincy dispute, at least, from 1931 to date, spanning a period of 95 years. It is clear from the facts recounted above that whenever the Bunkpurugu skins becomes vacant, thereby necessitating the enskinment of a new chief, the dispute erupts. We hold the view that such a protracted litigation needs to be decisively resolved on the merits, in one way or the other. The JC-NRHC did its part and considered the matter on its merits. The aggrieved parties are now before us on appeal. As chieftaincy adjudicators, traditional rulers and for that matter practitioners in the chieftaincy space, we cannot pretend to be unaware of the resurging and precarious nature of chieftaincy disputes these days, all of which have the potential to disturb our collective communal and national peace.

This Tribunal accordingly holds the considered opinion that the chieftaincy dispute before us must be determined expeditiously on the merits and not on technicalities: the latter approach, when resorted to, will defeat our quest to do substantial justice. Indeed, the new approach in chieftaincy adjudication, as we appreciate it, requires chieftaincy Tribunals not to encourage open-ended chieftaincy disputes. We owe it as a sacred duty not to allow such a scenario to happen. Therefore, we decline the invitation to determine this appeal on the basis of the technicality-driven issues regarding the unstamped powers of attorney, namely Exhibit A and Exhibit 6). Our duty, as a fact-finding Tribunal, is to determine the chieftaincy-related issues in the instant appeal, principal among which are the following: (1) whether or not the Jamong family is the only one royal family in Bunkpurugu; (2) whether or not the Nayiri is the nominating authority for the Bunkpurugu skin; (3) whether or not the enskinment of the 2nd Respondent/Appellant was proper.

Our principled stance not to encourage open-ended chieftaincy litigation in Bunkpurugu is fortified by the ruling the Supreme Court, delivered on 23rd July 2025 in the case of **Shaibu Jebuni & Anor v Putieha John Badingu v Sanjie Mwinaba Nkuro (Subst. by Alhaji Chaang & Anor)**, **Civil Motion No. J8/81/2025**, where Tanko Amadu JSC, delivering the lead opinion of the majority, stated at para 40 of page 23 thus:

> **"...It needs reminding that <u>open-ended chieftaincy disputes</u> must in no way be encouraged in this country especially given that chieftaincy disputes often involve deeply emotive and politically charged issues and prolonged stool[skin] litigation can be a significant source of strife and instability"** (Emphasis supplied)

Based on the multi-layered considerations above, we are not minded to weaponize the non- stamping of Exhibit 6 against the 1st Respondent/Appellant. We hereby dismiss the point of law regarding the unstamped power of attorney (Exhibit A) raised and canvassed by Counsel for and on behalf of in the NOA jointly filed by the 1st and 2nd Respondent/Appellants and vigorously canvassed in the instant appeal.

Issue (b): the revisited objection to the participation of the legal adviser to the JC-NRHC
The issue under consideration derives from the first joint additional ground of appeal filed on 30th September 2019 by E.K. Musah Esq, for and on behalf of the 1st and 2nd Respondents/Appellants, which is as follows:

"The Judicial Committee of Northern Regional House of Chiefs erred in law or misdirected itself when it decided that counsel for the Judicial Committee of Northern Regional House of Chiefs should continue as Counsel to the Committee and advise the Committee though Counsel ever represented the Petitioners in the same matter hereof before the Committee despite objection by Counsel for the 1st and 2nd Respondents because of the high likelihood of bias or conflict of interest.

In the same language and text, E.K. Musah Esq crafted the first additional ground of appeal for and on behalf of the 3rd Respondent/Appellant. For the avoidance of doubt, we also reproduce the second additional ground of appeal filed for and on behalf of the 3rd Respondent/Appellant as follows:
"The Judicial Committee of Northern Regional House of Chiefs erred in law or misdirected itself when it decided that counsel for the Judicial Committee of Northern Regional House of Chiefs should continue as Counsel to the Committee and advise the Committee though Counsel ever represented the Petitioners in the same matter hereof before the Committee despite objection by Counsel for the 1st and 2nd Respondents because of the high likelihood of bias or conflict of interest

Notably, at the time E.K. Musah filed his written submissions, he was representing the 2nd and 3rd Respondents/Appellants; he was no longer representing the 1st Respondent/Appellant. E.K. Musah Esq devoted pages 34-37 of his written submissions to the first additional ground of appeal now under consideration. Counsel pointed out the fact that way back on 31st August 2009, A. Yakubu Esq, whilst doing private law practice, and before he was recruited as official Counsel to the JC-NRHC, filed a notice of appointment of additional solicitor to represent the Petitioners. Counsel also pointed out that during the course of the trial, the respective lawyers for the Respondents raised objections to the participation of A.F. Yakubu in the proceedings on grounds of likelihood of bias or conflict of interest, but the objections were overruled. Premised on these facts, Counsel contended that the decision of the JC-NRHC to overrule the objection was erroneous and occasioned substantial miscarriage of justice against the 2nd and 3rd Respondents/Appellants. Counsel argued further that the legal advisor to the JC-NRHC ought to have recused himself from participating in the proceedings because, according to him, it was unethical for him to participate in the proceedings, in view of the obvious or apparent bias his legal advice would be to the adjudicating panel. Concluding, Counsel submitted that by accepting to be an additional solicitor for the Petitioners, the legal advisor to the JC-NRHC already demonstrated that he believed in the case of the Petitioners. In support of his arguments, Counsel cited and relied on the following Ghanaian cases: Budu II v Ceasar & Others [1961] GLR 76; and Addai v Anane [1973] 1 GLR 144 (holding 4). In effect, Counsel sought to impeach the entire proceedings and the judgment founded on it, on account of these contentions.

Notably also, at the time the written submissions were filed, the 1st Respondent/Appellant had engaged Joseph Kaponde Esq as his new Counsel. At pages 11-12 of his written submissions, Joseph Kaponde Esq also sought to impugn the entire proceedings and the judgment of the JC-NRHC by reason of the participation of the legal advisor to the JC-NRHC in the proceedings. Counsel contended that the objection raised against the participation of the legal advisor to the JC-NRHC in the proceedings bordered on the issue of likelihood of bias or conflict of interest. Counsel contended further that the decision by the JC-NRHC to overrule the objection was null and void.

Counsel for the 1st Respondent/Appellant contended further that: (1) the JC-NRHC could itself vacate such a void decision or same may be impeached on appeal; (2) the legal advisor to the JC-NRHC,

having previously represented the Petitioners, ought to have recused himself from membership of the panel; (3) the recusal became more imperative after the objection against the legal advisor's participation in the proceedings was raised at the trial; (4) justice must not only be done, but must also be seen to have been done, and therefore, the continuous involvement of the legal advisor to the JC-NRHC in the hearing of the petition was prejudicial to the cause of justice; (5) the tone of the judgment, in many respects, reflected that open bias; and (6) the input of the legal advisor to the JC-NRHC and the role he played influenced the verdict in favour of the Petitioners. Based on these contentions, Counsel urged this Tribunal to reverse the verdict of the JC-NRHC because, according to him, he participation of the legal advisor to the trial Judicial Committee worked substantial injustice against the Jafok and Nampauk royal families of Bunkpurugu In support of his contentions, Counsel relied on the following cases in support of his contentions: Mosi v Bagyina [1963] 1 GLR 637; Republic v High Court Kumasi; Ex parte Bank of Ghana, Amissah Arthur & Franklin Belnye v Samule Gyamfi & 693 Ors [2013] 44 MLRG 65 SC; Republic v High Court, Kumasi; Ex parte Mobil Oil (Ghana Ltd) Hagan Interested Party [2005/2006] SCGLR 312; and Republic v High Court Accra; Ex parte Ghana Medical Association (Arcmann-Akummey Interested Party) [2012] 2 SCGLR 768.

On his part, Counsel for the Petitioner/Cross-Appellant, devoted pages 20-23 of his written submissions to respond to the arguments canvassed by his learned friends on the other side, as detailed above. Counsel directed us to the proceedings generated at the JC-NRHC on 4th August 2016. Counsel pointed out the fact that at the tail end of the objection raised against the participation of the legal advisor to the JC-NRHC in the proceedings, E.K. Musah Esq who was then representing the 1st and 2nd Respondents/Appellants, stated in no uncertain terms that they had confidence in the legal advisor to the trial Judicial Committee.

Continuing, Counsel for the Petitioner/Cross-Appellant said he wondered why his learned friends on the other side would raise an issue that had been settled at the trial way back on 4th August 2016. He contended that: (1) the issue has been raised in the instant appeal because the 1st and 2nd Respondents/Appellants lost the case at the JC-NRHC; (2) no miscarriage of justice was occasioned when the JC-NRHC allowed its legal adviser to continue to participate in the proceedings; (3) in terms of section 28 (2) of Act 759, the JC-NRHC had to be constituted by three chiefs appointed by the Northern Regional House of Chiefs among its members, and the decision of the panel on any matter or cause is by simple majority; (4) given the fact that the decision of the JC-NRHC was unanimous, and therefore, no miscarriage of justice was occasioned; (5) in terms of article 270 (3) of the 1992 Constitution, the Regional and National Houses of Chiefs are mandated to make their own rules for the determination of disputes; and (6) the essence of article 270 (3) of the 1992 Constitution is to make proceedings at the Judicial Committees flexible and not bogged down by baseless technicalities.

In the analysis and determination of the issue under consideration, we must, before anything else, resolve the question as to whether the objection against the participation of the legal advisor to the JC-NRHC be lawfully revisited in the instant appeal. Undoubtedly, the decision of JC-NRHC to overrule the objection was interlocutory in nature. Therefore, that decision was appealable by the Respondents, if they so wished. However, none of the Respondent did not exercise that option. The law, as we appreciate it, is that nothing stops the Respondents/Appellants from raising the same issue to which the objections related in the instant appeal. Our position is firmly supported by the case of **R.T. Briscoe (Ghana) Ltd v Amponsah (1969) CC 99 CA,** where it was held that:

"...a person who is dissatisfied with an interlocutory decision does not lose his right to appeal against that decision merely because he fails in bringing the appeal within fourteen days, he still has the right to include appeal against that decision in an appeal against the final decision" (Emphasis is ours)

Thus, on the authority referenced above, we are unable to uphold the argument proffered by Counsel for the Petitioner/Cross-Appellant which tend to suggest that the Respondents/Appellants are estopped from revisiting the matters to which the objection related; in the instant appeal. Such an argument is totally misconceived, to say the least. Therefore, we are minded not to disturb the right of the Respondents/Appellants to canvass the first additional ground of appeal. What remains to be analyzed and determined is the issue as to whether not first additional ground of appeal is meritorious or otherwise.

The incontestable fact is that 4th August 2016 was the day the objection was raised at the trial and same ruled on by the JC-NRHC. For our purpose, we take a quick flight to pages 484-487 of the ROA with the view to analysing what transpired at the JC-NRHC on 4th August 2016 as follows

"Counsel for 1st and 2nd Respondents: We are making an application belatedly that is in the course of justice. The cardinal principle in justice is that it must not only be fair but it must be seen to be manifestly be fair and candid, and leave no room for suspicion. It has come to the attention of the 1st and 2nd Respondents that on 21st August 2009, Counsel filed an appointment of additional solicitor for the Petitioners. It has been 7 years since the document was filed and it got lost in the minds of the Respondents that such a document was filed. The history of this case is replete with a lot of delays in the prosecution of the matter. Therefore, documents filed got mixed up until it came to our attention that learned counsel had associated himself with the Petitioners. Once counsel ever purported to be solicitor for the Petitioners, though in his official duties, the oath mandates that he acts fairly and justly to all parties. The Respondents have the apprehension that there may not be justice. We are praying for the committee to take a decision for counsel to recuse himself and for another counsel to take his place

Counsel for 3rd Respondents: We associate ourselves with the submissions of 1st and 2nd Respondents. The objection is not belated. The law is clear on the issue. In the Republic vrs Constitutional Committee Chairman 1968 GLR 1050, head note 3. We accordingly pray that the right thing be done.

Counsel for Petitioners: I am taken aback by this development. Additional lawyer could not have been engaged without prior knowledge of existing lawyer. The notice of additional solicitor is not part of the proceedings the registry compiled to the National House of Chiefs when an issue arose. I have perused the record of proceedings and I have not seen the appointment of solicitor. All papers were filed. We want the matter to be investigated because we don't trust the authenticity.

Counsel for 1st and 2nd Respondents: My attention was called much earlier, but I decided not to raise the objection because we have confidence in counsel"

(Emphasis is ours)

The JC-NRHC, having carefully considered the positions taken by the respective Counsel for the parties overruled the objections for the following reasons: (1) A. F. Yakubu Esq merely filed a notice of appointment of additional solicitor for the Petitioners, but he never ever appeared in court to represent them in the proceedings; (2) Counsel for the 1st and 2nd Respondents conceded that in spite of the objection, he and the parties he was representing had confidence in A. F. Yakubu Esq, legal advisor to the JC-NRHC (3) A. F. Yakubu Esq, the assisting Counsel to the JC-NRHC, was not a member of the panel and was thus not required to participate in the its final decision (4) to allow the Respondents to truncate proceedings at that stage would send out wrong signals in an extremely volatile case which demanded urgent attention and speedy resolution; and (5) any further delays in hearing and disposal of the matter might lead to further needless loss of lives. (See the relevant portions of pages 484- 486 of the ROA)

Reading through pages 484-487 of the ROA, we discover that A. F. Yakubu, the legal advisor to the trial Judicial Committee, decided to recuse himself, but eventually rescinded his decision, apparently, because E.K. Musah Esq, speaking on behalf of the 1st and 2nd Respondents expressed confidence in him. As can also be noted, Stephen Azantilow, speaking for and on behalf of the 3rd Respondent, associated himself with the position taken by E. K. Musah Esq, save that he did not expressly state that he too had confidence in the assisting Counsel to the JC-NRHC. Therefore, it cannot be reasonably interfered that Counsel for the 3rd Respondent watered down the objection raised by him, as E.K. Musah Esq expressly did.

On the evidence, this Tribunal finds these established facts relative to the objection raised against the participation of legal advisor of the JC-NRHC in proceedings: (1) A. F. Yakubu Esq as a private legal practitioner never appeared in court to prosecute the matter for the original Petitioners as their additional solicitor; (2) the substantive lawyers for the Petitioners were practising from an Accra-based Law Firm registered as Hayibor, Djarbeng & Co. (See pages 5-11 of the ROA); (3) A. F. Yakubu Esq was practising from a Tamale-based private Law Firm registered as A.F. Yakubu & Associates (See page 34 of the ROA); (3) A. F. Yakubu Esq was not the one who filed the pleadings for and on behalf of the Petitioners; (4) on 15th December 2009 when the respective lawyers in the matter agreed on the triable issues, which the JC-NRHC adopted for trial, the lawyer who represented the parties was Archie Danso Esq (with him Owura Mensah Esq) and not A.F. Yakubu Esq; (5) the very first day A.F. Yakubu sat with the JC-NRHC as its legal advisor was on 8th October 2014.(See pages 264-265 of the ROA.. Based on these established facts, we are unable to uphold the arguments canvassed in this appeal to the effect that there was a real likelihood A.F. Yakubu Esq (the assisting Counsel to the JC-NRHC) skewed his legal advice in favour of the Petitioners. We state, without mincing words, that such an argument is nothing but a red herring, given the fact that his advice was not binding on the panel, neither was he one of the ultimate deciders of verdict of the trial Judicial Committee.

We do acknowledge the fact that in a clear-case scenario, the court may prohibit or restrain a legal advisor to a Judicial Committee from participating in the proceedings on grounds of real likelihood of

bias, arising out of proven actual or active professional relationship, past or present, between him/her and one of the parties in a matter pending before the same Judicial Committee which he/she advises. A clear example of such a scenario happened in the judicial review case of **Republic v Volta Regional House of Chiefs; Ex parte Togbe Afendza III and 2 Others, Longinus Agbodra & 7 Others Interested Parties (Civil Appeal No.H1/8/2012) CA,** delivered in 2014.

The brief facts of the above-cited judicial review case are that at the High Court, the applicants/appellants put forward a case of real likelihood of bias against the legal advisor to the Judicial Committee of Volta Regional House of Chiefs, Mr Kodzo-Kumah Dzanku. It was established in the proceedings conducted by the High Court that: (1) the 4th Interested party was the 4th respondent in a chieftaincy case pending before the Judicial Committee of Volta Regional House of Chiefs; and (2) the 4th interested party in the proceedings before the High Court was a client of Mr. Kodzo-Kumah Dzanku; he was representing the 4th interested party in a land case pending at the Hohoe Circuit Court. The High Court granted the application and prohibited Mr Kodzo Dzanku from participating in the chieftaincy proceedings as legal advisor to the trial judicial Committee. On appeal, Court of Appeal held, affirming the decision of the High Court, (per Apaloo JA) that:

> **"There is no doubt in my mind that the Regional Judicial Committee of the chiefs (see section 28(2) of Act 759) cannot exercise its judicial functions without the statutory presence of a statutory qualified and appointed lawyer…**
>
> **It is my view that clearly, the assisting lawyer's statutory functions in the Judicial Committee is a wide and unchartered field. Matters of law mentioned in the section include a whole subject of the law embracing jurisdiction, interpretation of decisions of the superior courts, rules of natural, binding, and non-binding authorities, stare decisis etc. These duties albeit fundamental, necessarily involve decision making on the part of the lawyer before communicating the same to the members of the Judicial Committee. Although any recipient of such advice is not strictly bound by the piece of advice so given, in the professional fields such as law, medicine, architecture, engineering etc the advisee stands the risk of losing respectability if without good tangible reason the advice so given is rejected.**
>
> **In this appeal, it is not doubted that the rules of natural justice apply to members of the Judicial Committee. But it can be said also that in the performance of his duties as spelt out in the Chieftaincy Act, the legal Counsel is also bound by the rules of natural justice specifically the "nemo est judex causa sua" or also known variably as "Let no man be a judge in his own cause" and also referred to as the "rule against bias" As already stated the rules of natural justice apply to all adjudicating bodies such as the Courts and the Chieftaincy Tribunals…**
>
> **For a start, the principle that we know and the litmus test in proof of bias is the "real likelihood of bias" and the long line of cases has established that. For that to metamorphose into "reasonable suspicion of bias" in my view is indeed a novelty. I am not surprised at all the trial Judge rejected that novel proposition of the law outright…**

As to whether the trial Judge failed to appreciate and recognize that the test for the existence of a real likelihood of bias is the objective test and not the subjective test of the adjudicating authority, the trial Judge addressed the issue as follows:

"The reasonable man must be fair to himself before he proceeds to pass judgment. I think the reasonable man ought to be objective and appreciative of the role of Counsel within the set-up of the Regional Houses of Chiefs before he makes an opinion"

There is no doubt in my mind that by the above observations made by the trial Judge, he appreciated the role of the reasonable man in assessing the existence of a real likelihood of bias as the objective of the reasonable man and not the subjective view of the Court...

In our situation under discussion, based on the facts, doubts can be raised about a possible influence of the legal advisor to the Judicial Committee although he is not a member of the Committee. There is no doubt that as legal advisor he wields the power of legal influence through his advice and for justice not only to be done, but should manifestly and undoubtedly be seen to have been done, Mr Kodzo-Kumah Dzanku, legal advisor to the Volta Regional House of Chiefs ought to be restrained from participating in the chieftaincy trial entitled Togbe Afendza III and 2 Others vrs Longinus Agbodra & 7 Others pending before the Judicial Committee. The appeal accordingly succeeds"

Certainly, the factual scenario based on which the legal advisor to the Judicial Committee of Volta Regional House of Chiefs was prohibited from participating in the proceedings (as it happened in the above-mentioned case), are distinguishable from the scenario involving the legal advisor to the JC-NRHC. It is an established fact, as noted earlier, that A.F. Yakubu Esq did nothing beyond merely filing a notice to act as additional solicitor of the Petitioners. We are of the considered view that the litmus test for determining real likelihood of bias, as was applied in relation to Mr. Kodzo-Kumah Dzanku, cannot be appropriately applied in the instant appeal. On the established facts of the case before us, applying the objective test to the circumstances of the case, we hold that no reasonable man, acting fairly, would have concluded that there was a real likelihood that the legal advisor to the trial Judicial Committee likely skewed his advice on matters of law in favour of the substituted Petitioner, who won the case at the trial. This is particularly so, where in the scheme of things, as alluded to by the JC-NRHC in its ruling to the objection dated 4th August 2016, the verdict as to which party had to win or lose the case before them rested exclusively with the panel and not with the assisting Counsel, A.F. Yakubu.

What is more? The statement by E. K. Mush Esq (the then Counsel for the 1st and 2nd Respondent) that he and the parties he was representing had confidence in the legal advisor to the JC-NRHC is binding the 1st and 2nd Respondents/Appellants, and as we have concluded earlier, that position was the reason A.F. Yakubu Esq rescinded his decision not to recuse himself. Therefore, in the instant appeal, the 1st and 2nd Respondents/Appellants must not be heard, through their respective lawyers, to be relying on the issue of likelihood of bias and conflict of interest against the legal advisor to the

JC-NRHC, and by extension the proceedings and judgment of the trial Judicial Committee. Indeed, this is a clear case where the Petitioner/Cross-Appellant must be shielded by the doctrine of estoppel by conduct as provided for under **section 26 of NRCD 323**.

As can be noted, Counsel for the 3rd Respondent/Appellant particularly contended that the tone of the unanimous decision of the JC-NRHC, in many respects, reflected open bias exhibited by the legal advisor to the trial Judicial Committee. We find this to a very serious allegation which requires proof. Tritely, the authors of the judgment were the three panel members, and therefore, if Counsel contended that the whole judgment or portions thereof reflected prejudice or bias on the part of the assisting Counsel for the JC-NRHC, it was for him to have demonstrated in his written submissions the specific aspects of the judgment which mirrored the alleged bias or prejudice exhibited by the legal advisor to the trial Judicial Committee, however he failed to prove it. We find Counsel to be merely speculating and such wild speculations are unfair and purely subjective. Consequently, this Tribunal rejects those speculation-driven contentions.

Be that as it may, as Apaloo JA alluded to in Republic v Volta Regional House of Chiefs; Ex parte Togbe Afendza III & 2 Others supra, the role of the legal advisor to the Judicial Committees is so indispensable that the panel cannot conduct any proceedings without him. Therefore, at the trial, the panel had to sit on the matter with A.F. Yakubu Esq as a court of necessity or forum of necessity in order to avoid a failure of justice; Nanima had to hear and determine such a tension-laden and volatile dispute. The fact about the volatile nature of the disputed featured in the introductory part of the judgment, and the same considerations compelled the JC-NRHC to overrule the objection to the participation of A.F. Yakubu Esq in the proceedings which we have recounted earlier on. The doctrine of necessity or forum of necessity was applied in the case of **Fosuhene v Akore II Others Chieftaincy (Chieftaincy Appeal No. 1/9),** where the Court held, per Hayfron-Benjamin JSC at page 189 that:

> **"In more straight-forward language, the courts ought not to permit a failure of justice for want of a judge, or in the present appeal, <u>for want of a court</u>. The Ahanti Regional House of Chiefs was the proper forum and there the petition had to be determined..."**
> (Emphasis is ours)

Observably, in the proceedings generated at the JC-NRHC on 4th August 2016, E.K. Musah Esq urged Nanima to dispense with the services of its legal advisor (A.F. Yakubu Esq) and appoint a new person in his stead. In the ruling of the trial Judicial Committee, the panel took the principled stance that such a course of action was unwarranted, as it had the propensity to cause unnecessary delays in the adjudication of the precarious chieftaincy dispute, and based on those considerations, Nanima stated emphatically that they would not truncate the on-going proceedings. Undoubtedly, the position taken by the JC-NRHC fell under the orbit of the doctrine of necessity, and we totally agree with the trial Judicial Committee on that point. We hold the view that in the peculiar circumstances of the case, the JC-NRHC, had to conduct the proceedings with its legal officer as a court of necessity or forum of necessity, sitting to prevent a failure of justice.

Undoubtedly, on the whole, the first additional ground of appeal is technicality-driven much in the same way as the point of law raised about the unstamped power of attorney which we have already

dealt with earlier in this opinion. We are minded to determine the instant appeal on the merits and not on the technical arguments canvassed by the respective Counsel for the Respondents/Appellants, which arguments, as we see them, are deeply rooted in afterthought. We uphold the contention by Counsel for the Petitioner/Cross-Appellants that this Tribunal must do substantial justice in this appeal, unhampered by technicalities; the case Abdilmasih v Armah [1972] 2 GLR 414 relied on by him is apposite. This contention perfectly aligns with the decisions in cases such as Nyamekye v Tawiah (supra) and Darko v Amoah (supra). We wish to add to the list, the decision of the Supreme Court in the case of **GIHOC Refrigeration & Household Products v Jean Hanna Assi [2005-2006] SCGLR 458,** where the Court held at page 492, per Modibo Ocran JSC, that:

> **"These days and age, the administration of justice thrives on doing substantial justice in deserving cases more than hemmed by in strict and narrow interpretation of rules which the late Prof Ocran called "technism" which are nothing but technicalities of the law"**

Based on the reasons given above, we decline the invitation extended to us by the respective Counsel for the Respondents/Appellants to set aside the unanimous decision of the JC-NRHC by reason of the participation of A.F. Yakubu in the proceedings. Consequently, we are minded to dismiss the respective first additional grounds of appeal filed the Respondents/Appellants.

Issue (c): the omnibus grounds of appeal and the 2nd -10th the additional grounds of appeal

As it stands now, what remains to be analyzed and determined in respect of the joint appeal launched by the 1st and 2nd Respondents/Appellants is the omnibus grounds of appeal and the second, third, fourth, fifth, sixth, seventh, eighth, nineth and tenth additional grounds of appeal filed for and on their behalf. In respect of the 3rd Respondent/Appellant's case, what is left to be considered are the omnibus grounds of appeal and the second additional ground of appeal filed for and on his behalf. For the sake of economy of space, we are minded to paraphrase the second, third, fourth, fifth, sixth, seventh, eighth, nineth and tenth additional grounds of appeal filed for and on behalf of the 1st and 2nd Respondents/Appellants as follows:

2. The JC-NRHC having found that the 2nd Respondent and Lambong Tapang hailed from the same Jafok family erred in law when it concluded that the 2nd Respondent has no royal lineage and was thus not qualified to be enskinned as Bunkpurugu Naba, on the grounds that none of the persons mentioned by him as his royal ancestors including his father and grandfather ever succeeded to the Bunkpurugu skin.

3. The JC-NRHC erred in law in finding that Exhibit D is a valid document duly executed by the named signatories in the face of legal issues raised by the then Counsel for the 1st and 2nd Respondents against the authenticity of Exhibit D, in the light of Exhibit 2A tendered by the 1st Respondent, which latter document the trial Judicial Committee found to be valid.

4. The JC-NRHC erred in law by accepting Exhibit D as a valid document binding on the parties and their families, and also erred in law by concluding that Exhibit D was a cul-de-sac or dead end of the 2nd Respondent's case because his Counsel did not object to the tendering of Exhibit D in evidence.

5. The JC-NRHC erred in law by concluding that the failure by Counsel for the Respondents to establish that the thumbprints of the deceased parties to Exhibit D was unauthentic rendered the document valid.

6. The JC-NRHC, having found and accepted Exhibit 2B to be a true record of the meeting of the Mamprugu Traditional Council held on 16th August 1997, and further, the trial Judicial Committee having found that the Bunkpurugu skin is rotatory as disclosed in Exhibit 2A, should have concluded that: (i) at the very inception of the Bunkpurugu skin, the Jamong royal family was not the only royal family of Bunkpurugu (ii) there were and are three royal families in Bunkpurugu viz the Nampauk, Jafok and Jamong royal families (iii) the Bunkpurugu skin rotates among the said three royal families (iv) the Jamong royal family wrongfully occupied the Bunkpurugu skin on three successive occasions. To correct this wrong and injustice the Jafok and Nampauk royal families should also occupy the Bunkpurugu skin on three successive occasions after which the skin will then go back to the Jamong royal family in that order.

7. The JC-NRHC should have found and therefore erred in law in not finding that: (i) the Jafok family was a royal family from the beginning of the Bunkpurugu community (ii) Lambong Tapang was a royal from the Jafok royal family (iii) Lambong Tapang was duly nominated, selected and enskinned as Bunkpurugu Naba after due process, following the demise of Nyankpen Libagtib (iii) Lambong Tapang did not become Bunkpurugu Naba by default of Jamong royal family not petitioning the JC-NRHC.

8. The JC-NRHC erred in law by finding that the Jafok family acquired a royal family hood by operation of law when Lambong Tapang succeeded to the throne unchallenged.

9. The JC-NRHC erred in law by finding that the Jafok royal family acquired a royal family hood by prescription of a legal right of succession to the Bunkpurugu skin by virtue of the unchallenged ascension to the skin by Lambong Tapang, and not by birth right.

10. The JC-NRHC erred in law when it relied on the following Supreme Court decision in the cases of (i) In re Wenchi Stool Affairs; Nketiah & Ors v Sramangyedua III & Ors [2001] 2 SCGLR 1024 (ii) Akenten II v Ayeremah [1996-97] SCGLR 384 (iii) In re Kwabeng Stoo; Karikari & Anor v Ababio II & Ors [2001-2002] 515 to hold that the process required for the enskinment of the 2nd Respondent/Appellant was not followed.

The second additional ground of appeal filed for and on behalf of the 3rd Respondent/Appellant by Stephen Azantilow Esq is also paraphrased hereunder as follows:

2. The JC-NRHC, having found and accepted Exhibit 2B to be true record of the meeting of the Mamprugu Traditional Council held on 16th August 1997, and further, the trial Judicial Committee having found that the Bunkpurugu skin is rotatory as disclosed in Exhibit 2A, should have concluded that: (i) at the very inception of the Bunkpurugu skin, the Jamong royal family was not the only royal family of Bunkpurugu (ii) there were and are three royal families in Bunkpurugu viz the Nampauk, Jafok and Jamong royal families (iii) the Bunkpurugu skin rotates among the said three royal families (iv) the Jamong royal family wrongfully occupied the Bunkpurugu on three successive occasions. To correct this wrong and injustice the Jafok and Nampauk royal families should also occupy the Bunkpurugu skin on three successive occasions after which the skin will then go back to the Jamong royal family in that order.

In the determination of the multiple additional grounds of appeal paraphrased and listed above, we have ideally decided to consolidate them with the omnibus grounds of appeal filed by the Respondents/Appellants. We are minded to adopt this approach because, the respective omnibus grounds of appeal and additional grounds of appeal are essentially different articulations of the same alleged underlying factual errors or errors the point of convergence being that judgment of the JC-NRHC is against the weight of evidence adduced at the trial. Indeed, this convenient approach is amply supported by cases such as **Lydia Kwao v Pascal Muako Tchemco (Civil Appeal No. J4/32/2019)**, delivered 22nd July 2020. We must point out the fact that multi-faceted grounds of appeal, as crystallized or consolidated, take a proper shape within the context of the disclosures in Exhibit D on one hand, and the contents of Exhibits 2A and 2B on the other hand. We have appraised ourselves of the law which is to the effect that documentary evidence is the best evidence and same must prevail over oral evidence. Thus, in the case of **Savior Church of Ghana v Abraham Kwaku Adusei & 4 Others [2021] 174 GMJ 1 SC**, the Court held, per Tanko Amadu JSC, at page 126 that:

> **"The law has long been settled in cases such as Atadi v Ladzekpo [1981] GLR 218 CA and Republic v Nana Akuamoah Boateng; Ex parte Dansoah [1982-83] 2GLR 913 SC that documentary evidence must always prevail over oral evidence as it is the best evidence"** (Emphasis supplied

Thus, in our considered opinion, in the instant appeal, the copious oral evidence on record adduced by the parties and their witnesses regarding royalty in Bunkpurugu and succession to the skin are to be considered within the contest of the disclosures in the two sets of documentary evidence on record, namely Exhibit D on one part, and Exhibits 2A and 2B on the other part. At the end of the day, the legally-flawless one among the two sets of the exhibits, must prevail.

The comparative analysis of the weight of Exhibit D, Exhibits 2A and 2B

Exhibit D is a document headed as: "MEMORANDUM OF AGREEMENT SIGNED BY PARIMAG JAJING AND YOAGBAT TOOJAK". The agreement was executed at the Nayiri's Palace on 19th July 1931, and the signatories thereto were Yoagbat Toojak, Parimag Jajing, Tang Jafouk, Libagtib Toojak, Kasuk Laar, Gbimgbau Nakab, Tarana Sachi and Sillim Jatong. It is worthy to note that the JC-NRHC devoted the relevant portions pages 13-15 of its judgment to the assessment of the authenticity, admissibility, and weight of Exhibit D. Particularly at pages 14-15, the trial Judicial Committee delivered itself as follows (see page 777 of the ROA):

"The implications of Exhibit "D" are so far reaching that it is extremely surprising that Counsel raised no objection to its tender and admission in evidence. This is because, being a document signed by members of the Jafok family and renouncing their claim of royalty and succession to the Bunkpurugu skin to the Jamong family, Exhibit "D" represented a cul-de-sack or dead end of the 2nd Respondent's claims.

It must be noted that there is substantial consensus among the parties in their pleadings and evidence that such a meeting of the chiefs and elders of Bunkpurugu did take place at the Nayiri's palace in respect of the contest by Parimag Goung, except that the Respondents denied that such an agreement was reached at the said meeting and signed by the parties. The Respondents, therefore, had a perfect opportunity to contest the validity of the said memorandum of agreement and to call for forensic testing of the thumbprints on the document in order to establish their authenticity, not having done so, the only logical conclusion that can be drawn is that the document is valid and authentic to the knowledge of the Respondents. Their attempts through Counsel to assail the validity of the document during cross-examination was not only belated but insufficient to impugn the validity of the document. Even in the case of the 3rd Respondent who joined the petition after Exhibit "D" was tendered and admitted in evidence, nothing stopped Counsel from applying for forensic testing of the document, given that Counsel sought to impugn its validity during cross-examination. Such an application would have been considered on its merits under those special circumstances and in the interest of justice. Having failed to do so, the Respondents left this court with no other option than to accept the contents of [the] Exhibit as a valid agreement binding the parties.

Even though both learned counsel for the Respondents attempted to assail [Exhibit] "D" in their written submissions on the basis of Sections 4 and 5 of the Illiterates Compliance Act (Not Ordinance) 1912 Cap 262, their positions on the matter are not sustainable in law...

The Committee therefore finds that Exhibit "D" is a valid document, duly executed by the named signatories. We are fortified in this conclusion by the undisputed fact that Yoagbat Toojak was reinstated as deputy to Jamong and subsequently enskinned as Bunkpurugu Naba presumably on the strength of Exhibit "D" and as a consequence of the said agreement. (Emphasis is ours)

Before we proceed further, we must straighten up certain facts about the names Jamong, Toojak Jamong and Toojak, as they repeatedly featured in the pieces of documentary and oral evidence adduced by the parties. On the evidence, it is not in dispute that there lived one Jamong, alternatively called Toojak who was a contemporary of Jafok, Nampauk and others. Jamong was said to be one of the sons of Nyaan. Also, there lived a former Bunkpurugu Naba called Jamong Toojak; he was a son of Jamong who was reputed to be one of the sons of Nyaan. So, as it turns out, we have Jamong Toojak (the father) and Jamong Toojak (the son). In order not to create confusion of thought, we prefer, in the appropriate context, to refer to Jamong Toojak (the father) as patriarch Jamong.

In the instant appeal, the Respondents/Appellant are seeking to impeach the far-reaching findings and conclusions the JC-NRHC made in its judgment regarding the authenticity, validity, and admissibility of Exhibit D. It is true, as found by the trial Judicial Committee, that Exhibit D was

tendered in evidence by the attorney for the Petitioners without objection by the respective Counsel for the Respondents (the Respondents/Appellants herein).

In his quest to impeach Exhibit D, Counsel for the 1st Respondent/Appellant contended at page 23 of his written submissions that the document is not authentic and unreliable for the following reasons: (1) the document has no certification or authentication on the face of it to indicate that it is emanating from the Mamprusi Native Authority (2) the document was not tendered in evidence by an officer of Mamprusi Native Authority as to have enabled it to be cross-examined on it regarding its authenticity (3) the document did not come from proper custody (4) the attorney for the Petitioners could not clarify the source of the document (5) the document did not come from any known Government department, nor was it certified (6) the original document from which Exhibit D emanated was not available (7) there is no thumbprint of the then Nayiri at whose instance and on whose authority or on whose behalf the document was executed. On the basis of these contentions, Counsel contended that Exhibit D is not a binding document.

Counsel for the 2nd and 3rd Respondents/Appellants also sought to deprecated Exhibits D, and particularly at pages 46-51 of his written submissions, he contended that Exhibit D was admitted in evidence for what it was worth. Furthermore, he submitted that there was no legal basis for the JC-NRHC to have arrived at the conclusion that the mere admission of Exhibit D was a cul-de-sac or dead end of the case put forward by the 2nd Respondent/Appellant. Relying on section 51(2) of NRCD 323, Counsel posited that:

"On the face of exhibit "D" it is relevant to the determination of the action, thus counsel for the 1st and 2nd Appellants did not object to the tendering in evidence of exhibit 'D". However, counsel for the 1st and 2nd Appellants raised substantial legal issues on the authenticity of exhibit" D'. In counsel's written submissions filed on the 16/04/2019, he invited the committee not to place any weight on exhibit "D" vide pages 636 to 695 of the ROA.

Nananom, surprisingly, however, counsel to the committee, who was once a counsel for the Respondent advised the committee to rely solely on exhibit "D" as cul-de-sac or dead end of the 2nd Appellant ['s] case. Very unfortunate indeed. Nananom we respectfully submit that exhibit "D' was not worth the paper it was written on because in law exhibit "D" was not an authentic or genuine document within the contemplation of section 162 of the Evidence Act 1975 (NRCD 323) which provides that [...] Nananom we respectfully submit that exhibit "D' did not satisfy the provisions of section 162 of the Evidence Act, 1975 (NRCD 323)

Furthermore, in attacking the authenticity of Exhibit D, Counsel for the 2nd and 3rd Respondents/Appellants contended that: (1) on the face of Exhibit D, it is a document emanating from a public office, Mamprusi Native Authority, Nalerigu dated 19th July 1931. (2) Mamprusi Native Authority was not the source of the document but it came from the attorney for the Petitioners (3) the document was not certified by the appropriate authority, Mamprusi Traditional Council, Nalerigu (4) the document was not tendered in evidence by an officer of the Mamprusi Traditional Council (5) the document, being a photocopy emanating from public office (Mamprusi Traditional Native Authority), it should have been certified to be a correct document by the custodian thereof or any other person authorized by the custodian in terms of section 162 of NRCD 323; (6) the 44-year old attorney for the

Petitioners who tendered the document said he got it from his grandfather, Yoagbat Toojak who died on 2nd February 1969, when the attorney was just one year old; (7) Yoagbat Toojak, an illiterate old man could not have stored the document so neatly for a one year old boy to grow and retrieve same from his possession (8) the document was authored in 1931 and it still looks so neat and fresh (8) the document was not retrieved from Yoagbat Toojak after approximately 80 years (1931-2011)

Arguing in relation to the authorship and weight of Exhibit D, Counsel for the 2nd and 3rd Respondent/Appellants contended that the document was thumbprinted by illiterates, but there was no jurat on the face thereof to indicate that the parties thereto understood its contents. Counsel also submitted that: (1) the name of the person who read the document to the parties and to their understanding is not found on the face of the document (2) the language in which the document was read and interpreted to parties is not found on the face of the document (3) the question as to whether the parties agreed to the contents of the document is also not found on the face of the document. It was therefore the contention of Counsel that the absence of jurat on the face of the document rendered it unauthentic and as such, the JC-NRHC should not have relied on it to conclude that same was the cul-de-sac or dead end of the 2nd Respondent/Appellant's case.

Relying on the case of Duodu & Ors v Adomako & Adomako [2012] SCGLR 198, Counsel for the 2nd and 3rd Respondent/Appellant submitted that the presence or absence of jurat on a document raises a rebuttable presumption, and therefore, a party seeking to enforce the contents of a disputed document must show that despite the absence of a jurat, the illiterate clearly understood it. Also, relying on a passage captured at page 140 of the book authored by Dennis Dominic Adjei (now JSC) titled **"Modern Approach to the Law of Interpretation in Ghana"**, Counsel in effect, submitted that "the absence of a jurat ceased to be of importance where there is evidence to prove that the illiterate person knew the content of the document" Based on these legal propositions, as understood by him, Counsel submitted that the Petitioners adduced no evidence to prove that the Jafok family represented by Parimak Jajing and Stang Jafok, who were signatories numbers 2 and 3 on Exhibit D in particular, and the other parties in general, knew the contents of the document before they thumb printed it. In effect, Counsel took the position that the thumbprints on Exhibit D are doubtful, and therefore, the doubt should be resolved in favour of the Respondents/Appellants.

It was pointed out by Counsel for the 2nd and 3rd Respondents/Appellants that the attorney for the Petitioners testified under cross-examination that Yoagbat and Parimak Jajing were dead, and according to Counsel, all the other parties to the Exhibit D have died. Counsel contended that: (1) because Exhibit D was executed in 1931, the parties thereto were definitely grown-ups at that point in time; (2) none of the parties to Exhibit D testified at the trial. Premised on these matters, Counsel contended that there was no way the JC-NRHC could have ascertained whether the parties knew of the contents of the document before thumbprinting it.

Notably, in assessing the Exhibit D and coming to its findings and conclusions in relation thereto, the JC-NRHC considered the fact that the 3rd Respondent/Appellant joined the case after the document had been tendered. However, he had every opportunity to have caused a forensic examination of the document, but he failed to do so. In his written submissions, Counsel for the 2nd and 3rd Respondents disagreed with the trial Judicial Committee; he contended that it is highly impossible to obtain fresh

thumbprints of the deceased parties to the document, who died approximately 80 years ago, for the forensic examination to be conducted in order to determine the authenticity of the document.

Counsel for the 2nd and 3rd Appellants hinted that Exhibit D purports to state that the Jamong royal family is the only royal family in Bunkpurugu, but the JC-NRHC by its own finding of fact stated that, at page 46 of its judgment as follows:

> "Whilst it may true that the Jamong Royal Family was the only royal family in Bunkpurugu to have ascended to the Bunkpurugu skin since its inception and retained the skin for about 100 years, they cannot sustain their claim of being the sole royal family following the successful and unchallenged enskinment of Lambong Tapang"

Winding up and based on his appreciation of the import of the portion of the judgment reproduced above, Counsel for the 2nd and 3rd Respondents/Appellants contended that the trial Judicial Committee would be contradicting itself by holding that Exhibit D is a valid agreement binding on the parties and their families. Furthermore, Counsel contended that the JC-NRHC would be contradicting itself by holding that the document was a cul-de-sac or dead end of the 2nd Respondent/Appellant's claim. For this and the other arguments canvassed by him (as detailed above), Counsel invited us to uphold the 3rd, 4th, and 5th additional grounds the appeal

This Tribunal must equally provide the relevant details of the arguments proffered by Counsel for the Petitioner/Cross/Appellant in relation to Exhibit D. Particularly, at pages 26-27 of the written submissions filed by him, Counsel contended the JC-NRHC did not err in holding that Exhibit D is document binding on the 1st and 2nd Respondents/Appellants, given the fact that they did not object to the tendering of same. Counsel contended further that Exhibit D is authentic and was properly obtained from Mamprusi Native Authority. Continuing, Counsel posited that:

"In our submission, the Appellants' Counsel if in doubt should have conducted a search from the Mamprusi Native Authority to ascertain whether or not Exhibit "D" was obtained from it. It is submitted that equity aids the vigilant and not the indolent. Also, he who comes to equity must come with clean hands. It is too late in the day for the Appellants to complain that Exhibit D was not presented by an Officer of the Mamprusi Native Authority, Nalerigu, now Mamprusi Traditional Council and also that it was not certified by the said Traditional Council"

Counsel for the Petitioner/Cross-Appellant also contended that: (1) the issues raised in respect of Exhibit D have no basis in chieftaincy matters; (2) both oral and documentary evidence are acceptable in chieftaincy matters; (3) the JC-NRHC heard the parties and their witnesses and found the version of the Petitioners to be credible, preferable and supported by documentary evidence and therefore rejected the version of the Respondents ; (4) his learned friends on the other side are resorting to technicalities to defeat the ends of justice; (5) objection to the tendering of Exhibit D ought to have been taken timeously; he relied holding 1 of the case of Republic v Ada Traditional Council; Ex parte Nene Okunno II [1971] 1 GLR 412; (6) the Respondent/Appellants are estopped by their conduct from asserting that Exhibit D is not authentic just because there was no jurat on the face of it, or simply because it was not certified by the Mamprusi Traditional Council, or merely because it was not tendered in evidence by an officer of the Mamprusi Traditional Council. Winding up, Counsel particularly relied on the opinion expressed by Prof Modibo Ocran JSC at page 492 of the case of

GIHOC Refrigeration and Household Products v Hanna Assi (supra) and urged this Tribunal not to rely on technicalities. He invited us not to disturb the findings of the JC-NRHC regarding the authenticity and binding effect of Exhibit D.

In considering the merits or otherwise of the respective arguments canvassed by Counsel for the parties as detailed above, for a start, we must state that the respective Counsel missed the point. The relevant law regulating the authenticity of an ancient document such as Exhibit D is section **146 of NRDC 323** and not section 162 of NRCD 323. For purposes of clarity and emphasis, we reproduce hereunder the provisions of section 146 and 162 of NRCD 323 as follows:

> **"146. Ancient documents**
>
> **Authentication or identification of a writing may be by evidence that the writing –**
>
> **(a) is in such condition as to create no suspicion concerning its authenticity**
>
> **(b) was in a place where, if authentic, it might be expected to be; and**
>
> **(c) is at least 20 years at the time it is offered"**
>
> **"162. Copies of writings in official custody**
>
> **A copy of a writing is presumed to be genuine if it purports to be a copy of a writing which is authorized by law to be recorded of filed, and in fact has been recorded or filed in an office of a public entity or which is a public record, report statement, or data compilation if**
>
> **(a) an original or an original record is in an office of a public entity where items of that nature are regularly kept, and**
>
> **(b) the copy is certified to be correct by the custodian or other person authorized to make the certification where the certification must be authenticated"**

The fact that the Traditional Councils are creatures of statute cannot be reasonably disputed, and also, the fact that such statutory bodies are public entities is beyond reasonable controversy. Nevertheless, the critical questions we must ask and find answers to are that: (1) is Exhibit D a public record? (2) must the Mamprusi Traditional Council necessarily be the custodian of Exhibit D? (3) did any existing law in force as of 1931 required that Exhibit D ought to have been recorded or filed in an office of a public entity?

Upon a careful scrutiny of Exhibit D, we discover that: (1) the document was written on a document bearing the image of an elephant, which according to the attorney for the Petitioners, is the totemic

emblem of Mamprusi Traditional Area; and (2) Tarana Sachi was one of those who thumbprinted the document. We have taken judicial notice of the notorious fact that in Mamprusi traditional official set up, the Tarana is the duty-bearing representative of the Nayiri, and by analogy, he is the chief of staff of the Nayiri; and (3) Exhibit D was executed at the Nayiri's palace at Nalerigu. It was suggested to the attorney for the Petitioners when he was under-cross-examination that as of 1931, the Mamprusi traditional set up did not have an elephant as its totemic emblem, but the cross-examinee denied it. Furthermore, it was suggested to him that Sachi was not the Tarana as of 1931, but he denied it.

As a matter of law, matters recited in Exhibit D are presumed to be true, unless the presumption was displaced by the Respondents with concrete evidence. (See **Bonsu v Bonsu** infra). We find no such concrete and legally-flawless evidence on record which operate to torpedo the recitals in Exhibit D. Therefore, we hold that: (1) the document was written on a paper bearing the totemic emblem of the Mamprugu State; (2) the Tarana of the day, namely Tara Sachi thumbprinted the document in the exercise of the traditional authority conferred on him by the Nayiri; and (3) the document was executed at the Nayiri's palace at Nalerigu. These established facts appear to give Exhibit D some official attribute. However, as we appreciate it, in substance, Exhibit D was a private undertaking executed principally between Yoagbat Toojak and Parimag Jajing, and endorsed or attested to by the other persons who thumbprinted it.

In other words, properly construed, Exhibit D is not a public record within the meaning and intendment of section 163 of NRCD 323, and having so concluded, we find it untenable for respective Counsel for the Respondents/Appellants to suggest that Mamprusi Traditional Authority must have necessarily been the custodian of Exhibit D. Furthermore, we find that no law, existing presently or as of 1931, compelled the parties to the written private agreement (Exhibit D) to record or file same at the office of a public entity such as the Registry of Mamprusi Native Authority or Mamprusi Traditional Council as the case may be. Therefore, by extension, no legal obligation rested on the descendants of Yoagbat Toojak, Parimak Jajing and the other persons who had copies of the document to file same at the Registry of the Mamprusi Native Authority or Mamprusi Traditional Council.

This Tribunal also finds it untenable for Counsel for the Petitioner Cross-Appellant to contend that the issues of authenticity and weight as canvassed by his learned friends on the other side regarding Exhibit D (as detailed above) thrived on legal technicalities. Section 1 of NRCD 323 provides, inter alia, that all questions of law, including and not limited to the admissibility of evidence, are to be decided by the court. Certainly, the authenticity and weight of Exhibit D are matters of pure law, and thus, in the circumstance of the case before us, the decision by the respective Counsel for the Respondents/Appellants to canvass them under the orbit of section 162 of NRCD 323 cannot be characterized as mere technicalities. As we have stated earlier, the arguments proffered in relation to Exhibit D are misplaced not on the basis that they are rooted in technicalities, but rather, on the basis that wrong provisions of NRCD 323 viz section 162 was resorted to by the respective Counsel for Respondents/Appellants.

Reading through the respective written submissions, we note that Counsel for the 2nd and 3rd Respondents/Appellants made no reference to section 146 of NRCD 323 nor any case-laws on the subject, namely ancient documents. Counsel for the 1st Respondent/Appellant simply ignored the section 146, so did Counsel for the Petitioner/Cross-Appellant. Nevertheless, it our sacred duty to

apply those provisions in the instant appeal. The import of section 146 of NRCD has been explained in several decided cases, such as the case **Mary Tsotso Laryea & 3 Others v Amarkai Laryea, CA** (**Suit No.H1/102/2014**), **Osagyefo Nana Aboagye III v Terba Eduku (Decd) & Others, CA** (**Civil Appeal No.H1/18/2013**) delivered on dated 16th July 2014, and **Hayfron v Egyir [1984-86] 1 GLR 682 CA).** These judicial authorities posit that an ancient document that meets the criteria set under section 146 is presumed to be authentic and admissible as evidence, without the need for further proof of execution, handwriting, or signature, unless there is evidence to the contrary.

As it can be noted, Exhibit D, which was executed way back on 19th July 1931, was aged 80 years as at the time it was tendered in evidence at the trial on 16th December 2011; in fact, Counsel for the 2nd and 3rd Respondents/Appellants alluded to this fact in his written submissions as detailed above. Therefore, we conclude that Exhibit D is an ancient document within the meaning and intendment of section 146 (c) of NRDC 323, and as such, the presumption of authenticity attached to it must inured to the benefit of the substituted Petitioner. Therefore, in the instant appeal, the onus fells falls on the Respondents/Appellants to rebut the presumption by pinpointing pieces of cogent evidence on record to demonstrate that Exhibit D is such that it failed to pass the litmus test as set out under section 146 of NRDC 323; they had to do this by demonstrating that the document is riddled with suspicion and that it did not come from the proper custody, but the respective Counsel for the Respondents/Appellants failed to pinpoint any such cogent evidence on record.

The question then is: did Exhibit D come from proper custody? We answer this question in affirmative. When the attorney for the Petitioners was under cross-examination on 27th April; 2015, the then Counsel for the 1st and 2nd Respondents (E.K. Musah Esq) asked him, and he answered as follows (see pages 272and 274-275 of the ROA)

Pages 272 of the ROA

Q: How did you come by Exhibit D?

A: Yoagbat Toojak is my grandfather and he was a signatory and this is his copy

Q: Who is the author of the document?

A: The name is not there. It is indicated it was signed at Nayiri's palace in Nalerigu.

Pages 274-275 of the ROA

Q: There is an emblem on Exhibit D?

A: Yes, an elephant

Q: Whose emblem is it?

A: That is the Nayiri's emblem

Q: Are you suggesting the document is on the letterhead of the Nayiri

A: Yes

Q: Look at Exhibit D, what is the date on the document

A: The date is July 19, 1931

Q: I am putting it to you by that date the Nayiri did not have any emblem.

A: The document is clear; it was signed at the Nayiri's palace on that date.

Q: I am putting it to you that Exhibit D, is a fake document meant to throw dust in the eyes of the committee

A: No, this is an authentic document"

We infer from the underlined portion of evidence supra that, indeed, prudence dictated that a copy of such an important document such as Exhibit D would be kept by Yoagbat Toojak for use by himself and generations after him. The document came from proper custody to the extent that it was the very copy which Yoagbat Toojak had possession of. The respective Counsel for the Respondents/Appellants seemed to suggest that the Petitioners ought to have procured a copy of Exhibit D from the Mamprusi Traditional Council presided over and controlled by the Nayiri, the 1st Respondent/Appellant.

The question then is: what if such a request for a copy of the document was turned down or met with a negative response or official feet-dragging? We believe that any of these may have been the possible scenario. In the circumstances of this case, we are not impressed by the argument that Exhibit D was from improper custody and that it must have been procured from the Mamprusi Traditional Council. We think that the best course of action was what the Petitioners took by tendering through their attorney a copy of the document which, at all material times, was in the custody of the Jamong family. Relatedly, the long question we wish to ask is: did any of the Respondents/Appellants tender in evidence a search result from the Registry of Mamprusi Traditional Council to demonstrate that Exhibit D is a ghost document and that the event disclosed therein never took place at the Nayiri's palace on 19th July 1931? We answer this question in negative. We must state, without mincing words, that the Respondents/Appellants assumed the burden of producing credible and sufficient evidence to rebut the disclosures in Exhibit D, and if they failed to so, they must have themselves to blame. We accordingly conclude that Exhibit passed the litmus test of authenticity as benchmarked under section 146 (b) of NRCD 323

The other segment of the argument canvassed by Counsel for the 2nd and 3rd Respondents is to the effect that Exhibit D looks suspicious, looking at how fresh and neat it is. This contention is certainly speculative. We have thoroughly examined the document which has the totemic emblem (an elephant) of the Mamprusi Traditional Authority on it. As can be noted from the question-answer interactions reproduced above, the then Counsel for the 1st and 2nd Respondents and now Counsel for the 2nd and 3rd Respondents/Appellants (E. K. Musah Esq) suggested to the attorney for the Petitioners that the Nayiri did not have an elephant as his totemic emblem as at 1931, and that Exhibit

D is a fake document, but the cross-examinee denied those suggestions and insisted that the Nayiri had an elephant as his emblem and that Exhibit D was executed at the Nayiri's palace. Thus, in the face of those denials and insistent assertion by the attorney for the Petitioners, the burden shifted on the 1st and 2nd Respondents to produce sufficient and credible evidence to the contrary, but we find no such sufficient and credible evidence on record. Therefore, we are left with no option than to conclude that Exhibit D does not look suspicious, and that being so, we hold that the document sufficiently satisfies the requirement spelt out under section 146 (a) of NRCD 323.

We have appraised ourselves of holding (5) of the case of: **In re Asere Stool; Nikoi Olai Amontia IV (Substituted by Tafo Amon II) v Akotia Oworsika III (Substituted by Laryea Ayiku III [2005-2006] SCGLR 637,** where the Supreme Court held, inter alia, that a court had no right to ignore evidence properly led before it. Definitely, the JC-NRHC considered itself bound to consider the authenticity of Exhibit D. In our considered opinion, the conclusion by the trial Judicial Committee that Exhibit D is an authentic and legally binding document cannot be faulted by this appellate Tribunal. For this and other reasons given above, we accept and affirm the finding of fact and conclusion by the JC-NRHC that Exhibit D is authentic and legally binding on the parties thereto, themselves and generations born after them, including the 2nd Respondent/Appellant and the Petitioner Cross-Appellant.

Tritely, what comes next after the determination of the authenticity and admissibility of a document is the weight to be attached to it by a court. In his written submissions, Counsel for the 2nd and 3rd Respondents/Appellants contended that the JC-NRHC ought not to have attached any deserving weight to Exhibit D because, according to him, the document has no jurat on the face of it. The question then is: did the parties whose thumbprints are on Exhibit D know and understand the contents thereof? We shall answer this question in a jiffy. The record show that there was a hot contest over the literacy status of those who thumbprinted Exhibit D. When the attorney for the Petitioners was under cross-examination on 27th April 2015, the then Counsel for the 1st and 2nd Respondents asked him, and he answered as follows (see the relevant portions of pages 272-273 of the ROA)

Q: How many thumbprints are there?

A: Eight thumbprints

Q: Are all eight illiterates?

A: I cannot tell.

Q: Do you know Yogbat Toojak

A: I have seen his picture but I haven't met him personally.

Q: To your knowledge, was he educated

A: No.

Q: What of Parimak Jajin

A: I don't know him and I cannot tell.

Q: I am putting it to you that Parimag Jajing did not go to school.

A: I do not know

Q: What about Stang Jafoug

A: I do not know him I cannot tell if he went to school and same applies to the rest

Q: I am putting it to you that Stang Jafoug [Jafok] did not go to school.

A: I cannot tell.

Q: Libagtib Toojak, Kasuk, Laar, Gbimgbau Nakab, Jarana Sachi, Sillim Jatong did not all go to school.

A: I cannot tell

Q: I am putting it to you that all eight of them could not read and write English.

A: I can't tell

Q: I am putting it to you that the content of the document was not known to them.

A: I disagree because they knew of the content of the document. Apart from the 2 people who signed [thumb printed] there were 4 other opinion leaders who sat in before the two signed. The other two were also elders, so they all knew the contents The Tarana Sachi was the Tarana of Nayiri in 1931"

As it can be noted, the cross-examinee could not positively or definitively state that the eight persons who thumbprinted Exhibit D were illiterates or literates, except Yoagbat Toojak; in fact, he was emphatic that Yoagbat Toojak was an illiterate. However, the last answer given by the cross-examinee settled the contest about whether or not those who thumb printed the document knew what it was all about. The credible and sufficient evidence on record establishes that: (1) as at 19th July 1931, Yoagbat Toojak was not the substantive chief of Bunkpurugu; (2) the decision by Naba Jamong Toojak authorizing Yoagbat Toojak to be deputizing for him sparked the disturbances spoken of in the first paragraph of Exhibit D; (3) the way out of the potentially volatile situation was the decision by the parties to put on paper who the real royals of Bunkpurugu were; (4) it was after the execution of Exhibit D that the Nayiri of the day formally enskinned Yoagbat Toojak as the substantive Bunkpurugu Naba; (5) upon the demise of Yoagbat Toojak, Nyankpen Libagtib was enskinned by the then Nayiri as the next Bunkpurugu Naba; and (6) the three successive chiefs of Bunkpurugu, namely Jamong Toojak, Yoagbat Toojak and Nyankpen Libagtib were members of the Jamong family.

Thus, the immediate event that birthed Exhibit D and the subsequent enskinment of Yoagbat Toojak and Nyankpen Libagtib by the Nayiri shows, by reasonable inference, that the signatories fully and clearly knew and understood the existing structure of royalty and succession to the Bunkpurugu skin which was documented in the memorandum of agreement. Observably, in his written submissions, Counsel for the 2nd and 3rd Respondents/Appellants relied on the case-law and the literature: he cited in the case of Duodu and Others v Adomako and Adomako(supra) and the opinion Denis Dominic Adjei (now JSC) expressed at page 140 of his book referenced above. This decided case posits that where a signed agreement has no jurat on its face, a party seeking to rely on the document must demonstrate that the illiterate signatory to it clearly understood and appreciated what it means. Denis Dominic Adjei (now JSC) opined that, the absence of jurat ceased to be of any importance, where the evidence shows that the illiterate person or persons knew the contents of the document.

Indeed, on the evidence, the proposition of the law on jurat detailed above advances the cause of the Petitioner/Cross-Appellant. As can be noted, the attorney for the Petitioner testified under cross-examination (reproduced above) that all those who thumbprinted Exhibit D knew of the contents. Also, he stated that apart from the two main signatories, there were four opinion leaders who sat in before the two signed. He asserted further that the other two were also elders, so they all knew the contents. He also said Tarana Sachi thumb printed the document. We believe that it was on the basis of the knowledge, meaning and import of Exhibit D that the then Nayiri formally enskinned Yoagbat Toojak as Bunkpurugu Naba, right after the execution of Exhibit D, and later, upon his demise, the Nayiri, operating in the same knowledge and understanding of the established customary rule of succession, enskinned Nyankpen Libagtib as the next chief of Bunkpurugu. Similarly, as we see it, it was on the basis of the knowledge and understanding of the contents of Exhibit D that the Bimoba elders and opinion leaders in general and the Jafok and Nampauk families raised no red flags regarding the enskinments of Yoagbat Toojak and Nyankpen Libagtib as successive chiefs of Bunkpurugu.

Concluding on our analysis of the authenticity and weight Exhibit D, we wish to rely on section **25 of NRCD 323,** which is to the effect that facts recited in a written document are conclusively presumed to be true as between the parties and those claiming through them, thus creating estoppel by written document. (See the case of **Kwame Bonsu v Kwame Kusi & Gifty Kusi Ampofowaa SC (Civil Appeal No. J4/14/2009)** (otherwise referred to as Bonsu v Bonsu) delivered on 4th November 2009). The recitals in Exhibit D, as we have stated earlier are as follows: (1) patriarch Jamong was the first settler in Bunkpurugu; (2) after the death of Naba Jamong Toojak, some disturbances erupted in the Bunkpurugu community orchestrated by Parimag Jajing. (3) Parimag Jajing claimed to be the chief of Bunkpurugu following the death of Naba Jamong Toojak (4) the then Nayiri dismissed Parimag Jajing's claim to royalty (5) the Jamong family is the only royal family in Bunkpurugu. Notably, the Petitioners' Exhibit 2B is the Gold Coast Chiefs List of 1928-29: this document establishes that as of 1928-29 Jamong Toojak was the head chief of Bunkpurugu. Logically, it means that Jamong Toojak was the Bunkpurugu Naba before 1931. We find zero documentary evidence on record which shows that some other person(s) from the Jafok family or and Nampauk family ever reigned as Bunkpurugu Naba before Jamong Toojak did, and this established fact, when aligned with the above-listed recitals, overwhelmingly makes Exhibit D so weighty such that it cannot and must not be torpedoed by the arguments canvassed by the respective Counsel for the Respondents/Appellants as detailed above. On the basis of these considerations, we are unable to uphold the contention that Exhibit D

is weightless. We hold that Exhibit D carries weight and the JC-NRHC ought to have relied on the disclosures therein contained to make far-reaching definitive findings of facts and conclusions in its judgment.

This Tribunal now zeroes in on Exhibits 2A and 2B with the view to determining how weighty they are, as compared to Exhibit D. Certainly, Exhibits 2A and 2B were the pieces of rival documents the 2nd Respondent caused his witness to tender in evidence, apparently to shake the foundations of the conclusive presumption operating in favour of the Petitioners by virtue of section 25 of NRCD 323. As it turns out, in the instant appeal, the 1st and 3rd Respondents/Appellants too are seeking to benefit from the contents of Exhibits 2A and 2B. The disclosures in Exhibits 2A and 2B purport to establish that: (1) there are three royal families in Bunkpurugu, namely the Jamong, Jafok and Nampauk families; and (2) succession to the Bunkpurugu skin is rotatory among the Jamong, Jafok and Nampauk families. In effect, what the two documents purported to achieve in 1997 was to alter the existing customary rule on the structure of royalty and succession to the Bunkpurugu skin, which had been decisively established and deeply entrenched by Exhibit D, way back on 19th July 1931, spanning a period of 66 years as at 1997.

For our purpose, we are minded to consider the relevant portion of Exhibit 2B captioned as "APPROVAL OF QUESTIONNAIRE ON STOOL/SKINS (REVISED), found at pages 3-4 of this document, where it was reported as follows:

> "The next item on the agenda was the <u>consideration and approval of the Questionnaire on the Stool/Skins (Revised)</u>. The Chairman, Yunyoo-Rana J.D. Yanyia who is also the Chairman of the Research Committee of the Northern Region House of Chiefs explained to members the importance Government attaches to the exercise and asked members to contribute meaningfully in the discussion of the Questionnaire. The Chairman asked the Registrar to read the information on all the skins, Division by Division and Skin by Skin, for members 'comments and correction where the need arises. The Registrar took about two hours to go through the forms. Apart from the Bunkpurugu Skin which the Bunkpurugu Naba objected to a fourth gate which agreed that it should be deleted, and was deleted accordingly…" (Emphasis supplied)

In the exercise of the power vested in this Tribunal by **section 9 of the Evidence Act 1975 (NRCD 323,** we have taken judicial notice of the notorious fact that "a questionnaire is a research-related tool consisting of a set of standardized questions used to gather information from respondents. It can be used for surveys, research or collect feedback and typically includes a mix of close-ended (e. g. multiple choice) and open -ended questions" (source: google).

It is an undeniable fact that chieftaincy administration has embraced the use of questionnaire as a research tool or methodology. Again, we have taken judicial notice of the notorious fact that somewhere in the 1980s, questionnaires were sent around by the then Chieftaincy Secretariat to all stools, eliciting for particulars of their respective royal families, systems of succession et al. In the scheme of things, it was required that the questionnaire should be filled out by the stakeholders of the particular stools. Notably, questionnaires have played significant evidentiary and procedural roles

in chieftaincy cases, particularly in establishing facts about lineage and succession, among other things.

It bears noting that questionnaire-related issue featured in the case of Opanin Antwi Manu & Another v Nana Afrakomah II & Others (supra) which we shall later consider in this opinion, particularly the aspect of this decided case where the Supreme Court depreciated the unhealthy practice of unilaterally exploiting a questionnaire to alter an existing customary law rule. For now, we must resolve the following questions: (1) whether or not Exhibit 2A is a questionnaire, and if not so; (2) whether or not the purported questionnaire said to have been discussed at the meeting of the Mamprusi Traditional Council held on 4th August 1997 could have validly altered the existing structure of royalty and succession to the Bunkpurugu skin as established by Exhibit D. Indeed, some of the answers the Registrar of Mamprusi Traditional Council (Isssah Fuseini) gave under cross-examination on 23rd November 2017 are very insightful or revealing as far as our analysis of the Exhibits 2A and 2B is concerned. Counsel for the Petitioners asked him, and he answered as follows (see pages 563-564 of the ROA)

> Q; When were you appointed [as] Registrar of Mamprugu Traditional Council?
>
> A: I was appointed on 23rd January .2012.
>
> Q: I am suggesting to you that Exhibit 2 was not prepared by you
>
> A: No, it was prepared by me.
>
> Q; When did you prepare it
>
> A: I was called upon to provide it and I did. I cannot recall when.
>
> Q: So, you did not record the entries
>
> A: No, I did not.
>
> Q: When were the entries recorded?
>
> A: By the records it was made in 1997. I am now saying it was in 2007.
>
> Q: I am suggesting to you, you cannot speak to issues emanating from Exhibit 2 since you did not prepare it.
>
> A: I can speak on it because I am the Registrar of the Traditional Council even though I was not the Registrar at the time the documents were prepared"

The entries in Exhibit 2A, which is headed as: "Mamprusi Traditional Area, List of Stools/Skins and their system of Succession", are follows:

> Traditional Area; Mamprusi
>
> Town/Village; Bunkpurugu
>
> Title of Stool (skin); Divisional
>
> Nature of Stool(skin): Bunkpurugu Naba

Clan/Family: Jafok, Nampauk, Jamong, Majikibe (*)

Matrilineal/Patrilineal: Patrilineal

Rotatory/Non-Rotatory: Rotatory"

In relation to Exhibits 2A and 2B, Counsel for the 2nd and 3rd Respondents/Appellants contended that: (1) the meeting of the Mamprusi Traditional Council held on 4th August 1997 did not create royal families in Bunkpurugu; and (2) what the Traditional Council did was to give approval to the report of the statutory Research Committee of the Northern Regional House of Chiefs which was mandated to research into the succession of the various skins in the Northern Region including Bunkpurugu. In support of these contentions, Counsel referred to a portion of Exhibit 2B which is headed as: "Approval of Questionnaire on stools/skins (Revised)".

Reading through the contents of Exhibit 2B, we discover that Yunyoo-Rana, J.D. Yanyia (who was a member of the Mamprusi Traditional Council and doubled as Chairman of the Research Committee of the Northern Regional House of Chiefs) was present at the meeting to which Exhibit 2B relates. Notably, Yunyoo-Rana was said to have impressed upon members of the Traditional Council present at the meeting that, the government of the day (PNDC) attached importance to the exercise relating to the questionnaire. From this disclosure in Exhibit 2B, we infer that the conduct of the research was directed by the PNDC, and as we appreciate it, the government must have done so through the Chieftaincy Secretariat

Undoubtedly, the 2nd and 3rd Respondents/Appellants and their respective families stand to benefit from the purported research-related matters which eventually produced Exhibits 2A and 2B. Therefore, it would have been in their best interest if they had tendered in evidence the following pieces of material evidence: (1) the purported questionnaire relating to the Bunkpurugu skin, (2) the purported minutes and report of the Research Committee of the Northern Regional House of Chiefs; (3) the purported minutes of the Northern Regional House of Chiefs which discussed and approved the report of its Research Committee. The research-related documents listed herein, if they really do exist, must have been in the custody of the Registrar of Northern Regional House of Chiefs. The question then is: where is the questionnaire and the allied research-related documents?

Undoubtedly, the purported questionnaire cannot, by any stretch of imagination, be the document that was admitted in evidence as Exhibit 2A. We need to see and examine the purported questionnaire to enable us make a determination as to nature of the specific questions administered by the Research Officer(s). We need to know who the responders of the administered questions were. However, the evidence adduced by the Registrar of Mamprusi Traditional Council provided no clues to crucial facts. Under **section 65 (3) of Act 759**, DW2 (the Registrar of Mamprusi Traditional Council) was the custodian of all the records of the Mamprusi Traditional Council. If, indeed, the purported questionnaire from which the entries in Exhibit 2A were generated did exist, nothing prevented any of the Respondents from causing same to be tendered in evidence at the trial.

Similarly, if, indeed, the questionnaire and the other research- related documents did exist and were in the custody of the Registrar of Northern Regional House of Chiefs, it means that they were easily within the reach of all the Respondents/Appellants, and if that was the case, nothing stopped any of

them from obtaining certified true copies thereof and tendering same in evidence to sufficiently substantiate the claim that the Bunkpurugu skin is made up of three royal families; viz the Jafok, Nampauk and Jamong families. However, no such pieces of material evidence were adduced by the Respondents. Decided cases such as **Boateng Asante v Scanship Ghana Limited Civil Appeal No. J4/15/2013** (delivered on 15th January 2014) posit that the failure of a party to produce material evidence is fatal to his case.

Therefore, on account of the failure by the 2nd Respondent/Appellant to produce the purported questionnaire through the Registrar (DW2), or by reason of the failure of any of the Respondents to tender the purported questionnaire and its allied research-related documents in evidence, the irresistible primary conclusion which we draw is that no such questionnaire was in existence, and from this, we make a secondary conclusion that the purported entries recorded in Exhibit 2A are suspicious and not credible, to say the least. We proclaim that whoever engineered the generation of the entries in Exhibit 2B did so to advance his self-serving interest to the detriment of the Jamong family.

Perusing Exhibit 2B, we find that Lambong Tapang was present at the meeting of the Mamprusi Traditional Council held on 4th August 1997, and therefore, we have good reasons to conclude that he was privy to the purported decision to alter the age-old customary rule of succession to the Bunkpurugu skin to make it rotatory among the Jamong, Jafok and Nampauk families. We are left in no doubt Lambong Tapang stood to gain from the purported decision to alter the custom. As the record shows, Lambong Tapang was purportedly enskinned as Bunkpurugu Naba in 1986 and he was gazetted on 2nd July 1998 (see Exhibit 3); certainly, that was not a coincidence. We find that it was after the purported alteration of the structure of royalty and succession to the skin, by virtue of Exhibits 2A and 2B, that he was gazetted.

Based on the considerations above, we find the entire evidence relating to the generation of the purported questionnaire and matters related thereto such as Exhibits 2A and 2B, to be doubtful or at best insufficient. Therefore, we hold the considered view that the JC-NRHC ought not have attached any deserving weight to the two legally-flawed or procedurally-flawed research-related documents. We are unable to attach any weight to Exhibits 2A and 2B. Granted, arguendo, that questionnaire did exist, there is zero evidence on record to show that the elders of the Jamong family participated in the process of generating or administering it. Therefore, it cannot be said that the Jamong family was a party to the purported alteration of the age-old customary system of succession, which had over the years preserved the right to occupy the Bunkpurugu skin to members of the Jamong family. We hold that the attempts made through Exhibit 2A and 2B to alter the customary system of succession to include the Jafok and Nampauk families was improper and of no legal effect, given the fact that there is no cogent and credible evidence to show that the Jamong family participated in the alteration of the existing customary rule of succession which as the evidence on record shows, was absolutely non-rotatory between the Jamong family and any other family or families in Bunkpurugu.

As stated earlier, an issue relating to list and/or questionnaire cropped up in the case of **Opanin Antwi Manu & Another v Nana Afrakoma II & Others** supra. The facts show, among other things, that over the years, succession to the Akwamu stool had been non-rotatory. However, during the reign of the late Odeneho Kwafo Akoto II, he and the queenmother (Nana Afrakoma II), without the

involvement of the elders and principal members of the other sections of the larger royal family of Akwamu, filled out a questionnaire to alter the system of succession in Akwamu from non-rotatory to rotatory. Delivering the lead judgment of the Supreme Court in the case under reference, Amegatcher JSC stated at page 522 as follows:

> **"The Akwamus are free to reform their customs, traditions, and practices if they want to. In doing so, they must comply with strict customary ways of reforming such ongoing practices of the Akwamu people which over time had crystalized into law. Until then, our role as a Court in charting the way forward for peaceful nomination, selection and enstoolment of the Paramount Chief is to give effect to the customary practices which were in place by the progenitors or the originators of the stool of the Akwamu state and practiced over several centuries"** (Emphasis is ours)

This Tribunal, inspired by the rendition of the law in the Supreme Court decision supra, must state that the people of Bunkpurugu are at liberty to alter the existing structure of royalty and customary system of succession to the skin which had become crystallized and practised over the years. Heretofore, we have concluded, based on the disclosures in Exhibit D, that the Jamong family is the only royal family in Bunkpurugu. The evidence shows that over the years, members of the Jamong family have devised their own internal rules of nominating suitable candidates for enskinment by the Nayiri. In fact, the attorney for the original Petitioners positively and emphatically testified that succession to the Bunkpurugu skin rotates among the two gates of the Jamong family, namely the Toojak gate and the Nabimom gate. It is clear on the evidence that Naba Jamong Toojak and Naba Yoagbat Toojak belonged to the Toojak gate, whilst and Naba Nyankpen Libagtib was from the Nabimom gate.

Therefore, on the evidence, we are convinced that there exists a settled customary rule in Bunkpurugu which exclusively confer royalty on members of the Jamong family at birth such that as we speak, royalty is reckoned from the bloodline of Jamong Toojak, Yoagbat Toojak and Nyankpen Libagtib. Moreover, we are satisfied that over the years, the Jamong family has not been having a rotatory arrangement with any other family, except among units or sections of the same Jamong royal family. Therefore, if there was the need to change such a crystallized customary rule of succession and to introduce a rotatory system to include the Jafok and Nampauk families, such a reform or an alteration of the custom must not be done unilaterally without reference to the Jamong family, whose exclusive birth right to royalty was sought to be taken away and compromised by the contents of Exhibits 2A and 2B.

Observably, Counsel for 2nd and 3rd Respondents/Appellants stated in his reply filed on 28th August 2020 that the purported alteration of the existing system of succession to the Bunkpurugu skin was done by the Research Committee of the Northern Regional House of Chiefs, and not by the Mamprusi Traditional Council. This position is indeed a faux pas, because the Research Committee, acting though its officer (s) could not have validly, suo motu, filled the purported questionnaire for and on behalf of the stakeholders of the Bunkpurugu skin. Definitely, somebody must have provided the information that was documented in Exhibit 2A and the fellows must have necessarily been a member of the Jafok or Nampauk family. In any event, the decision in the case of **Republic v the Research Committee of Volta Regional House of Chiefs & Daketey Family of Taviefe; Ex parte Agbeli**

Family of Taviefe, Suit No. Miscl. 71/92, coram Aban J (as he then was) was to the effect that the Research Committee of the Volta Regional House of House of Chiefs had no such power to have acted on a list, which is similar to Exhibit 2A in the case before us, to take any administrative decision affecting the Taviefe stool.

The facts of the above-mentioned judicial review case are that somewhere in 1984 the government of the day viz the erstwhile Provisional National Defence Council (PNDC) directed all Regional Houses of Chiefs to submit a comprehensive list of stools, royal families, and kingmakers of the stools in their respective regions to the National House of Chiefs. Pursuant to the directive, the Volta Regional House of Chiefs, acting through its Research Committee, called for data from the stools and families concerned. As at the time the directive was issued in 1984, Togbe Bansah Zigah III was the Fiaga of Taviefe; he was a member of the Agbeli family of Taviefe. On 19th July 1984, the Agbeli family submitted its list to the Research Committee of the Volta Regional House of Chiefs, showing itself as the exclusive owner of the Fiaga stool of Taviefe and also presenting itself as the only family eligible to provide candidates for enstoolment as Fiaga of Taviefe. The Daketey family of Taviefe learnt of the list submitted by the Agbeli family, and immediately also forwarded their list to the Volta Regional House of Chiefs and claimed exclusive ownership of the same Fiaga stool of Taviefe.

On 24th July 1984, nine chiefs and elders of Taviefe Traditional Area adopted a resolution against the position taken by the Agbeli family, claiming that: (1) the list submitted by the Agbeli family was fake because, according to them, the Agbeli family should not have been beneficiaries of the Taviefe Paramount stool if not for the shortage of suitable candidates from the Daketey family; and (2) the occupancy of the Taviefe stool by member of the Agbeli family was nothing but "borrowed inheritance" On 20th September 1984, the Research Committee of the Volta Regional House of Chiefs purportedly heard the parties on the competing claims as stated in their respective lists and concluded that: (1) the Fiaga stool of Taviefe was not the exclusive property of either families; and (2) succession to Taviefe stool was rotatory among Agbeli and Daketey families. Dissatisfied by the decision of the Research Committee, the Agbeli family filed the application for certiorari.

On the facts detailed above, the Court held, per Abban J (as he then was) that the Research Committee of the Volta Regional House of Chiefs had no jurisdiction to hear the matter and to alter the structure of royalty and succession to the Taviefe. The Court thus quashed the information contained in the list based on which the Research Committee purported took its decision which sought to alter the succession to the Taviefe stool from non-rotatory to rotatory.

We fully appreciate the fact that the erstwhile PNDC government had a noble intention for wanting to have a list containing the structure of royal families and the systems of succession to the skins or stools to be documented. However, without mincing words, we do not accept the situation where conscious attempts were made by certain individuals to abuse such a well-intentioned state policy as it happened in the instant case. Indeed, some aspects of the facts of the decision in the case of Opanin Antwi Manu & Another v Nana Afrakoma II & Others (supra) exemplify the concerns we have raised here.

Notably, the repealed **Chieftaincy Act 1971 (Act 370)** was in force as of 1997 when the purported list and/or questionnaire the Mamprusi Traditional Council and/or the Research Committee of the

CERTIFIED TRUE COPY
REGISTRAR
NATIONAL HOUSE OF CHIEFS

Northern Regional House of Chiefs used to alter to customary system of succession to the Bunkpurugu skin. Particularly, it was enacted under **section 43 (1) of Act 370** as follows:

> **"43(1). A Regional House of Chiefs, may after receiving representations from a Traditional Council or on its own initiative, and shall if so, requested in writing by the National House of Chiefs draft a declaration of what in its opinion is the customary law, rule relating to any subject in force in its region or any part thereof"**

We have perused the record and found no evidence which shows that the Northern Regional House of Chiefs received a representation from the Mamprusi Traditional Council, upon which its Research Committee purportedly acted and generated the questionnaire said to have been discussed and approved at the meeting of the Traditional Council held on 4th August 1997. We find no evidence that shows that the National House of Chiefs was privy to the purported alteration of the existing Bunkpurugu customary system of succession that had entrenched in Exhibit Furthermore, nothing on record shows that neither the Mamprusi Traditional Council nor the Northern Regional House of Chiefs ever resorted to the very first step involved in the alteration of the existing customary rule of succession to the Bunkpurugu skin, talk less about the other relevant and applicable steps as provided for under sections 44, 45, 46 and 47 of the repealed Act 370. Therefore, for this and other considerations above, we hold that Exhibit 2A and 2B are deeply legally-flawed, unreliable, and weightless as compared to Exhibit D. That being so, we conclude that Exhibit D towers above Exhibits 2A and 2B; in other words, Exhibit D must prevail over Exhibits 2A and 2B, in terms of the weight.

Thus, based on the crucial documentary evidence on record (Exhibit D), and on the balance of probabilities, it is true, and we accordingly do conclude that: (1) the Jamong is the only royal family in Bunkpurugu. (2) the occupancy of the Bunkpurugu skin by a person not hailing from Jamong confers royalty on him, no matter how he reigns; at best, he is to be considered a caretaker Naba (3) succession to Bunkpurugu skin is based on bloodline traceable to patriarch Toojak, Jamong Toojak, Yoagbat Toojak and Nyankpen Libagtib (4) royalty in Bunkpurugu and succession to the skin cannot be lawfully wished away by the succession of Lambong Tapang to Bunkpurugu skin in 1986. (5,) the existing established system of succession to the Bunkpurugu skin could not have validly been altered neither by the Mamprusi Traditional Council nor the Research Committee of the Northern Regional House of Chiefs in 1997, based on the purported list and/or questionnaire. Certainly, these findings and conclusions have far-reaching ramifications on: (1) the enskinment of Lambong Tapang in 1986; (2) the purported exercise of nominating authority by the 1st Respondent/Appellant; (3) the claim to royalty put forward by the 2nd Respondent/Appellant (4) the validity of the purported nomination and enskinment of the 2nd Respondent/Appellant; (v) the claim to royalty put forward by the 3rd Respondent/Appellant; and (5) the success or otherwise of the cross-appeal.

The enskinment of Lambong Tapang.

As the record shows, Lambong Tapang was a member of the Jafok family and a paternal descendant of Parimag Jajing, who happened to be one of the parties who executed Exhibit D way back on 19th July 1931. Based on our earlier conclusion that the Jamong family is the only royal family in Bunkpurugu, Lambong Tapang could not have been a royal of the Bunkpurugu skin, notwithstanding the fact that: (1) he reigned as Bunkpurugu Naba from 1986 till he died in 2005; (2) his name was

entered in the National Register of Chiefs as Bunkpurugu Naba, and (3) he was accorded a royal funeral. Concerning the enskinment in Lambong Tapang in 1969 and later in 1986, the JC-NRHC found at portions of pages 41- 46 of its judgment that:

1. Lambong Tapang was enskinned on two different occasions, in 1969 and in 1986, but the 1969 enskinment was rescinded by the Nayiri on the basis of a fracas which erupted after that event, in which circumstance, the Nayiri enskinned a member of the Jamong family, Nyankpen Libagtib as Bunkpurugu Naba;

2. Whereas the Petitioners asserted that the basis for the decision of the Nayiri to rescind the enskinment was because Lambong Tapang was not a member of the Jamong family, the Respondents asserted that it was because Lambong Tapang had once performed badly as a District-level politician in the 2nd Republic. However, in the view of Nanima, it may have been a mix of both of these and other possibilities. If the intention of the Nayiri was to rotate the skin to another family, he would have picked another candidate from the Jafok and other families and not from the Jamong family.

3. In 1986, Lambong Tapang mounted a spirited and successful attempt to recapture the skin following the death of Nyankpen Libagtib. Whereas the Petitioners claimed that he succeeded with the support of a military detachment then stationed in the area, the Respondents asserted that he succeeded on account of his legitimate claim to the skin.

4. There was absolutely no evidence on record to show that the Petitioners initiated an action at the JC-NRHC for a determination of their claim that Lambong Tapang was not a royal, though they claimed to have petitioned the then PNDC Secretary responsible for Chieftaincy Affairs, who in turn referred the petition to the Northern Regional House of Chiefs

5. The failure of the Petitioners to resort to the judicial process for a determination of their claim was the Archilles heel in their case before Nanima, because a petition to the then PNDC Secretary responsible for Chieftaincy Affairs and later to the Northern Regional House of Chiefs as an administrative body is not cognizable by law, by reason of the fact that the two bodies were not vested with jurisdiction to entertain any cause or matter affecting chieftaincy.

6. The Petitioners ought to have realized at that stage that their family's claim as the sole royal family was under threat and as such had to mount a legal challenge to the enskinment of Lambong Tapang in order to preserve their family heritage, but they did not do so for nearly 20 years only for them to file the petition at the JC-NRHC after losing their bid to have a member of the Jamong family succeed Lambong Tapang as the next Bunkpurugu Naba. The petition was brought at the JC-NRHC in bad faith. It was too late in the day to use the petition as a vehicle for a relief which they had virtually abandoned. In the circumstances the Committee would maintain the position that the enskinment of Lambong Tapang was legitimate, which position amounted to keeping in the law.

As can be noted, in justifying the findings and conclusion listed above, the JC-NRHC relied on section 37(1) of NRCD 323, which deals with presumption of regularity of official acts, judicial acts, governmental acts and other duties imposed by law. The JC-NRHC also relied on the case of Ghana Ports and Habours Authority v Nova Complex Ltd & Anor [2007-2008] SCGLR 808. On the basis of these authorities, Nanima concluded that the Petitioners, not having mounted a legal challenge to the enskinment of Lambong Tapang, the invitation extended to them to find the enskinment null and void was belated. The JC-NRHC also concluded that for siting aloof and abandoning its claim as the sole royal family for so long, the Jamong family had no one else to blame, but themselves.

Moreover, relying on section 26 of NRCD 323 and the case of Frabina Ltd v Shell Ghana Ltd [2011] 1 SCGLR 429, the JC-NRHC concluded that the Jamong family, having failed to challenge the enskinment of Lambong Tapang, the doctrines of estoppel by conduct and conclusive presumption operated against it as well as the claim that Jamong is the only royal family in Bunkpurugu. Also, relying on the case of Republic v National House of Chiefs; Ex parte Akrofa Krukoko II (Enimil VI, Interested Party) [2007-2008] SCGLR 179, the trial Judicial Committee concluded that the entry of the name of Lambong Tapang in the Register of Chiefs raised a presumption that, in fact, he was the chief Bunkpurugu. Lastly, the JC-NRHC concluded that estoppel would operate against the 1st and 2nd Respondents in light of disclosures in Exhibit 2A and 2B.

At this juncture, it is necessary consider the respective arguments canvassed by the respective lawyers for the parties in relation to the findings and conclusion of the JC-NRHC detailed above. At pages 7-8 of the further written submissions filed by him on 28th August 2020, Counsel for the 1st Respondent/Appellant particularly contended that: (1) the Petitioners failed to challenge Lambong Tapang after his enskinment as chief of Bunkpurugu and the Bimoba ethnic group; (2) by effluxion of time, the Petitioners cannot be reasonably making such spurious claims; (3) Lambong Tapang was duly gazetted in the National Register of Chiefs and that fact about his gazette, was never challenged in his lifetime; (4) in the absence of Lambong Tapang, his Regent as well as the head of his family were not joined to the petition to defend any claims of ineligibility or removal as Bunkpurugu Naba and related claims.; (5) the estate of Lambong Tapang was of interest to his successors and it was not for the 1st and 2nd Respondents to the Petition to fight his battles; (6) It was too late in the day for the Petitioners to use the avenue of appeal to address the issue; and (7) Parimag Goung as a Jafok once contested and lost but Lambong as a Jafok contested and won; the two personalities must go down in history as Jafoks who kept the blaze from their Togoland predecessors of the Jafok tradition in Bunkpurugu.

Counsel for the 2nd and 3rd Respondents/Appellants argued at pages 57-59 of his written submissions filed on 27th July 2020 that: (1) the finding by the JC-NRHC that by operation of law the Jafok family, through Lambong Tapang, acquired a prescriptive legal right of succession to the Bunkpurugu skin following the successful enskinment of Lambing Taapang, was contradictory and impeachable; (2) the finding of the JC-NRHC detailed above, was at variance with Article 277 of the 1992 Constitution and section 57(1) of Act 759 which provide for the definition of a chief, and to that extent the JC-NRHC erred in law; (3) on the evidence, Lambong Tapang hailed from the appropriate family and lineage of the Bunkpurugu skin and was validly nominated selected and enskinned as Bunkpurugu Naba by the Nayiri in 1986, and he reigned as such till his death in 2006; (4) going by the disclosures in Exhibit 2A, the Jafok family is one of the royal families in Bunkpurugu, and therefore, even if the Jamong family had challenged the enskinment of Lambong Tapang, it would have been an exercise

in futility because of the clear evidence placed before the trial Judicial Committee ; and (5) Lambong Tapang was the gazetted chief of Bunkpurugu. Based on these contentions, Counsel urged us to uphold the 7th, 8th and 9th additional grounds of appeal.

On his part, at pages 30-32 of the written submissions filed by him on 13th August 2020, Counsel for the Petitioner/Cross-Appellant argued that: (1) the evidence on record shows that the Jamong royal family has had three chiefs who ascended the Bunkpurugu skin since its inception; (2) the evidence on record also shows that Toojak, who hailed from the Jamong family, was the one who established the Bunkpurugu skin; (3) Lambong Tapang did not hail from the Jamong family, and therefore, the Nayiri could not have validly nominated, selected and enskinned him as Bunkpurugu Naba in 1986; (4) the selection and enskinment of Lambong Tapang was at variance with Article 277 of the 1992 Constitution and section 57(1) of Act 759; (6) though Lambong Tapang ruled for 20 years, his enskinment was null and void ab initio; and (7) the subsequent gazetting of Lambong Tapang, did not make him a chief since he did not hail from the appropriate family -Counsel supported this particular contention by a passage from S.A. Brobbey's book, at page 115 thereof

This Tribunal has tutored itself on the law of limitation of actions as provided for in the Limitations Act 1972 (NRCD 54). The period within which a cause or matter affecting chieftaincy may be initiated and prosecuted in the chieftaincy tribunals has not been set by this legislation, unlike other civil lawsuits. Therefore, Petitioners cannot be faulted for sitting by and allowing Lambong Tapang to occupy the Bunkpurugu skin for 20 years. Thus, we find it is totally untenable for Counsel for the 1st Respondent/Appellant to have contended that by effluxion of time, the Petitioners could not have reasonably be making such claims regarding the impropriety of the nomination and enskinment of Lambong Tapang in 1986.

Observably, on the evidence, the respective cases put forward by the Respondents/ Appellants in the instant are essentially targeted at establishing that the Jafok and Nampauk families are royal families in Bunkpurugu, in addition to the Jamong family. Observably also, at the trial, the Respondents had a common strategy, which was aimed at torpedoing the claim by the Petitioners that Jamong is the only royal family in Bunkpurugu. Therefore, if the petition had been dismissed, it would have produced a beneficial domino effect for the Jafok and Nampauk families, and by extension, the fruit of the judgment would have inured to the benefit of Lambong Tapang, albeit posthumously. The question then is: what prevented the head of the Jafok family or the Regent of the late Lambong Tapang from joining the petition as 4th Respondent, with the view to combining forces with the 1st, 2nd, and 3rd Respondents, if the argument on joinder proffered by Counsel for the 1st Respondent/Appellant is anything to go by.

On the evidence, we find no impediment put in the way by the Petitioners or JC-NRHC regarding an application for joinder filed by the head of the Jafok family the Regent of the late Lambong Tapang, and in any case, no application for joinder was filed by them. Undoubtedly, the decision to file an application for joinder, in the circumstance, did not rest with the Petitioners. Therefore, the contention by Counsel for the 1st Respondent/Appellant that the Petitioners ought to have joined the head of the Jafok family or the Regent of Lambong Tapang to the petition is totally misconceived. The collateral question we must ask and find an answer to is this: did the entry of the name of Lambong Tapang in National Register of Chiefs necessarily validate his claim to royalty of the Bunkpurugu skin? We do not think so. The fundamental fact, as established by Exhibit D, is that the only royal family in

Bunkpurugu is the Jamong family. By law, the registration only raised a presumption that Lambong Tapang, who belonged to the Jafok family, was the chief of Bunkpurugu, however, the presumption has been displaced by the disclosures in Exhibit D which had been in existence since 1931, and which document pre-dates his enskinment and registration in 1986 and 198 respectively. Our conclusion in this regard equally disposes the same line of argument canvassed by Counsel for the 2nd and 3rd Respondents/Appellants.

It is instructive to note that Counsel for the 2nd and 3rd Respondents/Appellants particularly raised red flags about the finding and conclusion by the JC-NRHC to the effect that Lambong Tapang acquired royalty by way of acquired prescriptive right, arising from the failure of the Jamong family to judicially challenge him. We understand Counsel to be contending that Lambong Tapang had royalty bestowed on him at birth and not by any such acquired prescriptive right, as found by the JC-NRHC. It is a documentarily established fact that the Jamong family is the only royal family in Bunkpurugu. It means that royalty is bestowed on members of the Jamong family at birth. It also means that members of the Jafok or Nampauk families cannot validly lay claim to royalty in Bunkpurugu as a birthright. Therefore, we are unable to accept the position that Lambong Tapang acquired royalty at birth. Equally, we are not in the position to accept and affirm the JC-NRHC's finding that Lambong Tapang acquired a royal status in Bunkpurugu by reason of the failure of the Jamong family to judicially challenge his enskinment.

This Tribunal has sufficiently appraised itself of provisions of sections 26 and 37(1) of NRCD 323, which the JC-NRHC relied to bestow royalty on Lambong Tapang. We believe that section 24 (1) of NRCD 323 must operate in tandem with sections 26 and 37 (1) thereof. Section 24(1) of NRDC 323 is to the effect that where the basic facts that give rise to a conclusive presumption are found or otherwise established in an action, no evidence contrary to the conclusively presumed fact may be considered by the tribunal of fact. On the evidence, it is an established fact that the Jamong family incessantly protested against the propriety of enskinment of Lambong Tapang in 1986, though the family or its representatives never judicially challenged his claimed royal status and eligibility to ascend the skin. By applying sections 26 and 37(1) of NRCD 323 against the substituted Petitioner and by extension the Jamong royal family, first, we understand the trial Judicial Committee to be opining that the members of the Jamong family, by their own statement, acts or omission intentionally and deliberately caused Lambong Tapang to believe that he was a royal and a legitimate chief of Bunkpurugu, and second, we understand the JC-NRHC to be reasoning that the purported enskinment of Lambong Tapang in 1986 was an official act presumed to have been regularly performed by the Nayiri.

In the determination of the correctness or otherwise of the JC-NRHC's use of estoppel by conduct against the Petitioners, we must call in aid the decision of the Supreme Court in the case of **In re Suhyen Stool; Wiredu & Obenwaa v Agyei & Others [2005-2006] SCGLR 424**.The facts of this case are that the plaintiffs/appellants/respondents (members of the Asona clan) claimed that they remained the rightful owners of the elevated Mponua divisional stool, because their Asona ancestors created the Odikro stool which had been elevated to Mponua divisional stool. On the other hand, the defendants/respondents/appellants (members of the Ekuona family) claimed that with the elevation of the stool from Odikro status to Mponua divisional status in 1954, a new stool had come into being, created for the Ekouna clan as a gift from the Omanhene of New Juaben to the Ekuona matrilineal family. The defendants/respondents/appellants also claimed that even if the stool was a continuation

of the original stool created around 1915 by Nana Kwaku Boateng I, the occupancy of the stool by the Ekuona family for well over 50 years after the reign of Frimpong Mansso I (an Ekuona), meant that the Asona clan had acquiesced in the new status of the Ekuona clan and were estopped in laying claim to the stool.

Thus, the Supreme Court had to determine, among other issues, whether or not the principles of estoppel by conduct, acquiesce and conclusive presumption had to operate against the plaintiffs/appellants/respondents, and thereby deny their Asona family of their right of ownership over the stool. The Court unanimously dismissed the appeal. Reading through holdings (2) and (4), found at pages 426-428 of the judgment, we gather the following propositions of law, as we appreciate them:

> **(a) The customary law rule was that, the mere occupation of a stool does not amount to ownership of the stool, since such occupancy might simply be in the nature of caretakership**
>
> **(b) The predicate condition stipulated in the first part of section 24 (1) of NRCD 323 is that the basic facts that had arguably given rise to a conclusive presumption must be found or otherwise established before the application of the legal effect or consequences of conclusive presumption, that is disallowance of contrary evidence. In the instant case, no conclusive presumption has been established or fulfilled in terms of section 24 (1) of NRCD 323 which would have prevented the plaintiffs, representing the Asona clan, from giving evidence on their historic title to the Suhyen stool.**
>
> **(c) On the evidence, there were no statements, acts or omissions of the plaintiffs which, in the words of section 26 of NRCD 323, "intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief..." That would have given rise to a conclusive presumption that the Divisional or Mponua stool of Suhyen was now the property of the Ekuona Clan. On the contrary, the plaintiffs' evidence had shown that the Asona clan had insisted that every time non-member of the Asona Clan sat on the stool, it was done with their permission.**
>
> **(d) On the evidence, no acts of acquiescence, estoppel in pais or equitable estoppel, have been established against the plaintiffs as regards their attitude towards the subsequent ascendency of the Ekuona Clan to the Suhyen stool, either in its original or elevated form. The defendants have failed to demonstrate lack of vigilance on the part of the royal family of the Asona Clan; and merely performing the role of a caretaker of a stool did not establish estoppel in pais or equitable estoppel, that is a situation in which person may be precluded by his actor conduct, or silence when it is his duty to speak, from asserting a right which he otherwise would have had.**

Delivering the lead opinion of the Supreme Court in the case under reference, Prof Modibo Ocran stated at page 434 as follows:

> **"On the other hand, to the extent that the defendants' contention is couched in terms of acquiescence or estoppel rather than conclusive presumption rule under the Evidence Act 1975 this contention also fails. First, because it was never established that the Asona Clan displayed ignorance in their claimed ownership of the Suhyen and second, because we deem the period of reign by Ekuona as caretakership, mere caretakership cannot rise to the level of an estoppel en pais or equitable estoppel, i.e a situation in which a person may be precluded by his act or conduct, or silence when it is his duty to speak, from asserting a right which otherwise would have had. We are not persuaded that the conduct of the Agona clan in witnessing the occupancy of the Suhyen stool by the Ekuona family amounts to acquiescence"** (Emphasis is ours)

It is true, as found and concluded by the JC-NRHC, that the Jamong family never initiated an action at the competent chieftaincy Tribunal to challenge Lambong Tapang's enskinment as Bunkpurugu Naba It would seem that the Jamong family preferred alternative dispute resolution to courtroom litigation. We say so because, as the record shows (see Exhibit D), on 19th July 1931, an out-of-court mechanism was used to resolve the Bunkpurugu chieftaincy dispute sparked by a claim by Parimag Jajing, a member of the Jafok family. Here is the trajectory of the protests: (1) the Jamong family protested against the purported enskinment of Lambong Tapang as Bunkpurugu Naba in 1969, and in consequence, the very the same Nayir who enskinned him cancelled the enskinment and subsequently installed Nyankpen Libagtib of the Jamong family in his stead; (2) in 1986 when attempts were being made by the then Nayiri to enskin Lambong Tapang, the Jamong family once protested against the proposed enskinment for the same reason that he was not a royal of the skin. nonetheless, the Nayiri enskinned him; (3) by way of a formal written protest, the Jamong family lodged a petition with the then Chieftaincy Secretariat, wherefore the Secretariat, in its wisdom, referred the dispute to the Northern Regional House of Chiefs to resolve, but as it turned out, the resolution of the dispute did not see the light of day before Lambong Tapang joined his ancestors in 2005.

The following excerpts from the cross-examination of PW1 (Abraham Namteeh Libagtib) dated 15th June 2016 are revealing, as far as the basis for the cancellation of the enskinment of Lambong Tapang was concerned. Counsel for the 1st and 2nd Respondents asked PW1, and he answered as follows (see particularly pages 440-441 of the ROA)

> Q: To your knowledge between Nyankpen and Tapang Lambong who was selected as chief of Bunkpurugu
>
> A: He selected Lambong and we refused because he was not from the Jamong family.
>
> Q: Is true that when Nayiri selected Lambong Tapang the Jamong family were not happy.
>
> A: Yes, it is true
>
> Q: And the Jamong family demonstrated and caused mayhem in the town.
>
> A: Yes, that is true.

Q: Because of the riots in Bunkpurugu, the Nayiri rescinded his decision of selecting Lambong Tapang

A: Yes, that is true

Q: To bring about peace and tranquillity, the Nayiri gave the skin to Nyankpen.

A: Yes, that is true:

As can be noted, in the cross-examination session supra, Counsel, apparently knowing the facts about the level of disapproval by the Jamong family of the enskinment of Lambong Tapang in 1969, elicited answers from the witness to that effect. Similarly, with the same knowledge of the facts about the intensity of the protests, Counsel elicited responses from the witness to that effect. The evidence of sustained protests and agitations in 1969 and 1986 are credible. Therefore, we are convinced that the Jamong family did not display ignorance and thus acquiesced in the claim of royalty by Lambong Tapang. For these reasons, we are unable to concur in the finding and conclusion by the JC-NRHC that the failure on the part of the Jamong family to resort to courtroom litigation to challenge Lambong Tapang should be the basis for the application of sections 26 and 37(1) of NRCD 323 against the then substituted Petitioner, particularly so, where in the same judgment the JC-NRHC accepted that Exhibit D is authentic and legally binding on the parties and their families. We reiterate the established fact that Parimag Jajin and Lambong Tapang, who were members of the Jafok family, were bound by the disclosure in Exhibit D, so are their descendants of today, including the 2nd Respondent/Appellant. It means, therefore, that neither Parimag Jajing nor Lambong Tapang was a royal of the Bunkpurugu skin. In the circumstances, the principle of estoppel cannot operate to posthumously bestow royalty on Lambong Tapang. This is because, by law (see **Darko v Brako** infra) royalty is bestowed at birth. There is zero evidence on record to show that Lambong Tapang was a prince from the Jamong royal family. Therefore, the principles of the law of evidence such as sections 26 of NRCD 323 cannot have validly been relied on by the JC-NRHC pass on royalty to him. Premised on these considerations, we hold that the JC-NRHC misapplied sections 26 of NRCD 323 to facts to the case before it.

We now turn to consider the trial application of section 37(1) of NRCD 323 by the JC-NRHC against the then substituted Petitioner. The question then is: whose official duty was the JC-NRHC talking about? Reading through the relevant portion of the judgment of the JC-NRHC regarding its resort to the provisions of section 37(1) of NRCD 323, we understand Nanima to have taken the position that the enskinment of Lambong Tapang was an official duty regularly performed by the Nayiri within these provisions. Indeed, the commentary portion of NRCD explains the import of section 37 as follows:

> "**This section states the common law presumption *omnia praesumuntur rite esse acta. It* is generally applied to judicial and governmental acts, but it <u>may be applied to duties required to be performed by law</u>...**" (Our emphasis)

As we appreciate it, the authority of the Nayiri to enskin a candidate-elect is a duty imposed by the tradition, customs, and usages, and not by law. Therefore, we hold the view that the JC-NRHC misapprehended and misapplied the meaning and import of section 37(1) of NRDC 323 by equating the traditional duties performable by the Nayiri as official act. as if he were a public official. Indeed,

section 179 of NRCD defines "public official" to mean "an officer, agent, employee, or other representative of a public entity acting in the course of duty as such officer, agent, employee, or representative. Granted, arguendo, that the Nayiri was a public official, the presumption of regularity contemplated by section 37(1) of NRCD 323 stood rebutted by the fact the person he enskinned namely Lambong Taapang had no ancestral connection to the Jamong royal family, which as the documentary evidence on record shows, is the only royal family in Bunkpurugu. In other words, section 37(1) of NRCD could not have validly watered down the established fact that Lambong Tapang was not a royal of the Bunkpurugu skin.

In our considered opinion, in the circumstances of the case before us, if the decision of the JC-NRHC, which is based on sections 26 and 37(1) of NRCD, is allowed to stand, it will mean that in future situations, when the Bunkpurugu skin becomes vacant, usurpers or imposters and for that matter non-royals may be emboldened to push their way through and get themselves enskinned, and thereafter, solidify their usurped royal statuses by creating new royal families for themselves and their descendants, simply because the real royals have sat by for far too long without judicially challenging the usurper or his descendants. This could be a recipe for chaos in the Bunkpurugu chieftaincy space.

This Tribunal has sufficiently educated itself of the legal principle that "once a royal, always a royal" as enunciated in the case of **Darko v Brako [1982-83] 2 GLR 214 SC.** Notably, at page 351 of this case Charles Crabbe JSC, upholding and affirming the application of this time-honoured principle by the Judicial Committee of Kwahu Traditional Council said:

> "**<u>And the traditional council had stated</u> that <u>"to be an heir or royal eligible to occupy a stool is a birthright which is never lost to the royal [or] his descendants by any law'. This statement is correct. Once a royal always a royal.</u> And unless a royal takes positive steps to renounce his royal blood or does an act which, in law, could result in his and his descendants being barred from the stool, and the appropriate steps are taken to debar him, he remains a royal all his life"** (Emphasis is ours)

In our considered opinion, conversely the principle that "once a royal always a royal" can be construed to imply that "once a non-royal always a non-royal". On the evidence, the founder of the Bunkpurugu community was patriarch Jamong, and he was the one who created the skin and made his son Jamong Toojak the first chief of the community. Thus, on the basis of the principle that "once a royal always a royal", and given the fact that members of the Jafok and Nampauk families are non-royals of the Bunkpurugu skin, they must remain as such ad infinitum. We, therefore, hold that Lambong Tapang, who is a member of the Jafok family, could never have been a royal of the Bunkpurugu by operation of the principle of estoppel by conduct. Furthermore, we hold that his 20-year occupancy of the skin, without the Jamong family challenging him in court and asserting their exclusive birthright, is inconsequential. Our findings and conclusions in this regard are superbly consistent with the position the JC-NRHC itself took at pages 31-33 of its judgment, where Nanima, relying on the case of: **In re Suhyen Stool; Wiredu & Obenwaa v Agyei & Others** (supra), found and concluded that:

> "Applying the ratio of this decision to the present case, <u>the Bunkpurugu skin, even if it originated from the Lokpur skin in Togo, was a new skin belonging to the first family that</u>

succeeded to it and not the original skin from it emanated or any other skin. What's more, even the originating or superior skins, if they exist, cannot take away the ownership of the skin from the royal family" (Emphasis is ours)

This Tribunal totally agrees with the trial Judicial Committee on the point that the Bunkpurugu skin belongs to the first family that succeeded it. As decisively established by Exhibit D, the first family which succeeded to the Bunkpurugu skin was the Jamong family. Therefore, we conclude that no other family, be it Nampauk family or Jafok family, can justifiably lay any claim to royalty in Bunkpurugu by shielding themselves under the sections 26 and 37(1) of NRCD 323. Consequently, the JC-NRHC could not have justifiably shielded Lambong Tapang (albeit posthumously) under the doctrines of estoppel by conduct, conclusive presumption, and presumption of regularity,

Observably also, in the case of In re Suhyen Stool; Wiredu & Obenwaa v Agyei & Others (supra), the argument proffered by Counsel for the appellants in that case, which was founded estoppel, tragically fell flat on its face because, as the Court found, the evidence showed that: (1) the Asona clan of Suhyen did not display ignorance of their birth right to exclusive ownership of the Suhyen stool; and (2) members of the Ekouna clan who had occupied the stool for about 50 years were not true royals of the stool. On these established facts, the position taken by Supreme Court in holding (2), as appreciate it, is that such mere occupancy of the stool by a non-royal confers the status of caretaker chief on him and nothing more. We believe that, certainly, the JC-NRHC did not avert its mind to holdings (2) and (4) of the decision under reference because, if it did, the panel would have come to the conclusion that, in chieftaincy law, Lambong Tapang could not have validly been , by any stretch of rules of the law of evidence, become a royal of the Bunkpurugu, notwithstanding the fact he reigned for 20 years without any legal challenge to his claimed royal status. Furthermore, if the JC-NRHC had carefully considered the law, as espoused in the case referenced, it would have come to the conclusion that at worst Lambong Tapang was a usurper, and at best, he was a caretaker chief of Bunkpurugu.

Notably, at page 40 of the written submissions filed by Counsel for the Petitioner/Cross-Appellant, he referred to the decision of the Supreme Court in the case of **Nana Ofori Appiah & Ors v Nana Akua Ameahene & Ors (Civil Appeal No. J2/02/2017),** delivered on 14th December 2017...In this decided case, the Supreme Court affirmed the decision of this Tribunal (as then constituted). The Apex Court, having adopted a passage from the book titled: **"The Law of Chieftaincy in Ghana Incorporating Customary Arbitration Contempt of Court Judicial Review** " (the latest 2008, authored by the retired Justice of the Supreme Court, S.A. Brobbey), stated, per Appau JSC, as follows:

> "**As Brobbey JSC stated in his book under reference supra, when such non-royal chief ascends the stool for many years, the argument canvassed by their offspring is that, they too are eligible to ascend the stool by virtue of the fact that their great-uncle once acceded the stool and that was proof that their family too was part of the royal family. However, the claimants from families described as caretaker families cannot claim to be members royal family are entitled to succeed or ascend the stool. They do not hail from the appropriate family or lineage for the purposes of succession as clearly provided under the constitution. It is incumbent on the one**

asserting that right to prove that he/she did ascend from the originator of the stool"
(Emphasis is ours)

Undoubtedly, the decision in the case of Nana Ofori Appiah & Ors v Nana Akua Ameahene & Ors (supra) also supports the legal proposition that: (1) a non-royal can only occupy a stool (and by extension a skin) is only as a caretaker; and (2) the family from which he hails becomes a caretaker family such that in future, members of the said family cannot lawfully claim to be true royals of the stool. Premised on these settled legal propositions, we reiterate and solidify our earlier position that Lambong Tapang was not a royal of the Bunkpurugu skin, since he did not hail from the appropriate lineage originated by Jamong.

Based on the matters aforesaid, the question then is: must we set aside the findings and conclusions by the JC-NRHC which sought to confer royalty on Lambong Tapang? We answer this question in the affirmative, because holdings (1) and (2) of the case of: **In re Koranteng (Decd); Addo v Koranteng & Others [2005-2006] SCGLR 1039** permit us to do so. Holding (1) posits that an appellate court is justified in setting aside the findings of fact by a trial court where such findings are inconsistent with crucial documentary evidence on record, or where the trial court improperly applied a principle of the law of evidence in making such findings of fact Holding (2) is to the effect that facts recited in a written document are conclusively presumed to be true as between the parties to the document and their successors in interest.

Irrefutably, Exhibit D is piece of crucial document. The recitals in this document show in clear and unambiguous terms that: (1) patriarch Jamong was the originator of the Bunkpurugu skin; and (2) the Jamong family is the only royal family in Bunkpurugu. Firstly, in applying the doctrine of estoppel by conduct against the substituted Petitioner and by extension the Jamong royal family in the way the JC-NRHC did, Nanima ended up recognizing that the Jafok family as another royal family in Bunkpurugu. However, such a finding of fact is inconsistent with the disclosures in Exhibit D. Secondly, in the circumstances of the case, the application of sections 26 and 37(1) of NRCD by the trial Judicial Committee to ground the finding of fact which made Lambong Tapang a royal of the Bunkpurugu skin was improper.

Interestingly, the JC-NRHC found and concluded in its judgment that Exhibit D is an authentic document binding on the signatories themselves and their respective families. It means, therefore, that the disclosures in the document are not re-negotiable or rewritable by the parties thereto or members of their respective families to which they belonged. Indeed, section 25 (1), on which holding (2) of the case of: **In re Koranteng (Decd); Addo v Koranteng & Others** supra was anchored, posit that facts recited in a written document are conclusively presumed to be true as between the parties to the document and their successors in interest. Therefore, it is totally strange for the JC-NRHC to have turned 360 degrees to rely on the doctrine of estoppel by conduct in the way it did and make a contradictory finding of fact that Lambong Tapang was a royal of the Bunkpurugu skin. On the basis of totality of this and the other consideration above, we hereby set aside the findings of fact and conclusions by JC-NRHC, which were founded on founded on sections 26 and 37(1) of NRCD.

The authority exercisable by the Nayiri in the kingmaking process in Bunkpurugu.

On the evidence, it is beyond disputation that the Nayiri (the 1st Respondent/Appellant) is the enskinning authority as far as succession to the Bunkpurugu skin is concerned; in fact, nowhere in

the evidence adduced at the trial was this fact denied, challenged, or controverted. However, as it turned out at the trial, the propriety of the nomination of the 2nd Respondent/Appellant by the 1st Respondent/Respondent was hotly contested, so was his enskinment that followed it. Thus, the authority of the Nayiri to nominate a candidate for enskinment as Bunkpurugu Naba was seriously contested by the parties.

Given the settled legal fact that a flawed nomination process cannot produce a customarily valid or proper enskinment process, we must resolve the question as to whether or not the Nayiri is the nominating authority as far as the chieftaincy institution in Bunkpurugu is concerned. The question then is: who nominated the 2nd Respondent/Appellant? This Tribunal finds the answer to this question posed from excerpts of cross-examination session dated 22nd November 2017. Counsel for the Petitioners asked the 2nd Respondent (the 2nd Respondent/Appellant herein) and he answered as follows (see the relevant portions of pages 557-558 of the ROA):

"Q: When were you nominated for the skin.

A: In May 2007.

Q: When were you selected.

A: It was on a Wednesday in the same month.

Q: When were you enskinned?

A: On the same Wednesday

Q: Who nominated you.

A: The overlord of Mamprugu.

Q: Who selected you.

A: It was the Nayiri, overlord of Mamprugu.

Q: Who enskinned you as a chief.

A: After selecting me, he enskinned me.

Q: I am putting it to you that your nomination, selection, and enskinment by the Nayiri was not in accordance with the customs of Bunkpurugu.

A: No, it is not true"

The attorney for the Petitioners asserted repeatedly that, per the settled custom and tradition of the people of Bunkpurugu, the Nayiri was not the nominating authority as far as succession to the Bunkpurugu skin is concerned. For the purpose of emphasis, we reproduce thereunder the relevant excerpts from the cross-examination session dated 25th January 2012, where the then Counsel for the 1st and 2nd Respondents asked the attorney for the Petitioners, and the latter answered as follows (see pages 168-169 of the ROA)

'Q: What did they tell you Nayiri could do in relation to the Bunkpurugu skin.

A: I was told Nayiri is the overlord of Mamprugu traditional area of which Bunkpurugu is a division. I was told any time there is a vacancy within any skins of Bunkpurugu division, a candidate is brought to Nayiri to enskin

Q: Have you as an individual ever witnessed the nomination of a candidate by the Jamong family.

A: Yes,

Q: Whose nomination did you witness

A: The candidate that Nayiri ignores (sic) to enskin by name Malik Musah for which reason we are in court I witnessed his nomination

Q: Was he nominated unopposed

A: Yes

Q: Who nominated him.

A: He was nominated by Chamba Seidu Nangubint Kolan

Q: Was he the only one who nominated him

A: No, the others are [were] Chamba Makinyoun Libaar, Chamba Suguar, Dajeeb Chamba, Nyannib Yoagbat, Chamba Gbaryuk Kombian, Chamba Mobya, Jamin John Baka, Nam Biika, Johnson Dubik, Kuunchaan

Q: Do you say that he was unanimously nominated

A: Yes.

Q: In your evidence you said that at Nayiri's palace there was somebody also from Jamong family who nominated himself.

A: Yes.

Q: Can you tell the committee who that independent candidate was.

A: He was Andrew Yoagbat"

Abraham Namteeh Libagtib testified as the sole witness for the Petitioners (PW1). In his evidence-in-chief, he asserted that the role of the Nayiri in the enskinment of Bunkpurugu Naba was that the Jamong family would choose one of their sons and present him to the Nayiri for enskinment (see 436 of the ROA). As the record shows, the evidence of PW1 in this regard corroborated the earlier assertion by the attorney for the Petitioners to the effect. Notably, when PW1 was under cross-examination on 21st June 2016, he denied a suggestion made to him by the then Counsel for the 1st and 2nd Respondents (E.K. Musah Esq) that the nomination, selection, and enskinment of the 2nd Respondent as Bunkpurugu Naba by the Nayiri was properly done. Beyond the denial, PW1 insisted that the impropriety of the nomination process was the reason the Petitioners were in court. (See page 451 of the ROA).

Japong Konlanbik testified as the second witness for the 2nd Respondent (DW2) The JC-NRHC. He told the JC-NRHC that the 2nd Respondent was his brother's son, which means that he was a paternal uncle of the 2nd Respondent. Also, for the purpose of emphasis, we wish to reproduce hereunder portions of the cross-examination session dated 29th August 201, where Counsel for the Petitioners asked him, and he answered as follows (see particularly pages 578-579 of the ROA)

Page 578-579 of the ROA

Q: So, you agree with me it was Nayiri who nominated 2nd Respondent, not so?

A: We nominated him from our family and other families brought their nominees and we presented all of them

Q: So, it was Nayiri who selected the 2nd Respondent.

A: Yes, that is correct

Q: So, you also agree it was the Nayiri who enskinned him.

A: Yes, that is correct

Q: I am suggesting to you that the Nayiri only has that authority to select a candidate.

A: No, it is not true

Q: I am suggesting to you that the Nayiri has no authority to select a candidate.

A: No, it is not true

. Q: I am suggesting to you that the Nayiri has the enskinning authority

A: No, it is not true, he has that authority"

Q: You agree with me that nomination is the preserve of the family the candidate hails from

A: Yes, that is correct.

Q: You will further agree that selection is preserve of the family the candidate hails from.

A: No, it is the Nayir who selects.

Q: Therefore, the selection of 2nd Respondent by the Nayiri is customarily wrong.

A: It is not true"

Thus, it was the evidence of second witness for the 2nd Respondent that the Jafok family nominated the 2nd Respondent, and it was the Nayiri who selected and enskinned him. The witness also admitted that nomination is the exclusive preserve of the family to which the nominee belongs. However, here is the contradiction: the 2nd Respondent testified on oath that the Nayiri was the one who nominated him, but his own witness (DW2) asserted that it was the Jafok family that nominated him. We prefer to believe the version put forward by the 2nd Respondent himself, because the facts about his nomination were peculiarly known to him better than anyone else. Therefore, his witness could not

have reasonably claimed to know the facts better than him. Tarana John Wuni Grumah testified as the attorney for the Nayiri, the 1st Respondent. When the on 30th August 2018, when the Tarana was under cross-examination, Counsel for the Petitioners asked him, and he answered as follows (see page 591 of the ROA):

Q: I am suggesting to you that the 2nd Respondent was not properly nominated.

A: The nomination is done by the family and he was nominated by the Jafok family".

Observably, the second witness for the 2nd Respondent as well as Tarana John Wuni Grumah gave their respective testimonies after the 2nd Respondent had positively testified to the fact he was nominated, selected, and enskinned by the Nayiri on the same day. Thus, as we see it, DW2 and Tarana John Wuni Grumah were simply engaging in a damage control exercise as far as their respective testimonies on who specifically nominated the 2nd Respondent were concerned. We find that the Nayiri was the one who did the nomination and not the Jafok family, as DW2 and Tarana John Wuni Grumah would want the whole world to believe. Nanima did not believe the concerted story told by Tarana John Wuni and DW2 because, in their judgment, they made a definitive finding of fact, based on the 2nd Respondent's own admission, that the Nayiri (the 1st Respondent) was the one who nominated the 2nd Respondent.

At page 6 of the further written submissions Counsel for the 1st Respondent/Appellant filed on 28th August 2020, he contended that the 2nd Respondent/Appellant was nominated to contest the skin by the Jafok family. This contention is inconsistent with the evidence of the 2nd Respondent/Appellant himself adduced at the trial where he admitted that it was the Nayiri who nominated him The law expected the 1st Respondent/Appellant to have justified the basis for his exercising the authority to nominate the 2nd Respondent in the first place, given the fact he (the Nayiri) is neither a member nor principal elder of the Jafok family, assuming without accepting that the Jafok family is a royal family in Bunkpurugu. We find no such legal justification from the evidence on record. Therefore, the attempt by Counsel for the 1st Respondent/Appellant to change the narrative and thereby contend that it was the Jafok family that nominated the 2nd Respondent/Appellant must not be allowed to stand. In simply terms, we reject such an argument as lacking any merit.

The decisions in the cases of Akenten v Ayerema [1996-97] SCGLR 384, in re Kwabena Stool; Karikari & Anor v Ababio and Ors [2001-2002] SCGLR 515, In re Wenchi Stool Affairs; Nketiah & Ors v Sramangyedua III & Ors [2011] 2 SCGLR 1024 are apposite as far as the determination of the nomination process is concerned. As can be noted, the JC-NRHC relied on these authorities to anchor its finding of fact that the nomination of the 2nd Respondent/Appellant by the 1st Respondent/Appellant was uncustomary. It is worthy to note that decisions in these three chieftaincy-related cased are to the effect that, where nomination of a candidate is flawed as being uncustomary or improper, the subsequent chief-making processes founded on it have no legal legs to stand on.

Notably, the 10th additional ground of appeal jointly filed by the 1st and 2nd Respondents/Appellants, was laden with the complaint that the JC-NRHC erred in law by relying on the decisions in the cases of Akenten v Ayerema (supra), In re Kwabena Stool; Karikari & Anor v Ababio and Ors(supra) and In re Wenchi Stool Affairs; Nketiah and Others v Sramangyedua III & Ors (supra). Therefore, we expected Counsel for the 1st Respondent/Appellant to have properly and sufficiently addressed us

on the basis of the complaint, and to have justified why he thought the trial Judicial Committee erred in law as contended by him. We find no arguments proffered by Counsel for the 2nd and 3rd Respondents/Appellants in justification of the complaint that the JC-NRHC erred in law by relying on those three decisions of the Supreme Court referenced above; in fact All that Counsel said at page 10 of the reply filed by him was that the 2nd Respondent/Appellant hails from the same family as Lambong Tapang, and therefore, he can also be nominated, selected and enskinned as Bunkpurugu Naba. We are not impressed by this scanty and somewhat misdirected argument; he was to tell us how Nanima allegedly erred in law, but he failed in that endeavour.

It bears noting that at the trial, the onus was on the Petitioners to produce credible and sufficient evidence to establish that the nomination of the 2nd Respondent was customarily improper. In discharging that burden, the attorney for the Petitioners was entitled, in terms of **section 12 (2) of NRCD 323,** to rely on all the evidence and needed not rely entirely on the evidence adduced by him. (See the case **of Kai v Kissiedu [2010-2012] 2 GLR 57** at 75 per Kanyoke JA). Indeed, the candid admission by the 2nd Respondent/Appellant that he was nominated by the 1st Respondent/Appellant decisively operated to advance the cause of the Petitioners, the thrust of whose case was that the nomination was faulty, deeply flawed, uncustomary or improper. Therefore, we minded to apply the admitted fact which helped the Petitioners meet the test of sufficiency. We, therefore, find and conclude that the credible and sufficient evidence on record establishes that the nomination of the 2nd Respondent/Appellant by the Nayiri was not customarily proper.,

Having considered the totality of the evidence in the manner aforesaid, we hold that the Nayiri had no authority under Bunkpurugu custom to have nominated the 2nd Respondent/Appellant, and that being so, the nomination was invalid and of no legal effect. The JC-NRHC cannot be said to have erred in law by relaying on the decisions in the case of Akenten v Ayerema (supra), In re Kwabena Stool; Karikari & Anor v Ababio and Ors (supra) and In re Wenchi Stool Affairs; Nketiah & Ors v Sramangyedua III & Ors (supra). For this and other the reasons given above, we accept and affirm the conclusion by the JC-NRHC that the nomination of the 2nd Respondent/Appellant was not proper, and as such, his purported nomination by the Nayiri was invalid. Assuming without accepting that the Jafok family is a royal family in Bunkpurugu, acceptance and affirmation of the finding by the trial Judicial Committee in this regard leads to the logical conclusion he cannot claim to be a validly-enskinned chief of Bunkpurugu.

Relatedly, we must consider the issue of self-nomination or independent candidature which resonates through the evidence on record. As a fact-finding Tribunal, the law enjoins us explore the facts and make the appropriate pronouncements on the customary law for posterity. In the case of **Opanin Antwi Manu & Another v Nana Afrakoma II & Others**, the Court, having held that proceedings in the chieftaincy tribunals are fact-finding in nature, continued with its delivery, per Amegatcher JSC at page 502, that:

> **"Consequently, regardless of the allegation that may be put forward by either party as being the true state of events, where a committee's fact-finding process reveals the facts to be of a certain truth whereas those alleged by the parties are otherwise,** <u>it is incumbent on the committee taking such</u>

proceedings to declare the correct the correct position and set the facts straight for the benefit of posterity" (Emphasis is ours)

The question then is: do the Bunkpurugu customary practices admit of self-nomination or independent candidatures? We answer this question in the negative, having regard to the evidence on record. It is clear from the evidence adduced by Japong Konlanbik, the second witness for the 2nd Respondent (DW2), Tarana John Wuni Grumah (the attorney for 1st Respondent/Appellant), Zacchaeus Jayur Katugu (the attorney for the Petitioners) and Abraham Namteeh Libagtib, the sole witness for the Petitioners (PW1) that, per the customs and practices of the people of Bunkpurugu, the authority to nominate a candidate for enskinment is exclusively vested in the royal family as an entity.

PW1 made it clearer by asserting that the settled customary practice is that the principal elders of the family would meet, build the required consensus and settle on a particular candidate, who would then have to be presented to the Nayiri for enskinment. The evidence shows that one Andrew Yoagbat of the Jamong family, without such consensus and unanimity of the elders of the Jamong family, did his own self-nomination, or he portrayed himself as an independent candidate, and thereafter, presented himself to the Nayiri for enskinment, Malik Musah, a member of the Jamong family was duly nominated and approved candidate from the Jamong family. There is zero evidence on record which shows that Naba Jamong Toojak, Naba Yoagbat Toojak and Naba Nyankpen Libagtib nominated themselves during their time. Therefore, we proclaim that Andrew Yoagbat must not be allowed to bend the established pattern and create a novel system of nomination, namely self-nomination, even if he hailed from the appropriate Jamong lineage. Indeed, the course of action taken by Andew Yoagbat was inconsistent with the legal requirement that a candidate must have been nominated by the appropriate family or lineage.

By way of summary, when the findings and conclusions we have made in this segment of our opinion are conjoined with our earlier finding and conclusion that, the Jamong family is the only royal family in Bunkpurugu, the irresistible conclusions which we draw are that: (1) though the Nayiri is the overlord of Mamprugu and doubles as the enskinning authority as far as succession to the Bunkpurugu skin is concerned, he is not the nominating authority for the Bunkpurugu divisional skin; (2) the authority to nominate a candidate for enskinment as Bunkpurugu Naba is exclusively vested in the principal elders of the Jamong family, acting for and on behalf of the entire family, and their decision must be based on consensus or unanimity, (3) the nomination process admits of no self-nomination or independent candidature; (4) it will be uncustomary for the Nayiri to nominate a candidate himself and proceed to enskin him as Bunkpurugu Naba; (5) to the extent that it was the Nayiri who nominated the 2nd Respondent/Appellant, his nomination was, improper, uncustomary, invalid and of no legal effect.

The 2nd Respondent/Appellant's claim to royalty.

We place on record that in this segment of our judgment, we stand by our earlier analysis and conclusions to the effect that: (1) the purported nomination of the 2nd Respondent/Appellant by the 1st Respondent/Appellant was improper, uncustomary and invalid; (2) to the extent that the nomination was uncustomary, the 2nd Respondent/Appellant cannot claim to be the lawfully-

enskinned chief of Bunkpurugu. We do not want to spill ink any more on the issue regarding the purported nomination, except to add two more cases to the list of authorities, based on which we have concluded that the purported nomination of the 2nd Respondent/Appellant by the 1st Respondent/Appellant was not proper. In the judicial review case of **Republic v Gbi Traditional Council; Ex parte Abaka VII [1995-96] 1 GLR 702 SC,** the Court held, per Acquah JSC (as he then was) at page 712 that:

> **"Chieftaincy is not a private and personal property of the incumbent chief so as to enable him choose who should take over from him. The choice of the candidate is the sole prerogative of those who are entitled under customary law to nominate, elect, and install the appropriate candidate. The stool belongs to the family, and it is the elders of the family, described as kingmakers who have the right to nominate a candidate".** (Emphasis is ours)

The recent decision of the case of **Abdulai Amidu Nyasu v Alhaji Abdulai Nankpa (Subst. Zakaria Nankpa) & Another [2024] 187 1 GMJ 265 SC,** the Apex Court reaffirmed the position that where nomination is done a person having no right at custom to so, the court will declare the nomination invalid and of no legal effect. In this decided case, the custom of the area dictates that: (1) candidate for enskinment as Kuoro of Pulima has to be nominated by the Johotina (the land Priest); (2) then, the nomination must be endorsed by the kingmakers; and (3) finally, the candidate is then introduced to the Kuoro of Tumu (the overlord chief) for enskinment. In 1998, contrary to the exiting custom, the then Kuoro of Pulima purported to have transferred his status as chief to his son, Mumuni Abdul Nankpa. The purported uncustomary act of the Kuoro of Palima triggered the chieftaincy dispute which travelled though the chieftaincy Tribunals (including ours) and ended at the Supreme Court. The Apex Court dismissed the appeal and affirmed the decision of this Tribunal (as then constituted) that invalidated the purported decision taken by the Kuoro of Pulima.

At this stage, what remains of the 2nd Respondent/Appellant's case, to be analyzed and determined by this Tribunal, is his claim that he is a royal of the Bunkpurugu skin. In the determination of the correctness or otherwise of the finding by the JC-NRHC erred that the 2nd Respondent/Appellant has no royal ancestry or lineage, we are minded, first, to analyse the relevant portions of the evidence proffered by himself and his witnesses, and secondly, we shall examine the relevant portions of evidence given by the attorney for the Petitioners. In the evidence-in-chief the 2nd Respondent/Appellant gave at the trial, found at page 516 of the ROA, he testified, among other things, that:

> "It is not true that if I am not a member of the Jamong family, I cannot be chief of Bunkpurugu. The reason why I am saying this is that I am from the royal family of Jafok. This is because my grandfather called Jajing was the first to settle at Bunkpurugu with his junior brother Yamboat. They were at Bunkpurugu. They had a senior chief at Kperok who was controlling them. As the two were at Bunkpurugu, Jajing went and brought Toojak who was from the Jamong family and asked him to be with his junior brother Yamboat and he was with Yamboat in Yamboat's house. when he was with Yamboat he stayed there for 3 years. Later Toojak said that he wanted to

build his own house and they gave him a place. It was Jajing and Yamboat who gave him a place to settle".

The 2nd Respondent/Appellant also asserted that: (1) the Bunkpurugu chieftaincy institution originated from Kperok; (2) a senior chief called Nabinangbang, who was a member of the Nampauk family, resided at Kperok from where he was controlling Bunkpurugu and its environs; (3) when the British and the Germans came, they divided the area between Ghana and Togo, and consequently, Nabinangbang and members of his Nampauk family fell into the Togo side, whilst his grandfathers from the Jafok family remained on the Ghana side; (4) members of the Jamong family also remained on the Ghana side of the border subsequent to the division of the land between the British and German; (5) during the course of time, the whitemen decided to find leaders for the Ghana-based Bunkpurugu community, and eventually, the lot fell on Jamong, whereupon he (Jamong) was named as the first "Dasanda" or "Kambon-Naba of Bunkpurugu" which translate to "the headman of Bunkpurugu". (See page 516-517 of the ROA).

Testifying further at the trial regarding what he knew to be the social connection between the Jafok, Nampauk and Jamong families, the 2nd Respondent/Appellant asserted (see page 517 of the ROA): that:

"The Jafok, Nampauk and Jamong have something in common. They are all from the same father [Nyan], but their father had those who were his biological children and those who were not. Those who were his biological children were my grandfather Jafok. Others were not his biological children and Jamong was not his real son. Jamong was not his real name, his real name was Siknan. The actual name was not Jamong but Fulin Jamong. There were seven children of Nyan and Jamong was the last person. Jamong was the son of Toojak who[m] Jajing brought. When they brought him, they were in Bunkpurugu. The chief who enskinned Jamong as Kambon-Naba, Nabinangbang died and all the clan members went to Togo to perform his funeral"

As can be observed, the evidence that the British and the Germans divided the parcel of land populated by the Bimobas runs through testimonies of the attorney for the Petitioners and the 2nd Respondent/Appellant. From this uncontested evidence, we have no difficulty concluding that the division of the land between the Germans and the British was in furtherance of the decision taken by the British, Germans, Italians, and others at the Berlin Conference of 1885, where those European powers scrambled and partitioned Africa. This is a notoriously known historical and geo-political fact, and accordingly, we have taken judicial notice of it in the exercise of the power conferred on this Tribunal by the provisions of **section 9 of NRCD 323**. Based on this historical fact and geo-political fact, we find the assertion by the attorney for the Petitioners that the Bunkpurugu community was established in 1818 to be probable because, when the assertion is considered within the context of the facts which we have just taken judicial notice of, the Bunkpurugu community must have been in existence before 1885. In fact, the JC-NRHC found and concluded in its judgment that the Bunkpurugu community was established in the 19th century, and we totally agree with Nanima.

In the evidence of the 2nd Respondent/Appellant detailed above, he mentioned two personalities viz Nabinangbang and Nyaan. He testified that Nabinangbang was a member of the Nampauk family, whilst Nyan was a member of the Louk clan. The assertion by the 2nd Respondent/Appellant that

Nyaan was the ancestor of the Nampauk, Jamong and Jafok families was not denied, challenged nor otherwise controverted by Counsel for the Petitioners. Therefore, we find the assertion to have been admitted by the Petitioners to be an uncontestably historical truth. (See the combined effect of the cases of **Fori v Ayeribi [1966] GLR 627 SC** and **Mante v Botwe [1989-90] 1 GLR 479 CA.** Thus, we find and conclude that Nyaan was a common ancestor of members of the Jamong, Jafok and Nampauk families. Having so concluded, we must interrogate or explore the facts about Nyaan, around whom the 2nd Respondent/Appellant built the fundamental facts regarding his claim to royalty and connection to the Bunkpurugu skin.

Certain pieces of evidence the 2nd Respondent/Appellant gave under cross-examination on 25th October 2017 are insightful for our purpose. Counsel for the Petitioners asked him, and he answered as follows (see the relevant portions of pages 550- 552 of the ROA for our purpose here):

Page 550 of the ROA

"Q: Therefore, succession to the Bunkpurugu skin is not open to all the people of Bunkpurugu.

A: That is not true; it is restricted to the Louk clan".

Page 551 of the ROA

"Q: Do you know one Nyaan?

A: Yes, he was our grandfather but I never met him.

Q: What was his relationship with the Louk clan.

A: The Fonfana I mentioned earlier was followed by Nyaan as the sixth person as headman of Louk Clan.

Q: Where did he live in his life time.

A: He lived in Lokperok.

Q: Where is Lokperok situated.

A: After the demarcation of the Ghana -Togo border it fell on the Togo side of the border.

Q: So, he lived and died at Lukperok not so?

A: Yes, he died and was buried there.

Q: And during his life [time] he was never a chief of Loukperok, not so

A: He was not enskinned but he was in charge of the land.

Q: I am suggesting to you that he was not in charge of the land

A: No, it is not true".

Page 552 of the ROA

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"Q: Do you know whether Nyaan had children in his life.

A: Yes, he did.

Q: How many children did he have

A: How (sic) had 7 children and later took Jamong and added to make 8

Q: How did he take Jamong.

A: Jamong's father was Fulani. Nyaan fell sick for 6 years before he brought Jamong. Nyaan had a last wife and the Fulani man was taking care of him. It was this Fulani man who impregnated his last wife and gave birth to Jamong.

Q: What was the name of the Fulani man you said was Jamong's father

A: I do not know.

Q: I am putting it to you that Jamong's father was not a Fulani man

A: I am speaking the truth

Q: You agree with me Jamong was last child of Nyaan.

A: Yes, that is correct.

Q: All the seven children lived with Nyaan at Loukperok in Togo.

A: They lived with Nyaan in Loukperok but at the time there was no Togo or Ghana"

Upon a careful analysis of the pieces of evidence reproduced above, we unearth the following established facts, from the 2nd Respondent/Appellant's showing: (1) Nyaan was never a chief; (2) Nyaan was the sixth head of the Louk clan; (3) all the children of Nyaan lived with him at Loukperok at the time when the Ghana-Togo boundary had not been demarcated; (4) after the demarcation, Loukperok fell into the Togo side of the demarcation. (5) Nyaan lived and died at Loukperok; (6) the biological children of Nyan included Jafok and Nampauk.

The attorney for the Petitioners also testified to facts about Nyaan when he was under cross-examination on cross-examination on 1st March 2012. Counsel for the 1st and 2nd Respondents asked him, and he answered as follows (see the relevant portions of page 176 -177 of the ROA):

Q: You said the 2nd defendant is not qualified to contest the Jamong skin why did you say so.

A: He is not qualified because he is not a member of the Jamong family and because the Bunkpurugu skin is not for the Luk family, but it is for Jamong family, the 2nd defendant is not qualified because he is from the Luk family

Q: Why do you say that it is only the Jamong family which is a royal family

A: The father of Luk [Louk] Nyan himself was never a chief before he died so all the seven of them did not have any succession right left behind for them by their father. The Jamong was the first family to settle in Bunkpurugu and for that matter established a royal house there.

Q: Back in Togo, which of these families you have mentioned were royals.

A: Luk [Louk], I mentioned earlier, there was no institution of chieftaincy in the Luk clan as their father died, they started to scatter, so wherever you settle and if the town begins to be big at where, you declare one of you as chief"

The assertion the attorney for the Petitioners made in the last answer as reproduced above, was not denied or challenged by the respective Counsel for the Respondents. Therefore, by the combined effect of the cases of **Fori v Ayeribi** (supra) and **Mante v Botwe**(supra), the assertion was deemed to have been admitted by the each of the Respondents/Appellants to be true. We, therefore, add this uncontested evidence to the list of the established fact., and from this newly established fact, we draw the following inferences: (1) the institution of chieftaincy was not known to the Loukperok-based Louk clan (2) upon the death of Nyaan, his children, including patriarchs Jamong, Nampauk and Jafok, migrated from Loukperok and settled at different locations and wherever they settled, they created their chieftaincy institution whenever the settlement grew bigger, in which case one of the settlers was declared as chief of the expanded community.

The above-listed established facts are in perfect alignment with the earlier testimony the attorney for the Petitioners gave on 16th December 2011(see page 156 of the ROA), where he asserted that: (1) the patriarch of the Jamong family settled at a location then called Bunkpemgu, which means an old river, but later, the settlement came to be known and called Bunkpurugu (2) the patriarch Jamong came along with his three brothers, making the first settlers four in number (3) in 1818 the village had grown bigger, and therefore, patriarch Jamong decided that there should be a chief for the expanded community (4) patriarch Jamong thus nominated his eldest son, Jamong Toojak and the latter was accordingly enskinned as the first chief of the Bunkpurugu community. (See page 156 of the ROA). Exhibit D firmly supports the assertion that the patriarch Jamong was the first person from the Bimoba stock to settle in Bunkpurugu., and that the only royal family in Bunkpurugu is the Jamong family. Upon a careful reading of the judgment of the JC-NRHC, particularly at page 33 thereof, Nanima, relying on the case of In re Suhyen Stool; Wiredu & Obenwaa v Agyei & Others (supra) definitively found and concluded that: "The Bunkpurugu skin, even if it originated from the Lokpur skin in Togo, was a new skin belonging to the first family that succeeded to it and not the original skin from which it emanated or any other skin"

This Tribunal accepts and affirms the findings of fact by the JC-NRHC reproduced above, given the fact that they are consistent with the disclosures in Exhibit D, which document the JC-NRHC found to be authentic and binding on the parties thereto, themselves and their families. In other words, as we have stated earlier, in their lifetime, Parimak Jajing and Lambong Tapang were bound by the disclosures in Exhibit D, all the members of the Jafok family are bound by the recitals in Exhibit D, and last but not least, the 2nd Respondent/Appellant is bound by the contents of Exhibit D. This conclusion takes us to the complaint laden in the fourth additional ground of appeal, where the 2nd Respondent/Appellant alleged that the JC-NRHC erred in law by concluding that Exhibit D was the cul-de-sac or dead end of his claim. Having examined the evidence, we totally agree with Nanima

when they found and concluded that Exhibit D was the cul-de-sac or dead end of the 2nd Respondent's claim to royalty in Bunkpurugu.

What is more? On the evidence, it was never the case of any of the Respondents that members of the Jamong family are not royals. Rather, it was their respective cases that members of the Jamong family are not the only group of royals in Bunkpurugu; in fact, they specifically pleaded and asserted that members of Jafok and Nampauk families are also royals of the skin. However, the Petitioners denied and vigorously resisted the Respondents' collective and synergized claims. Granting without accepting that members of the Jafok family are royals in Bunkpurugu, it necessarily means that members of the Jamong and Jafok families are related by blood. However, here is the twist; as can be noted, the 2nd Respondent/Appellant asserted under cross-examination that Jafok was a biological son of Nyaan, but patriarch Jamong was not; the assertion was denied by Counsel for the Petitioners anyway.

If, indeed, it is true that patriarch Jamong was not a biological son of Nyaan, it also necessarily means that there is no blood relationship between the Jafoks and the Jamongs. On the evidence, it is settled that Nyaan was not a chief in the Loukperokland, and thus, none of his children had royalty bestowed on him at birth. On the evidence, we have earlier found and concluded that in truth, upon the death of Nyaan, patriarch Jamong went his separate way and settled at Bunkpurugu where, in the course of time, he created the Bunkpurugu skin and thus created a royal class for members of the Jamong family. Premised on these considerations, we find no justifiable basis for the 2nd Respondent/Appellant (who is a member of the Jafok family) now wanting to be part of the royal family originated by patriarch Jamong, who he said was not a biological and for that matter illegitimate son of Nyaan .These matters too, in our considered view, must spell the doom of the 2nd Respondent/Appellant's claim.to royalty to the very skin created by patriarch Jamong.

On the evidence, we find the 2nd Respondent/Appellant wanting to leverage on the claimed chiefly status of Nabinangbang, who was a Louk clansman and resident in Lokperok, a town in modern-day Togo. It was his evidence that;(1) Nabinangbang, a Kperok-based senior chief, acting in concert with the whitemen, took a decision to find a leader for Bunkpurugu, and eventually, patriarch Jamong was appointed as the first Dasanda or Kambon-Naba (headman) of Bunkpurugu; and (2) during the reign of Nabinangbang, the British and Germans divided the land under his jurisdiction between Ghana and Togo, after which event the land populated by members of the Nampauk family came to be under the Germans, whilst the land populated by the members of the Jafok and Jamong families came to be under the British. By virtue of these narratives, he claimed that the Bunkpurugu chieftaincy institution originated from the Kperok chieftaincy institution. (Vide pages 516-517 of the ROA). Notably, the evidence of the 2nd Respondent was not specific on the whitemen who decided with Nabinangbang that a leader be appointed for the Bunkpurugu community. However, we believe that he was referring to the British and not the Germans because, nothing on record shows that after the demarcation, the Germans had any business to do with the people of Bunkpurugu. Indeed, the contents in Exhibits C and D give credence to our belief.

It is an undeniable fact that for the purpose of knowing and acknowledging the chiefs in the colonies or the protectorates in the then Gold Coast, the British generated Gold Coast Chiefs Lists, which they kept on updating regularly. At the trial, the attorney for the Petitioners tendered in evidence the Gold Coast Chiefs List 1928-29 and the Gold Coast Chiefs List 1934-35, which were marked as Exhibits

B and C respectively. The disclosures in Exhibit B establish that Jamong (mis-spelt as Jamongo) was the head chief of Bunkpurugu. The contents of Exhibit C also show that Jamong (again mis-spelt as Jamongo) was the Bunkpurugu Naba. By law, these pieces of documentary evidence must prevail over oral evidence on record regarding the chiefly status of Jamong. (See the case of Church of Ghana v Abraham Kwaku Adusei & 4 Others (supra).

In Exhibit B, the British colonialists documented in crystal clear or unambiguous terms that Jamong (Jamongo) was the head chief of Bunkpurugu, and in Exhibit C he was referred to as the Bunkpurugu Naba. Indeed, these documentarily established facts defeat the claim by the 2nd Respondent/Appellant that Naba Jamong was a mere headman of the Bunkpurugu community. On the evidence, the attorney for the Petitioners denied the claim that Nabinanbang was a Kperok-based chief, and equally, he denied the assertion that Nabinanbang appointed Jamong as headman of Bunkpurugu. In the face of the denial, the 2nd Respondent assumed the burden of producing credible and sufficient evidence to substantiate the assertion, but he produced none beyond the bare assertions. Thus, in the absence of credible and sufficient evidence on record to show that Naba Jamong became the leader of the Bunkpurugu community at the behest of Nabinangbang, we accept the version of the Petitioners' attorney that patriarch Jamong, and nobody else, created the Bunkpurugu chieftaincy institution in the 19th century. We also accept the Petitioners' version that: (1) the chieftaincy institution in Bunkpurugu was not under the control of Nabinanbang; and (2) the Bunkpurugu skin was not subservient to any Kperok-based or Lokpur-based chieftaincy institution.

Assuming without accepting that the Bunkpurugu skin originated from the Kperok-based chieftaincy institution, the finding of the JC-NRHC, captured at page 33 of its judgment, resolved the critical question regarding the relationship between the two skins. At page 33 of the judgment, Nanima found and concluded that even if the Bunkpurugu skin originated from the Togo-based Lokpur or Kperok skin, the newly-created skin belongs to the first family that succeeded to it. We concur in this finding of fact because same is firmly supported by law and the evidence. On the evidence, the first family that succeeded to the newly-created Bunkpurugu skin was the Jamong family, and not the Jafok nor Nampauk family. Thus, it is an established fact that the Jamong family exclusively owns the Bunkpurugu skin. Therefore, we find and conclude that the 2nd Respondent/Appellant, being a member Jafok family, cannot claim to be a royal of the Bunkpurugu skin. We also find and conclude that by reason of the operation of the concept of appropriate lineage, only princes from the Jamong family are eligible to be nominated for enskinment as chiefs of Bunkpurugu. Certainly, the 2nd Respondent/Appellant is not a prince of the Jamong royal family.

At this juncture, it is imperative that we consider the concept of princeship which, as we appreciate it, sits well and deep in fabric of chieftaincy institutions in the patrilineal communities in Ghana The import of the concept of princeship posits that a claim to royalty in the patrilineal communities must be determined on the basis of whether or not the claimant himself is a prince, or whether or not his father, grandfather or great-grandfather was a chief. Writing on the concept of princeship within the context of the prevailing customs and practices in the patrilineal communities in the Northern part of Ghana, the eminent author and jurist, S.A. Brobbey JSC (rtd) writes at pages 157-158 of his book

titled: "**The Law of Chieftaincy in Ghana. Incorporating Customary Arbitration, Contempt of Court, and Judicial Review**", 2008 Edition as follows:

> "**Installation of Chiefs in the Dagomba Traditional Area illustrates one of the systems of succession to a chief in the Northern Region. Among the Dagombas, succession is decided on patrilineal lines. Succession is open to all princes of the royal lineage in the community or village**" (Emphasis)

It is instructive to note that, by way of illustration, the learned author and jurist referenced series of decided case regarding succession dispute between Abudus and the Andanis, namely (1) In re Yendi Skin Affairs, Andani v Abudulai [1981] GLR 283 CA; (2) In re Yendi Skin Affairs; Andani v Yakubu [1981] GLR 866 CA; (3) In re Yendi Skin Affairs; Andani v Abudulai [1982-83] GLR 1080 SC; (4) In re Yendi Skin Affairs; Andani v Yakubu II [1984-86] 2 GLR 189 CA; (5) In re Yendi Skin Affairs; Yakubu II v Abudulai [1984-86] 2 GLR 226 CA; (6) In re Yendi Skin Affairs; Yakubu II v Abudulai [1984-86] 2 GLR 231 SC; and (7) In re Yendi Skin Affairs(No 2); Yakubu II v Abudulai [1984-86] 2 GLR 239 CA. The concept of princeship and succession to the Yendi skin resonated through this decided case.

At the trial, each of the Respondents claimed that eligibility to succeed to the Bunkpurugu skin is by contest, and that the contest is open to all the male members of the Louk clan. However, the attorney for the Petitioners denied and disputed the claim that succession to the skin is open to all male members of the Louk clan, and in his evidence, which is particularly captured at 176-177 of the ROA, he demonstrated that: (1) the Jamong family was the first to settle in Bunkpurugu ;(2) the Bunkpurugu skin is not owned by the Louk clan; (3) the Bunkpurugu skin is owned by the Jamong family; (4) Nyaan, who was the father of the whole Louk clan in Togo, was never a chief and did not pass on princely status to his children, some of whom were Nampauk, Jafok and Jamong (the father); and (5) the 2nd Respondent was not qualified to be enskinned as Bunkpurugu Naba because he is not a member of the Jamong family.

This Tribunal must now resolve these ancillary questions: (1) whether or not secession to the Bunkpurugu skin is by contest, and if so; (2) whether or not the contestant chosen by the Nayiri at the end of the day must necessarily be a prince from the Jamong family. It must be noted that at the trial, the parties were ad idem regarding the fact that over the years, succession to the Bunkpurugu skin has been by a contest among candidates hailing from the Jamong, Nampauk, Jafok, the other families, as the case may be. Excerpts from the relevant portions of the cross-examination sessions on record throw light on issue about the contest. Counsel for the 1st and 2nd Respondent asked the attorney for the Petitioners, and he answered as follows (see pages 275-276 and 278 of the ROA):

Pages 275-276 of the ROA

"Q: It is true, is it not, that before the enskinment of Toojak, a member of the Jafok family contested for the skin

A: Yes, it is true

Q: Do you know his name?

A: Yes, Gbanjabil Jajin

Q: It is also true that one Parimak also contested.

A: Yes.

Q: Jafok family won and was enskinned on not?

A: No, it is not true.

Q: I am putting it to you that Jafok won the contest and was enskinned"

A: No, it is not true"

Page 278 of the ROA

"Q: It is true or not so when Nyankpen was nominated by his family, Jamong family, 2 members of the Jafok royal family also contested?

A: Yes, it is true

Q: They are Gbanjejin Jajing and Lambong Tapang contested.

A: Yes, it is true

Q: It is true, is it not that Nayiri enskinned Lambong Tapang as chief.

A: Yes, it is true but [Nayiri] deskinned him the same day"

As can be noted, the cross-examinee denied the assertion that one Gbanjabil Jajin from the Jafok family reigned as Bunkpurugu Naba before Toojak did, and that being so, the required the 1st and 2nd Respondents to produce credible and sufficient evidence to substantiate that claim, but they failed in that endeavour. Therefore, we conclude that it is neither true nor reasonably probable that Gbanjabil Jajin once ruled as Bunkpurugu Naba, before Naba Toojak did.

The attorney for the 3rd Respondent also gave evidence on the issue of contest, particularly with regard to the contests that produced Yoagbat Toojak, Nyankpen Libagtib, Lambong Tapang and the 2nd Respondent/Appellant as winners in 1946, 1969, 1986 and 2007 respectively. (See pages 602-603 of the ROA). He testified that in 1946, Yoagbat Toojak (a member the Jamong family) contested with Parimak Goung (a member of the Jafok family) and the former won the contested and got enskinned as Bunkpurugu Naba. He testified further that in 1969, the contestants were: Lambong Tapang and Namang Parimak (members of the Jafok family), Jamong Botir and Nyankpen Libagtib (members of the Jamong family), S.B. Somob (a member of the Nampauk family) and Najar Duuk (a member of the Jakpakir family). He said.at the end of the day, Lambong Tapang won the contest and was enskinned, but later, the Nayiri cancelled the enskinment, and instead, enskinned Nyankpen Libagtib. As can be noted, we have earlier on, detailed the conflicting reasons given by the parties for the cancellation of the enskinment of Lambong Tapang, and therefore, we are minded not to belabour that point.

Testifying further, the attorney for the 3rd Respondent said in the contest which produced Lambong Tapang as the winner in 1986, the contestants were: Chamba Laar (a member of the Nampauk family), Lambong Tapang, Namong Parimak and Kwame Jadang (members of the Jafok family), Daak Yogbat and Botir Jamong (members of the Jamong family), Najar Duut (a member of the Jakpakir family) and Safang Suuk (a member of the Majikibe family). According to him, in the 2007 contest that produced the 2nd Respondent/Appellant as the winner, the contestants were: Peter Tapang and the 2nd Respondent (members of the Jafok family), the 3rd Respondent(a member of the Nampauk family), Malik Musah and Andrew Yogbat (members of the Jamong family), Namumtong (a member of the Majikibe family), Najar Laabik (a member of the Jakpakir family) and Nyan Jataut (a member of the Jatong family).

It is clear from the evidence of the attorney for the 3rd Respondent detailed above that the use of contest as part of the kingmaking process started in 1946. It is an established fact that Naba Jamong Toojak was the first chief of Bunkpurugu and upon his demise, he was succeeded by Yoagbat Toojak. What informed the decision to resort to the contest in 1946 is not borne out by the record, but the fact remains that there was no such contest during the time of Naba Jamong Toojak. Strikingly, way back in 1931, it had been accepted by the then Nayiri (acting through Tarana Sachi) as well as all stakeholders in the Bunkpurugu chieftaincy institution that the Jamong family is the only royal family in Bunkpurugu. Exhibit D speaks to these facts. We, therefore, find it unacceptable that the idea of contest was resorted to ostensibly to bring on board members of families other than the Jamong family. Indeed, the involvement of members of families other than the Jamong family has created the wrong impression that the Nampauk, Jafok, Saubinant, Jakun, Jatong, Jakpakir, Majikibe, Tuarbobik, and Taana families are royal families in Bunkpurugu.

At this juncture, we proceed to resolve the question as to whether the contestant selected by the Nayiri and enskinned as Bunkpurugu Naba must necessarily be a prince from the Jamong royal family. A portion of the evidence the attorney for the 1st Respondent (Tarana John Wuni Gruma) gave under cross-examination is very instructive here. Counsel for the Petitioners asked him, and he answered as follows (see page 591 of the ROA):

> "Q: So, you will agree with me that before one can become a chief, there must be an ancestor through whom one can clain [claim] lineage.
>
> A: Yes, that is correct.
>
> Q: So, a royal lineage is a necessary condition for one to clain [claim] his royalty
>
> A: Yes, that is correct
>
> Q: It is a fact that 2nd Respondent is tracing his royal lineage through Nyan.
>
> A: Yes, that is correct
>
> Q: It is also a fact that Nyan himself was not a chief.
>
> A: Nyan was not a chief, but he had a son who was a chief but I cannot recall his name. If 2nd Respondent traces his lineage to a son who was a chief, it means that he has royal lineage.

Q: I am putting it to you that you do not remember Nyan's son because he never had a son who was a chief.

A: It is not true

Q: <u>I am suggesting to you that a person can only be a chief if he hails from the appropriate family and lineage</u>.

A: <u>Yes, if he is from the royal family</u>" (Emphasis is ours)

Upon a proper construction of the evidence reproduced above, we find the cross-examinee to have alluded to the fact that a candidate for enskinment as Bunkpurugu Naba must have been a prince in the sense that he must have traced his lineage to a past Bunkpurugu chief. Irrefutably, Tarana John Wuni Grumah was articulating the position of his principal, the Nayiri., and therefore, his allusion to the fact that persons nominated, selected, and enskinned as Bunkpurugu Naba must be princes mirrored the thinking and believe of the 1st Respondent/Appellant. Therefore, it safe to conclude that succession admits of the concept of princeship, as it pertains among the Dagombas. For these reasons, we deem it necessary to rely on the literature reproduced above and conclude further that the twin concepts of princeship and appropriate lineage hold the key to the eligibility of a candidate for enskinment as Bunkpurugu Naba. In other words, the contestant or candidate must have been son, grandson, or great-grandson of a former Bunkpurugu chief who hailed from the Jamong royal family. Thus, we are unable to accept the position that succession to the Bunkpurugu skin is open to all male members of the Louk clan. Rather, we conclude that succession to skin is limited to princes of the Jamong royal family.

Observably, it is an established fact that Nyaan (sometimes spelt as Nyan in the ROA) was not a chief, and therefore, none of his children (including Jafok, Jamong and Nampauk) was a prince; more so, none of his children ever became a chief. As the evidence credibly and sufficiently shows, upon the demise of Nyaan, patriarch Jamong relocated from Kperok to the location which later became known and called Bunkpurugu: he relocated with three brothers; children of patriarch Jamong constituted the second generation of members of the Jamong family; he later created the Bunkpurugu skin, and; his son, Jamong Toojak became the very first chief of the community. These are established facts. Nothing on record suggest, not even faintly, those individuals with whom patriarch Jamong relocated to Bunkpurugu included Jafok and Nampauk.

Therefore, the question then is: how the 2nd Respondent/Appellant claimed royalty to the Bunkpurugu skin within the twin concepts of princeship and appropriate lineage? He asserted that his grandfather by name Lemi was the one who educated him on the history of the Bunkpurugu skin and matters relating to succession to the stool. Certain pieces of evidence he gave under cross-examination on 27th September 2017 need to be reproduced hereunder, for purposes of analysis. Counsel for the Petitioners asked him, and he answered as follows (see particularly the relevant portions of pages 539- 540 of the ROA)

"Q: Who is your father.

A: Nasinmong

Q: Was your father in his life time a chief.

A: No, he was not a chief.

Q: What is the name of your grandfather.

A: His name is Lemin.

Q: Was your grandfather a chief.

A: No, he was not a chief.

Q: Do you know one Parimak.

A: I have heard his name but I did not meet him. He was my grandfather.

Q: Was he your maternal grandfather or paternal grandfather.

A: He was my grandfather Lemi's brother. He was my paternal grand uncle.

Q: Was Parimak a chief of Bunkpurugu.

A: No, he was not a chief of Bunkpurugu.

Q: How did you learn the history of the Bunkpurugu skin and its succession

A: Because I hail from the royal family my grandfathers have educated me on it.

Q: So, your grandfather told you that Toojak was the first to settle in Bunkpurugu with his step brothers.

A: No, my grandfather never told me that.

Q: You were further told that the names of the other 3 brothers are Nabimong, Toobat and Gutir"

A: These people are from the Jamong family and my grandfather did not tell me about them"

Thus, the 2nd Respondent/Appellant mentioned the following members of the Jafok family as his paternal relatives: Jafok (the son of Nyan), Jajing, Yamboat, Parimak, Lemin and Nasinmong. The uncontested evidence is that none of these individuals ever reigned as chief of Bunkpurugu, and therefore, he is not and cannot be a prince for the purpose of succession to the Bunkpurugu skin, assuming without accepting that members of the Jafok family are royals of the Bunkpurugu skin. On the strength the proven facts before us, we hold that he mere fact that a person participated in the contest did make him a royal of the Bunkpurugu skin, unless he is a prince from the appropriate lineage, which is the Jamong family, and no other family in Bunkpurugu. Therefore, non-royals who participated in the contest and won cannot legitimately claim to be royals of the skin.

Based on our multi-dimensional analyses above, we concur in the findings and conclusions by the JC-NRHC that the 2nd Respondent/Appellant failed to substantiate his claim to royalty to the Bunkpurugu skin. We also accept and affirm the finding and conclusion by the Trial Judicial Committee that even if it is true that he is a royal of the Bunkpurugu skin, his purported nomination was invalid to the extent that he was nominated by the 1st Respondent/Appellant, who had no such nominating authority. The 2nd Respondent/Appellant was not a son of Lambong Tapang as to have

made him a prince, assuming without accepting that Lambong Tapang was a royal of the Bunkpurugu skin. Moreover, Exhibits 2A and 2B could not have validly conferred a royal status on the Jafok family, and by extension, on the 2nd Respondent/Appellant. Based on these and the considerations above, we are minded to dismiss the second, third, fourth, fifth, sixth, seventh, eighth, nineth and tenth additional grounds of appeal jointly filed by the 1st and 2nd Respondents/Appellants.

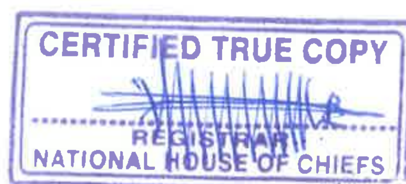
The 3rd Respondent/Appellant's claim to royalty

As the record shows, the 3rd Respondent/Appellant, like the 1st and 2nd Respondents/Appellants, seeks to rely on Exhibits 2A and 2B to assail the judgment the JC-NRHC, and as it turns out, Exhibits 2A is at the centre of the second ground of appeal canvassed for and on his behalf., which ground of appeal is exactly the same as the sixth ground of appeal canvassed for and on behalf of the 1st and 2nd Respondents/Appellants.

This Tribunal has earlier in this opinion faulted the claim, which Exhibits 2A and 2B purport to support, that the Jafok and Nampauk families are royal families in Bunpurugu. We have also concluded that Exhibit D towers above Exhibits 2A and 2B, and furthermore, we have concluded earlier on, based on the overriding weight of Exhibit D, that the Jamong family is the only royal family in Bunkpurugu. Additionally, we have concluded earlier on that the participation of the assisting Counsel for the JC-NRHC in the proceedings that begot the judgment appealed against cannot be faulted, and thus, the judgment would not be set aside. Based on these same conclusions, we hereby dismiss the first and second additional grounds of appeal canvassed for and on behalf of the 3rd Respondent/ Appellant, as we did in respect of the first and sixth additional grounds of appeal canvassed for and on behalf of the 1st and 2nd Respondents/Appellants.

At this stage, what is left of the 3rd Respondent/Appellant's case is the omnibus ground of appeal, which is his complaint that the judgment the JC-NRHC entered against was against the weight of evidence adduced for and on his behalf. Manasseh Kombat testified as the attorney for the 3rd Respondent and in his evidence-in-chief, he made the following core assertions, that: (1) the Bunkpurugu community is inhabited by members of the Louk clan, consisting of about ten families viz the Nampauk, Jafok, Saubinant, Jakun, Jamong, Jatong, Jakpakir, Majikibe, Tuarbobik, and Taana families according to him; (2) the ten families constitute are royals of the Bunkpurugu skin; (3) around 1652, Chamba Nampauk from the Nampauk family became the chief of Bunkpurugu and during his reign, he resided in Lokpur.; (4) upon the demise of Chamba Nampauk, the successive chiefs of Bunkpurugu were Chamba Barinaba from the Jafok family, Nabikukur from the Nampauk family, Chamba Nabimong from the Jamong family and Nabinanbang from the Nampauk family; (5) the four successive chiefs of Bunkpurugu were still residing in Lokpur during their respective reigns; (6) the Nayiri enskinned all of them; and (7) after the demise of Nabinangban, members of the Louk clan took a collective decision that deceased's successor would no longer reside in Lokpur, but would reside in Bunkpurugu. He continued thus:

"When this decision was taken there was a contest to occupy the skin. At this point Jamong Toojak who was appointed headman of Kambon-Naaba for the Bunkpurugu skin by Nabinangban, decided to nominate his younger brother Yogbat Toojak to represent the Jamong family in the contest. Jafok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family also nominated Parimak Goung to represent them. At the end of it Yogbat Toojak was selected by the Nayiri to succeed Nabinangbang. Yogbat Toojak ruled successfully from 1946 to 1968"

In the evidence-in-chief, the attorney for the 3rd Respondent made it known that the father of the 3rd Respondent was Chamba Laar, and furthermore, he said Nyan was not a chief before he died, but he was a royal. The attorney for the 3rd Respondent stated that it was not true that there had never been a chieftaincy institution in the Louk clan, he insisting that chieftaincy institution had been with the Louk clan for a long time. (See pages 602 and 607 of the ROA).

As was expected, the testimony of the attorney for the 3rd Respondent was tested under cross-examination. On 21st November 2018, Counsel for the Petitioners asked him, and he answered as follows (see the relevant portions of pages 612-617of the ROA):

Pages 612-615 of the ROA

"Q: Can you name the ancestor or ancestors of the 10 families through whom one can claim title to the skin?

A: Yes, I can. One is Gbambekir

Q: From which family.

A: He was ancestor to all the 10 families.

Q: Where was he residing?

A: He was residing in Lokpur

Q: Where is Lokpur located?

A: Lokpur is in the present-day Togo.

Q: So, Lokpur is not part of Ghana.

A: Yes, presently it not. But initially it was part of the Bunkpurugu Traditional Area.

Q: When was Gbambekir installed as chief

A: I cannot tell.

Q: You will agree with me that before one becomes a chief, there should be ancestor through whom he claims royal lineage.

A: It is true

Q: Who did Chamba Nampauk succeed

A: He succeeded Gbambekir. I have to add one thing. After Gbambekir's demise chieftaincy was left in abeyance for a long time until the mother of Nampauk advised him to revive it.

Q: When was Bunkpurugu established.

A: I cannot tell the specific date but we are told it was established during the reign of Nabikukur

Q: And when was this reign

A: We are told it was around 1723

Q: I am putting it to you that Bunkpurugu was established in 1880.

A: No, it is not true.

Q: I putting it to you that it was established by Toojak.

A: No, it was rather established by Jajin Dauyuoung and Yamboat. They invited Toojak to come and join them at Nakua.

Q: When did Jajing Danyun and Yamboat invite Toojak?

A: I cannot tell.

Q: You cannot tell because Jajing Danyoung and Yamboat did not invite Toojak to Bunkpurugu?

A: It is not true"

Pages 617 of the ROA

"Q: I am putting it to you that 3rd Respondent has no royal lineage which he can claim the skin of Bunkpurugu.

A: It is not true because he has three of his ancestors who occupied the skin. They were Nampauk, Nabikukur and Nabinangban.

Q: Where did they occupy the skin.

A: The occupied the Bunkpurugu skin whilst at Lokpur.

Q: I am putting it to you that Lokpur is not part of Bunkpurugu.

A: It is not true because Lokpur originally is part of Bunkpurugu Traditional Area.

Q: I am putting it to you that Lokpur is in Togo whilst Bunkpurugu is in Ghana.

A: Yes, it is not true but this has happened because of the colonial master's demarcation of the area in two which was not originally so. The demarcation of the boundary does not change our customs.

Q: When was the demarcation made between Ghana and Togo.

A: I cannot tell [the] specific date.

The pieces of evidence-in-chief and the question-answer interactions detailed above raise several thought-provoking issues for analysis, when they are considered against other pieces of evidence on record, particularly Exhibit D. Having pieced the evidence of the attorney for the 3rd Respondent together, we understand the attorney for the 3rd Respondent to have listed the past and successive chiefs of Bunkpurugu as follows: Gbambekir, Chamba Nampauk (1652), Nabikukur (1723), Chamba Barinaba, Chamba Nabimong, Nabinangbang and Yoagbat Toojak. As can also be noted from the cross-examination sessions reproduced above, the attorney for the 3rd Respondent asserted that

Bunkpurugu was established during the reign of Nabikukur. From this narrative, he is understood to have asserted that Bunkpurugu was established in or around 1723, in the 18th century. However, in sharp contradiction, witness for the 3rd Respondent, Adamu Laar testified under cross-examination, one Jajing Dauyuoung settled in Bunkpurugu and established the community, two years after the boundary between the present-day Togo and present-day Ghana had been demarcated. (See page 626 of the ROA).

This Tribunal has earlier on found and concluded that the demarcation of the boundary must have necessarily taken place after the Berlin Conference of 1885, subsequent to which event the British, Germans and other European powers partitioned the territories of the existing African states or communities We have also earlier in this opinion accepted as a fact that the Bunkpurugu community was established by patriarch Jamong in or around 1818. Undoubtedly, two years after the Berin Conference of 1885 cannot, by any stretch of imagination be 1723 or 1887. Therefore, the conflicting assertions that Bunkpurugu was founded in or around 1723 or 1887 is not and cannot be true or reasonably probable. Indeed, the JC-NRHC found as a fact that Bunkpurugu was established sometime in the 19th century; it is an established fact the community was established in 1818, as testified to by the attorney for the Petitioners. Moreover, the disclosures in Exhibit D establish, among other things, patriarch Jamong was the first settler in Bunkpurugu, and the land on which Bunkpurugu sits was given to him by Peb-dana Bawalima Dawuni. Nothing on record shows that Peb-dana Bawalima Dawuni was a Louk clansman or a Louk chief, and therefore, it cannot be true or reasonably probable that the land was owned the Lokpur or Kperok skin, even if same existed.

If, indeed, Bunkpuruguland and Lokpurland are one and the same thing, the two towns will be bearing the same name, even after the demarcation of the boundary by the colonialists. As the record shows, the attorney for the Petitioners explained that the name Bunkpurugu derived from the word "Bunkpemgu", which means "the old river". (See the relevant portion of his evidence-in-chief found at page 156 of the ROA). Nothing on record show that the old river in question is found at Lokpur or Kperok. Therefore, we are unable to accept the suggestion that Bunkpuruguland is an extension of Lokpurland or Kperokland; Bunkpuruguland ani its skin is owned by the Jamong family whose progenitor, patriarch Jamon was the first settler on the land.

As can be also noted, in the evidence-in-chief given by the attorney for the 3rd Respondent, he acknowledged the fact that Nyan was never a chief in his life time. However, he claimed that Nyan was a royal, but he failed to disclose how Nyan became a royal and which royal lineage from which he hailed. Notably also, his entire evidence was silent on the direct paternal blood relationship that existed between Nyan and Gbambekir, Chamba Nampuak, Nabibikukur, Nabinanbang, Chama Barinaba. or Chamba Nabimong, assuming without accepting that these personalities once reigned as chiefs of Bunkpurugu. Therefore, we find the assertion that Nyan was a royal to be doubtful. We do, however, accept the fact that several generations of Nyan's children and grandchildren had/have royalty bestowed on them at birth, by reason of their being born into the Jamong royal family.

On the evidence, it is not in dispute that Nyan was a Louk clansman and doubled as the father of Jafok, Jamong, Nampauk, Saubinant, Jakun, Jatong, Jakpakir and Majikibe. It cannot be doubted that Nyan, Gbambekir, Chamba Nampuak, Nabibikukur, Nabinanbang, Chama Barinaba and Chamba Nabimong and patriarch Jamong were Louk clansmen. However, what specifically set

patriarch Jamong apart from these named individuals, as we have found earlier in this opinion, is that he migrated from his fatherland (Lokpur or Kperok), settled in Bunkpurugu, and created the Bunkpurugu chieftaincy institution which, as the JC-NRHC rightly found and concluded, was separate and distinct from the chieftaincy institution that existed in his fatherland and former domicile.

The assertion that Gbambekir was the ancestor of all the ten families, must be considered against the other pieces of evidence on record concerning Nyan. This Tribunal understands the attorney for the 3rd Respondent to have asserted that Gbambekir was the originator of the Nampauk, Jafok, Saubinant, Jakun, Jamong, Jatong, Jakpakir, Majikibe, Tuarbobik, and Taana families, or he seemed to have asserted that children of Gbambekir were the originators of the ten families in question. The 2nd Respondent had asserted under cross-examination that Nyaan had eight sons who happened to be the respective originators of the Nampauk, Jafok, Jamong, Majikibe, Jatong, Saubinant, Jakong and Jakpakir families; in effect, this evidence seeks to take out the Tuarbobik and Taana families from the equation. (See page 559 of the ROA). We find the evidence on the number of families in Bunkpurugu to be slightly conflicting; the attorney for the 3rd Respondent asserted that there are 10 families, but the 2nd Respondent said there are 8 families.

It was the further evidence of the 2nd Respondent, which he gave under cross-examination, that the Louk clan was founded by one Fonfana who hailed from Gruma in the Song Empire, located at Nung in Burkina Faso. He said Nyan succeeded Fonfana as the sixth head of the Louk clan. (See pages 550-551 of the ROA). On the totality of the evidence, we accept the version that Nyan was the father of Nampauk, Jafok, Jamong, Majikibe, Jatong, Saubinant, Jakong and Jakpakir. On the basis of this and the other considerations above, we find that Gbambekir was not and could not have been the progenitor of the eight families whose names featured in the evidence of the 2nd Respondent. Moreover, it is highly doubtful that Gbambekir was the originator of the ten families the attorney for the 3rd Respondent listed in his evidence.

The assertion that Gbambekir and Chamba Nampauk once reigned as chiefs of Bunkpurugu is untrue. We find from the cross-examination sessions (reproduced above) that the attorney for the 3rd Respondent could not disclose the date on which Gbambekir became the chief of Bunkpurugu, or the period within which he reigned as such. The assertion that Chamba Nampauk became the chief of Bunkpurugu on 1652 must fly in the face of the established fact that Bunkpurugu was founded in the 19th century. In other words, the Bunkpurugu community, which was established by patriarch Jamong in the 19th century, could not practicably have been in existence in the 15th century, to be precise in 1652. Equally untrue is the assertion that Bunkpurugu was established during the reign of Nabikukur. The evidence given by the attorney for the 3rd Respondent was to the effect that as of 1723, Nabikukur was the chief of Bunkpurugu. However, the proven fact on record shows that the Bunkpurugu community was established in the 19th century. Thus, as we find it, Nabibikukur could not possibly have been the chief of Bunkpurugu. Based on these same considerations, we conclude that not true that or reasonably probable Chamba Nabimong and Nabinangbang became successive chiefs of Bunkpurugu before Jamong Toojak mounted the skin as the very first chief of Bunkpurugu.

We need belabour the point regarding the assertion by the attorney for the 3rd Respondent that succession to the Bunkpurugu skin is open to all the members of the Louk clan. We have earlier on concluded that succession to the Bunkpurugu skin is limited to princes of the Jamong royal family. In

other words, by the operation of the concept of appropriate lineage, once a member of the Jamong family satisfactorily establish that his father, or grandfather or great-grandfather was a chief, he becomes a potential heir to the skin, and if ably qualified, can be nominated for the Nayiri to enskin him. As found earlier on, Nyaan was a Louk clansman. However, it is unacceptable for one to contend that every Louk clansman in Bunkpurugu is a prince, and thus, a potential heir to the skin. On the evidence, we find and conclude that Nyaan is not the rallying point for reckoning royalty, and therefore, the paternal descendants of Nyaan, with the exception of the Jamongs, cannot justifiably claim to be royals of the Bunkpurugu skin. Thus, the 3rd Respondent/Appellant, who is a member of the Nampauk family, cannot validly claim to be royal of the Bunkpurugu skin.

The question long then is: on all the evidence, can safely conclude that Exhibit D is a sword of Damocles handing over the head the case the attorney put forward at the trial for and on behalf of the 3rd Respondent? We should think so. It clear from the record that by the time the 3rd Respondent was joined to the petition on 3rd July 2015, Exhibit D had already been tendered and admitted in evidence way back on 16th December 2011. At page 24 of their judgment, Nanima delivered themselves as follows:

> "Even in the case of the 3rd Respondent who was joined to the petition after Exhibit "D" was tendered and admitted in evidence, nothing stopped Counsel from applying for forensic testing of the document, given that Counsel sought to impugn its validity during cross-examination. Such an application would have been considered on its merits under those special circumstances and in the interest of justice. Having failed to do so, the Respondents left this Committee with no other option than to accept the contents of Exhibit as a valid document binding on their families.

Even though learned counsel for the Respondents attempted to assail [Exhibit] "D" in their written submissions on the basis of Sections 4 and 5 of the Illiterates Compliance Act (Not Ordinance) 1912 Cap 262, their positions on the matter are not sustainable in law"

This Tribunal totally accepts and affirms the conclusion by the JC-NRHC that Exhibit D is a valid document binding on members of the families to which the signatories thereto belonged, and we do so for the following reasons. On the evidence, we find that the Bimoba elders and opinion leaders in Bunkpurugu were privy to the execution of Exhibit D. We believe and accept the fact that the Bimoba elders and opinion leaders who thumbprinted or otherwise witnessed the execution of Exhibit D included at least a member of the Nampauk family. We have examined the record and found that the name Laar is associated with the Nampauk family. A careful examination of evidence of the 3rd Respondent shows that at least a member of the Nampauk family who participated in the contest held 1986 went by the name Chamba Laar. (See page 602 of the ROA referenced earlier on). In fact, the sole witness for the 3rd Respondent, who is a member of the Nampauk family goes by the name Adamu Laar. From these facts, we reasonably infer that the said Kasuk Laar who also thumbprinted Exhibit D was a member of the Nampauk family. Therefore, 3rd Respondent/Appellant is equally bound by the recitals in Exhibit D.

Observably, in this opinion, Exhibit D has been the fulcrum of our analysis and most of our findings and conclusions particularly during the consideration of the ten additional grounds of appeal

canvassed for and behalf of the 1st and 2nd Respondent/Appellant. Observably also, on the evidence, we find all the Respondents/Appellants to be operating on the same wavelength, except that whereas the 1st and 2nd Respondents/Appellants claimed there are three royal families in Bunkpurugu viz the Jafok, Nampauk and Jamong families, the 3rd Respondent/Appellant claimed that there are ten royal families in Bunkpurugu, three of which are the Nampauk, Jamong and Jafok families. One other point of convergence was all the Respondents/Appellants claimed that the Jamong family is not the only royal family in Bunkpurugu.

Earlier in this judgment, we made far-reaching independent findings as well as concurrent findings and conclusions based on Exhibit D. We must state our earlier analysis, findings and conclusions apply mutatis mutandis to the 3rd Respondent/Appellant's case, as far as necessary and as if same were set out in extenso in this part of this opinion. We must also state that our analysis, independent and concurrent findings in this part of our opinion apply mutatis mutandis apply to the case put forward by the 1st and 2nd Respondent/Appellants, as far as necessary and as if same were set out in extenso in this part of this judgment. This Tribunal has taken this course of action here and somewhere else in this judgment for the sake of economy of space and time, and to avoid needless repetitions

The last critical layer of the case put forward by the attorney for the 3rd Respondent was his assertion that the chieftaincy institution in Bunkpurugu an extension of the chieftaincy in Kperok. We have repeatedly referenced how JC-NRHC dealt with that aspect of the case tried before it. Particularly at page 17 of its judgment, the JC-NRHC observed at (see page 780 of the ROA):

> "Whilst the Petitioner's (sic) case is that the Bunkpurugu chieftaincy started in Bunkpurugu with Jamong Toojak, the Respondent's (sic) case is that Bunkpurugu chieftaincy originated in Togo and that it was after the death of Nabinangbang that the Louk clan as a whole decided not to have a chief in Togo any longer, but in Bunkpurugu. This is the Gideon's knot in this matter that has bedevilled the Bunkpurugu skin with conflicts, confusion, and violence for nearly a century"

Upon a careful consideration of paragraph 7 of the amended statement of case the 1st and 2nd filed at the JC-NRHC, Nanima found and concluded that per 1st and 2nd Respondents' own showing, Bunkpurugu chieftaincy originated in Bunkpurugu in the lifetime of Nabinanbang and existed contemporaneously with the chieftaincy in Togo. The JC-NRHC further found and concluded that chieftaincy in Bunkpurugu is separate and distinct from Louk chieftaincy in Togo as stated by the Petitioners, adding that such a position is amply corroborated by Exhibit D. Nanima continued thus:

"Indeed, the law of chieftaincy in Ghana is settled that where a prince or any other person leaves a community and starts to set up a new settlement of which he becomes the chief, a new royal family is born, separate, distinct and independent from the royal house from which he hailed and only the descendants of the new chief can lay claim to royalty in the first place and right of succession to the skin in the second place, as will be shown by case law on the matter, presently"

Moreover, at page 18 of the judgment, the JC-NRHC further hit the nail right on the head by exposing the flawed nature of the proposition that the Bunkpurugu chieftaincy originated from the Togo-based Louk chieftaincy institution. Nanima stated thus:

"Royalty and chieftaincy titles are not for the asking. They are won through wars of conquest or by daring and adventurous act of progenitors. It is not for occupants of a skin to decide they no longer want their own skin but want to enskin their chiefs on another skin which has been established, as suggested by all the Respondents, even if that skin was an offshoot of the former. The occupant of a superior skin cannot, by fiat or any other customary means, transfer that skin or superimpose it on another skin. Once a progenitor originates a skin, he also originates a royal family which assumes exclusive right of succession to the skin and not even a superior skin can take away this right. It is for this reason that this proposition which was canvassed by both learned counsel is extremely strange, novel, and inconceivable under the customs and traditions of the chieftaincy institution in Ghana"

This Tribunal totally accepts and affirms the findings and conclusions by the JC-NRHC as detailed above. Therefore, to the extent that at the trial, the attorney for the 3rd Respondents made the same assertion to the effect that the Bunkpurugu skin originated from the Lokpur skin, as the 1st and 2nd Respondents did, the findings and conclusions supra, which we do concur in, equally obliterates the claim that the Bunkpurugu chieftaincy institution originated from the Lokpur chieftaincy institution.

On the evidence, we are left in no doubt that patriarch Jamong was a paternal brother of the other seven sons of Nyaan. The case of **In re Adum Stool; Ofori v Agyei [1998-99] SCGLR 191** (see holdings 1 and per the headnotes at page 192) gives a better clue as who members of Jamong's family were.

> **"A person's immediate family in a patrilineal community would consist of his children, either male or females, his paternal brothers and sisters, paternal grandfather, and descendants of the paternal uncles in the direct line.**
>
> **His wider family would consist of the immediate families of all those who trace their ancestry though males from the common male ancestor. From that lineage, children of his male daughters would be outside his family. Amponsah v Budu [1989-90] 2 GLR 291 at 298-299 cited** [holding 1]
>
> **Since, in the instant case, both parties agreed that the Adum Stool was patrilineal, only sons and grandsons of the progenitor who could trace their ancestry through the male line to the creator of the stool, Anum Asamoah, were eligible to ascend it. To be eligible, the 2nd defendant must hail from the "appropriate lineage" as required by article 277 of the Constitution, 1992 ie he should be a son or grandson through the main line of the ancestor Anum Asamoah. On the evidence, the defendants had failed to establish any such relationship, Rather, the 2nd defendant succeeded only in tracing his ancestry through the male line"** [holding 2]

As we appreciate it, the thrust of the respective claims to royalty canvassed for and on behalf of the 2nd and 3rd Respondents/Appellants in this appeal, and which the 1st Respondent/Appellant associates himself with, is that once Nyaan was a Louk clansman and for that his children were also

of the same stock and united by a patrilineal blood relationship, royalty in Bunkpurugu is the preserve of all the male Louk clansmen. Holdings (1) and (2) of the case **In re Adum Stool; Ofori v Agyei** supra defeats such position. On the evidence, the 2nd and 3rd Respondents/Appellants failed to establish that Jafok or Nampauk was the creator of the Bunkpurugu skin. It was established that Jamong was the creator of the skin, and therefore, neither the 2nd Respondent/Appellant nor the 3rd Respondent/Appellant can claim to be royal to the skin, even though Jafok, Nampauk and Jamong were paternally related. Thus, the sons, grandsons and descendants of grandsons are the only group of persons eligible to ascend the Bunkpurugu skin.

Winding up our analysis and determination of the appeals, we must reiterate that each of the Respondents/Appellants complained that the judgment the JC-NRHC was against the weight of the evidence. We understand them to have complained that the evidence on record supported their respective claims, but the JC-NRHC gave judgment in favour of their adversary. We appreciate these complaints within the context of decision in the case of **Agbeko v Kudzordzie [2013] 67 GMJ 163 CA**, where the Court, speaking through Dordzie JA (as she then was) stated at page 177 as follows:

> **"The appellant by this ground of appeal is in effect saying that the evidence adduced at the trial supported his assertions, but judgment was rather given to his opponent; this court should <u>reconsider the evidence and reverse the decision of the trial court</u>"** (Emphasis is ours)

Undeniably, the ten additional grounds of appeal canvassed for and on behalf of the 1st and 2nd Respondent/Appellants are the elements of their complaint that the judgment of the JC-NRHC was against the weight of evidence. Similarly, argued for and on behalf of the 3rd Respondent/Appellant are the ingredients of his compliant that the judgment of the trial Judicial Committee was against the weight of evidence.

This Tribunal, having carefully sericitized the totality of the evidence on record in the manner aforesaid, finds no reason to reverse the decision of the JC-NRHC, <u>except</u> its findings and conclusion to the effect: (1) the Jamong family is not the only royal family in Bunkpurugu (2) by virtue of Exhibits 2A and 2B the Nampauk and Jafok families are also royal families in Bunkpurugu; (3) succession to the Bunkpurugu skin is rotatory among the Jamong, Jafok and Nampauk families (4) Lambong Tapang and members of the Jafok family acquired royalty in 1986 by operation of the doctrine of estoppel by conduct; and (6) the Jamong family eventually recognized the enskinment of Lambong Tapang, because it participated in the performance of the funeral of Lambong Tapang as a deceased chief and subsequently contested for the vacant skin.

Issue (e): the cross-appeal

The Petitioner/Cross-Appellant a complained that the judgment of the JC-NRHC is against the weight of evidence. Essentially, the complaint is against the holding by JC-NRHC that: ((1) the Jamong family is not the only royal family in Bunkpurugu (2) by virtue of Exhibits 2A and 2B the Nampauk and Jafok families are also royal families in Bunkpurugu; (3) succession to the Bunkpurugu skin is rotatory among the Jamong, Jafok and Nampauk families (4) Lambong Tapang and members of the Jafok family acquired royalty in 1986 by operation of the doctrine of estoppel by conduct; and (6) the Jamong family eventually recognized the enskinment of Lambong Tapang because it participated in

the performance of the funeral of Lambong Tapang as a deceased chief and subsequently contested for the vacant skin. In the case of **Smile Adzanyao & Anor v Hans J, Finke & Anor [2020] 163 GMJ 227, CA,** the Court held, per Amma Gaizie JA at page 244 that:

> **"It has long been appreciated that a party who alleges that the judgment is against the weight of evidence, carries a duty to point out pieces of evidence that were construed against him though they should not have been, and which should have been construed in his favour, but have not been"**

Firstly, we are left in no doubt that the JC-NRHC construed the disclosures in Exhibits 2A and 2B against the substituted Petitioner. The exhibits purport to establish that: (1) there are three royal families in Bunkpurugu viz the Nampauk, Jafok and Jamong families; and (2) succession to the Bunkpurugu skin is rotatory among the Jafok, Jamong and Nampauk families. This should not have been the case, because the authentic, legally-flawless, binding, weightier and crucial document on record viz Exhibit D establishes that Jamong is the only royal family in Bunkpurugu. We have concluded earlier in this judgment that, the recitals in Exhibit D prevail over those in Exhibits 2A and 2B. Therefore, the JC-NRHC ought to have construed Exhibit D in favour of the substituted Petitioner, and based on the recitals in the exhibit, the trial ought to have made definitive finding of fact and conclusion that the Jamong family has been and is the only royal family in Bunkpurugu.

The law is settled that an appellate court such as ours has the power to set aside the findings of fact and conclusions by the trial court, where the said findings of facts and conclusions are inconsistent with crucial documentary evidence on record. (See the case of **In re Koranteng (Decd); Addo v Korangteng & Others** supra). We, therefore, hereby set aside the findings of facts and conclusions by the JC-NRHC to effect that the Jamong royal family is not the only royal family in Bunkpurugu. We reverse the finding of fact and conclusion to the effect that the Jafok and Nampauk families are also royal families in Bunkpurugu, in addition to the Jamong royal family. We also hereby set aside the finding and conclusion by Nanima to the effect that succession to the Bunkpurugu is rotatory among the Jamong, Jafok and Nampauk families. As demonstrated earlier in this opinion, these impugned finding and conclusion were inconsistent with crucial documentary evidence on record, namely Exhibit D.

Secondly, certainly, the application of the doctrine of estoppel by conduct against the substituted Petitioner (and by extension the Jamong royal family), was a clear case of improper application of the law of evidence to anchor the estoppel-driven findings of facts and conclusions. In fact, by doing so, the JC-NRHC ended up conferring royalty on Lambong Tapang, albeit posthumously, and in effect, it also conferred royal status on the Jafok family to which the deceased belonged. The reason for the conferment of royalty on Lambong Tapang and by extension the Jafok family was that the Jamong family failed to judicially challenge the enskinment of the former between 1986 and 2005. Undoubtedly, such a finding of fact or conclusion was inconsistent with the crucial documentary evidence on record viz Exhibit D. As can be recalled, earlier on, in this opinion, we set aside the findings of facts and conclusion by the JC-NRHC, which sought to royalize Lambong Tapang and by extension the Jafok family. We relied on the case of **In re Koranteng (Decd); Addo v Korangteng & Others** supra to anchor our decision. We stand by our finding of fact or conclusion earlier decision in this part of our judgment. We hold that (1) the estoppel-related findings of facts and conclusions

are inconsistent with the disclosures in Exhibit D which is a crucial document on record, and; (2) the findings of facts and conclusions were products of an improper application of the rules of the law of evidence to wit sections 26 and 37(1) of NRCD 323

Having set aside the impugned findings of facts and conclusions by the JC-NRCH, we proceed to draw the necessary inferences from the established facts, particularly the facts established by Exhibit D to the extent that the trial Judicial Committee could. (See the case **of Praka v Ketewa [1964] GLR 423 SC**). In the case of **Oppong Kofi and Others v Attibrukusu III [2011] SCGLR 176**, where it was held that:

> "**Essentially, the effect of that ground of appeal was to invite the court to review the whole evidence, documentary or oral, adduced at the trial and come out with a pronouncement on the weight of the evidence in support of the judgment of the trial court or otherwise. Where the findings were based on established facts, the appellate court was in the same position as the trial court and it could draw its own inferences from the established facts**" (Emphasis

Fortified by the authority supra, we hereby find and conclude that:(1) the Jamong family is the only royal family in Bunkpurugu; (2) the Jafok and Nampauk families are not and have not been royal families in Bunkpurugu ever since Bunkpurugu was established in the 19th century; (3) Lambong Tapang was not a royal of the Bunkpurugu skin, withstanding the fact that he occupied the skin for 20 years, without a judicial challenge to his claimed royalty; there is abundance evidence which shows that the Jamong family incessantly challenged or protested his claim to royalty till he died in 2005; and (4) at best, Lambong Tapang was a caretaker chief for the period that he occupied the skin from 1986-2005, and at worst he was a usurper.

Relatedly, we must consider whether or not the 13 primary findings of fact made by the JC-NRHC are supported by the evidence on record, and if so to concur in them, and if not so, to set same aside. On the totality of the credible evidence on record, and on the basis on our earlier analysis, we hereby concur in the 1st, 2nd, 3rd, 4th, 5th, 8th, 9th and 13th primary findings by the JC-NRHC, listed at pages 37-38 of its judgment, found at pages 800-801 of the ROA, and reproduced earlier on in this opinion. We totally agree with Nanima in the sense that those primary findings of facts are amply supported by the evidence on record.

This Tribunal does partly accept and affirm the 7th primary finding of fact, which is that apart from the Jamong and Jafok royal families, no other family has succeeded to the Bunkpurugu skin even since it was established in the 19th century. On the evidence, it is true that Bunkpurugu was established in the 19th century as found by the JC-NRHC; indeed, we are in agreement with Nanima on this point. It is also true that Lambong Tapang of the Jafok family occupied the Bunkpurugu skin from 1986-2005, but we have concluded that by law, he was a caretaker chief. It is also true that no member of the Nampauk family has ever occupied the Bunkpurugu skin ever since the community was founded in the 19th century. This is the limited extent to which we are able to concur in the 7th primary finding of by the JC-NRHC. However, we disagree with the JC-NRHC when it found and concluded that Lambong Tapang was the chief of Bunkpurugu, properly so called. Therefore, we hereby reverse the 7th primary finding of fact to the extent that it seeks to bestow royalty on Lambong Tapang, and

by extension members of the Jafok family. We do so, because such a finding of fact is inconsistent with Exhibit D, crucial documentary evidence on record.

Moreover, we are in total agreement that the Jamong family is a royal family in Bunkpurugu, but we are unable to accept and affirm the other portions of 10th, 11th and 12th primary findings of fact which commonly posit that succession to the Bunkpurugu skin is rotatory among the Jamong, Jafok and Nampauk families; again, such findings of fact are inconsistent with Exhibit D. Therefore, we hereby set aside the 10th, 11th and 12th primary finding of fact, to the extent that they purport to posit that the Jafok and Nampauk families are royal families in Bunkpurugu, and also to the extent that they purport to posit that succession to the Bunkpurugu skin is rotatory among the Jamong, Jafok and Nampauk families.

We are unable to accept and affirm the 13th primary finding of fact by the trial Judicial Committee, which is to the effect that the Jamong royal family eventually recognized the enskinment of Lambong Tapang because, according to Nanima, the Jamong family participated in the performance of the royal funeral of the deceased and proceeded to participate in the contest for the enskinment of a new Bunkpurugu Naba. In the first place, the finding that the Jamong family participated in the funeral of the Lambong Tapang is not supported by the evidence on record. To demonstrate this position, we reproduce hereunder relevant excerpts of the cross-examination session captured at pages 283 of the ROA, where Counsel for the 1st and 2nd Respondents asked the attorney for the Petitioners, and the latter answered as follows:

> Q: Did the Jamong family participate in the funeral
>
> A: No.
>
> Q: Did the Jamong family contest the vacant skin after the funeral of Lambong Tapang
>
> A: Yes, my Lord. We were not contesting with anybody; we were going for our skin"

As can be seen from the excepts reproduced above, the evidence of the attorney for the Petitioners that the Jamong family did not participate in the celebration of the funeral of Lambong Tapang, was not denied by Counsel for the 1st and 2nd Respondents; in fact, Counsel elicited a fact from him and supplied the fact. Therefore, the assertion that the Jamong family did not participate in the celebration of the funeral of Lambong Tapang stands tall on the record, and that being so, we add it to the list of established facts. We, therefore, conclude the JC-NRHC had no justifiable basis for its finding that the Jamong family did eventually recognized Lambong Tapang as a chief by participating in the celebration of his funeral. In any event, the fact that a section of the Bunkpurugu community organized a royal funeral for Lambong Tapang could not have validly bestowed royalty on him because, as have concluded earlier on, in the eyes of the law, he reigned, died, and was buried as a caretaker chief, nothing more.

Moreover, as can be noted from the cross-examination session reproduced above, the attorney for the Petitioners admitted that the Jamong family participated in the contest, but, presto, he emphasized the fact their family was not contesting anybody because the their family owns the skin; indeed, the evidence given in that regard is consistent with the entire evidence given by him and that of the sole witness for the Petitioners. We hold the considered opinion that the established fact that

the Jamong family participated in the contest, per their chosen candidate (Malik Musah), was not good enough reason for the JC-NRHC to have found and concluded that the Jamong family eventually recognized the claimed chiefly status of Lambong Tapang. For this and the reasons given above, we also hereby set aside the 13th primary finding of fact in its entirety.

CONCLUSION

Based on the multi-layered reasons given, we dismiss the omnibus ground of appeal and the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th 9th and 10th additional grounds of appeal respectively canvassed for and on behalf of the 1st and 2nd Respondent/Respondents. Consequently, the appeal jointly launched by the 1st and 2nd Respondents/Appellants fails in its entirety, and accordingly, same is hereby dismissed.

We also dismiss the omnibus ground of appeal and the 1st and 2nd additional grounds of appeal filed by the 3rd Respondent/Appellant, and that being so, his appeal also fails in its entirety, and canvassed for and on behalf of the 3rd Respondent/Appellant. Accordingly, we hereby dismiss the appeal prosecuted by the 3rd Respondent/Appellant.

The cross-appeal succeeds in its entirety. We hereby affirm the unanimous decision of the JC-NRHC with variations. For the avoidance of doubt, we hereby vary the decision of the JC-NRHC by holding that: (1) the Jamong family is the only royal family in Bunkpurugu; and (2) Lambong Tapang of the Jafok family was not a royal of the Bunkpurugu, and therefore, he reigned as caretaker chief from 1986-2005, nothing more, nothing less. We also vary the consequential orders as follows:

(a) The head of the Jamong family and his principal elders are hereby ordered to, within a reasonable time, nominate an eligible candidate or eligible candidates, (as the case may be) from their royal family, whom they shall present to the Nayiri (the 1st Respondent/Appellant) for selection and enskinment by him.

(b) The 2nd Respondent/Appellant is hereby ordered to hand over all skin regalia and other properties in his custody to the 1st Respondent/Appellant.

(c) For the avoidance of doubt, the 2nd Respondent/Appellant is hereby restrained from holding himself out, or allowing himself to be held out as Bunkpurugu Naba, unless and until this restraining order is otherwise judicially vacated

Cost of this appeal is assessed at one hundred and fifty thousand Ghana cedis (Gh¢ 150,000.00), awarded in favour of the Petitioner/Cross-Appellant and against the Respondents/Appellants. This is our unanimous decision.

(SGD)

NANA EFFAH-APENTENG
(CHAIRMAN)

(SGD)
KING PROF. ODAIFIO WELENTSI III
(MEMBER)

(SGD)
NANA YAW AGYEI II
(MEMBER)

(SGD)
OKOTWAASUO KATAMANTO OWORAE AGYEKUM III
(MEMBER)

(SGD)
NANA OWUSU SAKYI III
(MEMBER)

(SGD)

ALEX OBENG-ASANTE ESQ

(COUNSEL/ RECORDER)

LEGAL REPRESENTATION:

1. JAMES OWURA-MENSAH ESQ FOR THE PETITIONERS/ RESPONDENTS/ CROSS-APPELLANT
2. JOSEPH KAPONDE ESQ FOR THE 1ST RESPONDENT/ APPELLANT/ RESPONDENT
3. TERENCE NINNANG ESQ FOR THE 2ND RESPONDENT/ APPELLANT/ RESPONDENT
4. SYLVESTER ISANG ESQ FOR THE 3RD RESPONDENT/ APPELLANT/ RESPONDENT