

## **CULTURAL NORMS AND DISPUTE ON WOMEN'S PROPERTY RELATIONS IN GHANA.**

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**ABSTRACT:** *The general impression created is that cultural norms used in dispute resolution in chiefs' courts in Ghana violate women's rights. Analysis of these norms and proceedings in chiefs' courts is important because chiefs' courts play a tremendous role in dispute resolution among the ethnic groups. The units of analyses are Anlo and Asante of Ghana. The findings of the research are that chiefs' courts do not discriminate against women in gender neutral cases and that the bias occurs when the case is gender sensitive. Women also have limited participation as decision-makers in chiefs' courts, a factor, among others, that may contribute to the bias against them. There is need to modernise operations in chiefs' courts to make it gender friendly. Moreover, since gender issues tend to affect women's property rights, and are often used as central reference points for the handling of disputes, there is need for social re-orientation of people. The research is significant because, inter alia, it contributes towards the strengthening of procedures in chiefs' courts, and in the reform of cultural norms/laws/principles that are gender discriminatory.*

**KEY WORDS:** Dispute, Dispute resolution, Chiefs' courts, Cultural norms/laws/principles, Property, Inheritance, Property inheritance.

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### **INTRODUCTION**

The article has analysed dispute resolution procedures in chiefs' courts among the patrilineal Anlo and the matrilineal Asante of Ghana. The analysis has become necessary in view of alleged gender bias in traditional institutions (see also Oomen 2005). For example, court's norms/principles or laws are said to violate women's rights of property relations. Thus the questions addressed in this article are: What are norms/principles or laws used in the arbitration of cases in chiefs' courts? Are the court norms different from or the same as the norms in society? Are the norms gender discriminatory and do they violate women's property rights? These questions are central to the research in view of the fact that chiefs' courts play a tremendous role in dispute resolution in Ghana.

Most anthropologists in the Malinowski school of thought stress the universality of dispute and suggest a holistic approach in its treatment (Roberts 1976: 676). Epstein (1967), for example, argues that dispute is a universal phenomenon with its corresponding procedure for resolution in any given society wherever it occurs. He proposes that the sequence of events known as a case

may be isolated for analytical purposes, but this must be considered vis-à-vis its social matrix if one is to understand fully its place in the social process. The Anlo and the Asante like other societies have their cultural mechanisms for resolving disputes. This research regards each case study as a sequence of events leading to resolution.

Llewellyn and Hoebel (1941: 29) on the other hand, contend that ‘the safest main road into the discovery of law’ is through the study of disputes or ‘trouble-cases’. This is because ‘not only the making of new law and the effect of old, but the hold and thrust of all other vital aspects of the culture, shine clear in the crucible of conflict’. In other words, it is important to study disputes in specific property related cases, including those of Anlo/Asante women because they reveal not only the kinds of law in those societies, but also the culture of the people in dispute. Aubert (1963) on his part argues that a legal process may transform from dyadic relationships into triadic ones once other(s) intervene. That is, ‘to the extent that recourse to a particular mode of settlement may involve others, it may also involve the personal interests of those others, or the interests associated with their positions’ (Moore 1969: 277). The research indicated the extent to which indigenous institutions among the Anlo and the Asante allow or curtail the involvement of others so as to avoid the personal interests of those others affecting the decisions of the courts.

## **METHODOLOGY**

The research units for the study are the patrilineal Anlo and the matrilineal Asante societies. These two lineages are the foundation of the social organisation in Ghana. Anlo society, a subgroup of the Ewe is in the southern part of the country. Anlo is bordered in the west by the Atlantic Ocean and in the east by the Keta Lagoon (Amenumey 1968). This implies the Anlo people do not have much land. Thus, many disputes among the Anlo are land-centred. Anloga, the traditional capital of Anlo is one of the research sites.

The Asante, a subset of the Akan, on the other hand, are found in the southern central hinterland of Ghana. Kumasi is the second fieldwork site and it is also the traditional capital of the Asante kingdom. Ubink (2008) identified the rapid population growth of Kumasi, which puts pressure not only on land but also on housing, creating accommodation related problems in the city.

A number of factors, including, the different kinship or family systems of the two societies influenced the choice of the research units. In addition, Anloga and Kumasi (fieldwork sites) have some strategic advantages in that both are not only traditional capitals but also host kings, queen mothers or *mamagawo*<sup>1</sup> and elders who, according to the traditions of the respective groups, embody indigenous values and traditions. In addition, indigenous ‘Supreme Courts’ and the ‘Court of Appeal’ are also located in both capitals. Further, both capitals have long histories of involvement in dispute or conflict resolution procedures. Kumasi is cosmopolitan while Anloga is not. Hypothetically, there is, therefore, the likelihood that Anloga may retain more indigenous elements in its conflict resolution institution than Kumasi.

The material for investigation comes from both primary and secondary data. The primary data consist of interviews, recorded cases and observation of a number of arbitrations (48) in both

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<sup>1</sup> The head of women chiefs among the Anlo people is known as *Mamaga* (singular) and *Mamagawo* (plural).

Avadada's and Asantehemaa's courts at Anloga and Kumasi. Avadada is the regent of Anlo king while Asantehemaa is the queen mother of Asante.

Analysis of field-data collected on dispute resolution and principles governing property inheritance amongst the Anlo and the Asante of Ghana essentially concerns discourse on law and society. An anthropological approach to research on dispute or law in society entails the widening of the analytical field to cover other issues in the social universe that may throw more light on the research object under investigation. It also suggests using local concepts and categories to understand unfamiliar institutional arrangements in the research units (Roberts 1976: 674). Following this anthropological approach, the analytic scope of the research was extended to investigate many things, including the normative statements (rules/principles/norms), the actual practices (trouble-less cases), disputes (trouble-cases) of property inheritance among the Anlo and the Asante, and the litigants' perspectives and motivations. It also investigated the day-to-day life, perceptions, and experiences of ordinary women who try to come to terms with their social, cultural, economic, political, religious and legal universe (Griffiths 1997: 11).<sup>2</sup> The trouble-less cases were accessed through observation of 'everyday life and normal range of activities' of the communities of the study during 'participatory research of the *longue duree*', while the trouble-cases (arbitrations) were obtained at both Avadada's and Asantehemaa's indigenous courts in Anloga and Kumasi. Literature review on dispute resolution and conflict management supplemented the data sources.

Two cases were selected from the above for analysis. One case came from Asantehemaa's court at Manhyia in Kumasi. It concerns a problem with accommodation. The other case is land-centred. It was obtained from Avadada's court in Anloga. The objects of the disputes reflect property as valued, highly contested resources, in both research centres. The choice of the two came via strategic selection to meet the requirement of the achieved research domain dealing with property cases involving women. The above reflects a combination of different methods, which Holleman (1973) describes as the 'methodological triad'. The strength of this anthropological approach to the study of disputes is that it gives a holistic picture of indigenous principles, rules or norms that are valid in a particular locality at a particular time. The aim is to see how a woman's rights of property relations fair in chiefs' court since, as indicated, the general impression created was that traditional fora and norms used in dispute resolution do not accommodate women's rights. The case studies also illustrate that chiefs' courts do not only arbitrate but also judge cases. Last, the end of the discussion will reveal that indigenous court norms are no different from societal ones that govern property relations among the Anlo or the Asante.

Given the gendered nature of the social universe, which largely has religio-cultural impacts that seem to influence all sectors of life, including political, economic and legal decision-making at the chiefs' courts under which women live in Ghana; the study considers how women in the two research units experience the cultural norms of inheritance and how this translates into their day-to-day lives and legal identity in terms of defending or claiming their property rights.

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<sup>2</sup> Anne M.O. Griffiths, *In the Shadow of Marriage: Gender and Justice in an African Community*, Chicago & London: The University of Chicago Press, 1997, analyses the similar gendered social universe women found themselves caught in, in Botswana.

Most anthropologists in the Malinowski school of thought emphasise two important features of dispute. First, they see dispute as part of life in any community or society in which it occurs. As such, they suggest a holistic approach in the treatment of dispute. This implies treatment of dispute should involve a) the genesis of the dispute, b) attempts made to resolve it and, c) subsequent history of relations between the parties involved. The second important feature of these studies focuses attention on disputants' activities and objectives. Earlier legal studies to some extent gave attention to judicial behaviour, but the litigant's perspective remains largely neglected. Thus, in recent years, analysis of institutions received less serious investigation than the litigant's perspective (see Roberts 1976: 676). Procedures among the Anlo and the Asante societies in Ghana reflect the mentioned features in their dispute resolution practices. Even now, attention goes to a disputant's wider goals in pursuing a particular quarrel; the ways in which he recruited support; the manner in which he chose the agency before which he brought the dispute for settlement; and the tactics he adopted before that agency. One feature stressed repeatedly is the element of compromise, which tends to be present in any given outcome and gives the dispute settlement process a 'bargaining' flavour markedly different from the 'zero-sum game' of win-or-lose adjudication as characteristic with the common law model (Roberts 1976: 676).

This gap of issues, if not covered in the analytical field, may cripple accurate conception and delivery of justice in the dispute resolution. Understanding all these different layers of issues that form the context of dispute, may contribute to proper evaluation of the subject matter of dispute resolution. This is where the legal centralist model, which divorces law from social life, may seem less appropriate for the research.

The analytical strategy is to discover within this scenario of influences what cultural norms operate and what role they play in the dispute resolution processes; also how this latter relates with women's inheritance and property rights in the two ethnic groups in Ghana.

It is important to indicate that the narrative and interpretive form of this paper has not only been drawn from detailed life experiences, trouble-less and trouble-cases, it as well throws light on the gendered and the spiritual world in which men and women live and how this affects the latter's access to property. Finally, the analysis is based on the way members of the Anlo and Asante ethnic groups themselves understood their practices and explained what they said and did.

## **DISPUTE**

This research makes no distinction between the terms 'conflict' and 'dispute' since both involve a disagreement over something. *Oxford Advanced Learner's Dictionary* defines conflict as a serious disagreement or an argument between people, groups or societies. This disagreement may come from an incompatibility of opinions, rules or norms and others between the people, groups or societies over a particular claim (2005). According to Brown and Marriot, conflicts are bound to occur where there is incompatibility of interests (1993: 5). Moreover, conflicts, whether verbal or behavioural, if not contained, may lead to violence and may even escalate to an international level. These shades of opinion seem to indicate that there is a small-scale and large-scale conflict. Many believe these small-scale conflicts find easy resolution. Some contest that even though certain conflicts can be resolved through 'dispute resolution procedures such as injunctions, or interdicts

or court orders, which may restrain unlawful behaviour, by arbitration and by mediation they are not necessarily amenable to resolution by dispute resolution processes' (Mwenda 2006: 13).

Dispute, on the other hand is said to be 'an assertion of opposing views claims', 'a disagreement as to right; especially, one that is subject of proceedings for resolution' (Ammer 1997). David Foskett argues that an actual dispute does not exist until assertion of a claim by one party and disputation has occurred by the other (1989: 5). This disagreement may be resolved by negotiation, mediation or by any other dispute resolution mechanism, which may involve a neutral third party. The difference is objectively qualifiable by the disputing parties themselves or by a third party, who then gives his decision on the case. According to Brown and Marriot (1993), 'the question as to whether or not a 'dispute'' exists can be highly relevant, for example, where arbitration or other dispute resolution provisions in a contract provide that disputes are referred to arbitration or any other stipulated process. If no dispute exists, then a party wishing to enforce any aspect of the contract may do so through the courts; but if a dispute does exist then the specified process is mandatory.

Popat Prathamesh (2003) attributed the emergence of complex disputes to the opening up of world markets with diversities and differences that tend to create miscommunications and therefore misunderstandings. Moreover, the phenomenon of the global village initiated by e-commerce and the Internet contributes to this. Further, in developing countries like Ghana and in the research units of Anlo and Asante, individualisation of life as one of the effects of capitalism is bringing about a considerable transformation in the family systems from what used to be a more cohesive extended family to a smaller, nuclear one. Individuals are now more concerned about what they can do for themselves and their immediate families, where immediate families often refer to children rather than a wife or members of the extended family. At the same time, there is pressure from the extended family to control its members and property. This leads to tension and conflicts between individuals and the extended family. In both Anlo and Asante, some individuals also control and use family property without giving shares to other family members. All this causes family disputes. 'The unsavoury result of this has been that disputes are not only arising at a far greater pace than ever before', but also entailing 'even greater complexities due to their cross-border and cross-culture nature' (Mwenda 2006: 14). It can also be indicated that the manner of dispute resolution may lead to a redefinition of relationships, redrawing of boundaries, redistribution of wealth, reform in laws, restriction to movements, removal of barriers, reshaping of thinking and moreover that it may contribute to reframing of problems (Pirie 2000: 3).

One argument states that even though conflict can be negative and can cause distress, it can also function positively. This is to say that it can motivate people to change their situations, which may lead to development and may bring improvement to the lives of the subjects of conflict (Folberg, Golann et al. 2005: 20).

In spite of the conceptual differences that some scholars have indicated, it appears such distinction does not make much difference. This is because the analytic discourse makes it clear that both conflict and dispute are susceptible to dispute resolution procedures. Where this is not possible is when there is a large-scale conflict. Similarly, there are disputes whose scale is large and complex and which are not easily containable. Like conflicts, disputes assume international proportions.

Moreover, disputes or conflicts are expression of differences between people. Airing differences creates an opportunity for peaceful resolution leading to a better understanding between parties (Mwenga 2006: 14). Thus, in this paper the two concepts are used interchangeably. In other words, dispute is one of the primary concepts of the research, but where conflict is used, its meaning is synonymous to that of dispute.

Disputes differ in nature and scope. Conceivably, even within the same category of disputes there may be apparent differences. It may be possible to explain these differences by acknowledging the issues and factors that can influence opposing parties. In this light, it is logical to say that one particular process of dispute resolution may not be applicable to all types of disputes (Mwenda 2006: 15). For this reason, while one type of dispute may be resolved through negotiation, others may require other methods such as mediation or the intervention of a neutral third party. The expectation placed upon this neutral third party is to devise procedures that can assess and possibly evaluate the issues at stake. Some disputes may even 'require an expert neutral party' or the use of an adjudicatory process. Others may involve application of a combination of methods. Thus, processes may involve informal, relatively formal or formal procedures depending upon the relative complexity of the issues at stake. It may be critically important to note that in the case of a neutral third party like a chief with his or her panel of elders, for example, there is need to understand the particular disputes with its implications. This will determine the kind of procedure used. This also involves knowledge of the disputing parties, their concerns, motivations, aspirations and interests (Mwenda 2006: 15).

Dispute as a subject matter seems too vast<sup>3</sup> to complete within the economy of time. For this reason, this paper limits its analysis to disputes related to women's property inheritance within the Anlo and Asante patrilineal and matrilineal family systems in Ghana.

## **INHERITANCE AND PROPERTY**

The concept of inheritance among the Akan and the Ewe refers to the transfer of property, after the property owner is deceased, from the original owner to their heir or heirs. The donor may also donate the property as a gift during his/her lifetime. Property on the other hand, refers to any object of legal rights. Sometimes the thing (property) could be a deity or an activity. For example, amongst the Anlo and the Asante societies in Ghana, someone could claim that fishing or farming is his or her property. This happens in the sense that either occupation is his or her regular source of income.

Many Western legal philosophers also contend that property ownership is in essence about relationships (Hann, 1998: 4). In his anthropological conceptualisation of property, E.A. Hoebel maintains that:

The essential nature of property is to be found in social relations rather than in any inherent attributes of the thing or object that we call *property*. Property, in other words, is not a thing, but a network of social relations that governs the conduct of people with respect to the use and disposition of things (1966: 424).

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<sup>3</sup> To see the classification of dispute, see H. Brown and A. Marriot. *ADR Principles and Practice*. London: Sweet & Maxwell, (1993): 2.

This may mean that property relations are essentially social relations between people. John Davids argues that, from an anthropological point of view, a boundary dispute cannot be construed as if it is a dispute with a boundary. In other words, one “cannot sue an acre” of land as if it were a person. That is why, according to him, “the study of property rules in general and of land tenure in particular, is the study of relations between people” (1973a: 157). This definition suggests that the object of legal rights (property) is essentially less important than the social relation it generates between individuals or groups of people. This stance cannot overrule the significance of property as a thing in itself. This is because social relations do not occur in a vacuum. They cannot take place without the object over which individuals or groups (claim to) have legal rights. One can thus understand that the anthropological definition should include a cultural variable to explain how individuals or groups of Anlo or Asante relate to property as a thing or an activity, which thus constitutes their social relation. In other words, the anthropological conceptual framework should encompass property not only as a set of social relations, but also somehow, a thing in whatever form it is found that essentially generates social relations. The next section discusses property relations among the Anlo and the Asante.

## **CULTURAL NORMS ON PROPERTY RELATIONS**

There are specific cultural norms that govern property relations among the Anlo and the Asante. Fieldwork among the Anlo has shown that there are two main norms that govern property relations: ‘A man inherits property from his father’ (*Dutsua, fofonue wòḍuna*), and ‘A woman inherits property from her mother’ (*Nyornua, dadanue wòḍuna*). With the first norm, when a father dies only his son inherits his estate. If sons are many, they inherit according to the order of seniority in age. Estate that cannot be shared is kept for the common use of the sons. The norm prohibits daughters any share of their father’s property. In the same way the last norm allows only daughters to inherit from their mothers. For Asante, ‘A man inherits from a man’ and ‘A woman inherits from a woman’. Nephews, for instance, inherit from their uncles. Nieces and daughters also inherit from their aunts and mothers respectively. The other norm states that ‘If brothers and sisters are there, nephews and nieces do not inherit’ (*Nniwa mma nsa, wofase nni adee*). With the passage of time it appears the first two norms merged to form latter norm. This latter norm qualified the people with inheritance rights in their degree of importance. For example, when a male acquired property but died intestate, his uterine brothers and sisters are the first to inherit it before his nephews and nieces. The widow and her children are prohibited by the norm to have a share in the deceased man’s property (Gedzi 2012b).

In the actual practices of property relations among the Anlo sons and daughters inherit from their fathers but the former have greater rights. For instance, Adala, a key informant, reported that after the death of a man who had married four wives, his property was shared among his children. The man had three sons and five daughters. First, the man’s piece of land was shared and each child received a portion. But the male children were given priority to pick a portion first before the females. The males also picked according to seniority of age. When it came to the turn of the females, the same age seniority was applied. After sharing the land estate, the deceased shallot farm was divided. Two plots went to each of the females while the males received ten each (Gedzi 2012b).

Some men, before they die bequeath a portion of their property over to their daughters. This typically involves notifying elders. The elders serve as witnesses to the transaction. In polygamous marriages, female children had equal share with their male siblings when property was distributed according to the number of mothers and not according to the number of children. This was so that the female child and her mother could also have a share in the intestate property.

If a deceased father has no male child but has only a daughter, the latter may by tradition and custom inherit his property. Unlike a son who enjoys a permanent interest, a daughter receives only temporary interest in the property. Her children may be considered to use the estate after her death on moral ground. This means they suffer eviction if their behaviour does not please members of the patrilineal family from which their mother had the temporary right of inheritance. Thus, while a male member's individual share of land or house passes on to his children upon his death under the system, a woman's share reverts to the lineage. When a man passes away childless and intestate, his brothers and sisters inherit from him. Even in this context, brothers often have more inheritance rights than their sisters. Thus, according to Kludze (1973), among the Anlo, both sons and daughters are considered when property is distributed, but the sharing is often unequally done. Kludze has further noted that the Anlo increasingly consider the claims of daughters as a privilege only, and not a right that can be enforced before a court of law, particularly in the case of land inheritance.

In the matrilineal family system of Asante, women and men cannot inherit from their fathers, but the latter make provisions, especially for their sons. Fathers are expected to set up their male children in life through a formal education and/or an apprenticeship (Gedzi 2012b; Awusabo-Asare, 1990). Like the Anlo, even though in principle, a man can only inherit from a man, and a woman from a woman, a uterine sister in Asante can inherit her brother's property. The male child can also inherit his mother's property. Similarly, nieces inherit from their uncles and a nephew may inherit from his aunt or grandmother. Women (nieces) in practice can inherit property from their uncles, but men (nephews) get first consideration.

In addition, if a father makes a traditional will before his death, his self-acquired estate may be posthumously shared among beneficiaries including his wife and children even though Asante indigenous law does not permit wives and children to have succession interest in their fathers' or husbands' property. On the other hand, a husband can give a portion of his self-acquired property to his wife and children before his death. The husband, just as among the patrilineal Anlo, has to do this in the presence of his family members and others outside the family. In each case, a beneficiary is obliged to present a bottle of rum or an equivalent present to the gathering indicating his or her acceptance of the gift. The present is shared in the gathering. This drink or present and the witnesses are significant in the indigenous transaction of gifting. In other words, the present is a testimony that the particular property has been given to the donee by the donor. The gathering is also a witness to the event against prospective litigation on the property. The above procedure in the indigenous inheritance system of Asante, just as among the Anlo, legally seals the transaction of gifting. According to Sarbah (1904), for the procedure to be valid, the donor must have the intention of giving and passing the item to the donee and that its acceptance must occur in the lifetime of the donor. Moreover, the transaction of giving and receiving 'must be proved and



evidenced by such delivery or conveyance as the nature of the gift admits' (Gedzi 2012b; Sarbah, 1904).

The general feeling among the Anlo and the Asante for not making adequate provision for a woman is that she (as a wife) is expected to be maintained and supported by her husband. There is also the fear that the woman may transfer the inherited property to her husband's lineage. As a beneficiary of the estate, the man retains it within the lineage to pass on to others. By remaining in the lineage, a man not only brings about continuity, but also helps in immortalizing it. As a result, men are supposed to own more property, including land, to enable them to raise a family for this immortalization. Among both socio-cultural groups, women who marry within their own lineages however, are more likely to have greater inheritance rights since the property they use remains in the same lineage. They may use land, for example, as long as they are alive and maintain links to their husbands' lineage, but cannot pass these rights on to others outside the lineage. It appears, therefore, that both patrilineal and matrilineal systems of inheritance do not favour, women, especially in exogamous marriages. Thus the main reason for the patrilineal and matrilineal inheritance systems is to maintain, retain and secure the property within the lineages. Since lineage and society give more of such rights to males in both family systems, they tend to dominate property ownership within the inheritance systems. The next section explains how Ghanaian society conceives of women; and how this defines women's position in society and their property relations vis-à-vis that of men (Gedzi 2012b).

## RESULTS

### Case 1: Kofi v. Ama<sup>4</sup>

This case was about accommodation, which led to imprecation. In this dispute, the defendant (Ama) ejected her brother from a house she built from proceeds she obtained from a store inherited from her deceased mother. This brother a number of times beat his sister, the reason for his ejection. To effect the ejection, the sister invoked a goddess to kill her brother if he returned to the house. Her oldest brother (Kofi) reported the case on behalf of his 7 brothers. The case was tried in the Asantehemaa's court. The settlement was concluded the same day.

### Plaintiff's statement

Before stating his case, Kofi (plaintiff) did not swear an oath. He went straight to make his case. He alleged his sister, Ama (defendant), insulted him and expelled his brother from the house. She purportedly also invoked a curse of *Antoa Nyama*, a river goddess extremely feared by the people in the area on all his family members.

The plaintiff explained that the defendant's mother had a store in the central market in Kumasi. When she died 21 years ago, the defendant, according to Asante custom and tradition, inherited

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<sup>4</sup> This is one of the cases that were arbitrated in a female's chief court at Manhyia in Kumasi, Ashanti region of Ghana. The female chief is the queen-mother of the Asante kingdom. The arbitration was recorded through participatory observation.

the store with the approval of her siblings. The agreement was that she should use the proceeds of the store to care for the rest of her siblings. Consequently, through the defendant's effort and with the consent of her siblings, she purchased a piece of land and put a house on it. She accommodated her brothers, including the plaintiff in the house. The defendant and her husband also lived in the same house. Later, there was a misunderstanding between the brothers and the defendant. The defendant ejected one of the brothers who had been beating her. In order to make the ejection effective and definite, she put a curse on him that the river goddess should kill him if he should ever come back to the house. According to the plaintiff, the defendant also included the other family members in the curse and that she personally insulted him. After the plaintiff made his statement, the defendant cross-examined him as follows.

Q: Did you fight with me?

A: No!

Q: Did you remember that my brother fought with me?

A: Yes!

Q: Were you there when my brother beat me?

A: No!

Q: Who told you that I was beaten?

A: A witness told me.

After this, the defendant pleaded to the panel judging the case to continue the cross-examination on her behalf in the following way.

Q: Where did she insult you?

A: Near the kiosk of the *koko* seller.

Q: How did she insult you?

A: She insulted me that I am a fool and that I am a useless person.

Q: How did she curse the family members?

A: She had eight eggs and each time she broke one, she mentioned a name of a family member and then invoked *Antoa Nyama* (a river goddess deadly feared by the Asate). After that, she poured a libation with a bottle of Schnapps to the river goddess.

Q: Who are you?

A: I am a representative of *abusuapene* (head of the family).

Q: Why did the *abusuapene* himself not come to the court?

A: He is a teacher

Q: Did he delegate you?

A: Yes!

Q: Did he give you a letter to that effect?

A: No!

Q: Then how can we accept your representation?

A: The *abusuapene* himself is around; you can verify from him.

Q: Did you go to the spot where the curse was invoked to verify?

A: No! But if you go now you can still find some signs.

Q: When the incident was first reported to you, what action did you take?

A: I informed the *abusuapene* and the rest of the brothers.

Q: After informing them, did you go to find out from the defendant?

A: No!

A panel member to the plaintiff:

To fail to find out what had happened from the defendant after the information had been given you, is traditionally wrong. This is because it is only after finding out from her that you can ascertain the truth. You did not go to the spot either. So what you are reporting is based only on what you have been told. No empirical evidence. But we are not using this to judge the case now. We are only reminding you of our custom and tradition about things of this nature.

### **Defendant's statement**

After this, the defendant (Ama) made her case. Like the plaintiff, she did not swear. In her statement, she admitted much of what the plaintiff had said. Yet she maintained that she cursed the brother who had beaten her and not all the family members. Traditionally, a curse serves as a powerful sanction to ensure obedience from someone or to deter someone from doing something (see also Radcliffe-Brown 1952: xviii; Fred-Mensah 2000: 43). According to the defendant, therefore, she took action to deter her brother from coming back to the house to beat her again. She explained her action was only defensive. After the defendant's statement, the plaintiff cross-examined her as follows.

Q: Did you remember we testified against you in a formal court in a similar case? Is this not the reason why you cursed all the family members?

A: No! I cursed only the one who beat me.

After this brief interrogation, the plaintiff pleaded to the panel to do the cross-examination on his behalf. The panel members cross-examined the defendant in turn.

Q: Have you ever fought with the plaintiff?

A: No!

Q: Why did you curse him?

A: I never cursed him. I cursed the one who beat me.

Q: Why did you curse your brother?

A: I cursed him to defend myself. That is, to deter him from coming back to the house to beat me again.

### **Plaintiff's witness and testimony**

The plaintiff's witness stayed sequestered in a room away from the courtroom to prevent him from hearing the proceedings. The witness happened to be a brother to the plaintiff and the defendant. First, he was asked about his religion. After saying that he was a Christian, he swore an oath saying: 'I swear to tell the truth in the testimony I am about to give. If I do not, may the Almighty God kill me'.

According to his statement, 21 years ago, 'our mother' died and "our sister" (the defendant) was given the deceased's store. Out of the proceeds of the store, she built a house. She distributed the rooms of the house to each of us'. Somewhere along the line, a misunderstanding developed between the defendant and the other siblings (including the witness). The defendant reported to the police that she did not want her brothers to live in the house any more. When the matter went to a formal court, all the eight brothers bore witness against their sister (the defendant) and she lost the case. Because of this, she bore a grudge against them and she invoked a curse on all the family members. After the testimony of the plaintiff's witness, he was cross-examined, first by the defendant.

Q: After the formal court case, did you fight with me?

A: No!

Q: Do you remember that my brother Yremi has been beating me?

A: Yes!

Q: Do you remember he attempted to kill me with a cutlass?

A: No!

Q: I am saying Yremi beat me and not you. Is it true?

A: Yes!

Q: Can I curse you if you do not hurt me?

A: No!

The defendant pleaded with panel members to continue cross-examining on her behalf, which follows this way.

Q: Were you there when she cursed the family members?

A: No!

Q: Do you know the one she cursed?

A: No!

Q: Did she curse you?

A: No!

Q: Are you not a member of the family?

A: I am.

Q: Then why are you not part of the members she cursed?

The witness could not answer this question.

Q: The plaintiff said the defendant cursed all the family members and you the witness are saying she did not curse you. Which of the statements should be taken by our court?

A: My statement is correct.

Q: So, is the plaintiff's statement wrong?

A: Yes!

At this, the cross-examination ended. Upon demand from the panel, the defendant could not produce any witnesses.

### **Presentation of verdict**

During the judgment, each elder (judge) on the panel representing each Asante clan (eight in number) in turn gave appraisal of all that was said by the disputing parties and the witness and passed judgment. The first panel member said, among other things that the plaintiff, Kofi acted selfishly. This is because he was not the head of the family (*abusuapene*) and no one asked him to represent the family but he took up the case. The family head did not delegate him to take the case to the queen mother's indigenous court. A second panel member was of the view that throughout the proceedings, the defendant never denied that she cursed her brother. She emphatically also maintained that she only cursed the one who beat her up. Therefore, since the plaintiff was not the one who did the beating, there was no need for him to bring the case to court. A third panel member also reiterated the view that the *abusuapene* should have accompanied the plaintiff to the court since as head of the family it was his responsibility to resolve a case like this. The fourth panel member seconded this but added that the defendant did not curse all the family members. She only cursed the one who beat her. The witness brought along by the plaintiff supported the defendant's

stance. Therefore, the plaintiff's case could not hold water. Thus, all eight panel members came to a consensus in favour of the defendant.

At this point, a court official smeared white powder on the left shoulder of the defendant, which traditionally signifies victory.

The convicted party lost his money (fee paid for an arrangement of a case to be tried) while the innocent one had all her expenses refunded except the powder-smearer's fee. The plaintiff also had to pay a compensation fee of 10 Ghana cedis to the defendant.

After this, the panel advised the loser to appreciate the effort of the defendant for using the proceeds of the store to put up a house, which accommodated all of them. They had to apologise to their sister (defendant). The ejected brother was asked to come back to the house, but advised never to beat his sister again. The parties were told that if any further problems arose they would be dealt with severely. An elder was then asked to see to it that the defendant revoke the curse. The plaintiff and his brothers shook hands with their sister (defendant). At the end of the proceedings, the parties were admonished and told to swear by *Nana's kokonua* (the chief's sore foot) that there would be no further problems between them. This is a taboo connected with the Asantehemaa. It references a fatal event in the distant past, which may not be revisited. It is recalled with deep sorrow. Therefore, if a disputing party swears by this event, it is believed that he/she will abide by the oath since failure may bring him/her same or similar calamity.

The female chief, elders and others who sat in on the case received part of the money forfeited by the unsuccessful party. Both disputing parties thanked the court with two bottles of local gin.

### **Case 2: Lili v. Lulu and Lolo<sup>5</sup>**

This second case was a land dispute between a woman named Lili (Plaintiff) and two men, Lulu and Lolo (Defendants). Both disputing parties were first cousins. This means they belonged to the same patrilineal family. The woman claimed title to a piece of land she inherited from her deceased mother, which the male family members wanted to snatch from her. This case is typical because among the Anlo, land issues relate to livelihood. Women in principle do not have the right to inherit land from their fathers. As a productive source, only men access, control and use it to support their immediate families including women as wives. The case was resolved at Avadada's indigenous court in Anloga. Like in the preceding case study, the present one appears in this research because it is property related and involves a female's inheritance right. As we shall see, this second case is not as straightforward as the first one. There was some complexity about it. It, therefore, involved adjournments, which allowed elders to inspect the contested land.

#### **Plaintiff's statement**

Before stating his case, the plaintiff was first asked to swear, which she did as follows: 'I swear to the *Aklibuso stool* to speak the truth in the matter at stake. I know that you the ancestors are here listening to us. If I tell lies in the case, take my life'. The *Aklibuso stool* is a family ancestral stool. In Ghana, these religious objects are highly revered and feared since people believe the spirits of

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<sup>5</sup> This is another case, among others that was recorded during fieldwork among the Anlo at Anloga in 2007.

their dead ancestors reside in them. These ancestral spirits are believed to protect, but can also punish or even kill if they are defiled. One of the ways of defiling them is to swear falsely to them. After swearing, the plaintiff demanded the removal of a panel member she did not want hearing her case. This was complied with by the court.

The plaintiff stated she came from Konu village and that she was a fishmonger. Her maternal and paternal grandparents came from the same village. She and the defendants descended from the same great grandfather, Helu and were first cousins. The great-grandfather's children came from the same mother. The common ancestor lived at Konu and owned land. Due to land litigation, the ancestor collected money from his two sons, N and M. This was why N and M have their names associated with the ancestral land even though among the Anlo, land is a family property; it is not individually owned, and therefore cannot be sold. It is kept in common for the use of all family members.

Later on, M married B and had the following children: Ze, Lina Kodzo, Pe, and Woli, who was the plaintiff's mother. According to the plaintiff, the family turned her grandfather's farming land into a cemetery. After the death of her grandmother, the plaintiff's mother asked for the replacement of the land turned into a cemetery since she had no place for farming. In response, Lulu (main defendant) on behalf of the family provided a portion of land to her. The plaintiff mentioned that one elder, Kofi, was present when the land transferred to her mother. Accordingly, the plaintiff's mother erected a pillar on each of the corners of the land. Later on, someone named Sao destroyed all the pillars claiming that the land belonged to him. The plaintiff's mother reported this to the family and the family head (main defendant) promised to give another portion of land to her.

The plaintiff maintained that she was present during a family meeting, when her mother handed over documents, indicating ownership of the disputed land, including some amount of money (proceeds from the land) to the main defendant (the family head). After a month, the plaintiff's mother inquired about the money and the documents but learned that they were deposited in a bank. The plaintiff's mother wanted to know who the signatories to the bank account were. This led to misunderstanding between her and the family head. The plaintiff's mother subsequently reported what the family head had done to the paramount chief of Keta. At arbitration, the family head was found guilty. After this trial, the plaintiff's mother received a new piece of land.

Some years later, the plaintiff needed 12 Ghana cedis. She asked her mother for help but she had no money to give her. In order to raise the money for her daughter, the plaintiff's mother pawned her portion of land to someone for a period of five years. Unfortunately, she died soon after. At the end of the five years, the defendants seized the land claiming that it was family property. As a result, the defendants refused to render account on proceeds from the land the plaintiff inherited from her deceased mother.

To make sure the land was now in their hands, both defendants destroyed the evidence of ownership that the deceased had on the land. When the plaintiff went to fence the disputed land, both defendants ordered the police to arrest her, contesting among other things that the disputed land did not belong to the plaintiff since she was not a member of their family. The police advised

the disputants to settle the case in a chief's court. In Avadada's indigenous court, the plaintiff sustained that:

I want this court to order Lulu and Lolo (defendants) to show me which town in the central Volta region they said I came from. If they fail to indicate the place, the court should collect 250 Ghana cedis from them for me. They should also tell me why I should not be free to enjoy my mother's property. If they fail, the court should collect the same amount from them for me.

After the plaintiff's statement, she was cross-examined by the main-defendant, Lulu:

Q. Were you present when I gave the land to your mother?

A. No.

Q. I put it to you that it was your mother who pointed out the place where Sao objected to.

A. That was so.

Q. The land is for K.B.

A. It can be true, for Helu comes from K.B. family.

Q. Do you know Konu has a war chief?

A. Yes.

Q. I put it to you that the land is a stool property of A.A.

A. It may be so.

Q. N and M's land is not for two people.

A. Yes.

Q. Do we not have building and farm plots on the land?

A. The land was originally a building plot now turned into farm.

Q. Is Ze not your senior uncle?

A. Yes.

Q. Why did Ze not give your mother a portion of land?

A. My mother was in Benin.

Q. Are there wells on the land?

A. Yes.

Q. Are the wells not identified?

A. They are mixed.

Q. Is your mother not from M?

A. Yes

Q. Is M's property no different from N's property?

A. The two did not share the property.

Q. Were the wells not on the farm before your mother died?

A. Yes.

Q. Was the land not shared at the time of our parents?

A. It was not shared.

Q. What authority do we have before your mother asked us for the land?

A. Because of the respect she had for you.

Q. Do you know that we are the family heads?

A. No.

Q. Do you know that your mother was alive before we destroyed the place?

A. They were destroyed after the death of my mother.

Q. Do you remember that when your mother erected the pillars, I questioned her?

A. That was so.

Q. Do you remember you said Ashie is So's relative?

A. She is her daughter.

It is important to note the first defendant's argument (as reflected in the plaintiff statement) that the plaintiff was not a family member. Thinking he might prove the plaintiff wrong before the court, the first defendant cross-examined her mainly on genealogy (family history). The cross-examination was continued by the second defendant as follows:

Q. Do you know that all the persons you mentioned had landed property?

A. Yes.

Q. Where are they?

A. I mentioned all I knew.

Q. Have you built on the farm?

A. Yes.

Q. Which of our parents built on the farm?

A. Ga.

Q. What is your name?

A. Lili.

Q. Are you aware that your mother said the property should return to us after her death?

A. That can't be true.

Q. Were we consulted by your mother before she pawned the farm?

A. I do not know.

This last question ended the cross examination by the defendants; and the witness for the plaintiff was then brought in to make his statement.

### **Evidence of plaintiff's witness**

He swore before testifying. He admitted that the plaintiff and the second defendant were her cousins and that the main defendant was his younger brother and their family head. According to him, N and M had a plot of land at Konu. In 1970, he received a piece of land through Ze and in appreciation for it, he gave a bottle of whisky and some amount of money to the family. It was in the same year that the plaintiff's mother, Woli was also given a building plot. She erected pillars at each corner of the plot, but Sao destroyed the pillars. His aunt Woli summoned the case before the paramount chief at Keta. The first defendant and other members of the family were present. In this trial, his aunt won the case.

Later on, three grandchildren of the plaintiff were seized by a deity for whom rites must be performed for their release. His is a situation where a child may be seized by a shrine as a penalty for an offense a parent, a family member or the child might have committed against a deity. The child seized becomes a slave or *trokosi* to the deity. Having no money to buy things needed for the rites, the plaintiff approached her mother for help. The mother informed the family, including the family head, about the issue. Since she too had no money to help her daughter, she pawned her piece of land to raise the money to buy the things for the rites at the shrine. But she (the plaintiff's mother) died soon after she pawned the land. After her death, Lulu (main defendant) said the land no longer belonged to the deceased.



When the testimony was completed, the plaintiff was asked if she had any questions to ask her witness. This procedure helps disputants to throw more light on issues that their witnesses have raised. She did this as detailed below.

Q. Did your aunt who was my mother invite some family members before she took the land?

A. Yes, she even brought in a surveyor.

Q. Was the land in the same shape before you were given your portion?

A. Yes.

Q. Is the land in question my mother's land?

A. Yes.

After this, the main defendant cross-examined the plaintiff's first witness as follows.

Q. Who gave the land before it now turned into farm?

A. I do not know.

Q. It was our parents who gave out the land before it now turned into farm, not so?

A. That may be so.

Q. Is the land not for N and M?

A. You are saying it.

Q. Did you see some wells with N/M's names on it on the farm?

A. I saw N/M's names on wells.

Q. Do you realise it is for two people?

A. I could not understand it.

Q. Did you see some wells behind your house?

A. Yes.

Q. Why did you not find out why two different names were on the wells?

A. I did not find out because there was no need for it.

Q. Why did you not ask Arom?

A. I can't ask him.

Q. Was I present before you were given the land?

A. You were not present.

Q. Did you inform me?

A. I did.

Q. Do you know I inspected the place?

A. I do not know.

This was followed by cross-examination of plaintiff's first witness by the second defendant.

Q. Who gave the land to aunt Woli?

A. You gave the go ahead with your blessing.

The panel then cross-examined the plaintiff's first witness.

Q. The dividing line you saw was not good hence your objections?

A. Yes.

Q. Tell us how you descend from N or M.

A. The witness made a presentation of the ancestral family tree or genealogy.

After this, the court was adjourned for the day. When the court session resumed, the defendants were asked to swear and state their case following the same procedure the plaintiff had done.

### **Defendants' statement**

The main defendant, like the plaintiff, objected to the inclusion of an elder among the panel of judges. The elder was removed but he was allowed to make a record of the proceedings. Both defendants individually mentioned their names, indicated their religion, and swore to *Aklibuso stool* that they would not tell lies when stating their case.

In his statement, the main defendant admitted his relationship with the plaintiff, explaining that his aunt was her mother. He also admitted most of what the plaintiff had stated and that it was a misunderstanding over the disputed land that led his aunt to summon him to a chief's court at Keta. This aunt, according to him, was the 'last remaining of our parents'. He informed the plaintiff's mother that she could inherit from her father, but that she could neither sell nor pawn the farm. However, she refused to consider his advice. The defendant explained that since the property (land) was owned by two families, he did not agree that his aunt should pawn her portion of land. This was why, according to the main defendant, he destroyed the fence around the farm. His aunt (Plaintiff's mother) died soon after the destruction of the pillars. After her death, he convened a family meeting and invited the plaintiff but she refused to attend. It was in this meeting that the family asked Arom to render accounts on the farm.

The main defendant indicated that the land in question was a farmland and not a building plot as the plaintiff had alleged. According to him, during inspection of the disputed land, the second defendant reminded the plaintiff that the land was ancestral property, and that anyone who would not admit this, might have trouble. The plaintiff interpreted this as a spiritual threat to her life. The main defendant, like the plaintiff, also reiterated the names of his predecessors in the family, emphasising among other things that the land in question became the property of N and M when their father was in need of money for litigation. Thus, the land was shared between N and M, each occupying 100 plots of land.

After the statement, the plaintiff cross-examined the main defendant as follows.

Q. Do you know that the whole land was farmed?

A. No.

Q. Do you know Ze had a farm and a cocoanut plantation on the land?

A. No, it is not true.

Q. Do you know Ze stayed in Konu?

A. Yes.

Q. Which work did he do while in Konu?

A. Fishing.

Q. Do you know he also farmed?

A. I do not know.

Q. I put it to you that N and M did not share the land.

A. I do not know.

Q. Why did Ligo have a share of land?

A. I do not know.

Q. Why did your father also have his share?

A. I do not know.

Q. Your brother Seth also had a share of the land.

- A. Yes.
- Q. Building on a farm is good, hence Seth built there.
- A. It is not true.
- Q. Why?
- A. Ze approved it.
- Q. Do you know that mother Woli also had Ze's approval?
- A. It is not true.
- Q. How do you know?
- A. Ze died.
- Q. Did Ze not die before Seth built his house?
- A. Yes.
- Q. Who has ownership of the land – Seth or Woli?
- A. Woli.
- Q. Woli inherited from M, not so?
- A. Not she alone.
- Q. Who gave the land to Seth?
- A. Rotor, Ze, Gala.
- Q. Woli took you to the chief's court.
- A. No.
- Q. Were you not at the chief's court?
- A. No.
- Q. Did you hear what exhibit 'A' said?
- A. I was not present when the records were made.
- Q. Woli summoned you before the chief's court.
- A. Mensah was summoned, not me.
- Q. You said the land is for your aunt Woli.
- A. Yes.
- Q. Woli used the authority you gave her.
- A. I gave authority over family accounts only.
- Q. If the farm is yours, is the land not yours?
- A. It is for the family.
- Q. Who begot Koti?
- A. Ashie.
- Q. Who did Ashie begot?
- A. Tovi, Miata, Lago, Galu, Kua, Worvi and Esinu.
- Q. Who begot Woli?
- A. Woshie.
- Q. How many children did Woshie have?
- A. Lidze, Dzo, Kple, Ze, Sawo and Woli.
- Q. Whom did N marry?
- A. Sodzi and Gbe.
- Q. Who were the children of Gbe?
- A. Wia.
- Q. What are the properties of Shie's children at Konu?
- A. I do not know.

Q. You are N's family head, not so?

A. Yes.

Q. As a family head, is it not your responsibility to know the properties of N's descendants as shared among them?

A. I would not know all.

Q. Why were you made a family head?

A. I will not know if I am not told.

Q. I put it to you that Shie's children had no properties at Konu hence Woli took the land and was supported by all members of the family except you.

A. I do not know.

The plaintiff also cross-examined the second defendant as follows.

Q. Is that all the properties you mentioned?

A. The land was shared but the building plot was not shared.

Q. Is the land not for farming?

A. Yes.

Q. If a family member had no share in the building plot, can't he/she have a share of the farmland?

A. No.

Q. Where will that family member stay?

A. I do not know.

Q. If somebody had a place to stay and you objected to it, are you not guilty?

A. I am not.

Q. Where do you allow the person to stay?

A. My grandfather did not allow building on the farms.

Q. Do you remember we settled this issue before elder Kofi?

A. Yes.

Q. Do you remember Kofi asked us to share the land into two?

A. He did not say so.

Q. What was the settlement?

A. We were asked to go and have equal share.

Q. What then is your problem with me?

A. We did not accept Kofi's awards.

Q. Why did you provide drinks?

A. We did not provide drinks.

After this, the defendants' witness was then called in to testify about what he knew about the case.

### **Evidence of defendants' witness**

The defendants' witness introduced himself and then swore. He mentioned that he knew the disputants. He was farming on part of the family land. He and the disputants met at Konukope where terms of farming on their land were discussed and agreed upon. Documents on the terms of farming were signed by Kofi, Ze and Mida while Senu signed as a witness. The mentioned family members were asked to make wells on the farm. Part of the land belonged to M while the other was for N.

Libation (traditional form of prayer) was made in the presence of the family head (main defendant). He made accounts to them every January.

In 1987, we made the accounts in Meka's house and Woli (Plaintiff's mother) was present. There came dispute between Woli and her nephews and nieces. The farm had 200 pieces of plot. The plaintiff's witness fenced around 20 pieces of the plot and destroyed the wells. I informed the family. Woli asked me to find somebody to rent 60 beds for 5 years from 1997-2002. I used to render accounts of 120 pieces of plot to her. She died in 2002. N and M's families invited me. The plaintiff was also invited but she did not come. N and M's families gave me 180 pieces of plot to cultivate. The plaintiff wanted the 60 pieces of plot, which her mother rented. But before her death Woli (Plaintiff's mother) had told me that the departed members of the family asked her to leave her portion of land to the family. The documents on the land were given to Woli, who did not return them before her death.

After the testimony of the witness, the defendants, like the plaintiff, were asked whether they were satisfied with what was said. They were given a chance to question or remind the witness of what he might have omitted during the testimony. The main defendant questioned his witness as follows.

Q. Did Woli erect pillars at the corners of the 60 beds?

A. Yes.

Q. Were the pillars destroyed?

A. Yes.

This brief questioning was followed by a cross-examination of defendants' witness by the plaintiff.

Q. Did you see corner pillars on the 60 beds?

A. Yes.

Q. Were there names on the pillars?

A. Yes.

Q. Which name?

A. Woli.

Q. Did it show ownership?

A. I do not know.

Q. Did my mother give the documents on the land to Akoenu?

A. Yes.

Q. Was I present when the farms were rented?

A. No.

Q. How come my name was in the document?

A. I do not know.

Q. I put it to you that I was present.

A. It was not true.

Q. Who shared the land for N and M?

A. Kofi, Ge, and Ze.

Q. Was the sharing made known to elder Kofi?

A. Yes.

Q. Why did we not see it that day?

A. I do not know.

After this, the panel also cross-examined defendants' witness.

Q. What complaint did you make and to whom when the six wells were destroyed and the 20 farm beds were removed?

A. I told Woli and the defendants.

Q. What was their reaction?

A. They said they would take action.

The session was adjourned for another day to allow inspection of the disputed land. But before the inspection, the court received a letter from the main defendant acting in the capacity of a family head indicating that the matter in the letter was *Res judicata*. The letter bore fingerprints of a sub-chief and some principal elders of the defendants' family. However, an elder of the family refused to add his thumbprint to the letter. When the panel of judges at Avadada's court contacted the signatories to the letter individually, it was discovered that Lulu (main defendant) as a family head, compelled the people to make their thumbprints on the letter without first letting them know its contents.

When the court session resumed, Avadada asked his elders (panel of judges) if they had any questions to ask both sides. The panel asked both disputants to summarise their respective statements and explain what actually they wanted the court to do for them. The panel did this to ascertain, first, the thoughts of both disputing parties. Second, it wanted to know whether there would be consistency in the facts the disputants had presented. After this, the Avadada then asked the disputants through his spokesperson whether they were ready to accept whatever judgment or award he was about to give on the case. When they agreed, Avadada and his elders withdrew for a private consultation among themselves. This is known among the Anlo as going to consult *Abriwa* (Ewe) or *Abrewa* (Akan). In Ghanaian traditional metaphysics, *Abriwa/Abrewa* is a very old woman reputed for her wisdom and mystical powers, which enable her to arrive at impartial verdicts. Because of these qualities, she is consulted for advice in legal decision-making. Thus metaphorically, when the jury stays in the courtroom or goes out to deliberate among themselves to arrive at a verdict, the jury is said to have withdrawn to 'see' the *Abriwa/Abrewa*. The procedure provides a 'mini forum' for an impartial assessment of the case at stake. People who are involved in the deliberation are ones who have been present throughout the court sessions and who have observed all the proceedings. In Western terms, the procedure is a version of trial by jury (see also Fred-Mensah 2000: 36-7).

### **Consultation of *Abriwa/Abrewa* and presentation of verdict**

The first thing Avadada and his council of elders consider in the private consultation is the sitting or judgment fee. This is paid either in cash or in 'drinks'. The fee is communicated to the disputing parties through Avadada's spokesperson. When both parties accept the fee, the spokesperson returns to the private deliberation.

In this private deliberation, the senior spokesperson of Avadada is first asked to summarise the statements made by both the plaintiff and defendants, and the testimonies of their witnesses. He is expected to analyse each statement and make his personal judgment on them. He passes his judgment on the case through an assistant spokesperson (who is also a member of the panel of judges) to the chief. Each member of the panel in turn makes his analysis and judgment. Avadada, who chairs the panel, is the last person to deliberate on the case. Before making his judgment, he considers the evaluations and judgments that have already been made by the other panel members and then takes the majority decision.

After arriving at consensus, the senior spokesperson of Avadada, who is deemed very eloquent, is asked to present the verdict when they return to court. Other members of the panel, including Avadada tell him what points to stress and which one not to stress as he presents the verdict.

When the panel eventually comes back to the courtroom, the members greet the disputants, the witnesses, relatives and friends, and all who have come to listen to the case. The chief's spokesperson then demands the sitting fee from the disputants before he gives the verdict.

Like the presentation in the Asantehemaa's court, the main spokesperson of Avadada evaluates the statements of both the plaintiff and the defendants and the testimonies given by their witnesses, stressing the weaknesses and or strengths of each. When he has finished, each elder in turn corroborates and supplements what the spokesperson omitted. Thus among the Anlo and the Asante, the presentation of verdict or *adamgbesese* is never done by one judge. This is why, after a judge has announced a verdict, other judges, one after the other, reiterate, emphasise or supplement points that have already been mentioned or omitted by a previous judge. It may be that the one who speaks first may make some mistakes. Others who speak after him will make corrections. Second, the practice is to demonstrate to the disputants that the verdict has not unilaterally come from one person; a strategy to prevent the guilty party from hurting or attacking a particular elder or judge because of a court decision.

Judgment on the land case confirmed the ruling by the chief of Keta that the disputed land belonged to the plaintiff's mother. Second, the panel considered the letter presented by the main defendant that the disputed land should not be released to the plaintiff as not only fraudulent, but also vexatious. The panel also disagreed with the testimony of the defendants' witness that ancestors had asked the plaintiff's mother to return the disputed land to the family. The panel declared that the plaintiff, 'in accordance with Anlo custom and practice is entitled to inherit her mother's property; and inheritance of her mother's land is hereby granted to her'. According to the court, the plaintiff's mother had stayed more than 12 years on the land without interruption and for this reason, the disputed land is owned and therefore, the property of her daughter, Lili.

The defendants who lost the case were asked to pay all the expenses made in the course of the arbitration —beginning from the reporting of the case to the verdict (excluding the thanksgiving drinks presented by the plaintiff). The court also ordered that restitution should be made by the defendants for the destroyed corner pillars (valued at 50 Ghana cedis). Altogether, the defendants were to pay an amount of 250 Ghana cedis to the plaintiff. In addition, the court directed that the defendants, 'their heirs, privies, workmen, servants and all those who claim title through them are hereby restrained from entering the land.'

After the announcement of the verdict, both plaintiff and defendants and those who accompanied them to the court were respectively asked to withdraw to consult among themselves about the judgment. This is another procedural principle to see whether both disputing parties were satisfied with the verdict or not. In this particular case, the parties came back in agreement with the verdict. The plaintiff, therefore, presented two bottles of Schnapps to the panel in appreciation for the arbitration. The Avadada's spokesperson then dabbed her with white powder, which signified her vindication.

After this, both plaintiff and defendants were made to shake hands and were advised to bury the hatchet and to live again as members of the same family. Since both disputing parties belonged to the same family, the court ordered that the family head should organise a reconciliation ceremony for their members in their original home at Konu.

Libation was poured thanking ancestors and gods for assisting in the resolution of the case. The unseen presence was also asked to help heal and strengthen the relationship between the disputing parties.

## **DISCUSSION**

Family members and friends accompanied both disputing parties offering their support in the indigenous courts. The sympathisers in the courts could not take part in the decision-making with the panel of judges since they had already taken sides in the case.

Before the verdicts in both cases, the sitting fees were paid to avoid instances where a party might refuse to pay his part after judgment was given. The fee is a testament that the trial occurred in an indigenous court and that disputants willingly appeared there.

It is significant that both disputing parties successfully invoked their right to retain and remove persons they considered fit or unfit from the panel of judges who tried the cases. As indicated, Aubert (1963) argues that a legal process may transform from dyadic relationships into triadic ones once other(s) intervene. This intervention means, 'to the extent that recourse to a particular mode of settlement may involve others, it may also involve the personal interests of those others, or the interests associated with their positions' (Moore 1969: 277). In other words, the intervention of others may have important effects not only on procedure, but also on outcome. It may also affect the breadth of significance of the dispute. The indigenous courts, therefore, give disputing parties the legal right to remove any member of the panel of judges for this reason, to minimise other interests intervening.

Although the main defendant in the second case study rejected an elder from the panel of judges, the elder was allowed to record the court proceedings. This seems unfair especially in cases where a losing party may take the case to the formal court for reconsideration, and the latter in turn may demand records from the indigenous court.

Anthropologists stress the need to consider the litigants' activities and objectives. They also draw attention to the disputant's wider goals, which involved them in a particular quarrel; the manner he or she recruited support or chose the agency before which he brought the dispute for settlement; and the kind of tactics he employed before that agency (Roberts 1976: 676). Both trials showed the above anthropological observations. During the arbitrations, it became obvious how male siblings or kin conspired, condoned and politicised the cases with the intention of misappropriating their female kin's property rights.

In the first case study, for example, the eight male siblings mischievously misrepresented what their sister did in order to sway the verdict to their favour. The plaintiff, on behalf of the other brothers, accused the defendant of insulting him, stating that he was useless. This is a serious



charge. According to Akan culture, a woman cannot tell a man that he is useless. To say this may amount to saying that the man is not a man. He is effeminate, worthless. Elders therefore consider these kinds of insults from a woman with all seriousness. To compound the case, the plaintiff alleged that the female defendant cursed his entire family. Neither of the accusations influenced decisions at the end of the deliberation. The plaintiff's argument could not work because his witness, (one of his brothers) misspoke in his testimony. Second, the jury, who is usually familiar with such sibling conspiracies, did not only listen to the facts of the case but also dug into the motive of the plaintiff for bringing the case to court. The motivation of the male litigants was to remove their sister from the house, which she built from proceeds from the store she had inherited from her deceased mother. The main reason was that they did not like the presence of their in-law (their sister's husband) in the house.

The Anlo case study involved a similar situation where the defendants and their witness connived, condoned and wittingly tried to usurp the land the plaintiff inherited from her deceased mother. Their effort to usurp the land was as premeditated as it was calculated. Their manoeuvre to collect documents (legal evidence, which spells ownership of land) from the plaintiff's mother before her death demonstrates this clearly.

Because it was a premeditated and calculated plot, just after the death of the plaintiff's mother, the men tried to damage the plaintiff's inheritance right to the land by insisting that she was not a family member.

Seeing that this malicious plan could not achieve the intended goal, both defendants and their witness quickly shifted their argument to invoking the authority of their dead ancestors; that the plaintiff's mother before her death directed the land she had occupied, controlled and used go back to the family since the ancestors requested her to do so. Among Ghanaians, tradition demands a person's dying words receive respect and be taken seriously. By appealing to the spirits, of which there would be no verification of fact, the defendants and their witness thought they could win over the panel who knew the disputed land was ancestral property; that is, it belonged to the first ancestor of the disputing family. Moreover, the men knew that the chief and his council of elders would not dispute their claim since the political and the judicial authority vested in them came from departed ancestors. Nevertheless, this trick also failed.

Furthermore, the main defendant, also the family head fraudulently deceived principal elders of his family to thumbprint a letter he unilaterally wrote on behalf of the family urging the disputed land not go to the plaintiff. The vigilant and thorough investigative work of the court thwarted this mischievous plot.

Finally, the defendants moved their argument back to custom and tradition. Theoretically, there are two objectified normative conceptions underlying property relations among the Anlo. These are: 'A man inherits from a man' while 'A woman inherits from a woman' (see Gedzi, 2012a:213-214). Because of these general normative concepts on property relations, the defendants could not understand why their cousin, a woman (plaintiff), should inherit the land since her mother did not buy it; and according to Ewe indigenous law, which the Anlo share, one does not buy and sell family land. In addition, women can inherit family land but they can only have a life interest in it.

As such, they cannot pass it on to their own children, unless the issue comes through a family marriage; in which case she also belongs to the same lineage of both parents. Traditionally a farm created on the family land belongs to the one who developed it, but the land still belongs to the family. In addition, a child may till a portion of the land of a parent but cannot say he or she owns the land. The plaintiff's argument therefore, that because her mother made a farm on the land and that by virtue of that fact the land belongs to her, seems contrary to Anlo tradition and practice. This was the defendants' last legal argument.

It is important to note that the plaintiff's mother was the only surviving child of the father. The portion of disputed land was a gift she (plaintiff's mother) received from her father. Thus, the plaintiff's mother had not only a permanent interest in the land but she could also pass it on to her child, the plaintiff.

Perhaps, the application of the relevant indigenous norm or principle of property relations helped determine the judgment. This does not mean that other considerations such as the behaviour or character, the motivations of disputants, among other things, held no weight. In other words, in any indigenous court, judges make choices of what norms, from a variety of social norms and practices will be suitable in rationalising a particular case. 'Even where the applicable norm is clear, alternative decisions are often possible on the grounds of adequacy or inadequacy of the evidence. There is also in the background the possibility of judicial innovation. All these complicate the process of decision, and make norms something less than automatic guides to decision' (Moore 2000: 184-5).

In both case studies, we see that the courts norms or principles used in judging the cases are no different from the norms or principles in the respective societies under investigation.

Research on dispute processing or resolution (cf. Abel 1974, 1982; Merry 1979; Nader and Todd 1978) suggests conflict-handling fora and 'procedures of disputing typologies such as mediation, negotiation, arbitration, litigation, self-help, avoidance, and "lumping it"' (see Felstiner 1974; Goldberg et al. 1985). The case studies demonstrate a combination of strategies such as arbitration, negotiation, adjudication and mediation for handling cases. Thus, in the court sessions, the disputants not only mutually consented to their cases appearing in the courts, but there were also judicial contests in which each party argued to win the case. The judges made every attempt to bring about a peaceful settlement or compromise between the disputants through an objective intervention. The Anlo and Asante procedure on dispute resolution, like much other evidence, suggests that chiefs and their council of elders often use norms (explicit or implicit) to legitimatise their decisions in the same way as disputants use norms to give substance to their arguments.

The chiefs and their elders carry their authority from ancestors and have the responsibility to make their rulings in accordance with established traditional norms. The nature of their judicial authority is derived from the nature of the political and religious source and the whole political and religious setting in which this judicial authority is based. Apparently, in the context of the Anlo and the Asante there is a political as well as religious dimension to all judicial proceedings; and that their procedures of dispute resolution appear intimately linked with the political and religious systems in which they are embedded.

The chiefs and their council of elders, as implied earlier, take a comprehensive view of disputes in relation to the norms, beliefs and socio-cultural practices of their society. They see their responsibility to resolve disputes in terms of community welfare. This is why they view dispute resolution as a reconciliation of divergent interests, which preserves not only the physical but also the spiritual well-being of the whole society (see also Uwazie 1994, 2000).

Finally, the procedure of questioning and cross-questioning, as seen in the two indigenous court case studies, seems structured on that of the formal court. This influence seems even more pronounced with the Avadada's court in the way the court presented the final verdict on the case. For example, part of the basis for the court's verdict was the fact that the plaintiff's mother had occupied the disputed land for more than 12 years uninterrupted. Thus she, and by extension her daughter, the plaintiff, had the right to the land. This aspect of the court's ruling appears influenced by the Western acquisitive prescription on property as seen in the formal court, whereby an item belongs to a person or persons if they possess it uninterruptedly for a certain period as if they were the owner. It seems that with the passage of time, this influence from the formal court either intentionally or surreptitiously crept into the indigenous dispute resolution systems of Anlo and Asante. This finding seems to contradict the hypothesis that Anloga, which is not cosmopolitan, may reflect more indigenous elements in its dispute resolution institutions than those of the cosmopolitan Kumasi.

It is also worth mentioning the role of religion in arbitration procedures in indigenous courts. According to tradition, chiefs occupy ancestral stools. As a result, most people believe that when chiefs and their elders sit over a case, unseen spiritual or ancestral forces help them reach an objective verdict. Because of this belief, some do not question decisions from chiefs' courts. The role of religion also appears in the case studies, particularly the first one where disputing parties swore the awesome oath to the queen mother. The traditional belief is that thought of spiritual sanctions can prevent feuding parties from revisiting a problem that has been resolved for them in a chief's court. In both Avadada and Asantehemaa's courts, the panel of judges did not only succeed in judging the cases but also made adequate provisions to avoid a repeat of the problem. This last fact is significant when comparing Asantehemaa's court, for example, against the settlement in the formal court where all the male siblings connived and condoned to testify against their sister; a case they won. Yet judging from what happened later on, it would appear that the formal court's judgment only succeeded in heightening the tension between the disputing parties.

There is also a strong element of compromise with dispute resolution in societies such as Anlo and Asante. This element tends to be present in each of the given outcomes of the case studies. This gives the dispute settlement process a bargaining flavour and makes it characteristically different (see also Roberts 1976: 676). The Anlo and Asante believe that conflict situations involve ruptures in disputants' interpersonal and social relationships. Because of this, the socio-cultural groups see dispute settlement as opportune moments for the restoration of broken relationships. Thus, the sequence of events called arbitration or legal decision-making for mending of broken relationship plays a major role in their legal culture. As indicated, in both case studies, the losing parties did not only lose their deposits but had to pay compensation fees to the victorious parties. Moreover, in the first case study, the panel admonished the guilty party to appreciate the effort of the defendant who put up a house to accommodate them. Consequently, the guilty party had to

apologise to the defendant. The ejected brother gained reinstatement but first had to agree never to maltreat his sister (defendant) again. After this, the plaintiff and his brothers shook hands with the defendant. The handshake is a sign of repentance and reconciliation between the disputing parties. Similarly, the family heads of the disputing parties in the second case study had to organise a reconciliation rite for the disputants. This rite would not only reconcile the disputing parties, it would also reconcile the parties with their community.

The study also reflects ideas, values, traditions and culture, and the basic premises of the Anlo and the Asante traditional societies. For example, through the study one realises that among the Anlo, society gives more inheritance rights to men than to women. However, there are also occasions when women's inheritance rights receive full acknowledgement. Thus, the 'analysis treats each case as a stage in an on-going process of social relations between specific persons and groups in a social system and culture' (Gluckman 1967: XV). The strength of the traditional approach corresponds to what anthropologists propose – that is, to study law in relation with other realities in the social universe. Moreover, the litigants' perspectives (Gluckman 1967) and other issues in the social context were considered during the dispute resolution processes among the Anlo and the Asante.

The findings of the research have also shown that court norms in determining cases are no different from social norms on property relations. However, it is realised that judges might not base their judgement only on indigenous norms. They may also consider other factors, such as the adequacy or inadequacy of evidence presented, the character or behaviour, and motivation of litigants. This means that norms may not always be determining factors in every court outcome.

On the other hand, outcomes of a chief's court may depend on the type of case brought before it. Outcomes may be fair when the case involved is gender neutral and determined by relevant cultural norms. The two main case studies demonstrated this, where the women litigants were acquitted of wrongdoing against the male contesters. It means the norms used in judging the cases did not violate the property rights of the women involved. The women were acquitted because the issues concerned their mothers' property (not a man's property), which according to custom and tradition of the Anlo and the Asante, daughters have more rights of inheritance than their male counterparts do. The outcome of the courts might have been different if the objects of contestation were men's properties. In short, rulings in chiefs' courts do not always go against women. Women's rights are not observed in the courts only when the case at hand is gendered.

In the case studies it is seen that even though the panels in both chiefs' courts referred neither to domestic formal law nor to the international conventions in the trials, their procedures in the case studies reflected some degree of objectivity and therefore observation of the women's property rights.

Conversely as a social group, women have limited participation as decision-makers in chiefs' courts. For example, there was no female chief or elder included in the panel of judges in Avadada's court even though women were among the litigants. Similarly, in the first case study from Asantehemaa's court, even though the forum was a female chief's court and there were other women chiefs and elders in attendance, only men determined the outcome of the case.

To make dispute resolution in chiefs' courts more efficient and credible requires the following steps. First, review those aspects of indigenous norms or law that discriminate against women's rights of property relations and socio-cultural and religious institutions that support and entrench the discriminatory practices.

There should be equality of both genders under indigenous law. In addition to the need to review the discriminatory aspects of indigenous laws or norms, chiefs' courts where these laws operate also need to be adapted so that women can have equal representation in the panels of legal decision-makers. It would mean modernising the courts so that their operation can reflect the principle of participatory democracy.

It is expected that indigenous fora play a significant role in the protection of human rights of litigants, including women. There are many judicial actors such as chiefs, elders and individuals within traditional societies such as the Anlo and the Asante, who daily apply indigenous laws, norms or principles to meet the need of their people. These local leaders or chiefs are not likely to distinguish between ideology that hurt women's rights, and values in traditional societies that coincide with international normative values. There might be a need to expose them to indigenous values that are rights protective to encourage becoming more rights conscious. This will help in appreciating right-promoting values in traditional society, while avoiding ideological practices or gender-stereotypes that go against women's property rights. It is important that the government of Ghana make provisions so that leaders, chiefs and 'chief-makers', including candidates to the institution of chieftaincy of the various socio-cultural groups, are not only exposed to traditional values that are rights protective, but also to international human rights discourses through periodic programmes. Apart from Non-Governmental Organisations (NGOs) such as the Christian churches and other religious bodies in Ghana, National Commission for Civic Education (NCCE) can receive logistical support to embark on intensive civic education programmes for the public. The educational programmes should be regional, district, township and village level events. It should also involve educational institutions, including tertiary ones. This means that government should see this programme as part of its policy priorities and provide appreciable budgets for them.

Moreover, since gender issues tend to affect women's property rights, and are often used as central reference points for the handling of disputes, there is need for social re-orientation of people. This requires a massive public educational campaign in order to eliminate, or at least minimise, gender stereotypes that operate in the social universe among the Anlo and the Asante of Ghana.

The research is important because, *inter alia*, it contributes towards the strengthening of procedures in chiefs' courts, and in the reform of cultural norms/laws/principles that are gender discriminatory. This may lead to a more credible and acceptable dispute settlement in chiefs' courts. Finally, the findings of the research, among other things, contribute to the theory of law and society, and to anthropological discourses on indigenous law and dispute resolution generally, and particularly in Ghana.

## CONCLUSION

The article has analysed disputes on property related cases among the Anlo and the Asante in which women were involved. The general perception is that cultural norms/laws/principles used in dispute resolution in chiefs' courts in Ghana violate women's rights. Analysis of norms and proceedings in chiefs' courts is important because chiefs' courts play a tremendous role in dispute resolution among the ethnic groups. The findings of the research are that chiefs' courts do not discriminate against women in gender neutral cases and that the bias occurs when the case is gender sensitive. Women also have limited participation as decision-makers in chiefs' courts, a factor, among others, that may contribute to the bias against them. There is need to modernise operations in chiefs' courts to make it gender friendly. Moreover, since gender issues tend to affect women's property rights, and are often used as central reference points for the handling of disputes, there is need for social re-orientation of people. In the final analysis, if the recommendations made in view of the research problem are implemented, they may limit or curtail the gender discrimination against women in chiefs' courts in Ghana.

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