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Mode of Convergence of Case Adjudication between Judicial and Akan Traditional Courts

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ABSTRACT

Judicial and traditional courts play significant roles in resolving disputes and maintaining social order in many parts of the world, particularly in Africa. These institutions adjudicate both civil and criminal matters that have the potential to disrupt peace and stability. In Ghana, judicial courts are constitutionally mandated to resolve disputes and administer justice, while traditional courts, led by traditional rulers, serve as accessible mechanisms for conflict resolution within local communities. This study investigates the points of convergence between judicial and Akan traditional courts and advocates for their complementarity in ensuring effective justice delivery. The concept of complementarity is employed to examine the linguistic similarities between the normative domains of these two adjudicative systems. A qualitative approach was adopted to obtain an in-depth understanding of their practices. The findings suggest substantial similarities between the two institutions, suggesting that traditional courts are important in the administration of justice, and should receive greater institutional recognition alongside the formal judicial system. The study draws on evidence from selected judicial courts across Ghana and traditional courts in the Ashanti Region to examine the similarities in their adjudicative processes. It provides a glossary of selected legal terms to support the findings.

Keywords: judicial courts, Akan traditional courts, complementarity, justice delivery, Ghana.

Introduction

The Akans are a large ethnolinguistic group in Ghana. Ghana is one of the former British colonies in West Africa with a current population of 30.8 million, according to the 2021 Population and Housing Census, and of which, the Akans constitute 47.5%. The Akans are found primarily in

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southern and central Ghana with related groups across the eastern border of Cote d'Ivoire. They consist of seven major subgroups, which are Asante (Ashanti), Fante, Akuapem, Akyem, Bono, Kwahu, and Nzema. The languages spoken by these subgroups are Asanti Twi, Akuapem Twi, Fante, Bono, Akyem, Kwahu, and Nzema, of which the Asante Twi is mutually intelligible. Asante Twi is the dominant Akan variety which is characterized by diglossia, and is widely used in inter-ethnic communication, in the media, churches, business transactions, and education. It is estimated that approximately 55-60% of Ghanaians speak or understand Asante Twi. This sociolinguistic factor is an indication of how the traditional case adjudication in Ghanaian judicial system can best be tracked through a language that is mutually intelligible. Since language is a *de facto* it will not be out of place to state that more than half of the Ghanaian population speaks the Asante Twi.

Sociologically, Akans traditionally practise a matrilineal system of inheritance and hold tenaciously to it. Over the years and to the present, they have been able to sustain a powerful, centralized political system. This centralized political system is passed down through generations; thus, the linguistic norm and cultural knowledge are held in high esteem among the Akans.

Historically, Akans had their own mode of case adjudication even before the period of colonization. They settled disputes and prescribed punishments for offenders. The punishments ranged from banishment, the imposition of fines, to even capital punishment, including beheadings. The traditional rulers had outright authority and lorded it over their subjects. This historical account has been highlighted by Adjei (2017). He recounts that before the British colonisation, traditional authorities exercised both criminal and civil jurisdiction and respect of criminal jurisdiction, they sometimes cautioned and discharged a culprit. Adjei (2017) intimated that this kind of authority exercised by the rulers was later taken over by the British, thus:

The British took over the entire criminal prosecution in the country after she had conquered the Asante people in series of war including the Sagrenti War of 1874 in which the British annexed the Asante territories. The British in maintaining her supremacy over the Asante kingdom defeated the Asante people in 1896 and proclaimed a protectorate over it. (Adjei, 2017: 10)

The Sagrenti War of 1874 emerged in the aftermath of the political agreement of the Bond of 1844. It was a war between the British and the Asante Kingdom. The war, led on the British side by Sir Garnet Wolseley (whose name was locally rendered as Sagrenti), ended with the defeat of the Asante forces and the capture and destruction in Kumasi of Asante Kingdom. Following the war, Britain sought to consolidate its influence over the coastal states and formalize its authority in the region (McCaskie, [1995](#)). The Bond was closely linked to the Treaty of Fomena 1874, which compelled the Asante Kingdom to renounce its claims to several southern territories and recognize the independence of states under British protection. This arrangement strengthened British political and economic control over the Gold Coast and weakened Asante dominance in the region (Boahen, [2000](#)). The agreement also facilitated the establishment of more direct British administration and judicial authority.

One major consequence of the post-war settlement was the proclamation of the Gold Coast as a Crown Colony in 1874. The British used the outcome of the Sagrenti War and subsequent agreements to justify the expansion of colonial governance. The Bond-like arrangements between the British and coastal chiefs reinforced British legal jurisdiction and culminated ~~into~~ in deeper integration of indigenous political systems into the colonial framework (Kimble, [1963](#)).

Overall, 1874 represented a significant turning point in Gold Coast history. It marked the decline of Asante influence along the coast, the expansion of British colonial authority, and the beginning of a more centralised colonial administration that would shape the political development of modern Ghana (Boahen, [2000](#)).

After independence from the British on 6 March 1957, the judicial system of the British was adopted and used as a mode of case adjudication. In view of that consequently, it was given constitutional backing thereby, limiting the traditional methods of settling disputes. Several constitutional governments were overthrown by military administrations, which altered their constitutions. Since the 1992 constitution was adopted and used, there have not been any interference, and it continues to be the legal document on which the citizens rely on. There have been some other legal instruments that complement the Constitution to give an impetus to facilitate case adjudication in Ghana.

The British takeover of the then Gold Coast resulted in a pluralistic legal system: the indigenous or traditional legal system, and the legal system of the courts during colonial rule. Today, many recognize customary and religious laws, alongside formal state laws, particularly in matters such as marriage, inheritance, land tenure, herder-farmer disputes, theft, family relations and other criminal cases. Legal pluralism also presents challenges. Conflicts may arise between customary, religious, and statutory laws, particularly concerning human rights, gender equality, and constitutional principles. For example, certain customary practices relating to inheritance or marriage may conflict with national constitutions and international human rights standards. Governments and legal scholars therefore continue to debate how to harmonize these legal systems while preserving cultural traditions and ensuring justice and equality (Woodman, [2011](#)).

Courtrooms have been inundated and saturated with unsettled disputes, which makes the situation particularly worrisome. Some court disputes have been in ongoing for over ten years, thereby, making correctional centres to swell up. This makes the confident people repose in the courts wane, thereby cutting a slur on its credibility. It is based on this premise that this research is conducted to ascertain the modus operandi of the traditional court system, which could be a complement to the judicial one and to ease congestion in the court room. Knowing the structure of the traditional court thoroughly will motivate others to patronize it. Another related reason is the integration of these two institutions, which brings traditional rulers closer to the people and enables them to identify misconduct more easily. Traditional rulers are found in cities, towns and villages of Ghana. Their main function is to ensure there is the prevalence of peace and orderliness in their localities. However, their mandate as conflict conflict-resolution practitioners is not backed by the law and regulations of the land. This current study investigates the convergences of these two administrative bodies and advocates for their complementarity to ensure the proper dispensation of justice. In this work, a judicial court refers to a constitutional court, whereas a traditional court refers to the one adjudicated by a court presided over by a traditional ruler. The researchers used few judicial courts in Ghana and selected traditional courts in the Ashanti Region of Ghana to assess the similarities.

Also, this research specifically aims to illustrate the similarities between the judicial and traditional court systems to enlighten litigants to patronize

and encourage them to use the latter alongside the former. The research will also weigh the procedures for both systems and assert if the traditional one may be considered akin to the judicial one. The paper also seeks to provide a translation of legal terminology from English to Asante Twi. Asante Twi is a dialect of the Akan language spoken in Ghana, a West African country.

Legal and Traditional Adjudicatory Systems in Ghana

Legal communication has become an important area of research largely due to the centrality of the functions of law in human society. According to Ope-Davies and Ademola-Adeoye (2019), the ability to encode and interpret meaning in such texts depends largely on discourse devices that establish connections between different parts of the text and contribute to its overall coherence. Conflict is inevitable in any human endeavour; hence, amicable ways of resolution are needed to avoid the disintegration of society (Williams & McShane, 1999). This view is based on the premise that in any society, there is bound to be a conflict because every individual is innately endowed with personal ideologies, preferences and beliefs. It is generally accepted that that two people cannot stay together for a year without any disagreement or conflict. Agyekum (2006) is of the view that in any human interaction, there are conflicts and disputes and an acceptable manner of co-existence rests on the mechanisms for settling these disputes and resolving such differences.

MacDowell (1978) opines that traditional Akan conflicts are resolved by the chief of the area and his sub-chiefs. Sometimes, the head of the family also acts as a mediator in dispute resolution. Traditional authorities in Ghana can either mediate or arbitrate in disputes or conflicts. Akans use moderation and persuasion to resolve conflicts in order to prevent their escalation (Agyekum, 2003). Conflicts inflame passion, indignation, hatred and antagonism; and for that matter, their resolution should be approached with circumspection. The constitution of Ghana has enacted laws to govern the country to curb lawlessness and disorderliness to enable citizens live in tranquillity. Court systems are established to ensure compliance with the enacted rules and regulations.

The court system in Ghana has undergone changes during various constitutional regimes and military interventions. The 1992 Constitution recognizes the following courts as superior courts of judicature: the Supreme Court, the Court of Appeal and the High Court. According to

Brobbey (2011), the Supreme Court is the highest court in Ghana and also serves as the constitutional court. In addition to hearing election petitions, it serves as the final appellate court in the country and exercises supervisory jurisdiction over all other courts. Article 135 of the 1992 Constitution sets out the other functions of the Supreme Court. The Court of Appeal, on the other hand, hears only appeals from decisions or orders of the High Court, the Regional Tribunal and the Circuit Court, in civil matters only (Brobbey, 2011). The Court of Appeal has two main divisions: The civil and criminal divisions. Articles 136-138 of the 1992 Constitution elaborate on its powers, composition and jurisdiction. According to the 1992 Constitution, the High Court has original jurisdiction in all civil and criminal matters. It also has appellate jurisdiction over appeals from the District Court and criminal appeals from the Circuit Court. It has supervisory jurisdiction over all lower courts in the country.

The Circuit Court and the District Court in Ghana constitute the lower courts. The name “lower” does not mean inferiority, however, it indicates their limitations in jurisdiction. They were established by the Court Act, 1993. The Circuit Court has a higher judicial status than the District Court. Some areas of jurisdictions of the Circuit Court are as follow: landlord and tenant issues, disputes on concerning contract and tort, problems involving ownership, occupation of or title to a parcel of land, the appointment of guardians of infants and the making of orders for the custody of infants, the granting of probate or letters of administration in respect of the estate of a deceased person etc. The District Court, like the Circuit Court, is established in all regions in Ghana. It has jurisdiction to try summarily, that carry specified criminal offences with some specified custodian sentences and some minor criminal offences which do not attract any lengthy custodian sentences. It settles civil cases whose monetary claims are specified.

Just as the judicial court has divisions, the traditional court also has a similar structure. In the Ashanti region of Ghana, for instance, the Ashanti King is the ruler of all the chiefs in the region and in some other regions in the country. His kingship transcends over all of them. We can therefore, liken his kingdom to the Supreme Court of Ghana. According to Agyekum (2003), the Akan traditional state level is the supreme court made up of the chiefs and the paramount chiefs or the king. There are various types of traditional courts among the Akan, namely, the king’s court, the queen mother’s court, village opinion leaders’ courts, religious courts and family

courts. The king can appoint and remove paramount chiefs, while chiefs and their councils can arbitrate cases brought before the paramount chief. In a catchment area, there may be a paramountcy and the paramount chief oversees the entire paramountcy. The other chiefs under his jurisdiction swear allegiance to him, and a case can be brought to a paramount chief for arbitration if a disputant is dissatisfied with the verdict of a chief. We can liken the paramount chief and his paramountcy to the Court of Appeal and the High Court, whilst a chief in a village is likened to a lower court like the Circuit and District courts. In the past, disputes were settled at a ruler's palace and one could even summon a person before religious leaders for amicable settlement. From time immemorial, before the introduction of constitutional laws, Africans, and for that matter, Ghanaians employed the traditional means to resolve conflicts and grievances:

Traditional leaders have historically used customary law to resolve land disputes, marital matters, succession and inheritance disputes and many more. To this day, the institution of traditional leadership still employs customs to resolve disputes. As a result, customary law continues to play an integral role in the resolution of disputes in communities. (Agyekum, [2006](#))

According to Nana Agyenim Boateng, Otumfour Wireduhene (a chief under the Asante King), traditional dispute resolution has been in existence for many years, and even now, It is widely practised in Ghana and handles more cases than the formal judicial system. He avers that some chiefs in the Ashanti Region of Ghana devote one day a week to settling disputes. According to him, a chief could use three months or less to dispose of a case, whereas the judicial court, in some cases, spends not less than four years for a similar case.

Nana Kutin Safee, the Otumfour Abremponghe of Kyekyewere-Afigya in the Ashanti Region of Ghana, notes that in matters concerning land disputes, chiefs possess more in-depth knowledge than magistrates and judges. They stay with the disputants, and they have profound historical knowledge of land and its boundaries. He emphasised that in some judicial courts, such as the District Courts, judgements are sometimes delivered based on the evidence before the court without any inspection of the land in dispute. According to him, judicial court systems are based on the law and the facts of the matter. He lamented that a party's failure to tender certain documents as evidence may result in the dismissal of the case. He cited an

example in which a judgement by default could be entered if a *defendant* refuses to submit his *defence statement*. Judicial rulings and judgments may, in some instances, be influenced by procedural or legal technicalities.

Before the inception of constitutional courts, there existed the traditional court which followed the same pattern but with some similarities and differences in their operations. In the recent trend, some chiefs settle domestic cases and other chieftaincy disputes. The chief or the king sits to adjudicate cases with the sub-chiefs just as in trial by *indictment*, a *judge* and a jury sit to adjudicate a case. The traditional method of adjudicating matters is different from a *summary trial*, in which a judge or a magistrate sits alone to settle a dispute. However, trivial matters can be settled by an elder of high repute in a community if the feuding parties repose confidence in the elder. Campbell and Obeng (2025), confirm that the courtroom is a site for ritualised and formalised language use. This is especially true of judges, lawyers, bailiffs and court interpreters, for whom such language use forms part of their everyday professional experience. Lay participants, on the other hand, are generally unfamiliar with the workings and interactional norms of the court and can find its rigid structures intimidating.

Conceptual Framework of the Study

The study relies on the concept of complementarity. The term complementarity refers to the idea that two systems, though different in structure, ideology, and procedure operate not in opposition but through mutual reinforcement, thereby supplementing each other in function and meaning making. The concept was first conceived by Niels Bohr in 1927. The concept did not originate in linguistics or law but in Physics and it was later adapted into linguistics, philosophy, social theory, anthropology and in legal studies. According to Hymes (1974), ‘complementarity in communicative systems implies that diverse linguistic codes and norms perform distinct but interdependent functions within the same speech community. In the current study, it is observed that the Ghanaian judicial system is colonially delivered, codified, and English-based, while the traditional courts (Akan) operate on an indigenous and customary basis and rely on oral transmission. This is why Allott’s (1960) definition aptly captures the ideological principle underlying the study, ‘customary law and received law in Africa ~~operates~~ operate not in opposition but in a complementary relationship shaped by social usage and institutional necessity’. Thus, the concept of complementarity is used in this study as an

analytical lens to show how shared communication may, from a linguistic perspective, facilitate functional equivalence and a shared understanding of communicative purposes without requiring identical legal terminology.

Methodology

The study employed qualitative methods to gather and analyse data and ascertain the points of convergence between the judicial and Akan traditional court systems in Ghana. It involved observations at selected palaces in the Ashanti Region, an Akan-dominated region (i.e., Kyekyewere, Afigya Sekyere North District; Asumegya, Amansie West District; Manhyia Palace, the seat of the Asante King) as representatives of the traditional courts, and observations in the District Courts in Jacobu, Suame, and Offinso, in the Ashanti Region. To enhance the reliability and trustworthiness of the study, 20 individuals with extensive knowledge of and experience with the traditional and judicial court systems were purposively sampled and interviewed in line with the objective of ascertaining the convergence between the two courts. Audio data were recorded over a period of three months. The audio recordings were transcribed and categorised according to the objectives of the study. The presidential election petitions at the Supreme Court in 2012 and 2020, which were broadcast live by major television stations in Ghana, were also used as important resources to achieve the objective of this study. The following constitutional court concepts, namely, writ of summons, venues for case settlement, standing ovation, power of attorney, recusal, adversarial and inquisitional methods, contempt of court, ruling and judgments and appreciation were situated in the traditional court system. **Mode of Convergence between Judicial and Akan Traditional Courts**

The study observes elements of similarities between the judicial/constitutional and traditional (especially, of the Akans) court systems as espoused below.

Structures of the two courts

Article 128(1-3) of Ghana's 1992 Constitution sets out the structure of the *Supreme Court*. The Court consists of the *Chief Justice* and not less than nine other justices of the Supreme Court. The court is duly constituted for its work by not less than five Supreme Court justices. The Chief Justice presides over sittings of the Supreme Court, and in the Chief Justice's absence. The Family Tribunal hears *criminal* or *civil* cases involving

persons under the age of eighteen (18) years. The composition of this court is the District Magistrate and two other persons, one of whom must be a social worker. At the *High, Circuit and Magistrate Courts*, some cases are tried *summarily*. This means there is only one presiding judge or magistrate who adjudicates a case.

This composition of the court is similar to ~~the~~ that traditional court system. During sittings, the Chief presides, together with his sub-chiefs. A visit to a traditional court sitting at the chief's palace of Kyekyewere, Afigya in the Afigya Sekyere North District in the Ashanti Region of Ghana showed that, the chief was the presiding officer. We were told that, the Kurontihene, the senior chief, presides. In the absence of the latter, the Akwamuhene presides. A person can also be summoned before an elder or reputable member of his community. The summoned person may appear based on the respect he has for the mediator. This means that a person is not always summoned before a council of chiefs; a matter may instead be brought before a single person, such as an elder, just as a case may be adjudicated by a single judge or magistrate.

Writ of Summons

A Writ of Summons is an official legal document addressed to a defendant requiring the defendant to appear before a particular court on a stipulated day and time. It is prepared by a court registrar, given to a *bailiff* for service. Normally, the *complainant* or plaintiff initiates the service. According to Arbetman and O'Brien (1999), in a civil trial, the party bringing the legal action is called the plaintiff, and in both civil and criminal trials, the party responding to the plaintiff (civil) or *prosecutor (criminal)* is called the *defendant*. The Writ of Summons is attached the plaintiff's Statement of Claim. It is a document prepared by the plaintiff spelling out the grounds on which the summons is instituted. The plaintiff must state the relief sought in the Statement of Claim and provide legal grounds to support the claim. The plaintiff can include a request for an interlocutory injunction and a consequential order that the court may deem fit. The injunction is accompanied by an *affidavit*. The bailiff, accompanied by the plaintiff, goes to the defendant's abode, and the bailiff explains the basis of the service letter to the defendant. The defendant makes an appearance in court after receiving the Writ of Summons. He also files his *Statement of Defence* with the court which is subsequently served on the plaintiff. In the Statement of Defence, the defendant responds sequentially to the claims made by the

plaintiff. He confirms where he agrees with the plaintiff and refutes where he disagrees. When the plaintiff receives the Statement of Defence from the defendant, he also files a *Reply* to the Defendant.

In a traditional court, the complainant goes to the chief's palace, gives a verbal narration of the dispute with the defendant, and pays a stipulated amount of money into the summons fund, signifying that the defendant has been summoned. The details of the summons are narrated to the linguist, who visits the defendant and tells him that the defendant has been summoned and should appear at the chief's palace at a stipulated time and on a stipulated day. This is done orally. The linguist is the mouthpiece of the chief, and whatever he conveys is considered to come directly from the chief. The defendant pays a non-refundable fee to indicate consent to the settlement of the case. The payment of this money is termed "Mpiisoɔ" in Akan, meaning,—the defendant accepts or supports the summons. The defendant can decide not to pay the money, meaning that the defendant does not accept the summons; consequently, the complainant may take the matter to another appropriate adjudicative authority. The latter may seek redress through the courts or by referring the matter to the paramount chief or the king of the tribe. A defendant who refuses to respond to a summons is saying "Menni ho bi"—I have no response to your summons. In the old days before the introduction of the formal legal system, the defendant would be forced to appear before the chief. If the matter centred on land, the chief, who held allodial title to land in his jurisdiction would revoke it from the defendant. There could be restrictions imposed on a defendant who was considered disrespectful towards the chief. For example, if any of his relatives died, the chief would prevent the family from organizing a funeral for the deceased as a form of punishment.

In a judicial court, if a defendant a summon letter but refuses to appear in court, a default judgement may be entered upon the plaintiff's application, signifying that the case should decide in favour of the plaintiff of the plaintiff and the defendant may be fined. After the fine, a formal decree is prepared by the Plaintiff and if the defendant still defaults, writ of fieri facias, abbreviated as Fi. Fa., may be issued to attach and sell any known property of the defendant. The same process is applied if a case is settled and the plaintiff is found guilty and fined but he defaults payment.

According to Nana Detwa, the Kurontihene of Kyekyewere – Afigya in the Afigya Sekyere North District in the Ashanti Region of Ghana, if a case

is settled in the chief's palace and costs are awarded against a plaintiff or defendant who refuses to pay, the chieftaincy may, as a form of punishment, decide not to allow the person to organise burial rites or benefit from any property belonging to the chieftaincy, as previously indicated. His Honour Peter Oppong Boahen, a Circuit Court Judge, is of the view that if a chieftaincy authority denies an individual, for instance, a burial permit, and the individual seeks redress through the courts or the Commission on Human Rights and Administrative Justice (CHRAJ), the chieftaincy authority may be compelled to reconsider or rescind its decision on the merits of the case.

Currently, some civil matters are settled by traditional rulers, whereas criminal matters are referred to the police. In some situations, complainants report criminal matters to the chief for amicable resolution. Cases such as theft, rape, assault and others can be reported to the chief for settlement. Misdemeanour-related cases may be settled by the chief of a community if the complainant so wishes. Rape is a second-degree felony but it can be brought before a traditional ruler or an opinion leader for amicable solution. However, some First and Second-Degree Felony cases such as *murder*, *burglary*, *arson*, etc., are referred to the police. If they are reported to the chief, the chief will advise that they be referred to the police.

Case Settlements Venues

Some cases in the judicial and traditional courts are settled in public. This means that members of the public are permitted to attend the proceedings. Perhaps the rationale is to inject a degree of credibility and transparency into the proceedings. A person present in court as a member of the audience is not allowed to participate proceedings unless permitted to do so. In a judicial proceeding, a lawyer who is not a party to the case may provide the court with relevant legal submissions in the capacity of *amicus curiae*. In a traditional court, any member present who wishes to contribute can do so with permission.

On the other hand, some cases in both traditional and judicial courts are settled in camera. This means that the public is not invited to attend the proceedings. In a judicial court, matters relating to matrimonial cases, rape cases, and security matters are not settled in public. They can be settled in a judge's or magistrate's chambers or in a courtroom without members of the public being present.

Standing Ovation

Before a judge or a magistrate takes a seat in court, a clerk announces the judge's or magistrate's arrival and asks the litigants and the audience to observe silence. They are asked to stand as a sign of reverence for the judge. Whoever refuses to comply may be sanctioned. People present are also reminded not to make noise or otherwise disrupt proceedings. A judge or a magistrate is introduced to the people before he takes his seat. The same courtesy of standing and respect are accorded to a chief. He is given an appellation by his linguist and the people gathered, remain standing until he sits down. After sitting down, both the disputants and the people gathered, line up to shake hands with him in a reverence mood.

Power of Attorney

Power of Attorney (POA), "is a legal document given to an attorney-in-charge or a legal agent, the authority to act on behalf of the principal" (CFI Team, [2020](#)). A plaintiff or a defendant may give power of attorney to a person to speak on their behalf in a pending case. A person in a foreign country who institutes a legal action in Ghana or against whom a legal action is instituted against may appoint an attorney to mediate on their behalf. A person with a speech or hearing impairment may appoint a legal representative to communicate and advocate on their behalf. The appointed person is called an attorney, and the authorizer is the principal, whilst the authorising document is the Power of Attorney. An attorney is not responsible for liability arising from the case. If the attorney is fined or found guilty, it is the responsibility of the principal to pay. In most cases, an attorney is appointed in a civil suit. A party may also appoint an attorney to act on their behalf in traditional court systems. Although most of the indigenous are not aware of this system of dispute settlement, according to Nana Detwa, the Kurontihene of Offinso Kyekyewere, the system is permissible, and the terms and conditions applicable in the judicial courts apply'.

Recusal

In law, recusal refers to the withdrawal of a judge or other decision-maker from a substantive or pending case to avoid a potential conflict of interest. This same definition is applicable to traditional court as well. A judge or a magistrate can recuse himself from a case before them. The conditions under which a judge may or may not be recused from a case.

There have been several instances of recusal in the legal history of Ghana. For example, in 2013, after a national election had been conducted, the New Patriotic Party (NPP), then in opposition, instituted legal action in the Supreme Court against the incumbent party, the National Democratic Congress, for alleged electoral malfeasance. The then Chief Justice, Mrs Georgina Theodora Wood, recused herself from the seven-member panel that was to sit on the case. Her reason was that she attended the same church, the Assemblies of God, with the respondent, John Dramani Mahama, the then incumbent president who was adjudged the winner of the election. According to the Chief Justice, Mr Mahama was her Sunday School student, and her participation in the case could influence her judgement.

Another recent instance was the parliamentary impasse between the Speaker of Parliament, Mr Alban Bagbin, and the Majority in Parliament, led by their leader, Mr Alexander Afenyo-Markin, on 30th, October 2024. The case received extensive coverage across Ghana's electronic and print media, as well as on social media platforms. In his application, the Speaker prayed the Apex Court, which had quashed his ruling on some seats in Parliament that had been declared vacant, stay its ruling. Before the court was to sit on his petition, the Speaker petitioned the court to recuse a member of the panel, Justice Ernest Gaewu, on the grounds that he was a member of the governing New Patriotic Party (NPP) whose Members of Parliament had petitioned the court. According to the Speaker, the Justice once contested as a parliamentary candidate in the Volta Region ~~for~~ on behalf of the ruling party but lost. Therefore, the Speaker argued that his party membership constituted a conflict of interest. The Speaker's petition was dismissed unanimously. These two instances demonstrate that recusal may occur either voluntarily or at the request of an aggrieved party.

The issue of recusal is also applicable in the traditional court system. A plaintiff or a defendant has the right to ask any member of the traditional ruling body against whom the party has an objection to recuse themselves. A ruler may also recuse themselves voluntarily. Recusal is necessary for the prevalence of natural justice. Based on the grounds upon which recusal is sought, a request for recusal may be upheld or dismissed.

Adversarial and Inquisitorial Methods

The adversarial method is a system in which the feuding parties are allowed to present their arguments before an impartial judge or a jury and

the burden of proof rests with the plaintiff or the prosecutor who has to prove the case beyond reasonable doubt. The inquisitional method, on the other hand, is a system in which a judge actively participates in the examination of the issues before the court. Sometimes, a question is directed at a party or the opposing lawyers whose argument the judge considers untenable or incomprehensible. This is an attempt to understand the intricacies of the matter in contention. Both methods are practised in the traditional court.

In the traditional court system, trials are conducted fairly because the parties are given the opportunity to present their cases, as is the practice in courts of competent jurisdiction. After the submission of the complainant, the defendant cross-examines the plaintiff, and the sub-chiefs, and members of the audience present may also be given the opportunity to ask questions. We can say that cases are settled in public. The opportunity given to the sub-chiefs to interrogate is likened to the inquisitional method of adjudication adopted by some judges and magistrates. It is an attempt to ask when an aspect of the case is ambiguous. The plaintiff's witnesses are called, and questions are put to them. The complainant also follows the same process in the presence of the chief and his entourage. In the judicial court, before the commencement of a case, the defendant can make a submission of no case to answer. However, after a preliminary examination of the matter, it can be ruled that a *prima facie* case has been established against the defendant, and the defendant should therefore present a defence. If the investigation into the case reveals the case against the defendant is frivolous, unmeritorious, and without merit, the accused is acquitted and discharged unconditionally. This same situation, when described to a chief, is also applicable to the traditional court system.

If an objection is raised, the chief and sub-chiefs' recess to deliberate and reach a decision, just as a panel of judges may do in a judicial court. The traditional court would say “*yerekɔbisa aberewa*”, meaning, “We are going to ask an old lady”. Older women are perceived as knowledgeable, experienced, sensible, and wise, owing to their extensive life experience and advanced age. They then return to deliver the final verdict, just as a presiding judge would do.

On the day of judgement, the presiding chief will allow the sub-chiefs to express their views on the matter in dispute. He, as the head, will deliver the final verdict and that will end the matter. Costs will be awarded against

the unsuccessful party, and if the case warrants any form of injunctive relief, it will be issued and enforced. After the final verdict, the feuding parties will greet each other and the chief and his entourage, signifying reconciliation.

Some Ghanaians hold their traditional rulers in high esteem and respect most of their verdicts, but in some instances, one seeks for an arbitration if he/she considers the legal processes as unfair. This same situation occurs in judicial courts. The dissatisfied party makes an appeal to the High Court or the Court of Appeal to review the case. Sometimes, the Supreme Court gives a delivers a judgement, and a dissatisfied party applies for a review.

Contempt of Court

A person is said to have committed the offence of contempt of court if the person brings a court into disrepute. It is legally wrong to discuss a pending case in a manner that comments on its merits and demerits. In that sense, such a discussion may have the tendency to prejudice the proceedings. This means that a judge or a witness listening to the discussion can be influenced, and that can have a bearing on the case. It does not mean that a case in court cannot be mentioned. It can be reported, but conclusions should not be drawn to jeopardise the ruling or the judgement. We often hear some lawyers and retired judges commenting on a concluded case, but that does not constitute contempt of court. However, the discussion must be constructive, devoid of acrimony and character assassination.

A person is said to have committed contempt of court if the person insults or threatens a judge, whether in or outside court. A person may also commit contempt of court if he the person makes a disparaging statement about a court or its judges. On Monday, July 8, 2013 the late former General Secretary of the New Patriotic Party (NPP), Mr Kojo Owusu Afriyie, popularly known as Sir John, was arraigned before the Apex Court for making a disparaging statement about the court. He pleaded guilty to the charge was fined and subsequently discharged. In another development, on 29th June 2016, two National Democratic Congress communicators, Messrs Godwin Ako Gunn and Alistair Tairo Nelson, together with Salifu Maase, host of Montie FM Pampaso, a political radio programme in Accra, were sentenced to custodial terms for insulting some Supreme Court justices. Consequently, the contemnors were summoned to show cause why they should not be punished for their contemptuous acts. To show cause means

to explain why a person should not be punished. A retired Supreme Court justice, Justice Atuguba JSC, would state that the contemnor should appear to “purge” themselves. Contempt of court is a misdemeanour and may attract a fine or a custodial sentence not exceeding three months.

From the Akan ethnographic perspective, the charges applicable in the judicial court also apply. For example, two people who fight or insult each other in the presence of a chief or the queen may be cited for contempt of court. A person who commits contempt is brought before the chief, reprimanded, and asked to pay a fine. The fine can be in the form of a large sheep or its equivalent monetary value. Akans would say, “Yeakye no dedua”, meaning, he is cited “he has been cited” for contempt of court.

Rulings and Judgements

The traditional system of rulings and judgements is similar to the judicial court system. Rulings and judgements are made solely by the chief or the queen on behalf of the elders. The researchers observed during proceedings at the Kyekyewere Traditional Court that the chief allowed the elders to express their opinions on the case in public. Some of the opinions favoured the complainant, whereas others favoured the defendant. After listening to them, he made the final judgement on the case. During their interaction with the chief, the researchers explained the procedure used by the Supreme Court. In the Supreme Court, judgements are deliberated upon in camera, and the presiding judge announces the final verdict of the court in public, although each panel member subsequently delivers a written judgement. The presiding judge has no authority to alter the opinions of the respective judges. However, the chief may override the views expressed by the sub-chiefs and make a decision that differs from their recommendations. Nevertheless, the two systems share certain similarities.

Appreciation

Appreciation is expressed in both the judicial and traditional court systems. Whenever a judgment is delivered or a ruling is issued by the court, appreciation is expressed. In the judicial court, the opposing counsel may be heard saying, “Most Grateful” to the presiding judge(s). It is a norm within the judicial system, and following judgements delivered by the superior courts, opposing counsel may be observed rendering verbal appreciation to the panel of judges. It was observed in the Supreme Court of Ghana that, the Court had delivered its judgement in the election petition

concerning the 2020 presidential election, the lead counsel for the respondents, Mr Tsatsu Tsikata, rendered his heartfelt appreciation to the justices of the Supreme Court for their time spent resolving the election petition. This appreciation was in recognition of the time the justices devoted to hearing and determining the case. In a court like the Supreme Court, both parties (Applicant and Respondent), through their counsel, appreciate the efforts of the court by expressing gratitude to the justices for their services. This has become an established practice. We often see this gesture whenever a dispute is resolved by a superior court. Whether a party is satisfied with the verdict or not, this practice is observed. This courtesy is also demonstrated in the High Court and even the lower courts.

It may happen that the unsuccessful party is dissatisfied with the judgement, but he still has to show appreciation. He may speak to the press after leaving the courtroom to express his dissatisfaction and disappointment with the judgement. He may say that the court erred or that the judgement was perverse, and if there is an opportunity to appeal against the judgement, he may do so.

Traditionally, appreciation is expressed when a chief and his subjects sit to settle a dispute. Before the settlement process begins, the feuding parties pay a nominal amount of money to demonstrate that they agree to the summons. However, that amount of money cannot compensate for the time the rulers spend on the case. The rulers sometimes walk to inspect the land in dispute at the expense of their other responsibilities. They sit to hear a case for several days to make sure that peace is restored. In view of this, the disputants queue up to express their gratitude to the rulers for their commitment to resolving the dispute by shaking hands with them. After a case is concluded, one of the chief's subjects, usually the linguist, shouts, "Yemfa abadwafoɔ nnyɛ nkoa" - "Panel members are not taken for free." This means that, although the disputants were not charged for the services provided, they have to show appreciation by paying something to the panel. It is not compulsory, but the disputants, particularly the successful party, may give something to the panel, which is then shared among its members. The money paid to the panel is termed "Aseda "thanksgiving money."

Findings

In this paper, we have discussed some similarities of the judicial and traditional courts. The discussions demonstrate that the two systems are

similar and capable of resolving disputes. The noticeable challenge with the traditional system is that its proceedings are undocumented, making them difficult to use as precedents, as well as the difficulty in enforcing rulings or decisions. After a case is resolved, there is no record to indicate that a case of that nature was heard. In the case of the judicial court, every judgement is documented. The superior courts' judgements are quoted as cases and used as precedents for other similar cases. It can be argued that a previous case was judged or considered in this manner, and for that matter, a case of similar structure must also be judged as the previous case. There have been law reports from other countries, which are also referenced and used as precedents. We can make reference to every case settled in court. The judgements at the lower courts are written and submitted to the Chief Justice.

In the course of our interaction with some litigants and members of the public, we realized that the confidence they repose in both the judicial and traditional courts is gradually waning. They complain of various forms of corruption to the extent that judges and traditional rulers can be induced to deliver perverse judgements. However, we considered most of their allegations as unsubstantiated and based on perceptions. There was no concrete evidence to back them. Some of our interviewees think, if one's case is in court and one pays a bribe, the judgement could be decided in one's favour. Recent rulings and judgements on the Speaker of Parliament and the New Patriotic Party Members of Parliament, led by their leader, Alexander Afenyo-Markin, attracted unsavoury criticisms and lambast from the National Democratic Congress and other legal luminaries. Some magistrates who were contacted regarding this public perception rejected these assertions and maintained that they should not be subjected to impunity.

It was observed in the courtrooms and the chief's palace that the number of cases before the chiefs outnumbered that of the judicial courts. We monitored cases in the Offinso District Court in the Ashanti Region of Ghana. Cases before chiefs in some of the villages within that district were also monitored. Disputes, particularly chieftaincy disputes, before the King of the Asante in the Manhyia Palace were also monitored. We realized that the District Court operates every day of the week, to settle disputes, but, in the villages, chiefs meet once a week to settle disputes. A comparison of the cases handled by chiefs with those adjudicated by the courts revealed that

the chiefs handled a greater number of cases.

The researchers also observed that the number of months spent on some cases in the chief's palac was fewer than that spent on cases in the courts. We learnt of some cases that had been before the court for over five years, but there was no case in the traditional courts that had lasted for more than a year.

Conclusion and Recommendations

The findings of the study demonstrate the concept of complementarity between the judicial and Akan traditional courts. As both systems employ similar procedural and legal principles in the administration of justice in Ghana. The use of a writ of summons in both systems indicates that parties are formally invited or compelled to appear before an adjudicatory body, ensuring fairness and due process. Although the procedures may differ in form, the underlying objective of notifying litigants and providing them with an opportunity to be heard reflects a shared commitment to justice in Ghana.

Furthermore, the presence of recusal and contempt of court in both judicial and traditional adjudication indicates that the two systems uphold comparable standards of impartiality and respect for judicial authority. Recusal ensures that adjudicators withdraw from cases where there may be a risk of bias, while contempt sanctions help maintain order and protect the integrity of proceedings. These similarities indicate that traditional courts are not merely cultural institutions but also embody principles that align with those of the formal legal system.

The recognition of power of attorney or representative advocacy within both systems further strengthens the notion of complementarity. By allowing individuals to be represented by trusted persons or legal representatives, both courts facilitate access to justice and accommodate litigants who may be unable to present their cases personally. Furthermore, the convergence of these adjudicatory mechanisms illustrates that Akan traditional courts and judicial courts operate as complementary institutions that pursue the common goals of dispute resolution, social order, and justice within the plural legal framework of Ghana. This suggests that traditional courts should be granted recognised powers, especially to enforce their rulings, to enable them to complement the judicial courts more effectively and reduce case congestion within the judicial system. Chiefs can be

remunerated by the government, as a way of motivation, just as the case of adjudicates in Alternative Dispute Resolution (ADR). Legislation may also be introduced to regulate the traditional court system and enhance its credibility, accountability, and public confidence.

Author Contribution

Emmanuel Antwi Fordjour: conceptualization, methodology, writing – original draft. **Charles Ofosu Marfo:** writing – review & editing, supervision, validation. **Confidence Gbolo Sanka:** writing – review editing, supervision, validation. **James Gyimah Manu:** writing – review & editing, resources, validation. **Victoria Ogunnike Faleke:** writing – review & editing, resources, validation.

Conflict of Interest

The authors of the manuscript have no financial or non-financial conflict of interest in the subject matter or materials discussed in this manuscript.

Data Availability Statement

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