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Navigating Historical and Legal Shortfalls to Resolve the Bawku Chieftaincy Conflict in Ghana through Court-connected Mediation.

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Abstract

This article examines the conflict between Mamprusis and Kusasis, rooted in chieftaincy disputes and escalating over the years, resulting in the loss of innocent lives, destruction of property, and deterioration of the area's former status as a business hub. The article thoroughly analyses the various efforts to resolve the conflict between the feuding factions, focusing on unearthing the inherent shortfalls behind the persistence of the conflict despite massive investments over the years to address the issue. The analysis demonstrates that while the judiciary and other ad hoc bodies have occasionally been involved, substantive legal resolutions have often been elusive. The article also discovers that the Supreme Court's grants of the plaintiff's leave to withdraw a suit filed in 2003 without liberty to apply has erroneously been misinterpreted as a judgment, fueling further discord. The analysis further submits that the Opoku-Afari Committee that first considered the issues between the parties was heavily beset with internal inconsistencies that significantly contributed to the persistence of the conflict. Considering the growing dimensions and persistence of the conflict, this article advocates for collaborative efforts by the feuding factions to achieve a lasting resolution while admonishing stakeholders to be measured in their public utterances to minimise the level of resentment. The article argues that while the courts are viable forums for resolving disputes, they may not be the best forum for a guaranteed resolution of the present dispute. The article, therefore, advocates for court-connected mediation, as outlined under the Alternative Dispute Resolution Act 2010, to help achieve a sustainable resolution of the conflict.

Keywords: Bawku Chieftaincy conflict, withdrawal of a suit, court-connected mediation, Opoku-Afari Committee.

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Introduction

On the 18th of October 2024, the Court of Appeal of Ghana unanimously set aside an arrest warrant instituted by the government of Ghana against Naa Sheriga Alhaji Seidu Abagre on the 18th of February 2023 by declaring the warrant null and void.[2] The warrant was occasioned by his enskinment as the paramount chief of the Bawku Traditional Area by the Nayiri, Naa Mahami Abdulai Sheriga, the overlord of Mamprugu.[3] While the Nayiri and his kingmakers were initially included in the arrest warrant, this was subsequently varied to exclude the Nayiri and his kingmakers. The government arrest warrant was set against the basis that a chief was already in the area in the person of Naba Abugrago Azoka II, rendering the Nayiri enskinment illegal.[4] Despite the Court of Appeal's unanimous verdict that shot down the warrant, describing it as illegal and void ab initio, the government initially gave notice to file an appeal before the Supreme Court but subsequently abandoned its decision through a public notice. Having successfully set aside the arrest warrant, Naa Sheriga Alhaji Seidu Abagre, since his elevation by the Nayiri, returned to Bawku, his original home of residence, now as a Chief of Bawku.[5]

While his enskinment and return home should have triggered legal challenges of his legitimacy by aggrieved parties, the feuding factions have resorted to gun battles, blocking of roads, and

[2] *Naa Alhaji Seidu Abagre (Kulga II) v The Republic* [2024] CA No. H2/002/2024.

[3] The enskinment and coronation of Naa Sheriga Alhaji Seidu Abagre (Naa Kulga II) took place on the 14th February 2023 at the forecourt of the Nayiri palace in Nalerigu, the regional capital of the North East Region of Ghana.

[4] Kojo Oppong Nkrumah, Statement (2023), Ministry of Information, Government of Ghana, available online at https://moi.gov.gh/newsroom/2023/02/statement-2/, accessed on 09/11/2024.

[5] Following his return home to Bawku, the parliamentary candidate of the governing party in Zebila for the December 7, 2024, general election issued a press statement describing his return home as a provocation. He went on to suspend his campaigns and call on the government to get him arrested despite the Court of Appeal verdict. The decision of Zebila's NPP parliamentary candidate was followed by the NPP candidate for Bawku, who also called for the government to work towards resolving the issue. The actions of these NPP candidates arguably sounded like 'pouring petrol into an already burning fire' leading to unstoppable attacks by Kusasi and counterattacks by Mamprusi in defence. While this sounds strange, it is merely a repeat of political interference that has been the bane of the contestations to the Bawku skin since the beginning of Ghana's independence.

killing of innocent persons. Within a space of about three weeks, 26 individuals have cruelly lost their lives, the majority of whom do not belong to any of the feuding factions. Although the attacks and counterattacks are methodically ongoing, the government appears to lack options to decisively deal with the situation except to deploy security forces to the area to maintain law and order. While this is a welcome move to control the lawlessness in the area, it remains incapable of resolving the decades-old problem the government has grappled with since independence without finding a lasting resolution to the contested claims of the feuding factions of Mamprusis and Kusasis. Against this backdrop, this article examines the issues from a historical and legal perspective to advance viable pathways to amicably resolve the contesting claims to restore peace and harmony to the good people of the Bawku Traditional Area. Indeed, there cannot be a better time to undertake this task than now, when the stakes are high, and the media space is heavily inundated with discussions about the ongoing issues without a foreseeable end to this feud in sight.

This article is structured into five parts including this introduction. The first part evaluates the level of involvement of the courts or statutorily constituted bodies or ad hoc bodies, particularly focusing on whether they have had the opportunity to dispassionately consider the claims of both Kusasis and Mamprusis regarding the competing claims to the Bawku Skin. This part also evaluated the vital question of whether the Supreme Court's grant of the revocation of the suit in 2003 constituted a judgement or otherwise based on established jurisprudential requirements of our law. The Opoku-Afari Committee's report, which had the privilege of listening to the parties at the initial stages of this conflict, is further evaluated in part three of this article. Part four considered the way forward, giving weight to the consideration of court-connected mediation for an effective resolution of the age-old chieftaincy dispute. Part five provides a conclusion to the overall analysis. Below address the question of who are the first settlers in Bawku.

The Bawku chieftaincy conflict in the eyes of the courts

The Bawku chieftaincy conflict traces its origin to 1957, when Mamprusis and Kusasis, who lived peacefully with each other for centuries before the arrival of the Europeans, appointed or elected and enskinned rival chiefs for Bawku. This set the stage for the years of inter-tribal conflict that have accounted for several deaths, destruction of property, ruining the business hub Bawku was hitherto known for, and reducing the area to a security threat that broadly affects the lives of citizens in Ghana. The current state of affairs of the conflict, coupled with

the growing expansion of its coverage and massive politicisation without evidence of concrete effort to resolve the burning issues, have made it necessary to undertake this task directed at contributing to creating a better understanding of the issues with practical proposals for redress. When considering the Bawku tribal chieftaincy conflict, it is crucial to thoroughly review the various instances in which the matter was brought before the courts. This is important because placing the Bawku situation in the spotlight for analysis would be incomplete without appreciating the conflict's historical foundation, especially from the aegis of the courts. It is, therefore, crucial to thoroughly review the various instances in which the matter was brought before the courts to clearly understand whether the court has dispassionately resolved the issues confronting the feuding parties.

Has the substantive claims of the parties been impartially examined by the courts

Evidence shows that the parties occasionally vented their grievances before the courts and other statutory bodies. The fundamental question is whether or not the courts or other statutory constituted bodies, such as the National House of Chiefs, have had the opportunity to impartially evaluate the parties' substantive claims with a clear pronouncement of the rightful occupant of the Bawku skin. This question is crucial as each party often claims that the courts, at one time or the other, have ruled in their favour. Answering this all-important question will lay to rest whether the jurisdiction of the courts, the Judicial Committee of the National House of Chiefs, or any other forum will need to be invoked to impartially appraise the core issues of the respective claims of the parties and to bring finality to this age-old problem. Undertaking this onerous task, therefore, calls for the evaluation of the various issues that have been determined by the courts to ascertain whether or not the substantive issues have been dealt with in those instances.

One such instance is the Court of Appeal decision in *S. D. Opoku-Afari & Ors v Yirimea Mamprusi & Anr.*[6] where the government adopted the Opoku-Afari Committee's report while replacing the Kusasi area with Bawku was being contested. It could be argued that the court's rulings, in this case, have been superseded by NLCD 112.[7] However, the primary object of the present analyses is to ascertain whether, in that case, the court had the opportunity to fully consider the various claims of the parties that continue to be contentious today.

[6] [1958] CA N 70/58.

[7] Chieftaincy (Amendment) Decree, 1966.

It is essential to draw guidance from past decisions as we seek to proffer viable options that could be activated for the amicable resolution of the contesting claims. Therefore, it is imperative to carefully examine the issues laid before the court for determination and whether those issues have kept the parties' claims alive. In *S. D. Opoku-Afari & Ors v Yirimea Mamprusi & Anr.*, the Court of Appeal was invited to quash the High Court verdict that had set aside the government's decision to vary its readings of the Committee's report by replacing Kusasi area with Bawku. So, the court had the burden to consider whether the government's decision that Abugrago Azoka was customarily elected and installed chief of Bawku was not identical with or equivalent to the Opoku-Afari Committee's decision that he was elected and installed chief of the Kusasi area.

While declining the High Court's request for the Committee's report, at the last hour of the hearing the government submitted four bullet points described as the findings of the Opoku-Afari Committee to the court. These notably included:

"[t]hat the findings of the said Committee of Enquiry relevant to this matter are as follows:

a. *Abugurago Azoka is the direct descendant of the former rulers of Bawku*
b. *Bawku is the chief town and administrative centre of Kusasi area*
c. *At least from 1932 the chief of Bawku has been recognised as the chief of the whole Kusasi area.*
d. *On the 6th June 1957, the said Abugurago Azoka was elected and installed as chief of Bawku and the Head of all the chiefs in the Kusasi area."*

The government submission also stated that the final paragraph of the Committee's report documented as follows: "Finally, we humbly pray to report to Your Excellency that Abugurago Azoka has been customarily elected and installed as the chief of the Kusasi area."

Examining the four bullet points of evidence placed before the High Court, the Court of Appeal took notice that the information from the government admitted at the trial depicts that Bawku and Kusasi area are interchangeable and that the government's varying Kusasi area as Bawku was justifiable and valid. Consequently, the Court of Appeal could not help but overrule the High Court's decision and restore the government's decision that Abugrago Azoka was elected and installed the chief of Bawku. The Court of Appeal's decision to overrule the High Court's decision was substantially based on the material evidence the government directly laid before the courts without more.

More significantly, the court's involvement in *Opoku-Afari* was merely to determine whether the government acted ultra vires by varying the Committee's findings that Abugurago Azoka was properly elected and installed a chief of the Kusasi area, which was equivalent to him being

installed chief of Bawku. In effect, the court was not to examine the substantive claims by the parties. It is instructive to note that the substantive issues were laid before the *Opoku-Afari* Committee, and the government's implementation of the findings was the subject before the High Court that found merit in striking down the government's interpretation of the findings. This led to the government's appeal before the Court of Appeal. The Committee's report will be considered shortly.

Before that, however, what is evident from the above is that the issue before the Court of Appeal was about the government's interchanging Kusasi area for Bawku and whether the Committee exceeded its mandate in pronouncing that Abugrago Azoka was customarily elected and installed a chief, which the court determined in the affirmative. It remains that the parties' substantive claims were not placed before the Court of Appeal in the specific instance. More importantly, the verdict of the Court of Appeal that restored the government's implementation of the committee report that Abugrago was elected and installed chief of Bawku was subsequently ousted by the NLCD 112 in 1966.[8] By NLCD 112, Abugrago Azoka's reign came to an end, and the Nayiri appointed and enskinned Naa Adam Zangbeo as the 14th Bawku Naba from the Mamprusi royal lineage of Bawku.

Developments in 1980

However, in 1979, Abugurago Azoka got some young men to install him as a rival chief of Bawku. His installation as a rival chief ushered in another legal contest before the courts in the matter of the *Republic v Abrugrago Azoka Ex Parte Alhaji Adam Zangbeo*[9] The initial question is whether the core issues about the Bawku skin were comprehensively examined and declared here. Essentially, the matter was filed before the High Court to restrain him from holding himself out as a chief. Before arriving at its decision, the court took judicial notice that he had been dis-enskinned under NLCD 112 and has not been restored, although NLCD 112 had been repealed by the Chieftaincy Act 1971.[10] The issues before the court did not address or go into the substantive issues we are still battling today about the Bawku skin conflict and the basis of the parties' claims.

[8] Chieftaincy (Amendment) Decree, 1966.
[9] Suit no 23/80.
[10] Act 370.

Following this, in 1983, Abugrago Azoka filed his case before the National House of Chiefs.[11] His action was found unpersuasive and did not merit the reliefs sought before the Judicial Committee of the National House of Chiefs. Abugrago invited the Judicial Committee of the National House of Chiefs to injunct the Nayiri and have him seized from enskinning Bawku chiefs, but this outrightly fell flat. They held that it was unthinkable and uncustomary for a 'layman, an individual or a commoner' to mount a challenge against the authority of a chief who wields the power of exercising the right of nominating or appointing and enskinning chiefs.[12] It is important to underscore that proceedings at the National House of Chiefs, like the High Court, were examined within the purview of the NLCD 112. As such, the case did not delve into the substantive claims that continue to arbitrarily ravage and destroy innocent lives and property.

However, Mamprugu's success before the High Court and Judicial Committee of the National House of Chiefs was short-lived. Barely three months into the decisions of the National House of Chiefs, PNDC Law 75 was promulgated.[13] While Abugrago died earlier in 1983 and was categorically described by the National House of Chiefs as a commoner under the aegis of NLCD 112, PNDC Law 75 posthumously recognised him to have died as a chief, defiling the settled law that the law does not take a retrospective effect. Consequently, on account of the death of Abugrago Azoka before PNDCL 75, his son Nicheama Abugrago Azoka took over the chieftaincy role.

Fast-forward to the change of government in 2001. The Mamprusi mounted a legal challenge before the Supreme Court, alleging that PNDC Law 75 was unconstitutional and that the Supreme Court should declare it as such.[14] This became the first-ever legal action before the Supreme Court about the Bawku chieftaincy conflict. In that suit, the Supreme Court's original jurisdiction was invoked to declare unconstitutional PNDCL 75[15] that restored *Abugrago Azoka* and his appointed chiefs of the various communities to the skins within the Bawku Traditional area. The case was short-lived as the applicant discontinued the case upon discovering that PNDCL 75 had been repealed earlier in 1996 under Act 516.[16] The

[11] *Abugrago Azoka Ex- Bawku Naaba v Nayiri of Mamprugu Adam Badimsugru* [1983], [NHC. 2/UR/80].
[12] Ibid, [5].
[13] Chieftaincy (Restoration of Status of Chiefs) Law, 1983 (P.N.D.C.L 75).
[14] *Alhaji Ibrahim Adam Zangbeo v Nicheama Abugrago and Attorney General* [2003] suit no SC1 2003.
[15] Chieftaincy (Restoration of Status of Chiefs) Law, 1983 (P.N.D.C.L 75).
[16] Statute Law Revision Act, 1996 (Act 516).

discontinuation of that suit by the applicant has been a subject of controversy emanating from various interpretations by stakeholders, including the parties and government. In particular, while the 1st respondent and their privies construe the discontinuation to amount to a landmark judgment in their favour, the applicant and his legal team interpret it differently.[17] It is striking that the government has wholly accepted the respondent's reading of the discontinuation as a judgment in favour of the respondents in its recent press statements,[18] and several public pronouncements.

Considering the tumult surrounding the abrogation of the suit by the claimant since 2003, it is necessary to examine the matter placed before the courts and the import of the outcome. In so doing, the immediate question is whether the rescindment of the suit by the claimant constituted a finality to the substantive matter of the dispute regarding the rightful occupant of the throne as the Bawku chief. This calls for evaluating the matter on record before the Supreme Court, focusing on the specific assignment the court was invited to undertake and what the court consequently undertook.

Implications of grant of leave to withdraw without liberty to apply

In *Alhaji Ibrahim Adam Zangbeo v Nicheama Abugrago and Attorney General*,[19] the plaintiff's writ invoked the original jurisdiction of the Supreme Court and sought

for a declaration that:

> *"(i) the chieftaincy (Restoration of Status of Chiefs) Law, 1983 (PNDCL 75) which restored Abugrago Azoka to the Bawku skin posthumously is inconsistent with and in contravention of the terms and tenor of the Constitution, particularly Article 270 (3) and 277 thereof as it made no provision for the determination in accordance with the appropriate customary law and usage of the validity of the nomination, election, selection, installation or disposition of a person as a chief.*
> *(ii) a necessary qualification for a person to be eligible for the Bawku skin is that he must hail from the appropriate Mamprusi royal house or lineage*
> *(iii) accordingly, on a true and proper interpretation of the constitution, particularly Article 270(3) and 277 thereof, the 1st defendant, being a Kusasi, is not and cannot have been validly nominated, selected and enskinned Bawku-Naba in accordance with Mamprusi customary law and practice.*'

[17] Letter written on the 29th of July 2003 by Akufo-Addo, Prempeh and Co, legal representatives of the Plaintiffs, addressed to the Secretary/ Legal Adviser of the Bawku Skin Lineage.

[19] [2003] suit no SC1 2003

As noted above, the court was invited to determine the constitutional validity of PNDCL 75 and to declare whether its contents are inconsistent with the true meaning of Articles 270 (3) and 277. It is submitted that the court's determination of the consequential effect of Articles 270 (3) and 227 on PNDCL 75 could have aided in the ascertainment of the fate of the 1st defendant. The crucial question is, did the court take the opportunity to evaluate the grounds of the plaintiff's action? Before the court could exercise its vested jurisdiction to go into the merit of the matter before it, the plaintiff who initiated the action on the 17th of February 2003, served notice on the 28th of April 2003 to discontinue the suit entirely with the liberty to re-apply as follows: '*please take notice that the plaintiff herein seeks leave to wholly discontinue his action against the defendants with liberty to apply.*'[20] On 29th April 2003, the Supreme Court responded: *'[t]he application to discontinue is granted but without liberty to apply under PNDCL 75 and articles 270 and 277 of the 1992 Constitution*.'[21] The above application to discontinue the suit, which the court granted, has been at the epicenter of controversy over the last decade regarding its import, particularly the court's grant of the claimant's prayer to discontinue the suit entirely without liberty to apply. Was this a judgment that addressed the issues set out in the claimant's suit? For a matter of this nature that has troubled every government since independence, this was a unique opportunity for the court to meticulously scrutinise the contesting issues exhaustively before pronouncing its judgment to bring finality to the matter for strict enforcement.

Discontinuation of a suit

There is no legal backing to support the proposition that discontinuing a suit at the Supreme Court, where its original jurisdiction has been invoked, amounts to a final judgment. Ghana's jurisprudence allows for the discontinuation of an action by either party, and the courts grant leave to discontinue an action before it without necessarily going into the merit of the case provided for under the various court rules. For instance, under the High Court (Civil Procedure) Rules,[22] a plaintiff may discontinue their action with leave of the court before, during, or after the hearing subject to costs and any terms deemed to be just and such discontinuance or withdrawal would not be a defence to any subsequent action.[23] Again, under the Supreme Court

[20] *Alhaji Ibrahim Adam Zangbeo v Aninchema Abugrago & Attorney General* [2003], suit no. 1/2003.
[21] ibid.
[22] High Court (Civil Procedures) Rules, 2004, (CI 47).
[23] Order 17 r 2.

Rules,[24] an appellant who wishes to withdraw their appeal must file a notice of withdrawal with the Registrar, and their appeal shall be considered dismissed.[25] The effect, therefore, is that the judgment, which was the subject matter of the appeal, continues to be in force. However, what is worthy of note here is that the said Rule refers solely to matters on appeal. Therefore, a party seeking to invoke the Supreme Court's original jurisdiction cannot be said to be covered by Rule 18.

The question then arises, what happens when a party invokes the Supreme Court's original jurisdiction and discontinues its action? Does such a grant by the court amount to a judgment? The Supreme Court Rules are silent on this, so it would be beneficial to examine pronouncements made by the court regarding this issue.

The Supreme Court has observed that it is incumbent upon the court to analyse the entire record of a case, taking into account the parties' testimonies and all documentary evidence adduced before arriving at its decision, to satisfy itself that, on the preponderance of the probabilities, the conclusions are reasonably or amply supported by the evidence.[26] While this observation was made about appeals before the court, in the recent case of *Nyakomle & 7 Ors v Ashong*[27] the court re-echoed its position that alleged statutory chieftaincy matters must 'be carefully scrutinised in ascertaining whether or not same falls within the definitional purview under our statutes.'[28] This, therefore, supports our assertion that if the Court's ruling on 29th April 2003 was a final judgment, a matter such as the Bawku chieftaincy conflict could not have missed the court's attention to be subjected to scrutiny before granting the plaintiff's request for discontinuation of the suit.

It is an established principle of law that a party who files an action or an appeal may withdraw their suit at any time with leave of the court.[29] It is significant to state that the above rules of the courts are a tacit endorsement of the common law case of *Fox v Star Newspaper Ltd*[30] where, in considering a similar rule of English law, the court convincingly stated that:

> *'The principle of the rule is plain. …The substance of the provision is that, after a stage of the action has been reached at which the adversaries are meeting face to face, it shall only be in the discretion of the judge whether the plaintiff shall be allowed to withdraw from the action so as to retain the right of bringing another action for the same subject matter.'*

[24] Supreme Court Rules, 1996 (C.I 16) (as amended by C.I 24, 1999).
[25] Rule 18.
[26] *Oppong v Anarfi* [2011] 1 SCGLR 556 [565].
[27] [2024] GHASC 9 (28 February 2024) [J4/27/2023).
[28] Ibid., [9].
[29] Supreme Court Rules and High Court Civil Procedure Rules mentioned earlier.
[30] [1898] 1 QB 636.

The English court's express clarification has effectively received resounding approval by the courts in Ghana. For purposes of illustration, in the case of *Sasraku III v Ellis & Wood Families*[31] Kpegah J (as he then was) emphasised the effect of Order 17 rule 3 when he held that :

> "*Before the enactment of Order 26, r. 1 of L.N. 140A, the plaintiff's right to elect to be non-suited at any stage and still retain his option to bring a fresh action went unchallenged. Order 26, r. 1 has greatly curtailed that privilege. It is a complete code on the subject of discontinuing an action or withdrawing a defence. The power of the plaintiff at common law to claim a non-suit, or of a plaintiff in equity to dismiss his bill at his own option at any time and still retain the right to bring a fresh action, wasremoved*"

A grant of an application to discontinue a case before the court, without liberty to apply does not imply that a full hearing of the matter informed the grant. For instance, in *Amissah v Attorney General*[32], the Supreme Court made it explicitly clear that where a plaintiff invokes the original jurisdiction of the court, and the parties have filed their statements of case and memorandum of the issues, the plaintiff would need the court's leave to withdraw or discontinue the case initiated by him. The courts have underscored that a court has to decide under such an instance, whether or not to grant the plaintiff's application to withdraw or discontinue the case, and this calls for the exercise of its discretion judicially in accordance with the law and rules of reasoning.[33] In *Amissah*, the court stressed that its exercise of discretion in favour of the application is subject to the plaintiff's show of 'good and sufficient reasons.'[34] The court's observations aligned with the English court's submission that: '[a] court must also be entitled to consider both the circumstances in which the notice of discontinuance was issued and what the claimant is attempting to achieve by issuing and serving the notice.'[35]

So, while a person who invokes the court's jurisdiction is entitled to withdraw or discontinue the case, the ground for the withdrawal or revocation must be valid. Consequently, where the person provides valid reasoning to justify the basis for the discontinuation of the case, the court will exercise its discretion in the plaintiff's favour. In *Amissah (*supra), it was held by Brobbey JSC that a person cannot be compelled to litigate when he is not minded to do so because that

[31] [1989-90] 1 GLR 498
[32] [2003-2004] SCGLR 156.
[33] *Acheampong v Yaa and Others* [2020] GHASC 34 ; *Nyakomle & 7 Ors v Ashon*[2024] GHASC 9;
[34] *Amissah v Attorney General* [2003-2004] SCGLR 156 [158].
[35] *Ernst & Young v Butte Mining Plc* [1996] 1 WLR 1605 , [1622F]; *High Commissioner for Pakistan in the United Kingdom v National Westminster Bank* [2015] EWHC 55 (Ch), [2015] 1 WLUK 268.[47]

will go contrary to the letter and spirit of Article 21 (1) (b) of the 1992 Constitution. On this basis, the court had no reservation permitting a claimant who desired to discontinue a suit, bearing in mind that the claimant was seeking fresh relief before the High Court but that the grant of the plaintiff's prayer was without liberty to re-apply.[36]

Barring constitutional breaches, the courts have no objection to sanctioning an application for the discontinuation of the matter without going into the merit of the substantive claims.[37] It is worth noting that if the court is truly rendering a judgment in a claimant's withdrawal of a suit, it will not taint itself with controversies by failing to provide valid reasoning for a series of claims that were before it. This, therefore, ousts the argument that the grant of the claimant's application to discontinue the suit in *Alhaji Zangbeo v Abugrago Azoka* was a judgment of the core issues placed before their Lordships.

The Ghanaian courts[38] are replete regarding the English court decision in *Fox v Star Newspaper Ltd*[39] where the court explained :

> "*The principle of the rule is plain. It is that after the proceedings have reached a certain stage the plaintiff, who has brought his adversary into court, shall not be able to escape by a side door and avoid the contest. He is then no longer dominus litis, and it is for the judge to say whether the action shall be discontinued or not and upon what terms. I think it would be a great error to construe the rule by reference to the old meaning of the term 'discontinuance' or any mere technical sense of words. The substance of the provision is that, after a stage of the action has been reached at which the adversaries are meeting face to face, it shall only be in the discretion of the judge whether the plaintiff shall be allowed to withdraw from the action so as to retain the right of bringing another action for the same subject matter."*

The court holds significant discretion in determining the terms under which a plaintiff may be allowed to discontinue an action. It will thoroughly assess all circumstances surrounding the case and, if it appears equitable, may impose a condition that bars the initiation of any further actions. In the case of *Amoako v Kwan & Another*[40], Osei-Hwere J (as he then was) underscored that the court 'has wide discretion as to the terms upon which it may grant leave to a plaintiff to discontinue the action.' He further stressed that the court will often 'consider all the

[36] *Isaac Kwarteng Vrs Haruna Feisel & 2 Ors* [2023] GHACC 22.
[37] *Obeng Manu v. The Attorney General* [2000] SCGLR 275; *Nyakomle & 7 Ors v Ashong* [2024] GHASC 9; *Amissah v Attorney General* [2003-2004] SCGLR 156 [158].
[38] *Republic v High Court (Fast Track Division) Accra; Ex Parte Electoral Commission* [2005-2006] 514 at 535; *The Trust Bank v G.K Appiah and Sons Ltd* [2011] GHASC 21 (20 April 2011); *Achiampong v Obaapanyin Aba Yaa & 5 Others* (2020) GHASC 83.
[39] [1898] 1 QB 636
[40] [1975] 1GLR 25

circumstances, and, if it seems just, will impose a term that no other action shall be brought: It may, in like manner, refuse leave to discontinue and give judgment for the defendant. From the operation of Order 17 r 3, there cannot be any hard and fast rule on the exercise of the court's discretion to allow a discontinuance and deny the plaintiff liberty to reinstitute the action as it is in the present case. The circumstances of each case would determine the orders the court could make in an application to discontinue under order 17 r 3 of C. I 47.' Corroborating Osei-Hwere express submission, Kpegah J (as he then was) in *Sasraku v Ellis & Wood Families*[41] affirmed that "Each case has to be considered on its own merit. Where, however, special circumstances exist making it unjust, inequitable, and unfair to retain in the plaintiff the option to bring a fresh action, the court can deny such liberty."

In the case of *Achiampong Vrs Obaapayin Aba Yaa & 5*,[42] Dordzie JSC explained that in the English Court of Appeal case of *Fox v Star Newspaper Ltd*[43], 'which considered the principle behind Order 26 r1 became the locus classicus on the issue' and further asserted that 'Order 26 r 1 is in *pari materia* with Order 17 rule 3 of C.I. 47'. Following this, she concluded that the judge holds the crucial power to determine whether a plaintiff can withdraw from the action while maintaining the right to pursue another case on the same matter. This decision carries significant weight and can impact the overall pursuit of justice.

One crucial limb of ***Fox v Star Newspaper Ltd***, which our courts give much weight as the 'locus classicus' on discontinuation of suits by the plaintiff, that warrants significant attention, is the tacit clarification that the grant of non-suit does not amount to a judgment on the substance of the case. In the ***Fox v Star Newspaper Ltd*** case, the issue before the court was whether or not a plaintiff was entitled to the right to be nonsuited. In other words, where a plaintiff, after bringing a defendant to court, found the case going against him or that he did not have the requisite materials to prove his case, could elect to be nonsuited and subsequently bring a fresh action. In essence, the discontinuance of a suit and its effect was the main issue before the court. The enactment of the Judicature Act put a fetter on this right of the Plaintiff as Order XLI., r. 6, of the Rules of 1875, originally provided that '*any judgment of nonsuit, unless the Court or a judge otherwise directs, shall have the same effect as a judgment upon*

[41] [1989-90] 1 GLR 498
[42] [2020] GHASC 83 (5 February 2020),
[43] [1898] 1 QB 636

the merits for the defendant; but in any case of mistake, surprise, or accident any judgment of nonsuit may be set aside on such terms as to payment of costs and otherwise as to the Court or a judge shall seem just.". However, the above provision was repealed through the enactment of the Rules of 1883, which did not explicitly mention nonsuit being a judgment.

On account of the amendment that excluded nonsuit being a judgment, the Court of Appeal took judicial notice of this in the instant case of *Fox v Star Newspaper* per A.L. Smith LJ who held copiously that:

> *'I think that Order XLI., r. 6, of 1875 has been advisedly omitted from the Rules of 1883, because there is really* ***no such thing now as a judgment of nonsuit****, and it was found that the matter with which the rule dealt is provided for by the rule as to discontinuance, namely, Order XXVI., r. 1, which provides that, after a certain stage, the plaintiff cannot without the leave of the Court discontinue the action*'(emphasis added).[44]

This apparent elucidation by Smith LJ was concurred by Chitty L.J, who further held, as noted earlier, that: [t]he principle of the rule is plain. It is that after the proceedings have reached a certain stage the plaintiff, who has brought his adversary into court, shall not be able to escape by a side door and avoid the contest. He is then to be no longer *dominus litis*, and it is for the judge to say whether the action shall be discontinued or not and upon what terms.'[45]

It is evident from the above unequivocal expression of the oft-cited *locus class*icus case of *Fox v Star Newspaper Ltd* that the legislative intent was essentially to disband the absurdity that hitherto appeared to have placed fetters on claimants who did not want to proceed with their claim. While it may be argued that *Fox v Star Newspaper Ltd* is an English case law and is merely of persuasive effect in Ghana, it remains incontestable that the Ghanaian courts regard *Fox* as a celebrated authority they are prepared to follow. More importantly, the common law as received remains part of the laws of Ghana.[46] In particular, Article 11 of the 1992 constitution eloquently states that the laws of Ghana include the rules of law generally known as the common law and the rules generally known as the doctrines of equity. In addition, if our courts desired to depart from the settled precedent, they would have said so. Alternatively, if parliament had wished to disassociate itself from the definitive pronouncements of *Fox*, this would have been discharged in clear and unambiguous terms.

[44] *Fox v Star Newspaper Ltd* [1898] 1 QB 636 [638]; see also, *Gilham v Browning* [1998] 1 W.L.R. 682 (1998),
[45] *Fox v Star Newspaper Ltd* [1898] 1 QB 636 [639].
[46] Article 11 of the 1992 constitution eloquently states that the laws of Ghana include the common law.

In the absence of such a legal provision or precise judicial pronouncement, it is erroneous to say that the grant of the plaintiff's application to discontinue the suit in *Alhaji Zangbeo v Abugrago Azoka* amounted to a judgment of the core issues placed before their Lordships. This flawed conclusion is deeply problematic in sensitive matters such as the Bawku Chieftaincy conflict that has taken hostage a vast community like Bawku and its surrounding communities. It is, therefore, significant that such inaccurate and misleading pronouncements are stopped completely, and the feuding parties are encouraged to lay down their weapons and resort to the appropriate institutions for an amicable settlement.

The discontinuation of the suit by the claimant did not constitute a finality to the substantive matter of the dispute regarding the rightful occupant of the throne as the Bawku chief. In effect, the substantive issues of the parties remain intact and need to be effectively dealt with for lasting peace to ensue.

Issues before the Opoku-Afari Committee

While the substantive issues that provoked and continue to be the burning issues sporadically detonating the Bawku chieftaincy conflict have not been comprehensively examined by a court of law or other statutorily mandated institution, as shown above, it is imperative to note that the issues were the basis for the formation of the Opoku-Afari's Committee at the start of the conflict in 1957. As mentioned earlier, June 1957 saw for the first time the appointment and enskinment as well as the election and installation of two rival chiefs for Bawku by the Mamprusis and the Kusasis, respectively. This originated the start of the conflict. While the Mamprugu State Council was in court to restraint Abugrago Azoka from holding himself as a chief of Bawku, the government at the time constituted a committee of enquiry to investigate the veracity of Abugrago Azoka's claims to have been validly elected and installed chief of the Kusasi area.[47] Although the Mamprugu Traditional Council opposed the government's move, including the committee's composition, for already being in court to restrain Abugrago, the Council eventually submitted and participated in the committee's investigation. It is, therefore,

[47] S.D. Opoku-Afari, Bawku Afairs: Report of the Committee Appointed by His Excellency the Acting Governor-General to Inquire into and Report its findings on the claim of Abugrago Azoka to have been elected or appointed and installed as chief of the Kusasi Area, (1958).

instructive to note that this was the first time the issue of a rival chief came out in Bawku's history, and the contesting claims were the subject of the committee's investigation.

Before the Committee, Abugrago argued that his ancestors were the original chiefs of Bawku, and Mamprusi came with the white man, evaded their palace and seized the Bawku Skins for Mamprusis. Abugrago stated this as follows:

> *'[t]he Mamprusis came along with the Whiteman and were able to establish themselves on Kusasi land because of the influence and power of the Whiteman. ... The Kusasi were then not well organised and could not resist the peaceful evasion of the Mamprusis supported by the Whiteman. Thus, the Skin of Bawku was seized from his grandfathers and given to the enlightened Mamprusis. ... He claims to be the direct descendant of the former rulers of Bawku before the evasion by the Mamprusis.'*

Abugrago Azoka's submissions clearly sought to portray that Mamprusi's presence in Bawku was the product of the Europeans entering into the territory with Mamprusis to evade and seize the Bawku Skin for Mamprusis. However, his submissions, which the Opoku Afari Committee admitted, do not appear to resonate with other historical records. Syme, a former District Commissioner for Bawku during the colonial era, documents that: 'it was not until 1909 that Bawku station was first established by Liuent F.W.F, Jackson' as a British protectorate.[48] Hilton corroborates Syme by noting, '[t]he Northern Territories Protectorate came into being in 1897, civil administration commenced in 1907, and Bawku became a Government Station under L t. Jackson in 1909.[49]

Juxtaposing Abugrago's submissions to Syme and Hilton's observations will mean that Mamprusis settled in Bawku in 1909 or shortly before or after that. This broadly does not add up with even the Opoku Afari Committee's observation of when Mamprusi settled in Bawku. In particular, the Opoku Afari Committee explicitly acquiesced that the reign of Naa Atabia, the then overlord of the Mamprugu State, ushered in his son, Prince Ali, as the first Mamprusi chief in Bawku, long before the arrival of the Europeans in the north. This dispels Abugrago's argument that Mamprusis evaded Bawku and took over his forebearer's Skin with the powerful influence and support of the Europeans. It is submitted that the Committee should have discounted Abugrago's observation instead of its admittance, consequently constituting the basis of its conclusions as already captured earlier. This is especially worrying to the extent

[48] Syme, J. K. B. "The Kusasis: A Short History." (1930). [v].
[49] Hilton, Thomas Eric. "Notes on the history of Kusasi." Transactions of the Historical Society of Ghana 6 (1962): 79-86.

that it taints the integrity of the overall outcome that drives its footing to the very submissions that are unconnected to the bare historical facts. Moreover, it is a well-documented fact and indeed admitted by the Committee that Kusasi were hitherto stateless communities and only had household or clan heads as the highest forms of authority. In talking about stateless tribes, Waterson specifically mentions Kusasis, among others and states that they are broken up and '…each compound became more or less a law unto itself, obeying no man really'.[50] This again raises another crucial issue regarding the truthfulness of Abugrago's submissions before the Committee. Nevertheless, the Committee gave weight to those submissions, which informed their conclusion without being wary of the consequences. It is no surprise that the Mamprugu State Council protested not only against the formation but also the Committee's composition. One may not be far from right to argue that the Mamprugu State Council suspected some sinister handling of the dispute that underlined their initial protest.

It is instructive to note that, while recognising the era that saw Mamprusis settlement in Bawku over 150 years earlier at the time of the Committee investigation, the Committee went on to clarify that this was to safeguard the trade expedition on the route between Mamprugu and Tenkorugu, presently in Burkina Faso, from attacks by robbers and burglars.[51] This second school of thought find solid support from anthropological studies. For example, Hilton states that: '[f]or a long time the Nayiri seems merely to have wished to keep open the trade route through Kusasi, and from this, some of the senior chieftaincies originate. This route was, in fact, a very important one. Great caravans of Hausas and Moshis on their way to Salaga used to break their journey at Tenkodogo'.[52] Syme had also recorded that the Mamprusi chiefs of Sinebaga, Binduri and Bawku 'principal function was to keep the trade route open between Nalerigu and Tenkudugu'[53] in the Upper Volta, where the Chief of the Busangas lives, and to provide escorts for traders and slavers passing down from the North.

This demonstrates that the Mamprusis settlement in Bawku was not motivated by Europeans entering the area with Mamprusis. This further strengthens the argument that the committee appeared to have missed the point when they did not only admit but heavily relied on

[50] Watherston, Albert EG. "The northern territories of the Gold Coast." Journal of the Royal African Society 7.28 (1908): 344-373, p357.
[51] Opoku-Afari Committee (n48) at 2.
[52] T Hilton, "Notes on the history of Kusasi." Transactions of the Historical Society of Ghana 6 (1962): 79-86
[53] Syme, J. K. B. "The Kusasis: a short history." (1970), p14

Abugrago's observation that his forefathers, as prior occupiers of the Bawku skins, were outrun by Mamprusis with the help of the white man.

More importantly, the committee's report further raises crucial issues of deep concern with particular reference to the style of presentation reflected in the report as witness statements of the then Bawku Naba, appointed and enskinned by the Nayiri under contest. Yiremia is recorded to have stated as follows:

> *The witness continued to say that **he did not think that a Kusasi nan should rule the Kusasi**. The Kusasi did not start life with chieftaincy. They believe in the production of food in plenty and eating. **Most of the Kusasi Chiefs were appointed by the Nayiri.** The canton chiefs of Kusasi were appointed and installed by the Bawku Naba. **The Kusasis are not fit to rule as chiefs**. They are in the habit of seizing the wives of their own tribesmen' (emphasis added).*[54]

The extract first reveals some internal inconsistencies. From the onset, it is massively important to note that Yiremia was not quoted verbatim but captured as per the Committee's writing. The key issue of concern borders on the express recording that Kusasi should not rule Kusasis and that the Kusasi chiefs were appointed by the Nayiri. The question is if a Kusasi should not rule a Kusasi or is not fit to rule Kusasis, what were the chiefs appointed by the Nayiri meant to do? It is well known that the Nayiri appointed Chiefs directly for various towns across the Bawku traditional area until 1931, when the colonial rulers introduced the election system, especially for the head chief of Bawku with the power to appoint the other chiefs of the rest of the towns in the traditional area. It is unclear whether this was the Committee's error or Yiremia's actual submission. The fact is Yiremia, as a royal of the Bawku skin, is familiar with the Nayiri's appointment of not only Mamprusis as chiefs but also Kusasi for Kusasi's communities, Bisa for Bisa's communities, Bimoba for Bimoba's communities, among others within the Bawku traditional area. As such, he should have been fully aware of this and avoided the inconsistencies if he made those submissions.

Before one could get over this, another deeply concerning observation is attributed to the witness again from the report. Specifically, the report states:

> ***'**The witness stated that the crowd which witnessed his appointment and installation at Nalerigu consisted of Mamprusis, Moshies and Hausas, **but after the installation he proceeded north to rule the Kusasis. His installation was complete without the sanction, will, or attendance of any Kusasis. He said, among other things, that he had achieved his aim and was no longer interested in any Kusasi matters.** He had been appointed the Chief

[54] Opoku-Afari Committee (n48) at 7

of the Kusasis by the Nayiri, and ***he did not care what the Kusasi say or think about it***. ***If the Nayiri thought he was good to be a chief, no one can challenge that fact***'[55](emphasis added).

One struggles to answer what prompted the other tribes living in Bawku to witness the enskinment, excluding the Kusasis. Could they have planned the election of Abugrago way before the Mamprusi royals' journey to Nalerigu? It is well documented that one of Nayiri's council members to date is a Kusasi. If no Kusasi accompanied the royals to Nalerigu for the enskinment, could it be that the Kusasi's council member of the Nayiri was equally absent on the said day? While we have no answers to these questions, we think these are crucial questions that ought to have been addressed and factored into the committee's impartial evaluation of the parties' claims. Unfortunately, however, these were not addressed. It is instructive to note that the Committee gave a lot of weight to the lack of sanction, will, and approval by the Kusasi. It sounds like the Committee members were unaware of how a person becomes a chief, king, and queen in Ghana and worldwide. If for nothing, one would have expected them to hail from communities where chieftaincy exists in Ghana and how persons ascend to the throne as chiefs. Moreover, once this was just at the time of our independence and it is understood that Queen Elizabeth was in Ghana at the time, one would expect that they should have known that her ascension to the throne as Queen of English was not by virtue of the consent of the people of United Kingdom and the various protectorates under the British rule. This practice is still prevalent today, and how King Charles took over the reign of leadership as the King of the United Kingdom is not in secret. His rise to the throne did not require the sanction, will or attendance at the event by the people of the United Kingdom. It is, therefore, surprising with the degree of weight the Committee attached to that contributing to their decision.

An express statement in the Report further strikes one in terms of practical utility to the investigation, including the facts' veracity. In particular, the submission that;

'Mahama Yiremia, an old man, about 85 years of age, claims to be the Bawku Naba and Head Chief of the Kusasi Area. ...Mahana Yiremia stated that in the olden days, the Kusasis had no chiefs, and therefore, the Nayiri appointed his son to look after them. The area is mainly populated by the Kusasis, except that the Mamprusis are also here as Chiefs and Princes'[56]*(emphasis added).*

[55] Opoku-Afari Committee (n 48) at 8.
[56] Opoku-Afari Committee (n 48), at 6

From the extract, one wonders about the significance of statements such as: 'an old man, about 85 years of age' to the investigation. More importantly, the Committee's postulation that Kusasis mainly populated the area with no chiefs and the Nayiri appoint chiefs to look after them is very problematic, especially when contrasted with the historical realities, as discussed earlier. From the earlier discussion, we have shown that the historical records demonstrate that Bawku was a vacant land occupied by the Mamprusis. Syme's statement supports that as of 1824, Bawku had only five compounds and that Kusasis in Bawku are essentially a product of migration to Bawku in the early 1920s. Rattray also made a similar observation when he noted that Bawku are mainly Mamprusis, founded by the ruling class. While this is conclusive, it is worrisome that the Committee failed to appreciate the historical settlement arrangement in the area.[57]

The various troubling process errors that consequently gave rise to the Committee's conclusions are profoundly worrying. In particular, the admittance of flawed evidence and biased manifestations are clear testaments that further exacerbated the integrity of the Committee's conclusions. It is, therefore, submitted that the degree of errors in the judgements of the committee cannot be excluded from blame for having midwives the foundations of such an important issue of great national concern, resulting in the years of loss of lives, destruction of property, turned the once celebrated business hub epoch to a ghost community deprive of the much-needed development and consequently leaves the area as a security threat zone of the country. It is further submitted that while the Opoku-Afari Committee is the only constituted body to have heard the parties, the massive errors of fraught judgments have sowed the seeds of discord instead of providing the much-needed forum for resolving the dispute, evidenced by the lack of equitable treatment of the parties that appeared before it.

The committee's questionable neutrality was directed not only at Yiremia but also at his witnesses, as they were not spared. In particular, while recognising that Mumuni Bawumia, was well-informed about the customs and traditions, including solid geographical knowledge of the area, the Committee failed to give weight to his submissions and was equally dismissive of his evidence before the Committee. The other witnesses of the Mamprugu State, including the then MP of the area, Awuni Janbodo, the Nangodi Naba, Harold Amori Azuri and

[57] For detail discussion of the settlement arrangements, see part 2 of this article.

Nantomah who represented the Nayiri evidence before the Committee were treated the same way. Instead, the Committee opted to lay emphasis on not only peripheral but inaccurate statements. For purposes of illustration, the Committee intimated that Nantomah underscored that:

> *'...since God created heaven and earth, no Kusasi man has had the privilege of being appointed a chief; neither had the Kusasis the privilege to elect their own chief except by appointment from Nalerigu by the Nayiri and the Kusasis must not be given that privilege now'.*[58]

We have already demonstrated that the Nayiri appointed Kusasi chiefs in Kusasi-founded and/or dominated areas before the development. We have also noted that the Committee wordings were full of inconsistencies, especially a similar statement was averred to have been made that Kusasis are not fit to be chiefs and that Kusasis are appointed as chiefs by the Nayiri. The above statement that since creation, no Kusasi has been appointed as a chief is not only contrary to the facts but also kowtowing the same pattern as earlier noted, arguably to give the dog a bad name and to hang him. It is arguably submitted that whereas the Committee had the illustrious opportunity to equitably evaluate the claims of the parties based on the relevant rules of laws, it opted to focus on matters that turned out to betray inexcusable grievous internal contradictions.

Flowing from the analysis, we think the inconsistencies heavily undermined the integrity of the impartial umpire one would have expected from such an investigation. This probably might have prompted the continuity of the parties to insist on making viable claims about Bawku's skin, leading to decades of turmoil in the area to date. While the courts over the years have had occasions to engage with the feuding parties, the substantive issues have remained alive on the table, leading to the continued relapses at every attempt to apply medication to the wound when the inside is not adequately cleaned. This leaves the colossal question of what can be done to bring finality to the matter for peace to reign in Bawku. Below, we further set out what we think is urgently needed to resolve the issues at stake.

Way forward: Court-ordered mediation as a viable approach to the resolution of this impasse

[58] Opoku-Afari Committee (n 48), at 9.

Following our analysis of whether the substantive issues have been dealt with, we deem it necessary to proffer suggestions for a mechanism for resolving the conflict. We submit that the parties re-evaluate their respective claims and adopt appropriate institutions to resolve the impasse. We endorse the suggestion that the parties return to court to seek a final resolution of this matter,[59] with a caveat that the matter will be referred to mediation for the parties to negotiate an agreement that would be recognised as a judgment enforceable by the court.

An examination of antecedent factors that have culminated in the impasse between the Kusasis and Mamprusis in the preceding sections of this article, and the devastating effect of the deadlock emphasise the need for adopting an effective mode of resolving the conflict. Ghana's judicial power is vested in the Judiciary[60] and exercised through the courts, which are seized with the power to adjudicate disputes[61] such as the prevailing impasse. With the legal authority and state machinery to enforce its judgments and orders, the courts would play a pivotal role in restoring peace to Bawku and its environs.

However, an attempt to resolve this matter through litigation should be avoided primarily because of its complexities and because litigation has been known to breed ill will between litigants.[62] Due to litigation's adversarial nature, any illusions about restoring good relations between the feuding parties disappear after judgment has been delivered because there is always a winner and a loser at the outcome of any litigation.[63] A court judgment declaring one party victorious will exacerbate the volatile situation in Bawku. However, an agreement reached by both parties following negotiations is more likely to effectively resolve the conflict. In that regard, court-ordered mediation would be effective in resolving the conflict surrounding the Bawku skin.

Mediation as an alternative dispute resolution approach[64] is a structured method of conflict resolution in which trained individuals (the mediators) assist people in a dispute (the parties) by listening to their concerns and helping them negotiate.[65] For effective mediation to occur, a dispute must be submitted to a third party with the skills (and experience) to resolve the

[59] https://3news.com/news/bawku-conflict-the-situation-is-beyond-mediation-uer-peace-council-chairman/ (accessed 16th November 2024)
[60] Article 125 of the 1992 Constitution of Ghana.
[61] Article 126 of the 1992 Constitution of Ghana.
[62] (Fiadjoe).
[63] (Hassan, 2022).
[64] (O'Mahony & Doak, 2017).
[65] (Cohen, 2003).

issue between the parties amicably. A court-ordered mediation implies a mediation process which takes place after a court order. Ghana's jurisprudence provides for the resolution of disputes pending before a court through mediation,[66] and for ease of reference, the relevant section is reproduced here:

> *Reference to mediation by court*
> *64. (1) A court before which an action is pending may, at any stage in the proceedings, if it is of the view that mediation will facilitate the resolution of the matter or a part of the matter in dispute, refer the matter or that part of the matter to mediation.*
> *(2) A party to an action before a court may, with the agreement of the other party and at any time before final judgment is given, apply to the court on notice to have the whole action or part of the action referred to mediation.*"[67]

Under this law, the prerequisite for referring parties to mediate their dispute is that the matter must be pending before a court of competent jurisdiction. The Act provides that the settlement between the parties will be recorded as a court judgment and enforced as such.[68] The significance of this law is that the parties have a judgment of a court of competent jurisdiction negotiated by them, thus ensuring a win-win situation. Unlike litigation where the parties are bound by copious laws of procedure and legal rules that can hamper the process, mediation can be tailored to the needs and preferences of the parties and represent the parties' preferences. The procedural flexibility of Alternative Dispute Resolution such as mediation has been acknowledged as an attraction for litigants in Ghana by the Court of Appeal.[69] Under litigation, disputants feel they are no longer in control and have surrendered their autonomy to bailiffs, court clerks and registrars, lawyers, and judges whose legalese confuses them. However, the familiar setting and use of mother tongue during mediation gives parties a feeling of being in control of the process and this makes them more likely to participate wholeheartedly, an essential requirement for amicable resolution of disputes.

Conclusion

This article examined the conflict in Bawku, which claimed several lives, destroyed properties, and ruined the business hub for which Bawku was hitherto known and celebrated. The conflict, which is centred on issues of chieftaincy between Mamprusis and Kusasis, has persisted since

[66] Alternative Dispute Resolution Act, 2010 (Act 798).
[67] Alternative Dispute Resolution Act 2010, s 64.
[68] Section 64(5); *Agyemang v Christ The Redeemer Investment Ltd* (A2/18/2023) [2022] GHADC 410.
[69] *Akwass Farms Ltd v Ghana Telecom Co. Ltd* (Suit No. H1/30/2010)
Dated 3rd February, 2010.

Ghana's independence, necessitating the urgent need for a concerted effort by the feuding parties to resolve this matter. The growing importance of a lasting solution to this conflict cannot be overstated. Although the courts have been invited to resolve this issue on a few occasions, it has been discovered in this analysis that the courts have not had the opportunity to delve into the substantive issues for varying reasons. What has been laid before the courts over the years has been merely the validity of the Kusasis vis-à-vis the Mamprusis claims against the arbitrary government measures that have all outlived their usefulness. More importantly, the 1958 Court of Appeal decision was merely concerned with determining whether the Kusasi area was equivalent to Bawku but not the deeply rooted claims. The only instance where the parties effectively made their case was before the Opoku-Afari Committee, which was also fraught with internal inconsistencies, as demonstrated in the analysis. The most recent foray by the courts into the issue in 2003 ended with the plaintiff withdrawing his suit before the Supreme Court could go into the matter. The Supreme Court granted the plaintiff leave to discontinue the suit but without liberty to apply under PNDCL 75 and Articles 270 and 277 of the Constitution, which has been erroneously interpreted by several parties to mean a judgment in favour of the defendants. This misconception has further fuelled the dispute, which appears to have no end in sight.

While the courts are the ideal forum for resolving disputes of varying degrees, we arguably submit that the courts alone would not be the most suitable forum for effectively resolving the Bawku chieftaincy impasse. For a more practical resolution, we believe that a court-connected mediation is the answer to an amicable and permanent settlement of the Bawku conflict. This approach would allow the parties to harness the massive advantages of mediation, such as ownership of the process, which litigation in the court cannot provide, for an amicable settlement. We are confident that this approach, in conjunction with the courts, can potentially guide the parties towards a lasting solution to the dispute in Bawku. Therefore, we propose court-ordered mediation, as provided under the Alternative Dispute Resolution Act 2010, as the best mechanism for resolving the Bawku chieftaincy conflict effectively.