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IS THE CHIEF FISHERMAN A CHIEF? AN EXAMINATION OF NUUMO NYAKOMLE AND 7 ORS V NII TETTEH ASHONG.

Kweku Attakora Dwomoh[1*]

Abstract

The Supreme Court's decision in Nuumo Nyakomle v Nii Tetteh Ashong reignites debate over the constitutional meaning of chieftaincy and the legal status of the chief fisherman within customary law in Ghana. This paper critically examines the Court's conclusion that the Chief Fisherman of the Kpone Traditional Area is not a chief for purposes of the Constitution of the Republic of Ghana, 1992. It contends that the constitutional definition of a chief requires an examination of lineage, nomination, and election in accordance with the relevant customary law procedures, rather than assumptions based solely on the title or functions of an office. 1992. I argue that the Court, in relying principally on Eku alias Condua III v Acquaa without undertaking the customary law inquiry required by the 1992 Constitution of Ghana, it reached a legally unsustainable conclusion with broader implications for the interpretation of Ghana's chieftaincy jurisprudence.

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Introduction

It is axiomatic that chieftaincy is a traditional institution in Ghana that has endured over time. It has demonstrated resilience through the pre-colonial, colonial and post-colonial eras.[2] Sakyi asserts that chieftaincy is not only an institution that has endured the impact of colonisation and been weakened thereby, but also the oldest institution to have undergone such changes.[3] Chieftaincy is sacred;[4] it is embedded in culture;[5] traditional governance revolves around it.[6] It is a symbol of leadership and serves as a cornerstone for traditional governance and culture.[7] It has been given constitutional and other legislative backing.[8] The Constitution of the Republic of Ghana, 1992,[9] declares as an entrenched provision,[10] that "the institution of chieftaincy, together with its traditional councils established by customary law and usage, is hereby guaranteed."[11]

The identity of a chief is so profoundly rooted in the customary law and usage of the people to whom he belongs that even Parliament is bereft of authority to, by legislation, confer chieftaincy upon one who

2 *The Republic v The President, Central Regional House of Chiefs and the President, National House of Chiefs, Nana Ogyeedom Obranu Kwesi Atta VI, Ex parte Obrempong Nyanful Krampah XI* (Unreported, Civil Appeal No J4/90/2022, 21 June 2023); I Owusu-Mensah, 'Politics, Chieftaincy and Customary Law in Ghana's Fourth Republic' (2014) 6(7) *Studies* <https://www.jpanafrican.org/docs/vol6no7/6.7-12Owusu-Mensah.pdf> accessed 3 March 2025, *The Republic vs The President, Central Regional House Of Chiefs & 2 Ors Ex Parte: Obrempong Nyanful Krampah XI* [2023] DLSC 16114.

3 K Sakyi, *Gone but Not Forgotten: Chieftaincy, Accountability and State Audit in Ghana, 1993–99* (Research Reports).

4 *In Re Kwabeng Stool; Karikari & Another v Ababio II & Others* [2001–2002] SCGLR 515.

5 Joris Tieleman and Justus Uitermark, 'Chiefs in the City: Traditional Authority in the Modern State' (2019) 53(4) *Sociology* 707–723 <https://doi.org/10.1177/0038038518809325> accessed 10 April 2026.

6 A K P Kludze, *Ewe Law of Property* (Sweet & Maxwell 1973) 14–15.

7 Monika Różalska, 'Between Tradition and Modernity–the Role of Chiefs in the National Development and Local Governance in Ghana' (2021) 13 Politeja 379.

8 *Ex parte Obrempong Nyanful Krampah XI* (n 1).

9 It must be noted that the Constitution did not create the institution of chieftaincy. Chieftaincy even predates colonialism. *Nenyi Kobina Andakwei IV (Substituted by Nenyi Kwame Kotsia IV) and Others v Kow Larbie Kobina Abaka II (Substituted by Nenyi Kobina Affir) and Others* [2018] DLSC 183; *Amonoo and Others v Twaako and Others* [2023] GHASC 89 (19 July).

10 Constitution of the Republic of Ghana, 1992, art 290(1)(p).

11 Constitution of the Republic of Ghana, 1992, art 270(1).

is not so recognised under that custom.[12] In like manner, Parliament cannot divest a person of his status as a chief where that status is firmly anchored in tradition, nor may it enact any law that diminishes or derogates from the honour and dignity of the chieftaincy institution as a whole.

This position, though seminal, has not always been the state of our chieftaincy affairs.[13] This paper shall trace the historical antecedents of the chieftaincy institution from pre-colonial to the post-colonial era to establish the various phases and changes it has been through and establish how important this paradigm shift is to the chieftaincy institution.

Despite the independence and constitutional protection given to chiefs and the institution of chieftaincy under the Constitution of the Republic of Ghana, 1992, there are questions as to who properly qualifies as a chief. This difficulty is intensified where the traditional office holder performs functions and, in some instances, meets the constitutional criteria of a chief yet their legal status remains uncertain. One such traditional office holder is that of the chief fisherman.

In the case of *Nuumo Nyakomle and 7 Ors v. Nii Tetteh Ashong*,[14] the Supreme Court was faced with the question of the status or recognition of a chief fisherman and was required to determine whether a chief fisherman is a chief. In other words, does the constitutional definition of chief include a chief fisherman? The Supreme Court held, based on case law, that the Chief Fisherman of the Kpone Traditional Area is not a chief under our law.

12 Constitution of the Republic of Ghana, 1992, art 270 (2)(a).
13 Constitution of the Republic of Ghana, 1992, art 270(2)(b).
14 *Nuumo Nyakomle and 7 Ors v. Nii Tetteh Ashong* [2024] DLSC 17458.

This paper will not purport to make a pronouncement of whether the Chief Fisherman is indeed a chief.[15] Rather, it offers a critique of the decision, contending that the case presented a novel situation and a missed opportunity for the Supreme Court to articulate the customary law position on chief fishermen and, on that basis, determine whether they qualify as chiefs. It further argues, without equivocation, that the Supreme Court's decision in *Nuumo Nyakomle and 7 Ors v. Nii Tetteh Ashong* was rendered without due regard to the customary law and practices that underpin the constitutional criteria for determining who qualifies as a chief.

The paper is structured as follows. Section 2 examines the facts of the case and the respective decisions rendered at the various levels of the courts in *Nuumo Nyakomle and 7 Ors v. Nii Tetteh Ashong*. The third section traces the evolution of the institution of chieftaincy from the pre-colonial through the colonial to the post-colonial era. It reflects on the progressive limitations imposed upon the institution over time, as well as the various attempts by successive governments to subject it to political control, rather than allowing it to remain governed wholly by customary law. In the fourth section, the paper considers the definition of a chief under the Fourth Republican Constitution and juxtaposes it with that of chief fisherman. It argues that any proper determination of whether a chief fisherman qualifies as a chief must necessarily be grounded in the constitutional and customary criteria that define chieftaincy. The fifth section analyses the decision in *Eku Alias Condua III v Acquaa (the Condua case),*[16] which served as the principal authority upon which the Supreme Court relied in the *Nuumo Nyakomle* case to conclude that a chief fisherman is not a chief. It contends that such reliance was misplaced, particularly as the two cases are distinguishable and as the precedent was inapplicable to the circumstances at hand. The paper concludes by demonstrating

15 This is because the direct answer to that question is an empirical one which can be the subject matter of a subsequent paper.

16 *Eku Alias Condua III v Acquaa (the Condua case)* (1968) GLR 412.

that the Supreme Court, in *Nuumo Nyakomle*, missed a significant opportunity to establish a clear and authoritative precedent on the status of the chief fisherman within Ghanaian jurisprudence.

The Decision in *Nuumo Nyakomle And 7 Ors V. Nii Tetteh Ashong*[17]

The case of *Nuumo Nyakomle and 7 Ors vs Nii Tetteh Ashong* presented an unusual set of facts. The plaintiff (appellants) in the case sought, amongst others, a declaration that the respondent, who was a chief fisherman, had been removed as the Chief Fisherman of the Kpone Traditional Area on grounds of rudeness, arrogating priestly functions to himself that he was otherwise not entitled to perform. They further sought orders against the respondent to account for all monies received on behalf of the fisherfolks in the Kpone Traditional Area. The defendant (respondent), in his response, raised an objection claiming that he is the duly appointed Woleatse (the Chief Fisherman) of Kpone and had occupied that position since the year 1992. He further argued that his position as a chief fisherman had been gazetted and his name had been entered into the National Register of Chiefs. He argued again that there was no lawful customary procedure of destooling him, and as such his purported destoolment was unlawful. More importantly, he argued, by way of a motion to dismiss the suit, that the matter before the court was a cause or matter affecting chieftaincy[18] and as such the High Court did not have jurisdiction to hear it.

17 *Nuumo Nyakomle and 7 Ors vs Nii Tetteh Ashong* (2024) DLSC 17458.

18 Per Section 76 of the Chieftaincy Act, 2008, Act 759, a cause or matter affecting chieftaincy is as a cause, matter, question or dispute relating to any of the following:

(*a*) the nomination, election, selection or installation of a person as a chief or the claim of a person to be nominated, elected, selected or installed as a chief,

(*b*) the deposition or abdication of a chief,

(*c*) the right of a person to take part in the nomination, election, selection or installation of a person as a chief or in the deposition of a chief,

(*d*) the recovery or delivery of stool property in connection with the nomination, election, selection, installation, deposition or abdication of a chief, and

(*e*) the constitutional relations under customary law between chiefs.

The trial court dismissed the application of the Respondent and held that he did not meet the constitutional threshold for who a chief is. The trial court further held that after assessing *the Condua case*, the fact of the entry of the name of the defendant in the National Register is only prima facie recognition by the National House of Chiefs and does not give legitimacy to the office holder. The trial court concluded that when Article 277 of the Constitution and section 57(1) of the Chieftaincy Act 2008, Act 759 are construed, the provisions on who a chief is will exclude the position of a chief fisherman.

At the Court of Appeal, the learned Justices set aside the judgment of the High Court on grounds that the claim before the court was one which was a cause or matter affecting chieftaincy and, as such, the trial court did not have jurisdiction to hear the matter. The Court of Appeal was further of the view that, looking at the definition of who a chief is and looking at the categories of chiefs under the Chieftaincy Act, the respondent hailed from the appropriate lineage and as such met the requirement of being considered as a chief.

Upon further appeal to the Supreme Court, His Lordship Amadu Tanko, after construing various provisions and decisions on who a chief is and a "cause or matter affecting chieftaincy", was persuaded by the decision in *the Condua case* which is quoted in extenso for emphasis:

We are persuaded by the judgment of the Court of Appeal in *Eku alias Condua III v. Acquaa (1968)* GLR 412 which was extensively discussed by the trial court in its ruling on the motion to dismiss the suit:

There can be no doubt, therefore, that the fishing community of Aboasi to which both parties in this appeal belong have no proprietary interest whatsoever in any piece of land in the village called Aboasi.

They are strangers and licensees on that part of a land which they occupy within the Shama Site. It seems to me that a distinction must be drawn between the headman of the Fishing community of Aboasi village and the headman of Aboasi village who is the Odikro or Penin of the village. The former has no constitutional status, and is therefore not entitled to a seat on the state Council, whilst the latter is the aboriginal head of the entire people of the village... Surely, it is the latter type of headman who has a stool that can have constitutional rights and obligations in the aboriginal state and could take his place at the council.

The holding of His Lordship that the respondent was not a chief was not supported by the analysis in the Judgment. The determination of whether a person is a chief or not is a mixed question of the custom of the area supported by the constitutional and legislative definition of who a chief is. Merely relying on a legal precedent, completely different in context from that of the respondent, to establish the assertion that the respondent, as a chief fisherman, is not a chief is, with the greatest of respect, erroneous. Further, the reliance placed on the precedent overshadowed the peculiar customary and statutory context within which the Respondent's status as a chief fisherman ought to have been assessed. Even though the Supreme Court rightfully observed that differences exist in the customs and usages of the various areas and that may affect the chieftaincy status of a chief fisherman, it still concluded, being heavily persuaded by the decision in *Eku alias Condua III v. Acquaa,* that the chief fisherman of the Kpone traditional area's position is a position of trusteeship.

Chieftaincy Through Time

Chieftaincy is the primary form of governance in the various societies. In Asante communities, for instance, the traditional system of governance was one founded upon an ordered and reverent structure

of leadership, wherein authority flowed in a dignified hierarchy—from the paramount chief, through the divisional and village chiefs, down to the council of elders and the heads of lineages who anchored the very fabric of the community.[19] The chief in traditional society was an embodiment of religious and magical authority.[20] Now, as then, a chief, before he assumes his office, is made to participate in rituals to institute in the chief the powers of the land and to place him in the position to bridge the gap between the living and the dead as well as the gods.[21] The chief is regarded as a sacred figure, revered not merely as a temporal ruler but as a custodian of spiritual authority. In him, the precolonial people placed profound belief, attributing to his office influence over the fertility of the land, the coming of the rains, and even the delicate boundaries between life and death.[22] The chief did not govern by himself. He ruled with a council of elders or, in some instances, with the heads of the lineages of the town/village. The chief, through his council, made decisions on behalf of his people.[23]

In pre-colonial times, who was a chief was determined by the tradition of the people.[24] Such a person should have been nominated, elected, enstooled or enskinned as a chief or, in some cases, installed or appointed by the designated persons under custom.[25] Without these pre-requisites, a person was not considered a chief.

19 R S Rattray, *Ashanti Law and Constitution* (Clarendon Press 1929); Michael Crowder and Obaro Ikime, *West African Chiefs* (African Publishing Corporation 1970).

20 S Obianim, *Ewe Konuwo* (Macmillan 1957); M J Field, *Social Organisation of the Ga People* (Crown Agents for the Colonies on behalf of the Gold Coast Government 1940).

21 K A Busia, *The Position of the Chief in the Modern Political System of Ashanti* (Oxford University Press 1951).

22 C E K Kumado, 'Chieftaincy and the Law in Modern Ghana' (1990–1992) *18 University of Ghana Law Journal* 194–216.

23 In some communities there are opinion leaders whose task is to listen to the views of the people in the community and relay them to the council. Their role aids the council in their decision-making having in view the views of the people.

24 D Addo, *The Institution of Chieftaincy in Ghana: The Future* (Konrad Adenauer Foundation 2004).

25 Ibid

When the British assumed jurisdiction over the Gold Coast Colony, they wrongly assumed that the chieftaincy institution was the same; thus, they observed how chieftaincy amongst the Akans played out and replicated the same amongst the Ga. Thus, paramount chiefs were created where hitherto paramountcy was unknown in their custom.[26] This commenced an era of social disintegration. Because these newly created chieftaincy positions did not have roots in tradition, recognition and acceptability of these chiefs were always in issue.[27] For example, in the Ga traditional areas, the colonial creation and recognition of certain traditional offices generated disputes over legitimacy and succession, resulting in competing claims to authority, divided loyalties among subjects, and recurring conflicts over traditional leadership. This was because these newly created chieftaincy positions were not known to the native people.

To exacerbate matters, the colonial government introduced indirect rule, a system of government through which colonial authority was exercised through traditional rules and native institutions and by which the British sought to progressively adapt native institutions to Western ones.[28] In essence, the policy of indirect rule was designed to enable the British to consolidate and maintain effective control over the Gold Coast by governing through established indigenous institutions, particularly the chieftaincy system.[29] Indirect Rule required that the British have control over who would wield chiefly power, and to address that need, the colonial government turned to a process of recognition through gazetting.[30]

26 W C Hailey, *Native Administration in the British African Territories, Part III* (His Majesty's Stationery Office 1951) ch VIII, 194.

27 Kumado (n 24).

28 F D Lugard, *The Dual Mandate in British Tropical Africa* (Blackwood 1923); R L Buell, *The Native Problem in Africa* (Macmillan 1928); Margery Perham, 'A Restatement of Indirect Rule' (1934) 7 *Africa* 321–334; W C Hailey, *An African Survey* (Oxford University Press 1938) 413; David E Apter, *The Gold Coast in Transition* (Princeton University Press 1955) 120.

29 Ibid

30 Recognition in this context was the formal acknowledgment by the colonial government that an individual ought to be regarded as a chief and be given the entitlements and privileges of a chief in accordance with law. Where a chief's recognition was withdrawn, such person could not exercise any function of a chief. See Kwame Dzivenu, *Chieftaincy, Custom and the Administration*

As Kumado posits, the introduction of the requirement for gazetting to recognise a chief was not achieved easily. It came through much opposition from the educated Ghanaians who argued that the colonial government did not have carte blanche jurisdiction over all the chiefs-only those granted by treaty.

The system of indirect rule without doubt weakened the institution of chieftaincy. Beyond the recognition powers given to the colonial government over chiefs through gazetting, there was the introduction of the Supreme Court Ordinance of 1876. The ordinance introduced the formal court system, which limited the hitherto adjudicatory powers of the chiefs. The Supreme Court of the Gold Coast was to have the same jurisdiction as the High Court of Justice in England and adjudicate claims by the natives. The government also passed the Native Jurisdiction Ordinance of 1878 to define the powers of the chief. It was later repealed and re-enacted by the Gold Coast Native Jurisdiction Ordinance of 1883.[31] In addition to defining the powers of the chief as the 1878 Ordinance introduced, the 1883 Ordinance sought to regulate and control the powers of the native authority.[32]

Addo-Fening argues that the Native Jurisdiction Ordinance of 1883 took away the inherent judicial powers of the chief. The chief's judicial power became derivative.[33] The colonial government became the source of the judicial power of the chief. Further, the 1883 Ordinance made the chief susceptible to being removed from office or suspended by the colonial government (Governor-in-Council) where there was gross abuse of power or where the chief proved to

of Justice in Colonial Ghana (PhD thesis, University of Edinburgh 2011) <https://era.ed.ac.uk/server/api/core/bitstreams/bf5ee607-beac-4469-a452-2124179f9ea9/content> accessed 1 June 2026.

31 1 G & G 1(2d), pg 13.

32 Ibid.

33 R Addo-Fening, 'The Native Jurisdiction Ordinance, Indirect Rule and the Subject's Well-Being: The Abuakwa Experience c1899–1912' (1990) 6(2) *Research Review (Institute of African Studies)*

be incompetent or unsatisfactory to the colonial state.[34] The 1883 Ordinance supposedly conferred on the chiefs the powers to make bye-laws, but such bye-laws' validity came from the approval of the governor only where the bye-law was for the promotion of peace, good order and welfare of the people.[35] The Ordinance created the courts of the king as the court of first instance.[36] The presence of British courts in the protectorates was subversive of the authority of the chief. The chief, as Sarbah argued, in the mind of Africans carried with him the administration of justice;[37] thus, when the 1883 Ordinance took such powers away substantially, the chief was rendered partially impotent. The power of many of the chiefs in the protectorates became so diminished that they were considered merely as arbitrators.

To illustrate, in 1886 one Ayimadu, whose niece had been ordered to pay a five-pound fine by the Nifahene, forbade her to pay that amount. When Ayimadu was summoned to the chief's palace over his conduct, he refused to go and sent a message to the chief that the chief did not have any power to summon him to his court.[38] When the chief escalated the matter to the government, he was informed Ayimadu had done no wrong–he acted within the confines of the law. He was further told that he did not possess powers under the 1883 Ordinance. The Nifahene only acted as an arbitrator.[39] In other instances where the subjects flouted the authority of the chief

34 Native Jurisdiction Ordinance, s 29.

35 Ibid

36 G E Metcalfe, *Great Britain and Ghana: Documents on Ghana History 1807–1907* (Nelson and Sons 1964) 390–393; National Archives of Ghana, Adm 11/1/3, J T Hutchinson to Colonial Secretary, 20 December 1891; *Gold Coast Colony Ordinances* vol I (1874–1892) 399, cl 24 of the Native Jurisdiction Ordinance 1883, 401.

37 J M Sarbah, *Fanti National Constitution* (Frank Cass 1968) 128, 134.

38 National Archives of Ghana, Adm 11/1/3, Amoako Atta I to H E Griffith, 12 August 1886, cited in R Addo-Fening, 'The Native Jurisdiction Ordinance, Indirect Rule and the Subject's Well-Being: The Abuakwa Experience c 1899–1912' (1990) 6(2) *Research Review (Institute of African Studies)*.

39 National Archives of Ghana, Adm 11/1/3, W B G to Commissioner for Native Affairs, 31 August 1886; Colonial Secretary to King Amoaqua Atta, 17 September 1886.

in matters the chief had jurisdiction in, the King's court refused to uphold the power of the chief to punish. In the case involving Odikro Yaw Tawia of Kade, where he failed to attend a summons by the Okyehene for a matter in relation to an oath, the King's court refused to uphold the authority of the Okyehene.[40] As Addo-Fening asserts, towards the end of the 19th century, the chief's power had been so diminished that his sub-chiefs in some instances could even walk out on the chief without deference to his authority. In some instances, they could even publicly insult the chief.[41]

In 1902, there was the passage of the 1902 Ashanti Administration Ordinance after the Yaa Asantewaa War.[42] This law sought to bring the Asante under formal British rule and place restrictions on the recognition of chiefs such that a person could not serve as a chief in Asante until the governor had formally recognised him.[43] In fact, it was unlawful for any head chief to exercise the powers of a head chief when he had not been recognised as such by the governor.[44]

The Ordinance also placed heavy restrictions on the adjudicatory powers of the chief by the establishment of the Chief Commissioner's Court,[45] where the Chief Commissioner had powers to stop the hearing of any case pending before a native tribunal and direct it to be heard in his court.[46] Similar restrictions were placed on chiefs in the Northern Territories under the Northern Territories Administration Ordinance, 1902, where the adjudicatory functions of the chiefs in Northern Ghana were heavily impaired.[47]

40 National Archives of Ghana, Adm 11/1/1094, Kade Chief to Smith, 11 December 1888.
41 Ibid
42 Ashanti (No. 1. 1902) This was an ordinance which was to provide for the administration of the government of Ashanti after Ashanti was annexed to and became part of His Majesty's dominions.
43 Thaddeus Ulzen, 'March 27, 1952: Local Government Ordinance Reduces Role of Chiefs in Local and Municipal Affairs' (29 March 2018) <EAUMF Blog> accessed 7 April 2026.
44 Ashanti Administration Ordinance, 1902, s 22.
45 Ashanti Administration Ordinance, 1902, ss 5–12, 17.
46 Ashanti Administration Ordinance, 1902, s 20.
47 Northern Territories Administration Ordinance, 1902, ss 5–16.

In 1904, the Chiefs Ordinance was passed, which granted power to the governor to grant recognition to the chiefs. Under the Ordinance, the chief obtained recognition as a chief by the state where the chief applied to the governor for a confirmation of his/her election as a chief. The Ordinance's preamble read as follows: "An Ordinance to facilitate the proof of the election and installation and the deposition of chiefs according to native custom."[48] Even though some authors have argued that under this law the colonial government rather sought to bring modernity to the chieftaincy institution and redesigned them in accordance with the models of the English monarchy,[49] the effect of the law was to further create legislative barriers to the independence the chief enjoyed in the exercise of his authority under custom. This not only weakened the chieftaincy institution, but it made the validity of title dependent on the government of the day, thus eroding the customary independence and procedures of the native communities.

Under the Guggisberg Constitution of 1925, three provincial councils were established in the colonies. The provincial councils had the power to elect members to the legislative council, whose duty was to discuss matters of ethnic interest and to consider and advise government on any bill from the government which would affect the local people.[50] Even though this appeared a laudable step, it rather metamorphosed the Chieftaincy institution from a traditional institution to one that aligned with the government of the day.[51] There was also the passage of the Native Courts (Colony) Ordinance 1944,[52] which provided for the composition, administration and powers of native courts in the colony.[53]

48 Chiefs' Ordinance, 1904, preamble.

49 Owusu-Mensah, *Politics, Chieftaincy and Customary Law in Ghana* (Konrad-Adenauer-Stiftung) <Konrad-Adenauer-Stiftung PDF> accessed 6 April 2026.

50 F M Bourret, *Ghana: The Road to Independence, 1919–1957* (Oxford University Press 1960) 48.

51 Harvey, W.B., Law and Social Change in Ghana (Princeton, Princeton University Press, 1966) Ch. 2.

52 No 22 of 1944, 1 G & G 1 (2d) 73.

53 This law had immediately been preceded by the Native Administration Ordinance, 1927.

Towards the end of the colonial administration, the Coussey committee was formed to deal with many structural problems, including problems of native administration. It recommended that the native authorities be given powers in relation to native customary constitutional disputes regarding their stools.

To a considerable extent, the colonial era witnessed a marked diminution of the power and authority of the chief, as the institution was significantly weakened and subordinated. The chief's role and authority no longer emanated solely from the customary law of the people. Even though the chief exercised customary powers, those powers could be exercised with the approval of the government of the day, as approved by a statute. In some respects, the chief was no longer the customary head. He had to survive by pleasing the colonial power.

The 1957 Constitution supposedly brought relief to the institution of chieftaincy by boldly returning the institution as it existed under customary law and usage. This provision was not made in isolation. It further maintained that the House of Chiefs was to be established in each region.[54] In 1958, the House of Chiefs Act[55] was passed, which formally set up and sought to operationalise the House of Chiefs, sought to regulate the affairs of chiefs and even their disputes. Consequently, the Chiefs (Recognition) Act[56] was enacted. This law gave power to the Governor-General to have the last word on the enstoolment or destoolment of a chief such that when a person is enstooled or destooled per the custom in the area, that enstoolment or destoolment will not be effective if it is not recognised by the Governor-General.[57] The Act further placed restrictions on the chief by giving powers to the Governor-General to prohibit anyone

54 Ghana (Constitution) Order in Council, 1957 pt IX, ss 66–68, 88, 1 G & G 128.
55 House of Chiefs Act 1958 (No 20 of 1958), as amended by the House of Chiefs (Amendment) Act 1959.
56 The Chiefs (Recognition) Act 11, 1959.
57 The Chiefs (Recognition) Act, 1959 (No. 11 of 1959), s 2.

from exercising the functions of a chief and to place a residence ban on him. The effect of these provisions was that even though the Constitution of the Republic of Ghana, 1992, guaranteed that the institution of chieftaincy must be regulated by the customary law and usage of the traditional area, the Governor-General, under legislation, had the power to determine who should be the chief in a traditional area or otherwise.[58] This meant that where a person is enstooled in accordance with the customary law and usage of the area where such person was a person who opposed the ideology of the government of the day, such a person's enstoolment was most likely to be disapproved by the Governor-General. Kumado asserts[59] that many of these legal provisions against chiefs were because of the opposition some chiefs gave to the constitutional struggle before independence. Some Asante and Akyem chiefs supported the opposition parties against the Convention People's Party (CPP), and this resulted in laws made against their interests, including laws to affect their financial interests, so their financial resources to finance opposition parties were limited.[60]

Subsequently, in 1966, after the overthrow of Kwame Nkrumah's CPP government led by the National Liberation Council, the National Liberation Council (which was heavily opposed to the ideology and ways of the Nkrumah led administration) passed laws to guarantee the freedom of the chieftaincy institution. There came the passage of the Chieftaincy (Amendment) Decree, 1966 (NLCD 112)[61] which sought to guarantee the administration of chieftaincy under the appropriate customary law and usage. The NLCD 112 still maintained some powers in the government to withdraw recognition from some chiefs. This was because there were some persons appointed

58 *Asor II and Others v Amegboe and Others* [1978] GLR 153-169.

59 Ibid

60 The Akim Abuakwa (Stool Revenue) Act. No. 8 of 1958 was an example of such laws made which brought their financial resources which was hitherto under their traditional authority under the control of government

61 This law was an amendment to the Chieftaincy Act, 1961 (Act 81).

by the erstwhile government as chiefs who didn't qualify as chiefs under their custom. More clearly, under the amendment decree, some chiefs were specified in the schedule to the decree as having been promoted to paramountcy by the Nkrumah government where such paramountcies were not known under the custom of the place. Per the amendment decree, such paramountcies were reduced to the status they had before the elevation.[62] Also, some chiefs who were listed in the second schedule to the decree lost their recognition as chiefs by the government since such people did not qualify as chiefs in their respective customary areas.[63] It further reinstated all deposed chiefs who ought to have been the lawful occupants of the stool or skin. These processes did not come without challenges. As Mensah-Brown has pointed out, there were huge challenges of reverting some stools which had been elevated to paramountcies to their original statuses.[64]

In 1969, based on the Akuffo-Addo constitutional commission proposals, the 1969 constitution came into force, ushering in the 2nd Republic. Under the 1969 constitution, the rhetoric of guaranteeing the institution of chieftaincy under custom was provided for.[65] The constitution maintained the various houses of chiefs at the regional levels and further maintained the national house of chiefs with an option of an appeal from their decisions to the Supreme Court. The National House of Chiefs also had significant functions, although much couldn't (no contractions in formal speech) be achieved under it to undertake studies on the customary law with the view of having a unified system of rules of customary law.[66] The constitution had no provision on the recognition of the chief by a minister for the validity of the position of the chief. In the case of *Republic v. Boateng; Ex*

62 National Liberation Council Decree 112 para 2.
63 National Liberation Council Decree 112 para 1(2).
64 A K Mensah-Brown, 'Chiefs and the Law in Ghana' (1969) 13(2) *Journal of African Law* 57 <JSTOR> accessed 10 April 2026.
65 Constitution of the Republic of Ghana 1969 arts 153–159, 169.
66 Ibid

Parte Adu-Gyamfi II,[67] the Court reaffirmed the position thus: "With the coming into force of the Constitution, 1969, recognition by the minister is no longer essential to the validity of enstoolment of chiefs. A chief under Act 81 after the promulgation of the Constitution, 1969, is one who has been nominated, elected and installed as a chief according to customary law. The recognition given by the minister of the enstoolment of the respondent did not operate to cure the defect in his enstoolment."

Notwithstanding the above–stated position, when the Chieftaincy Act, 1971 (Act 370) was passed after the coming into force of the 1969 Constitution, the recognition of chiefs by the Minister was maintained even though the constitution had provided for the fact that the institution of chieftaincy shall be governed by the customary law and usage of the area. The Chieftaincy Act defines who a chief is as follows: an individual who has, in accordance with customary law, been nominated, elected and installed as a Chief or as the case may be appointed and installed as such and whose name for the time being appears as a Chief on the National Register of Chiefs. Provided that no person shall be deemed to be a Chief for the purposes of the exercise by him of any function under this Act or under any other enactment, unless he has been recognised as such by the Minister by notice published in the Local Government Bulletin[68] (sic)

The Act further mandated the entry of the name of the chief in the National Register of Chiefs.[69] The Minister was further given powers to prohibit any person purporting to act as a chief from doing so and could impose a residence ban on any such person he so prohibits.[70]

Intriguingly, the power of the government to recognise or detract from recognising a person as a chief, even though such chief would

67 *Republic v. Boateng; Ex Parte Adu-Gyamfi II* [1972] 1 GLR 317.
68 Chieftaincy Act 1971, (Act 370), s 48(1).
69 Chieftaincy Act 1971, (Act 370), s 48 (2)
70 Chieftaincy Act, 1971 (Act 370), s 52.

have been validly enstooled or enskinned, was given to the Minister, which is an affront to the return of chieftaincy to the customary set-up.

Remarkably, the return of the institution of chieftaincy to its pristine form at custom was seen under the 1979 Constitution. The Constitution, beyond merely declaring that chieftaincy shall be governed in accordance with the relevant customary law and usage, went ahead to define who a chief is. It defined a chief as a person who, hailing from the appropriate family and lineage, has been validly nominated, elected and enstooled, enskinned or installed as a chief or queen mother in accordance with the requisite applicable customary law usage.[71] This definition replaced the statutory definition contained in Section 48 (1) of Act 370. It is significant for a number of reasons. This was the first time that the Constitution, the fundamental law itself, expressly defined a chief. Since 1957, the constitutions of Ghana have guaranteed chieftaincy according to custom and usage but have left the identification of a chief to the legislature. The definitions in the various statutes have been at variance with the constitutional guarantee because they invariably involved central government in the process of attaining or losing chiefly status.[72]

The victory the 1979 constitution brought was short lived when the 1979 constitution was overthrown by the Provisional National Defence Council (PNDC) government in 1981. Upon the assumption of government, the PNDC government abrogated the 1979 constitution but by the proclamation being the Provisional National Defence Council (Establishment) Proclamation 1981 as amended by PNDC Law 42, section 53 (2) maintained the definition of who a chief is under the 1979 constitution. That victory was Pyrrhic. In 1985, the PNDC government passed the Chieftaincy

71 Constitution of the Republic of Ghana 1979 art 181.
72 Ibid

(Amendment) Law, 1985, P.N.D.C. Law 107. In that rather two (2) paragraphed law, the PNDC government took the institution of chieftaincy back to legislative control. It maintained the definition under the 1979 constitution but further went ahead to impose limitations on the chief. It provided as follows:

(1) A chief is a person who, hailing from the appropriate family and lineage, has been validly nominated, elected and enstooled, enskinned or installed as a chief or queen mother in accordance with the requisite applicable customary law and usage.

(2) Notwithstanding any law to the contrary, no person shall be deemed to be a chief for the purposes of the exercise by him of any function under this Act or any other enactment unless he has been recognised as such for the exercise of that function by the Secretary responsible for Chieftaincy matters by notice published in the Local Government Bulletin.[73]

Subsection 2 inserted into section 48 subjected the validity of the chief's authority to recognition by the Secretary for Chieftaincy Matters by notice published in the Local Government Bulletin.

Then came the current Constitution of the Republic of Ghana, 1992. Who is a chief in Ghana is given a constitutional definition just as was done in 1979. The determination of who a chief is or is not has not been left to the whim and caprice of any person. Neither was it, under the Constitution of the Republic of Ghana, 1992, left to be given validity by a person (a minister or government official). It is not for the court to decide based on its discretion whether a person "looks" like a chief or not.

Under the Constitution of the Republic of Ghana, 1992, the institution of chieftaincy in Ghana is governed by the customary law

73 PNDCL 107.

and usage of the area in question or the group of people. Thus, article 270 of the Constitution of Ghana, 1992, boldly pronounces that the institution of chieftaincy, together with its traditional councils established by customary law and usage, is hereby guaranteed.[74] This, in essence, means that the Constitution of the Republic of Ghana, 1992, by an added clause, placed the institution of chieftaincy fully under customary law and usage, demonstrating an appreciable penchant to place a limit on the extent of statutory influence on the institution of chieftaincy. Rightfully, to substantiate the added layer of limit, the Constitution provided conclusively that Parliament does not have the power to pass any law which confers on any person the status of being a chief or has the power to withdraw recognition given to any person as a chief.[75] To further demonstrate how protected the sacrosanctity of the institution of chieftaincy is, Parliament is further restricted from passing any law which in any way detracts or derogates from the honour and dignity of the institution of chieftaincy.[76] Thus, the Chieftaincy Act, 2008, Act 759, in providing for the regulation of chiefs, did not confer on any person the status to recognise or detract from recognising a chief. It only provided for a register[77] for the administration of the functions of the chief under the Act such that all chiefs must be duly registered with the register provided.[78]

Without doubt and following the trajectory, the 1992 followed the 1979 approach of providing customary autonomy to the institution of chieftaincy, restoring it where it belonged before the introduction of British Jurisdiction in the Gold Coast.

74 Constitution of the Republic of Ghana, 1992, art 270.
75 Constitution of the Republic of Ghana, 1992, art 270(2)(a).
76 Constitution of the Republic of Ghana, 1992, art 270(2)(b).
77 Chieftaincy Act, 2008 (Act 759), s 57(5).
78 The said section provides as follows:

(5) A person shall not be considered to be a chief for the performance of a function under this Act or any other enactment, unless that person has been registered for the performance of that function in the National Register of Chiefs and that person's name has been published in the *Chieftaincy Bulletin*.

Who Is a Chief in Ghana?

A chief in Ghana is a person who hails from the appropriate family and lineage, and such person has been validly nominated, elected or selected and enstooled, enskinned or installed as a queen mother or as a chief in accordance with the relevant customary law and usage.[79] This definition is repeated at section 57 of the Chieftaincy Act, 2008, Act 759.

The constitutional definition of the chief acknowledges that in some traditional areas the queen mother in the area is the recognised chief; as such, in such circumstances, such persons should be given the due recognition as the chief. For a person to qualify as a chief under article 277, such a person must meet three main indicators being:

a. Whether the person, who claims to be a chief, hails from the appropriate family and lineage.

b. Whether the person, who claims to be a chief, was validly nominated, elected or selected.

c. Whether the person, who claims to be a chief, has been enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage.

The satisfaction of the above stated indicators is construed in accordance with the customs of the people in the community for whom the chief is being considered.

A chief must hail from the appropriate family and lineage

For a person to qualify properly as a chief under the constitutional definition of who a chief is, that person must meet the first criterion of whether the person hails from the appropriate family and lineage.

79 Constitution of the Republic of Ghana, 1992, art 277.

Such a person must be a royal or heir to the stool. Such royal status, according to the case of *Darko v. Brako and others*[80] is obtained from birth, which is never lost by the royal or his descendants by law unless the royal took positive steps to renounce that royal blood-line, or he did acts which in law could result in him and his descendants being disqualified from their royal status and actual steps were taken to debar him.[81]

His Lordship Appau rightly observed in the case of *Nana Ofori Appiah & Ors v Nana Akua Ameahene & Ors*[82] that "since chiefs are selected or chosen from royal families, those chosen must hail from the appropriate family and lineage from which the selection is made." In Akan custom, there may be instances where some people who were not royals could ascend to the throne. His Lordship Brobbey lists some instances where a non-royal could ascend to a throne. When such a person ascends to the throne, the person is not considered a chief but as a caretaker. Such instances include where the royal family is matrilineal, and there is no male in that royal family to ascend to the throne, so a distant relative is made to occupy the throne.[83] Another factor could be where a person is made to ascend to the throne as a security for a debt[84] or, in some instances, where a strong overlord is made to ascend to the throne of a place he/she is not a royal in order to protect them from an invading force.[85] When such a caretaker ascends to the throne, such a caretaker is not considered a chief properly so called under the constitutional requirement of who a chief is. That ascension also does not create a rotational system to the ascension to that stool.[86] Where his descendants claim they

80 *Darko v. Brako and others* [1982-83] GLR 345.
81 *Ibid* 346.
82 Chieftaincy Appeal No J2/02/2017 (unreported).
83 S A Brobbey, *The Law of Chieftaincy in Ghana* (Advanced Legal Publications 2008).
84 These instances occur where the community in need of money for a pressing matter and the one who provides the money is made to made to occupy the stool as security for the debt till the debt is paid.
85 Ibid
86 *Essilfie & Anor v Anafo VI & Anor* [1993-94] 2 GLR 1.

qualify to also ascend to the throne because their ancestor was once an occupant of that stool. What the descendants must establish is whether their ancestor hails from that appropriate family or lineage to qualify as a chief. Having an ancestor once ascend to the stool does not automatically catapult a person as meeting the first requirement of hailing from the appropriate family or lineage.

In sum, even where a stool has not had its royal occupant ascend to the stool for several years, even in excess of 150 years, that does not serve as a bar to the rightful person ascending to the throne by the person from the appropriate family and lineage.[87] Common law concepts like estoppel and acquiescence cannot override such entrenched customary (constitutional) principles.[88]

A chief must be validly nominated, elected, or selected.

Nomination refers to the formal act by which a person is identified and put forward for consideration for election or selection as a chief. Nomination of the candidate must ensue before any of the subsequent processes can take place. If the nomination is faulty/defective, the other processes of election and selection of the chief will be of no consequence. The process of nominating the candidate for consideration as a chief is not a process open to just any person or to royals. The customary law of the area dictates who is mandated to nominate a candidate for the occupancy of the stool. Nominating a person for consideration for the stool in Akan is the preserve of the queen mother.[89] The queen mother has three chances to nominate a chief.[90] In most of these communities, there is one queen mother,[91]

87 *Darko v. Brako* (n 81).
88 *Nana Ofori Appiah & Ors v Nana Akua Ameahene & Ors.*
89 *Darko v. Brako* (n 81). Also see the case of *In Re Kwabeng Stool; Karikari & Another v Ababio II & Others* [2001-2002] SCGLR 515.
90 *Boampong v. Aboagye* [1981] GLR 927, SC.
91 *Nana Atoaa Sramangyedua III, Nana Dr. Abrefa Mensah Abrampa, Nana Owusu Achiaw Kusi*

and where the election or selection process bypasses the nomination of the queen mother, such process is considered a nullity.[92] As noted by His Lordship Brobbey, Nomination is the sine qua non to the election of a chief.[93] This points to the fundamentality of the nomination process.[94] The exception to queen mothers nominating a candidate for consideration by the king-makers lies where the queen mother, with the customary right to nominate, deliberately refuses to nominate, which gives the king-makers the right to nominate a candidate in that vein.[95] The queen mother must, however, be given a reasonable time to act or refuse to act–usually she must refuse to act on three occasions.[96] The queen mother nominates the candidate after consulting extensively, including her advisors and the elders.[97] Emphatically, it is only when there has been a valid nomination that the king-makers can proceed to make a valid election or selection of the candidate preferred to be the chief of the customary area.

The chief must be enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage

Article 277 recognises that females (queen mothers) can qualify as a chief in Ghana. Indeed, in the Dagbon traditional area in the Northern Region of Ghana, the overlord is not restricted to gender. The chief can be male or female. Thus, whoever is nominated and elected or selected as the chief must go through the necessary rites

II And Oheneba Dr. Krabiri Boateng I vs. Kwadwo Nyam Nketia, Wenchi, Nana Owusu Ansa Kokroko And Nana Kumi Adusi Poku [2011] DLSC 4106.

92 The case of *Macfoy v United Africa Trading Company Ltd* [1961] 3 All ER 1169, at pages 1172-1173, PC: establishes the fact that "If an act is void, then it is in law a nullity. It is not only bad, but incurably bad... And every proceeding which is founded on it is also bad and incurably bad."

93 Ibid

94 Ibid

95 Ibid

96 *Republic v Boateng; Ex parte Adu-Gyamfi II* [1972] 1 GLR 317.

97 R S Rattray, *Ashanti Law and Constitution* (Clarendon Press 1929) 1443. See also the case of *In Re Kwabeng Stool; Karikari and Anor. V Ababio &* Others [2001-2002] SCGLR 515.

required in that customary area to enstool, enskin or install such chief or queen mother. It is imperative that the customs of the various communities vary from each other;[98] thus, the process for enstoolment or enskinment will differ from community to community. In most Akan communities, the process of enstoolment commences with a period of confinement. Among the Akuapems (those from Akropong), confinement takes place at *mmogyannwe.*[99] Whereas amongst the Asantes, confinement takes place at apatamu.[100] The period of confinement can take seven days, fourteen days, twenty-one days, and even in some instances, forty days. The chief-elect at that stage is taught the traditions of his people, the spirituality surrounding the office, how to lead the people, taught about the stool, how to behave in public as a chief, how to dance as a chief and how to respond to the drum.[101] After the period of confinement, the next stage is oath swearing. The chief elect, under oath, makes a solemn pledge to his constituents, invoking the gods as witnesses to serve the people diligently and to commit to them.[102] After the chief swears the oath, if there are sub-chiefs, they also swear an oath of allegiance to the chief. The oath swearing places the chief under the law of his people and signifies his formal coming into office.

Who Is a Chief Fisherman?

Having examined the institution of chieftaincy in its historical and constitutional dimensions, and having delineated the criteria that define who qualifies as a chief under the Constitution of the Republic of Ghana, 1992, it becomes both necessary and instructive to turn attention to the parallel but contested traditional office of

98 *The Republic v. Nana Osei Bonsu II Mamponghene Ex Parte: Obaapanin Afua Amadie* (2007) JELR 68404 (SC).

99 This means the place where blood is dried up.

100 This means inside the hut.

101 M Kwadwo Ntiamoah, 'Indigenous Leadership Formation Structures: Insights from Akan Chieftaincy System in Ghana' (2025) <ResearchGate> accessed 7 May 2026.

102 K Agyekum, 'Ntam "Reminiscential Oath" Taboo in Akan' (2004) 33(3) *Language in Society*.

the chief fisherman. This transition is central to the inquiry at hand. For if chieftaincy is anchored in customary law and usage, then any determination of whether a chief fisherman falls within that constitutional conception must begin with a clear understanding of the nature, origin, and functions of that office within the customary framework of the communities that recognise it. It is against this background that the institution of the chief fisherman must be examined.

The chief fisherman is inextricably bound to Ghana's coastal life, drawing its authority and relevance from the rhythms and sustenance of the sea. Ghana's coastline of five hundred and fifty (550) kilometres and a continental shelf area of twenty-four thousand three hundred square (24,300) kilometres is dotted with fishing communities. The fishing industry has been an active industry in Ghana since the early 1700s,[103] and the craft of some tribes in Ghana since their migration to Ghana. Fishing communities have their own leaders who steer the affairs and are typically led by the chief fisherman.

Incidentally, in recent times, there have been calls from a section of traditional leaders on the government to abolish the chief fisherman concept because it undermines the traditional chieftaincy institution. One such person is Torgbiga Adamah III, the Makorsor of Somey, who appealed to the Ministry of Fisheries and Aquaculture Development (MoFAD) and argued that the position of the chief fisherman is not backed by law and that its occupants merely arrogate to themselves power to equate themselves to "traditional authorities".[104] Intriguingly, he well admits that the traditional chiefs in such communities do not have a say in the activities of the fisherfolk because the fishing

103 Barbara Walker, 'Dividing and Conquering the Sea: The Colonial History of Marine Fishing and Property Rights in Ghana' (Paper presented at the Marine Environmental Politics in the 21st Century Conference, Institute of International Studies, University of California Berkeley, 1999) <FAO PDF> accessed 7 February 2026.

104 Emmanuel Ajarfor Abugri, 'Scrap Chief Fisherman Concept–Somey Chief' *Modern Ghana* (1 August 2020) <Modern Ghana> accessed 27 January 2026.

community has its chief (the chief fisherman) who superintends their affairs.[105] The Minister of State, in response to the appeal, rightfully raised doubts about the authority of the ministry to scrap the position of the chief fisherman. She argued that since the legitimacy of the chief fisherman did not come from the Ministry, the Ministry may lack the power to scrap that customary office.[106] Thus, the question remains: is the chief fisherman a customary position unknown to our customary laws?

Adjei asserts that in the canoe fishing communities, the community is governed by local institutions such as the paramount chief of the area, the chief fisherman, chief fishing trader, typically known among Akan as the Omanhene, Apofohene and the Konkohemaa, respectively.[107]

Nunoo *et al* concur, asserting that the Chief Fisherman is the overlord of the fishing community.[108] They describe the chief fisherman as an institution in the community where a primary role of the chief fisherman is to assist with fishing resources.[109] The chief fisherman is therefore not merely an individual, but an office or a structure.[110] In the surveyed fishing areas of Adina, Chorkor, Dixcove and Elmina, the members of the community considered the institution of the chief fisherman as the foremost institution to be resorted to for resolving disputes amongst fisherfolk.[111] The adjudication is not done solely by the chief fisherman. He does it with a council of elders. Additionally, his office has jurisdiction over conflicts between

105 Ibid
106 Ibid
107 M Adjei, 'Governing the Ocean Space for the Coexistence of Fishery and Petroleum Industry in Ghana's Western Region' (Master's thesis, University of Bergen 2017) <Academia.edu> accessed 11 May 2026. (bora.uib.no)
108 F K E Nunoo, B Asiedu, J Olauson and G Intsiful, 'Achieving Sustainable Fisheries Management: A Critical Look at Traditional Fisheries Management in the Marine Artisanal Fisheries of Ghana, West Africa' (2015) 2(1) *Journal of Energy and Natural Resource Management* <DOI Link> accessed 27 January 2026.
109 Ibid
110 Ibid
111 Ibid

fishermen and fishmongers over debts on the sale of fish.[112] The chief fisherman also collects, supervises, and shares fishing inputs to the fishermen so scarcity in resources does not plague the fishermen.[113]

The chief fisherman is the only institution which supports the management of fishing resources and serves as the primary institution to enforce fishing regulations and rules in the area and serves and grants permissions for entrants into the fishing industry of the area.[114] Where there are migrant fishermen within the community, there is sometimes appointed the migrant chief fisherman who serves as the point of contact between the fishing community and the migrant fisherfolk–which sometimes include non-Ghanaians.[115] [116]

Odotei also asserts that the chief fisherman has a role in solving the occupational hazards of the fishermen and providing security (physically and spiritually) for the fishermen.[117] For instance, the chief fisherman has the duty of pacifying the sea by banning fishing for some days.[118]

In some areas, however, the chief fisherman serves as a liaison between the paramount chief of the area and the fishing community.[119] He communicates the problems of the fishermen to the paramount

112 Ibid
113 Ibid
114 Ibid
115 Irene Odotei, 'The Migration of Ghanaian Women in the Canoe Fishing Industry' (1992) 5(2) *Maritime Anthropological Studies* 88–95 <PDF Copy> accessed 6 February 2026.
116 Migration is a common phenomenon amongst the fishing folks. This is because in the fishing industry, there is a belief backed by data that fishes migrate thus the fishermen depending on the season and the migration trend of the fishes move from community to community which has the bumper fish season to fish. This movement is seasonal and after the fishing season in that community is over, they move back to their original community.
117 Irene Odotei, 'Gender and Traditional Authority in the Artisanal Marine Fishing Industry in Ghana' (1999) *Studies on the Fishing Industry* <https://fishcomghana.ucc.edu.gh/wp-content/uploads/2017/04/Gender-and-Traditional-Authority-in-the-Artisanal-Marine-Fishing-Industry-in-Ghana.pdf> accessed 5 February 2026.
118 Ibid
119 *Fisheries Governance Institutions in Ghana* (unpublished document, *Governing the Ocean Space for the Coexistence of Fishery and Petroleum Industry in Ghana's Western Region* 2016) <https://9pdf.net/article/fisheries-governance-institutions-in-ghana.q052ovol> accessed 3 February 2026

chief and communicates any concerns from the paramountcy to the fisherfolk.[120] He also deals with external governmental matters that concern the community.[121] Where a person wants to take up fishing as a profession or to join the fishing business, it is the chief fisherman who determines whether the person is admitted. Also, where migrant fishermen come into the community, it is the chief fisherman who accepts the beach drink or beach fees from the migrant fisherman.[122]

Eligibility Criteria as A Chief Fisherman

Who qualifies for the position of the chief fisherman is determined by the practice and history of the fishing community involved. In some communities, the chief fisherman is appointed based on the experience of the fisherman (by merit). For instance, amongst the Fante, the criteria for the appointment in such places of merit include owning a canoe and gear, being an accomplished person and a person of honour, patience, bravery and a person who can command respect from the fisherfolks.[123] Even though being a chief fisherman is by appointment, there are still some distinctions created. In areas such as Elmina and Komenda, any fisherman qualifies to be appointed as a Chief Fisherman. In other areas, such as Dixcove and Anomabo, the appointment is reserved for some selected groups in the community.[124] In recent times, the educational background of the nominee has been quite critical in being appointed as a chief fisherman.[125]

In other areas in the Greater Accra Region and Central Region– as Winneba, Cape Coast and amongst the Ga-Adangbe–the chief

120 Ibid
121 Ibid
122 Irene Odotei. (n118)
123 Ibid
124 Ibid
125 Bryan Maddox and Ragnhild Overå, 'New Technologies, New Demands and New Literacies: The Changing Literacy Practices of Fishing Communities in Bangladesh and Ghana' (2009) 8(2) *Maritime Studies (MAST)* 35 <https://www.researchgate.net/publication/261144890_New_technologies_new_demands_and_new_literacies_The_Changing_Literacy_Practices_of_Fishing_Communities_in_Bangladesh_and_Ghana> accessed 30 May 2026.

fisherman's position is hereditary. Thus, in those areas, the question of who qualifies as the chief fisherman is determined by a lineage rather than the experience of the individual.[126] The chosen lineage ought to have been the family which introduced marine fishing to the community or might have been the first fisherfolks in the area. The other reason is that that lineage would have been the lineage acknowledged as the fishing experts over time. This further means that there is a possibility of having a chief fisherman who lacks professional expertise in fishing.[127]

The system amongst the Anlos is quite different. They do not have a separate traditional system for the installation of the chief fisherman, unlike some Fante areas and Ga-Adangbe areas, where the position is either by appointment or through the family lineage. Amongst the Anlos, the position of chief fisherman was created recently. Historically, the general traditional authorities were also the authorities who managed and administered the fishing community. The position was created to help deal with fishing-related matters.[128] When the chief fisherman is selected, whether by appointment on merit, rituals are performed to initiate him into office. He is confined for a period; he is made to swear an oath of office, and there is jubilation to signify his installation as the chief fisherman.

Is A Chief Fisherman Comparable To A Traditional Chief?

The decision of the various courts in the *Nuumo Nyakomle* case in determining the matter which was central to the nature and scope of who a chief fisherman is, failed to properly expose the nature of

126 Ibid

127 Ibid. What is typically done in such situations is that a deputy chief fisherman is appointed (who is a professional fisherman) to assist the chief fisherman in the performance of his duties. He is also supported by a strong or mature fishing council.

128 Ibid

the office of the chief fisherman to determine whether, in line with its nature across the various communities, that office will meet the threshold of being a chief or not. Whether the chief fisherman of an area is a chief or merely an administrative head cannot be determined without considering the cultural history and practices of the people involved. The decision of the court in *Nuumo Nyakomle* rather ought to have focused on whether

d. The Respondent, who claims to be a chief, hails from the appropriate family and lineage

e. The Respondent was validly nominated, elected or selected

f. The Respondent has been enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage.

The unconventionality or non-traditionality of the office of that chief must not in any way sway a court to think that that position of the person does not qualify such person as a chief. Indeed, the Chieftaincy Act under section 58 recognises that beyond the Asantehene, the paramount, divisional, and sub-divisional chiefs, and the Adikrofo[129] which are widely known, other chiefs who are recognised by the National House of Chiefs. Such chiefs cannot be denied their status or recognition if they meet the requirements of being recognised as a chief, although such chiefs have not hitherto been recognised as such. Rightfully so, in fishing communities, there are public structures (similar to the traditional chieftaincy institutions), with authorities, which haven't been subjected to legal analysis to determine whether they ought to be recognised as chiefs or not within the confines of the law.

As an example, one study observed that practically all fishing communities in Ghana along the coast have a public authority

129 Chieftaincy Act, 2008, (Act 759), s 58(a)-(d).

structure for the administration of matters amongst the fisher folks, where this structure is headed by a figure known as a chief fisherman- just like the traditional communities.[130][131] The chief fisherman does not operate by himself. He is assisted by a council in the performance of the duties of the office. He fisherman performs religious and spiritual roles, as well as roles of solving occupational problems of fisher folks in the form of accidents at sea, conflict resolution, and sharing of government allocations.[132] These roles performed aren't different from the roles performed by the chiefs of the traditional communities.

As noted earlier, in some communities such as the Ga-Adangmes, Cape Coast and Winneba, it is hereditary, based on the lineage of the person.[133] In other areas like Anomabo and Dixcove, eligibility as a chief fisherman is limited to some selected groups in the town. After eligibility is settled, the person selected is made to go through rituals such as ritual confinement and taking oaths in accordance with the ceremony ritual of the area.[134] For emphasis, the chief fisherman does not operate or work alone. He works in consultation with a council who assists him with his work.

The history and the nature of his office do not appear to be radically different from the "traditional chiefs" we know. They both act as spiritual heads of their people; they serve their people with a council, and they (depending on the area) are enstooled as chiefs from appropriate families rooted in custom. They are confined after the period of selection, and they swear an oath of office and allegiance to their people.

130 Irene Odotei, 'Gender and Traditional Authority in the Artisanal Marine Fishing Industry in Ghana' (1999) 15(1) *Research Review of the Institute of African Studies* <https://doi.org/10.4314/rrias.v15i1.22878> accessed 3 March 2025.
131 Odotei (n 137).
132 Odotei (n 137) 22-23.
133 Odotei (n 137).
134 Odotei (n 131).

Thus, the Supreme Court had an opportunity to analyse this unique office of the respondent as a chief fisherman to determine whether, in accordance with the customary practice of his area, he qualifies as a chief. Since customary law is a question of law[135] the Supreme Court had the power to invite both parties to make submissions on the customary practice and nature of the chief fisherman in the Kpone area,[136] or consider appropriate textbooks or even request the appropriate house of chiefs to provide their opinion on the relevant customary practice[137] to aid their final decision. This the Supreme Court failed to do but rather relied on a decision which has no equal footing to the case before them. This clearly renders the holding unsubstantiated and without legal basis.

Distinguishing The Case of *Eku Alias Condua I I I Vrs Acquaa*[138]

The Supreme Court, as the final appellate court, is not bound to follow the decision of any court[139] such that it can depart even from its own previous decision when it appears right to do so.[140] Nonetheless, it can apply any decision it finds persuasive, albeit such application must be made in law.

The Supreme Court in the *Nuumo Nyakomle case* relied heavily on the dictum in *the Condua case* to conclude that a chief fisherman was not a chief. The *Condua case*, though similar to the case in question, involved a declaration to recognise the plaintiff as the headman of the fishing community of Aboasi Village in the Shama Traditional Area and, as headman, his entitlement to collect fishing tolls.

135 Courts Act 1993 (Act 459), s 55(1).
136 Courts Act 1993 (Act 459), s 55(2)(a).
137 Courts Act 1993 (Act 459), s 55(5)
138 *(1968) GLR 412*
139 Constitution of Ghana 1992, art 129(1)
140 Constitution of Ghana 1992, art 129(3)

In the judgment of Azu Crabbe JA, he emphasised that the question was about a headman of the community in the following words: "In this appeal it is common ground that a headman is not a chief as defined by the State Councils (Colony and Southern Togoland) Ordinance, 1952 (No. 8 of 1952)."

And indeed, in the judgment the court aptly defined the headman to mean: "any person chosen by the community of a village, and confirmed or approved by the paramount chief of the State wherein the village is situated in accordance with native customary law, and includes an Opanin, Onukpa, Hanua, Hafia, and Nokotoma."[141]

Thus, *the Condua case,* which formed the basis for the decision of the trial court and the Supreme Court in *Nuumo Nyakomle,* was one where the issue was whether a headman of a fishing community was a chief and not whether the chief fisherman is a chief.

Again, the determination of the court in *the Condua case,* in concluding that the headman of the fishing community was not a chief, was based on a specific statute, i.e. the State Councils (Colony and Southern Togoland) Ordinance, 1952 (No. 8 of 1952).[142] The State Councils (Colony and Southern Togoland) Ordinance, 1952 (No. 8 of 1952) at that time was a law which Kulendi JSC noted had been passed to expressly limit the traditional authorities' residual judicial function in settling customary law disputes.[143] It formed part of a coordinated attempt to phase chiefs out of the local government administration. This process commenced with the passage of the Local Government Ordinance (No. 29 of 1951), where, under this law, the functions the chiefs had under the Native Authority laws were taken from them and allocated to a set-up local government council. This process, in essence, destroyed the native system of

141 (n 139) 423.
142 See its application in *Ahenkora II vs. Ofe* [1961] DLSC 546.
143 *Elorm Kwami Gorni v Attorney-General and National House of Chiefs* [2022] DLSC 15121 (SC Ghana).

administration.[144] Thus, such a law in just a restricted area of eroding the power and authority of the chief cannot be one on which the Supreme Court, with the greatest of respect, could base its decision. That era of treatment of chiefs no longer exists

This then meant that at best, the decision in *the Condua case* was not of general application and that era of darkness for the chieftaincy institution should not be revisited without proper justification. With the greatest respect to their Lordships, basing a decision on chieftaincy today on a decision like that in *the Condua case* without ascertaining and appreciating the context, the laws at that time and the political hindrances against chiefs invariably rendered the basis for the conclusion inaccurate. Indeed, it is submitted that their Lordships ought to have construed the question of the chieftaincy title of a chief *fisherman* as a novel case and should have discussed the nature and scope of it, thoroughly testing it in the light of the constitutional definition of a chief under article 277. Merely relying on *the Condua case* and merely discussing the definitions of a chief could not have properly analysed the office of the chief fisherman in the light of the nature of the reliefs sought.

Conclusion

This paper has sought to assess the office of the chief fisherman through the lens of the chieftaincy institution and to posit that the court ought to have considered the unique nature of the office of the chief fisherman to have laid down the law on whether the chief fisherman in the Kpone traditional area ought to be considered as a chief. We have traced the historical evolution of the institution of chieftaincy as it has existed from pre-colonial times, through colonial times, its post-independence period and to its current status under the 1992 constitution. I have demonstrated that in pre-colonial times

144 Ibid

the authority and legitimacy of a chief was determined and/derived from the customary law/practice of the relevant community until colonial rule altered the inherent authority of the chief. However statutory control of the institution did not weaken the status of the chief in the community.

Post-independence Ghana still retained powers to recognise and/otherwise regulate chiefs statutorily. The 1992 constitution made a deliberate attempt to preserve the customary foundations of the institution of chieftaincy. It defines who a chief is and expressly proscribes the law maker from withdrawing or conferring a chief status on a person who is otherwise not entitled to. Constitutionally, a chief is meets three main indicators namely appropriate family and lineage; valid nomination, election or selection and enstoolment/enskinment/installation as a chief or queen mother in accordance with the relevant customary law and usage. We have seen that in many communities, the chief fisherman's office is embedded in the traditions of the fishing communities, and he is considered a chief in his own right. He performs functions comparable to a traditional chief, his qualification to the office is determined by hereditary lines (in some communities) or by merit. Thus, an assessment of whether a person is a chief fisherman or not (in this case, of the Kpone traditional area) can only be done through the evaluation of the customary practice of the community in question vis-à-vis the constitutional criteria of a chief.

The judicial function, particularly within the context of chieftaincy, requires proactivity- not a mechanical application of precedent. It calls for a meaningful exposition and engagement of the relevant customary laws of the various communities. The Supreme's decline to take the thorough inquiry into the customary nature of the office of the chief fisherman was an abdication of an opportunity to clarify a key area of Ghanaian jurisdiction The judicial function,

particularly within the context of chieftaincy, requires proactivity– not a mechanical application of precedent. It calls for a meaningful exposition and engagement of the relevant customary laws of the various communities. The Supreme Court's decline to take the thorough inquiry into the customary nature of the office of the chief fisherman was an abdication of an opportunity to clarify a key area of Ghanaian jurisdiction. The unconventionality of the office of the "chief" should rather serve as a clarion call on the courts, especially the Supreme Court, to perform its constitutional and statutory role of establishing precedent. Merely relying on a decision of a court as the basis may not suffice. The test for determining whether a person is a chief or not should always be whether it meets the constitutional criteria under article 277 of the Constitution of Ghana, 1992.