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# ALTERNATIVE DISPUTE RESOLUTION BY CHIEFS AND TENDAMBA: A CASE STUDY OF KUMASI AND WA TRADITIONAL AREAS

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## Abstract

*Land is a very important natural resource without which man would have been unable to support lots of his socio-economic needs. Populations in the world over have increased considerably over the last few decades and that of Ghana is no exception. In Ghana, this increasing population has reflected in an extensive demand for land for agricultural, residential, commercial and small-scale industrial activities. This competitive trend of land demand has, however, left behind numerous recorded land disputes. The effects of these disputes cannot be overemphasised. This study highlights the challenges with the state court land dispute resolution systems in Ghana and how best the customary courts can serve as an alternative in resolving land disputes. It also focuses on land dispute resolution by Chiefs<sup>1</sup> and Tendamba<sup>2</sup>. Finally, the paper offers some propositions for the use of Alternative Dispute Resolution (ADR) mechanisms in land dispute resolution and intervention models required to strengthen the ADR process in Ghana.*

## Keywords

Land Dispute, Resolution, ADR Mechanisms, Chiefs, Tendamba and Ghana.

## 1.0 Introduction

Accessibility to land and landed resources are paramount to ensuring sustainable livelihoods. Land is both property – an economic resource valued as a means of production and a store of wealth, and territory governed space that gives those who control it leverage over other people (Berry, 2009a). Land has both socio-economic and cultural values in the Ghanaian society.

There is a widespread consensus that the land holding and management systems in most sub-Saharan Africa is complex and governed by the indigenous traditional systems in the various regions that make up the countries (Arko-Adjei, 2006). About 80% of lands in Ghana are under customary ownership (Sulemana, 2011; Kasanga, 1988,). Such lands are administered by

chiefs, family heads, clan heads, community heads and held under customary law and governed by customary law (Obala and Kinyungu, 2003), with the remaining 20% vested in the state. Therefore, land administration in most parts of Ghana falls within the broad area of customary land administration generally governed by customary practices and enacted legislations (Government of Ghana, 1999). This phenomenon also signifies that accessibility to land is mainly through the traditional land sector (Abdulai and Ndekugri, 2007).

Administration of these customary lands in Ghana is, however, fraught with a myriad of challenges. These challenges, among other things, relate to general indiscipline in the land market characterised by encroachments and

<sup>1</sup> Chiefs are the traditional politico-administrative heads at the Community level.

<sup>2</sup>‘Tendana’ or ‘Tendamba’ are terms used by Dagomba, Frafra, Dagaaba and some other tribes in Northern, Upper East and West regions to mean ‘land owner’. (Tendana is singular and Tendamba is the plural form.)

multiple sale of land, indeterminate boundaries of stool/skin lands as a result of lack of reliable and use of unapproved, old or inaccurate maps, little or no coordination between public land sector agencies and their customary counterparts, as well as between respective land owning groups (Government of Ghana, 1999). Others are, poor record-keeping and lack of state-of-the-art equipments, as well as the use of unqualified and uncertified persons in land surveying and valuation.

This has resulted in uncountable incidences of land disputes and litigation between land owning groups, as well as other stakeholders in land, especially the unsuspecting private investors. Under land dispute situations in Ghana, resolution is sought either in the state courts or under customary court systems. It then becomes a choice for litigants to either resort to the state court, characterised by strict judicial rules and procedures, or customary courts, governed by traditional mechanisms and flexibility. It has, however, been the case that the state courts have been slow in resolving land disputes because of the customary complexities involved. Alternative Dispute Resolutions (ADRs), thus, provide a range of procedures that serve as an alternative to the adjudicatory procedures of litigation for the resolution of land disputes. Essentially, ADRS provides a cheaper, faster and peaceful form of justice for the ordinary citizen, particularly the rural poor who do not have access to state justice either because of lack of resources or because of long physical distance of formal courts. Besides these, Shamir (2003) finds it to be easily accessible than the state courts.

## **2.0 The Issue**

According to the Legislative and Judicial Review Report of the Land Administration Project, there is slow disposal of land cases by the courts and a lot of resources are lost while

pursuing land litigation. The result has been delays in justice delivery. And since justice delayed is justice denied, the situation is worth research priority. There is, therefore, the need to find alternatives to lawsuits with an equally effective outcome. Indeed, land is simply not abundant enough in many regions of the world to guarantee enough plots to all households (Daudelin, 2003). Individuals, groups, families and government run into each other in an attempt to secure land for various developmental projects. With increasing demand for urbanised space for land investments and other purposes, landowners are under intense pressure to sell urban land, regardless of the social interests involved. These lead to dispute within local communities, particularly with the youth who have little purchasing power and few alternative options to the direct use of land as a source of livelihood. The Legislative and Judicial Review Report has also reported that conversion of agricultural land for urban uses is also problematic, and there are frequent complaints that people are being driven off their ancestral lands, in arbitrary fashion, to make way for urban development.

In line with this, both the government and the judiciary have put in combined efforts to set up complementary institutions to aid in land dispute resolution. This is to help relieve the already overburdened court system. Land litigation, by its very nature, is time-consuming and involves a complex network of processes and procedures that are too technical for most people. Besides, litigation is fraught with other disadvantages that seriously call for other alternative mechanisms for the resolution of land disputes in particular. The exorbitant cost involved could be catalogued as the very first serious disadvantage of litigation.

It is common knowledge that litigation often destroys relationships since, by its very nature,

one has to win and the other lose. This does not promote goodwill in dispute resolution. Also, though judges are learned in law, they may lack deep knowledge in customary land matters and may, therefore, not give the best judgment on certain land cases. In such situations, land experts and traditional authorities are better placed to resolve such disputes effectively without recourse to court action. Realising this opportunity more than a decade ago, Lord Salmon, in *Novawest Contracting Property Ltd. v. Taras Nominees Property Ltd*, [1998] VSC 205 (23 December 1998) stated:

I cannot help thinking that building constructors and sub-contractors and architects ... know more about the building trade than I or indeed any judge can hope for.

Though, Lord Salmon's position specifically related to the built environment, his pronouncement presupposes that customary experts, rather than the courts, are appropriate for the resolution of particular disputes. Besides the technicality inherent in land disputes, the customs and traditions of some communities make it appropriate for local dispute resolution procedure rather than settlement by an adjudicator from outside their community (Hammond, 2003).

### **3.0 The State Courts and Land Dispute Resolution in Ghana**

In 2004, the Chief Justice of Ghana made the pronouncement that there were about sixty thousand (60,000) cases involving land disputes pending in the courts (Prah, 2005). In 2003, information from the Kumasi High Court indicated that the average minimum time taken to resolve a land case is between three to five years, but could take as long as fifteen years (Crook, 2003). The prospect of early resolution of these cases is very dim. It is the proposition of Land Administration Project (LAP) that customary

land cases would only go to the courts when the available customary ADR mechanisms fail to offer a resolution. Consequently a sub-component of the LAP has been dedicated to facilitating the settlement of land cases and developing alternative land dispute resolution mechanisms. This is to ease the growing backlog of proceedings in the courts. Land disputes often degenerate into violent confrontations resulting in the loss of life and property, disrupting normal socio-economic activities. Considerable time, energy and money are expended by disputants, government and security agencies to contain such disputes. To curb this situation, participatory approach based on ADR techniques are recommended to advance customary land dispute resolution and minimise the threat of land related disturbances. Apart from the fact that Alternative Dispute Mechanisms (ADRM) will reduce stress and provide satisfactory results in disputes, it will also aid in the decongestion of the courts clogged with land cases. For instance, it is observed that, disputants seek mediation generally because it is a cheap, flexible, adaptable and effective channel for dispute management (Bercovitch, 1989).

Land litigation has several consequences. For instance, court injunctions have stayed a lot of land development projects and, hence, deprived potential users their development rights. Peasant farmers, whose livelihoods depend entirely on the land, suffer untold inconveniences and this, undoubtedly, has implications on poverty levels. Confidence in customary ADRM seems to be stronger. In 1999, the Asantehene Otumfuo Osei Tutu II authorised all land disputes in Asanteman to be withdrawn from the regular state courts for traditional court settlement. Expectedly, within a month, this order was obeyed and several protracted land disputes, which were pending for over ten years, were settled. This depicts that confidence in the Asante traditional courts

appear to have been restored under Otumfuo Osei Tutu II (Kasanga, 2001). ADRMs are also proving to be a very fast, effective and less costly alternative of resolving land disputes in Ghana

#### **4.0 Understanding Alternative Dispute Resolution (ADR)**

Alternative Dispute Resolution comprises various voluntary (customary ADRMs) or compulsory (statutory ADRMs) approaches for resolving disputes in a peaceful and solemn way, ranging from negotiation between the two parties, a multiparty negotiation, through mediation, consensus building, to arbitration and adjudication. Sometimes also called “Appropriate Dispute Resolution”, ADR is used to define a set of approaches and techniques aimed at resolving disputes in a non-confrontational way (Shamir, 2003). ADR mechanisms are used for settling disputes outside the formal courtroom. It is seen as a way of relieving the pressure on an overburdened court system that is clogged with numerous land cases. Other forms of the ADR include religious courts, traditional courts that apply customary laws in Ghana, as well as informal settlement by state officials acting in their local capacity, e.g., Lands Commission and Office of the Administrator of Stool Lands. As court queues elongate with rising cost, and time delays continue to plague litigants, people are gravitating towards ADR process in resolving their disputes.

In Ghana, ADR is governed by the Alternative Dispute Resolution Act of 2010 (Act 798). The law interprets ADR to mean the collective methods of resolving disputes otherwise than through the normal trial processes at the law courts (Section 135). ADR is quickly gathering momentum in its application in the country following the passage of the Law. Indeed the ADR law was an important legal hurdle in consolidating and formalising ADR in Ghana.

Following this, the GNA (2012) reported that about 16,080 multi-faceted kinds of cases were resolved between 2007 and 2011. However, one must not be misled into the thinking that ADR is alien to the Ghanaian local customs and traditions. It is an age-old approach in resolving dispute in Ghana, but the passage of the Act 798 modernised and formalised the ADR process. Per the memorandum to the Act, ADR processes include statutory arbitration, customary arbitration and mediation.

#### **5.0 Causes of Land Disputes in Ghana**

According to Mensah Sarbah, “every piece of land has an owner, whether such piece or plot were wasted land or forest land...” (Buah, 1998). On this premise, land can be acquired from holders of the alienable interest through formal or informal land markets. Generally, these transactions are complex in nature and are not without issues. Though the most apparent cause of land dispute is the rivalry of interests, there are other remote factors that cannot be ignored. Wehrmann (2008) explained the causes of land disputes from a different analytical perspective after her studies on Ghana. She associated the causes of land disputes to political, economic, socio-economic, socio-cultural, demographic, legal/juridical, administrative, technical (land management), ecological and psychological factors. The Ghana National Land Policy outlined the causes of land disputes in Ghana to include multiple land sales, indeterminate boundaries of customary-owned land resulting from lack of reliable maps and plans, conflict of interest between and within land owning-groups and the state (Government of Ghana, 1999). Land disputes within land-owning groups are more pronounced in parts of Ghana where lands are held by families. When family heads deal in family land independently, confusion is likely to evolve regarding land grants, especially when the



head fails to account for proceeds thereof. In some occasions, some family members refuse to recognise the position of the family head and may also counter-grant land already granted to another person. This phenomenon has fuelled multiple sales of land, culminating in protracted land litigations. Kasanga (1999) noted that, in the case of Upper East and Upper West regions of Ghana, the de-vesting of lands by government to the original owners in 1979 had provoked land disputes between some *tendamba* and some chiefs who originally do not hold ultimate title to land.

Kasanga notes:

Some chiefs in the two regions, who were partly instrumental in the divestiture of the lands, are currently in court against some *tendamba*, while others are facing deskinment charges for claiming, among other things, to be the ultimate land titles holders. Most of the reported cases are from the Upper East Region (Kasanga, 1999: 20).

Similarly, Lentz, 2001 (cited in Berry, 2009b) reaffirmed de-vesting of lands by the state as the cause of land disputes, especially in northern Ghana:

Struggles over land and chieftaincy have intensified in recent years, notably in northern Ghana, where returns of state-held lands to their original owners have given rise to legal disputes and, sometimes, to violent disputes over land claims and jurisdiction among chiefs, citizens, and the custodians of the earth shrines (Berry 2009b: 1376).

Aryeetey *et al.* (2007) have also identified that land disputes in Ghana involve government, chiefs (stools/skins), family heads, individuals and other groups in various permutations, such as:

- (a) inter-ethnic and intra-ethnic;
- (b) between groups;
- (c) between chiefs and their people;

- (d) governments and communities;
- (e) communities and transnational corporations, and
- (f) between individuals, who may not have ownership rights, but recognised derivative rights holders in land as strangers, tenants and migrant farmers.

It is generally observed that, 'households experience small-scale land disputes with relatives, neighbours, landlords, or local governments' (Yamano and Deininger 2005:1). Ayee *et al.* (2011) have identified 9 types of land disputes in Ghana based on the nature of its cause (Table 1).

**Table 1: Types of Land Disputes in Ghana based on the Nature of its Cause**

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| <ul style="list-style-type: none"> <li>i. Boundary disputes usually between different stools and/or between individuals;</li> <li>ii. Disputes between chiefs and individual farmers over the rapid conversion of farm land into residential plots, without consultation and adequate compensation;</li> <li>iii. Inter-family and intra-family disputes over family land boundaries, the division of plots and proceeds from land sales, and the right to use certain parcels of land;</li> <li>iv. Disputes between chiefs and local people over land allocation practices and the lack of transparency and accountability in land transactions;</li> <li>v. Disputes arising from delayed or inadequate payment of compensation payments for government acquisitions;</li> <li>vi. Disputes over multiple claims to compensation payments;</li> <li>vii. Disputes between government institutions and subjects of particular stools/individuals, for example, sale of lands acquired by government for public purposes to private individual/corporate developers, instead of original owners and expired leases (99-year leases in parts of Accra expired between 1989 and 1999, but there has been no notification to the original owners);</li> <li>viii. Disputes between private individual developers and stools/families/individuals;</li> <li>ix. Disputes over ownership of resettlement lands.</li> </ul> |
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Source: Ayee, *et al.* (2011)

Cook (2005), in his study of three towns (Kumasi, Goaso and Wa), also identified intra-family dispute, trespass/boundary dispute and unauthorised disposition of rights in land by chiefs or strangers as the commonest land disputes in the afore-stated communities in Ghana. Land disputes have stalled land development and led to dissipation of resources of the disputants. It is, thus, important to limit the occurrence of these disputes and develop a fast and non-adversarial resolution mechanism to resolve these disputes. Without harmony in land ownership, investors are unlikely to be impressed or no investment can be sustained over time (Kasanga, 1999) to reduce poverty and create wealth for the people. It is generally accepted that the prevailing land tenure system in Ghana have itself generated serious problems that have exacerbated land tenure insecurity with negative implications for national development (Tsikata and Seini, 2004:4). The complications associated with the land tenure system in Ghana re-emphasises the need to enhance customary land management with accompanying dispute resolution mechanisms. The role of land conflict in generating wider insecurity makes it absolutely vital to find means to resolve disputes early before they escalate (Toulmin, 2006). ADR, thus, provides a good platform for resolving land disputes at early stages in non-adversarial manner to avoid wider complications and attendant negative effects on the socio-economic development.

## 6.0 Customary land management - Wa and Kumasi in perspective

The chieftaincy institution remains one of the oldest and most respected politico-administrative customary institutions in Ghana. Chiefs are recognised as traditional political and administrative leaders with varied responsibilities, especially in maintaining peace and tran-

quillity and spearheading local level development in their territorial communities. Chiefs in Southern Ghana are usually linked to the Stool while their counterparts in northern Ghana are linked to the Skin as their symbol of authority. The Tendamba, on the other hand, are the descendants of the first settlers of their respective villages or towns and pertains to the three (3) northern regions. The land ownership system stems from discovery, first settlement and subsequent inheritance by their descendants.

In the Wa Municipality, the Tendamba are the proper title holders to land in their respective towns and villages (Kasanga, 1999) and not Chiefs, though Chiefs may hold considerable portions of land, if they are heads of a land-holding family. According to Kasanga (*ibid*), the functions of the Tendaana, in a typical northern traditional setting, include the following:

- “allocation of vacant land to ‘strangers’;
- settlement of land disputes;
- pouring of libation and the pacification of the land when sacrilege has been committed;
- introduction of new chiefs to the ‘earth god’, and acting as advisors;
- arrangement for annual sacrifices to ensure peace and the prosperity of their communities;
- enforcement of covenants in respect of communal lands;
- taking appropriate sanctions on trespassers and for anti-social behaviour” (Kasanga, 1999: 12-13).

The role of the Chiefs and Tendamba in land dispute resolution, therefore, takes the form of both traditional politico-administrative roles by the chiefs and a typical traditional spiritual intervention by the Tendamba. In ADR process, the Chiefs and Tendamba have very useful roles to play in resolving land disputes because of their respective roles in community administration

and land ownership, allocation and dispute resolution. Hence, the ensuing discussion outlines the traditional land adjudication procedures employed at the level of Tendamba jurisdiction (specifically in Wa) and the Asantehene's Lands Secretariat and its disputes resolution system in Kumasi.

### ***6.1 Land Dispute Resolution Procedures - Tendamba Court in Wa***

Land disputes involving individuals are first placed before the Tendamba who call all the parties to make their claims. Where it has to do with double sale, the Tendamba will first identify the grantors and further determine the rightful vendor. In most cases, the resolution is done by allowing the first grantee to take possession, whilst the subsequent grantee is given an alternative plot by the grantor. In other cases, where dispute has to do with boundary, the Council of Tendamba will come together to identify the appropriate boundaries for the disputing parties and this may further be demarcated by a certified surveyor. Sometimes, disputes may arise among the Tendamba themselves. Such disputes are largely traceable to ownership and boundary issues. Where two families have a dispute over land, they contact the overall head of the Tendamba, called the Tendaa Naa (Head Tendamba - mostly the oldest person among the land-owning group).

In the case of Wa, the Head of the Balum Clan is contacted. Where parties are not satisfied thereafter, they then petition the area Chief, who presides over the case, and with the help of his council of elders, he administratively hears the case and further assists in finding resolution. The Chief does this by inviting witnesses to corroborate claims as in the Court System. The difference, however, is that, witnesses are more comfortable when giving evidence and other relevant information than in the court system.

According to Kaleo Naa, Banamwine Sandu II (qualitative interview, 2009), this process is faster than the courts. This was further affirmed by Kolkpong Naa Abu Bin Saliu (qualitative interview, 2009), who revealed that, in customary arbitration, land cases are to be heard and resolved in not more than two (2) judicial sittings or hearings. It is important to note, however, that, because of the hierarchical nature of chieftaincy in the area, titular Chiefs cannot preside over land disputes. It is, however, always advisable that resolution procedures are started from the bottom ranked Chief, like the community Chief, to the Paramount Chief, unless a particular Chief is directly or indirectly a party to the dispute. In land dispute resolution, whilst the Tendamba may make sacrifices to pacify the gods of the land and aid landowners to testify to ownership, the Chiefs preside over the sitting for the settlement of land disputes.

The study noted that, in the past, if the Tendamba and Chiefs failed to resolve a particular case under the customary procedure noted above, a spiritual approach was adopted to determine actual land ownership. The 'Earth Priest' would be invited to make sacrifices to invoke the spirits of the gods. This process requires the purchase of drinks (schnapps) and animals, such as, goats, rams, chicken, among others, as may be requested by the gods through the priest for sacrifices. With this process, the fetish priest merely presents the dispute to the gods for resolution and further direction. Parties in the dispute submit themselves to the process, if they bring the demanded items to the shrine. However, if in the process one party withdraws, notwithstanding what the reason might be, he will be declared the loser and appropriate charges will be levied against him. The other consequence of this process included all manner of calamity or death of the 'false party' and his immediate family. This may continue until that party confesses to be falsely claiming ownership



of the land. If the case is finally determined, the losing party would be required to procure animals and drinks to appease the gods.

Though this spiritual approach may appear awkward in modern civilisation, it, nonetheless, wards off fraudsters who falsely lay claims to land they sincerely have no entitlement over. Land disputes have been resolved through this approach for many generations, and, even in current times, it is not out of place resorting to this unique traditional approach. As revealed from this study, the Tendamba have not always made invocation of spirits a first option of remedial measure, but dialoguing and mediating with the disputants have been the viable option. It is noteworthy that the relevance of this process has, however, come under strain following the widespread acceptance of Christianity, Islam and related religions in recent times. And since the entire process of ADR is voluntary, deity invoca-

tion is becoming colloquial and unpopular for land dispute resolution. The procedure is illustrated in Figure 1.

The cost associated with this traditional judicial process is low. Normally, the complainant provides one bottle of schnapps and/or kola nuts as custom demands and to show courtesy to the Tendamba. The travel cost is also minimal as Tendamba and chiefs, who handle these cases, are located, in majority of cases, in the neighbourhood of the disputants. The formal court process presents a different challenge in terms of cost and accessibility.

From Table 2, all seven (7) processes of ADR in the Tendamba and Chief’s court may cost approximately Gh¢45.00, depending on the locality and the market values of the items so demanded. Unlike the state courts, disputants are saved filing fees and legal counsel fees which together may run into over Gh¢2,000. The

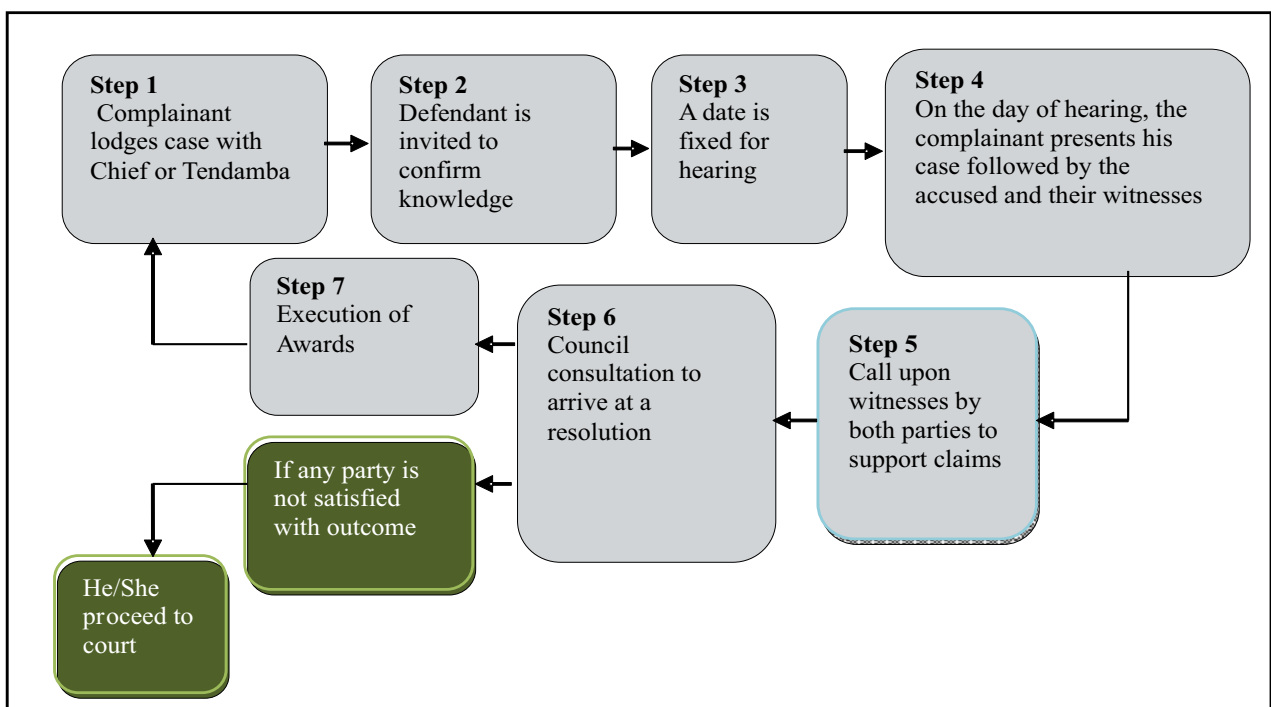


Figure 1: Summary of Customary Arbitration procedures in Wa Municipality

Source: Authors, 2011

**Table 2. Processes, Costs and Duration for Land Dispute Resolution in Wa (Dagaaba)**

<b>Processes</b>	<b>Costs Requirements</b>	<b>Time taken for Resolution</b>
Lodging of Complaint	2 bottles schnapps at Gh¢ 20	1 day
Invitation of Defendant	2-5 pots of pito/money Gh¢5	1 day
Scheduling of hearing	Nil	1 day
Hearing of both sides	Nil	1 or 2 sittings at diff. Days
Hearing of witnesses	Nil	1 or 2 sittings at diff. Days
Consultations of Council	Nil	1 day
Execution of Awards	1basin of pito at Gh¢ 20	1 day
<b>Total Process: 7</b>	<b>Total Cost approx. = GH¢45</b>	<b>Total Time = not more than 2wks/2 sittings</b>

*Source: Authors Field Data, 2011*

processes involved are also quite straight forward and disputes as reported from the interviews with Chiefs are resolved in two (2) to four (4) sittings and may last not more than two (2) weeks. The seven (7) processes could as well be completed in 1 day, depending on the complexity of the case, the convenience of traditional authority and the parties involved. Though disputing parties may end up paying commitment fees per custom to the traditional council, these cumulatively still remain cheaper than payments in the state courts. The low cost of ADR is complemented by its flexibility, speediness, friendliness, unifying and convenience, hence making it, indeed, an appropriate means of land dispute resolution. In fact, these revelations affirm our earlier claims that ADRS provides a cheaper, faster and peaceful form of justice for the rural poor who lack access to state courts attributable to resources constraints or long physical distance.

### **6.2 Land Dispute Resolution Procedures in the Asantehene's Lands Secretariat**

The traditional court of Asantehene has, since time immemorial, resolved disputes involving land, property, succession and inheritance through the customary arbitration process. Asantehene's administrative wings comprise of

councillors who assist him in matters he directly presides. The counsellors include the Krontire, Akwamu, Adonten, Benkum, Gyaase, Ankobia, Kyidom, Oyoko, Mawere and Nkosuo divisions (Yankson, 2009). They are the different principal divisions in the Kumasi traditional area represented by stools and form integral part of the Kumasi Traditional Council (KTC). Established under section 12 of the Chieftaincy Act, 1971 (Act 370), the KTC is the largest traditional council in the country. Its jurisdiction covers the whole of the Kumasi Metropolitan Area (KMA), and some areas in the Ashanti and Brong Ahafo Regions of Ghana. Under the repealed Chieftaincy Act of 1961 (Act 81), the KTC was also known as the Kumasi State Council, established under the State Councils (Ashanti) Ordinance of 1952 (No.4).

Among other functions, the KTC is responsible for the administration of stool lands. Although the KTC in itself is a statutory institution, there are other offices within it which are non-statutory. The non-statutory offices include the Asantehene's Secretariat, Asantehene's Lands Secretariat (ALS) and the Kumasi Traditional Council Arbitration Court. Statutory staffs of the KTC are paid from the Consolidated Fund, while non-statutory staffs are paid by the Asantehene. From 1926 to date, all the activities of the KTC,

including the resolution of disputes involving lands, are recorded and preserved. Such records are available at the Manhyia Archives.

### 6.2.1 *Current Land Dispute Resolution Process*

In September 2011, the Asantehene appointed a three-member Arbitration Committee, chaired by the Bantamahene, with Akyempimhene and Asokore Mamponghe as members. The Arbitration Committee functions under the Asantehene's Lands Secretariat (ALS). Among other things, the committee was primarily tasked to investigate and settle all land disputes amicably and to enhance land documentation processes in the Kumasi Traditional Area. It was also to sharpen the judicial functions of the Royal Court regarding land disputes through the ALS. Individuals or group of persons disputing over the occupation or use of any parcel of stool land within the Kumasi Traditional Area were urged to petition the committee for resolution.

The petitions are submitted to the Arbitration Committee in written claims. However, as most of the complainants are illiterates, the ALS often takes oral submissions of claims, summarises them and presents same to the committee in writing. Details of the disputing parties and the land which is the subject matter of the dispute are collected. Upon receipt of the claims, the committee will then fix a date and invitation letters are sent to the parties to appear before the committee. The invitation letter clearly spells out the complainant's claim(s) and requests each party to bring along any document(s) or witnesses which may support their assertions. On the first day of sitting, parties are requested to indicate whether they accept that the committee arbitrate the dispute and, thereafter, they are given ample opportunity to state their case.

The arbitration committee sits on Wednesdays and Fridays each week. To help in their duties, a

staff of the ALS is nominated to act as a secretary during sittings. Land disputes that the committee arbitrated within the research period can be categorised as:

- Illegal allocation of land, e.g., family heads, stool elders, etc.,
- Wrongful entry of land by caretaker chiefs;
- Multiple allocation of land by caretaker chiefs in respect of the same land;
- Caretaker chiefs intentionally refusing to endorse allocation notes, execute lease documents and consents;
- Boundary disputes between stools or individuals, and
- Delay in the documentation process due to misplaced documents at the ALS.

The committee arbitrates, at least, four land disputes at each sitting, depending on the nature and degree of complexity of the cases. It is noted that, between October 2011 and August 2012, the committee handled 226 land disputes. Out of this number, 155 cases were successfully settled, representing about 69% of land cases it received. Where, in the view of the committee, a particular case is complex or its outcome has the tendency of affecting the traditional jurisdiction of a particular chief or has a far-reaching consequence, the case is referred to the Asantehene for direct arbitration. It is astonishing to note that, the cost required throughout the arbitration process is only GH¢100.00, an amount very much within the reach of anyone who can afford to buy land in Kumasi. This amount is paid by the parties on submission of claims or petitions. A portion of the arbitration fee goes to cover administrative expenses, such as printing and opening of files for cases, and a portion also goes to pay allowances for the arbitration committee members. The process is found to be less bureaucratic, less cumbersome and requires no expensive legal representation as is required by the formal law courts.

### 6.3 Key Characteristics of the Customary ADR Process in the Study Areas

#### 6.3.1 Membership of the ADR Team

Currently, in the Wa Municipality, ADR teams comprise only heads of land-owning families who sit to deliberate and resolve land disputes. In the Kumasi Metropolis, the team comprises selected chiefs from around the city who are knowledgeable both in law and custom, and the dynamics of land disputes. The members are highly respected, unbiased, incorruptible opinion leaders who are also residents in the community and are knowledgeable in the subject matter. At one end, they command lots of respect and integrity among the town folks and their resolution is mostly adhered to. Remember, the acceptability of ADR is hinged on the trust people repose in the system and at no point should this be compromised.

#### 6.3.2 Venue

Land dispute resolution can take place at any location, depending on which place becomes the first point of contact in a particular dispute. For instance, it may be at the Chief palace<sup>3</sup>, it may take place at the office of the Customary Lands Secretariat, at the local Church Hall, at the Mosque or in the courtyard of the Head of Tendamba. Generally, proceedings are held in an 'open' place, a place that is convenient for all disputing parties. This is to allow for public hearing of the proceedings, though they may not have the opportunity to contribute, except where they are directly involved in the dispute or called upon to do so. Sitting times may mostly fall between 8:00 a.m. and 6:00 p.m. In order not to disrupt the normal working hours of most people, weekends are mostly used.

#### 6.3.3 Language of Instructions

Section 106 of the Alternative Dispute Resolu-

tion Act 2010 (Act 798) empowers the disputing parties to choose the language for proceedings. The language usable for deliberations at customary land dispute resolution is the common language of parties involved. In the Wa Municipality, the main languages often used are Waali/Dagaare/Sissali and Twi in the Kumasi Metropolis. This allows users of the facility to express their view adequately in the languages which are common within the community and they thoroughly understand. Parties may also opt to speak through interpreters in the language of their choice. For easy recording, English may also be used for largely literate parties. This status quo should be maintained.

#### 6.3.4 Costs Involved

One of the arguments against the state court land dispute resolution hinges on the cost involved. This explains why ADR mechanisms in both study areas endeavour to reduce the cost base as much as possible. ADR can be undertaken at no cost to disputing parties. However, in order to get the total commitment of parties to the process, parties are made to pay a token at the beginning of the process. Section 90 (3) of Act 798 provides that the payment by the parties of the arbitration fee or token demanded by the arbitrator in customary arbitration constitute (a) consent to submit to customary arbitration, and (b) the appointment of the arbitrator.

Sometimes, parties to a dispute may voluntarily offer money or other gifts to thank the arbitrators or mediators for their assistance in reaching a resolution. Other costs involved in the resolution of land disputes using the Chiefs and Tendamba include the purchase of sacrificial animals and drink or drink money. From this study, this cost does not exceed GH¢100.00 in both Wa and Kumasi.

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<sup>3</sup> A Palace is a royal residence occupied by the Chief and his elders.



### 6.3.5 Arbitration Award and Execution

Awards of land disputes arbitration take many forms. The award could be in the nature of vesting the disputed land in the appropriate party or replacement; re-demarcation of boundaries; prohibition from further entry on the land, if the dispute borders on trespass and any other remedies as the case may be. In Wa, per custom, non-compliance to a resolution reached in the process of customary arbitration, a person may be banned from attending communal functions and enjoying community facilities. In extreme cases, he or she may be expelled from the community. In Kumasi, defiance of arbitration orders by a party or parties could result in severe sanctions<sup>4</sup> and, in the case of a sub-chief, it could lead to destoolment by the Asantehene. For example, in July 2013, the Asantehene destooled the Odikro of Bomso-Sasamo in connection with a land dispute. In that same case, the King fined the Akyempimhene to slaughter twelve sheep (*The New Crusading Guide*, 2013). Due to the authority and reverence commanded by the Asantehene, non-compliance of arbitration award is uncommon at the ALS in Kumasi.

## 7.0 Conclusion and Recommendations

The use of ADR to settle land disputes is gaining acceptance by stakeholders in Ghana. People are demonstrating quite an impressive response to the ADR process. For instance, the Arbitration Committee of Asantehene, from our study, arbitrated over 226 land disputes between October 2011 and August 2012. Of this number, 155 cases were successfully settled, representing about 69% of land cases it received. In Wa, traditional court system is the first point of interest in dispute resolution by people (Cook, 2005). ADR has a future in the Ghanaian adjudication system. It has the benefits of flexibility,

leads to the development of expertise, saves time, cheaper, relieves the overload of cases on state courts and results in a win-win situation of all the parties involved. Cook (2005) noted that, land disputes in the state courts took between 2 to 5 years to be resolved in Kumasi, Goaso and Wa and litigants expended an average amount of Gh¢2,000 on their cases. Our study reveals that ADR process is still cheaper and faster in resolving land disputes in Ghana. In the case of Tendamba court in Wa, cases are resolved in not more than two weeks and the disputants incur cost of traditional commitment (i.e., purchase of kola and drinks) valued not more than Gh¢45.00 at the time of our survey. The Asantehene's Arbitration Committee in Kumasi resolves land disputes before it in one or two sittings and a paltry amount of GH¢100.00 are incurred by disputants as cost at the time of this study.

Chiefs and Tendamba have a lot to offer in the land disputes resolution in Ghana. They know the land, its boundaries and the customary rules and regulations regarding its holding. Again, they are experienced and knowledgeable in indigenous customary land law and principles. Judges are clogged with many cases and most of the land cases pending before them could be well handled by chiefs and Tendamba under the indigenous customary judicial system. If there is goodwill, a desire to avoid confrontation and dispute, and an understanding that all parties can benefit from a strategy of using alternative dispute resolution approaches, there is a real opportunity to reduce the damage caused by disputes and move from potential dispute to potential cooperation.

To help strengthen and make ADR mechanism a vibrant medium of redress in Ghana it would require some interventions. Among these interventions, we propose the establishment of more Customary Land Secretariats cutting across the country for the different tenure systems. There are, currently, only three fully-established Customary Land Secretariats (CLSs) in the whole Upper West Region with the fourth

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<sup>4</sup> Sanctions may include customary fines, such as purchase of animal and drinks for purification, for disobeying traditional authority orders.



secretariat yet to be set up. It is expected that the CLSs will assist in record-keeping on land ownership, land alienation and further aid dispute resolution. However, in as much as these establishments are encouraged, government, through the Alternative Dispute Resolution Centre established under the Act 795, should support them in their logistical needs, like computers and accessories and office furnishing, among others. Although the first phase of the Ghana Land Administration Project has helped resolve some of these difficulties, much is still expected in the second phase of the project in this regard. The local people should be made to understand and appreciate the objectives of these secretariats and their responsibilities relating to the sustenance of these secretariats. For efficiency and effectiveness, we further propose that the membership of a customary arbitration team should include Chiefs, Tendamba (as the case may be), some officials of the Lands Commission and some co-opted professionals, such as, lawyers, valuation and land surveyors, depending on the nature and cause of the dispute in question.

Additionally, regular training programmes should be organised for the traditional heads who handle the local disputes under the ADR to help them upgrade their arbitration skills and properly adhere to the rules and regulations of the ADR process. Basic principles surrounding arbitration should be taught them. Measures on how to mitigate the effects of resolutions reached, especially on the losing party, should be made available to them. By this, the institution of Chiefs and Tendamba will be abreast with current standards as far as out-of-court dispute resolution procedures are concerned. Finally, it is submitted that, the responsibility for land dispute resolution should first be given to the Chiefs and Tendamba who have under their sleeves vast experiences and deeper understanding on customary land tenure and can assist to achieve greater success in resolving land dispute cases before them.

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