IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL (CIVIL DIVISION)

ACCRA – GHANA

CORAM: **HENRY KWOFIE JA** **PRESIDING**

P. BRIGHT MENSAH JA

OBENG-MANU JNR JA

SUIT NO. H1/66/2016

20TH MAY 2021

BETWEEN:

NII TSUI ALABI)

STEPHEN BORKETEY)

NAA AJELEY SOWAH) .. PLAINTIFFS/APPELLANTS

vs

EKOW RICHARDSON)

FREDERICK SHAMO substituted **) .. DEFENDANTS/RESPONDENTS**

by **Benjamin Amartey)**

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JUDGMENT

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BRIGHT MENSAH JA:

This appeal is against the judgment of the High Court, Accra delivered **25/05/2015** that went in favour of the defendants/respondents, as against the plaintiffs/appellants herein. Being dissatisfied with, and aggrieved by the decision of the trial court, the plaintiffs/appellants have mounted the instant appeal filed with this court on **29/05/2015** on a number of grounds, namely:

i) The judgment is against the weight of evidence before the court.

ii) The learned trial judge erred in law by failing to require 2nd defendant to prove the condition precedent for the application of res judicatem, namely same subject matter which 2nd defendant failed to prove in this case.

iii) The learned trial judge erred by holding that the judgment in suit No. L383/89 is binding on plaintiffs who have acquired usufructtuary interest in the land before the said suit was instituted which holding is contrary to the principle of law stated in the Supreme Court case of Attram v Aryee (1965) GLR 341.

iv) The trial judge misdirected herself to the effect of the judgment in Suit No. 383/89 on non parties such as plaintiffs whose interest in the land was vested before the judgment and the judgment specifically excluded such interest from the effect of the judgment.

v) Additional grounds of appeal to be filed upon receipt of the record of appeal. See: ***pp 489-480 roa.***

By this appeal, the plaintiffs/appellants seek from this court the reversal of the judgment of the trial court. So far as the records go, no further or additional grounds of appeal have been filed prior to the hearing of this appeal. In considering this appeal, the designation of the parties shall be maintained. That is to say, the plaintiffs/appellants shall be referred to simply as the plaintiffs and the defendants/respondents, the defendants.

The suit:

The plaintiffs suing as joint administrators of the estate of the late Phebe Amasah on 10/10/2008, caused to be issued in the registry of the lower court, a writ of summons endorsed with the judicial reliefs listed hereunder, against the defendants:

1. Declaration of title to the land described in the statement of claim.

2. Perpetual injunction.

3. Damages for trespass, and

4. Recovery of possession.

In paragraph 2 of the statement of claim **[pp 3-4 roa],** the plaintiffs pleaded that the deceased died possessed of a land as owner, being at Adjiringano Accra bounded on the north west by proposed road measuring 600 feet more or less; on the south west by Ghana Government land measuring 600 feet more or less; on the south east by Nungua Stool land measuring 570 feet more or less; and on the north east by Nungua Stool land measuring 560 feet more or less. On record, the suit was initially launched against the 1st defendant only. Being served with the writ and the statement of claim, he entered appearance and filed a defence denying the claim of the plaintiffs.

It is noted, pursuant to an order of the lower court Frederick Shamo Kwei was later joined to the suit as 2nd defendant. However, he did not live long to see the end of the trial. He passed on to eternal glory. Upon an application for substitution made to the trial court, Shamo Kwei (deceased) was substituted by Grace Telley Tesa.

2nd defendant's Counterclaim:

Having been substituted for Shamo Kwei, Grace Telley Tesa filed a defence to the claim and then counterclaimed against the plaintiff as follows:

1. Declaration of title to the land described at paragraph 9 herein.

2. Recovery of the land in dispute.

3. Damages for trespass.

4. Perpetual injunction restraining the plaintiffs, their successors-in-title, assigns, servants and agents from interfering with the quiet enjoyment of 2nd defendant's family.

5. An order directed at the Registrar of the Land Title Registry to cancel Land Title Certificate No. GA 12317 as having been wrongly issued.

6. Cost of this litigation including Solicitor's costs.

See: ***pp 100-102 roa.***

It is worthy of mention that Grace Telley Tesa herself did not survive the suit as she also died in the course of the pendency and was subsequently substituted by Benjamin Amartey Mensah.

Issues set down for trial:

Issues contained in the application for directions filed 01/04/2009 by Counsel for the plaintiff were as follows:

1. Whether the judgment of S.A Brobbey JSC constitutes estoppel per judicatem against defendant and their grantor.

2. Whether the allodial owner of the land in dispute is Nungua Stool or Numo Kofi Anum Family of Tesa.

3. Other issues on the face of the pleadings.

Additional issues:

The defence added the following as additional issues:

a. Whether or not the judgment of His Lordship Justice Jones Dotse dated 21st December 2009 is binding on plaintiffs.

b. Whether or not plaintiffs' predecessors-in-title had been in possession of the land in dispute without interference from defendants.

Facts of the case:

Sometime in the year, 1990 Phebe Nii Amasah (now deceased) took a leasehold grant of the land, the subject matter in dispute. The grant was formalized by an indenture that was dated 09/05/1990 and made between the Stool of Nungua and Phebe Nii Amasah. According to **the plaintiffs** who sued as joint administrators of the estate of the late Phebe Nii Amasah, the deceased subsequently took steps to register her title at the Land Title Registry and obtained a Land Title Certificate numbered GA 12317.

It is the case of the plaintiffs that after its acquisition, the deceased went into possession and exercised some acts of ownership of the land by granting portions of the land to some developers who have also been in effective possession without any interference. It was quite recently and before the issuance of the writ that the 1st defendant with the aid of some Policemen caused damage to some developments on the land claiming that he obtained the grant of the land from one Shamo Quaye. As stated supra, Shamo Quaye applied for and was joined as 2nd defendant. However, he died during the pendency of the suit so he was substituted by Grace Telley Tesa who unfortunately did not survive the suit and was subsequently replaced by Benjamin Amartey Mensah as the current 2nd defendant in substitution for Shamo Quaye (deceased).

The **1st defendant** pleaded in his defence as appearing on ***pp 8-9 roa*** that he was granted the disputed land by the Numo Kofi Anum family of Tesa in the year, 2001. He claims that whilst developing the land in 2003, some trespassers who had obtained an exparte injunction against him came unto the land and demolished his developments thereon. According to him, he later obtained judgment in the High Court in respect of part of the disputed land. He denied that another suit was mounted against him in the High Court.

The **2nd defendant's** story as pleaded in his defence filed 05/07/2013 is that Nungua Stool has no title to the disputed land and that the stool as a party to a suit No. L.383/89 intituled: Nii Mate Tesa & 5 ors v Numo Nortey Adjeifio & ors, it ought to have known that it did not have title to the disputed land to have made a grant to any person including the plaintiffs. It is the also their trespass to parts of their family land lying at Tesa within the "Adjiriganor Residential Area Scheme" that encompasses a total area of 998.89 acres.

According to the 2nd defendant, their family has been in possession and made some grants to some developers including the 1st defendant. They claim that the plaintiffs knew or ought to have known of the pendency of some suits in respect of the land at the time they caused harassment, arrest and detention of Shamo Quaye but they failed to join in particular, suit No. L.383/89.

Judgment of the trial court:

This appears on ***pp 477-488 roa.***

On record, the parties on both sides tendered various judgments in support of their case. See: ***pp 514-571; 588-597; 603-659; 668-701; 702-713*** and ***718-736 roa*** respectively. Specifically, the plaintiffs tendered in support of their case, the following judgments:

a) **Exhibit D –** judgment of the High Court presided over by Brobbey JSC sitting as an Additional High Court Judge;
b) **Exhibit E** – judgment of the High Court presided over by Ofosu-Quartey J; and
c) **Exhibit F –** judgment of the High Court presided over Novisi Afua Aryene J.

The defendants, on the other hand, relied on the following judgments:

a) **Exhibit 3** – judgment of the High Court presided over by Felicity Amoah J;
b) **Exhibit 5** – judgment of the High Court presided over by Dotse JSC sitting as an Additional High Court Judge;
c) **Exhibit 9** – judgment of the Court of Appeal;
d) **Exhibit 10** – judgment of the Supreme Court; and
e) **Exhibit 13** – judgment of the High Court presided over by Amos Buertey J.

It cannot be overemphasized that on the basis of the judgments referred to supra tendered in the case, the issue of estoppel res judicatem heavily weighed on the mind of the trial court. That finds expression in the opening introduction of the judgment of the lower court that we feel obliged to reproduce it hereunder:

"The facts of this case shows clearly how the judicial process can be used to perpetually keep aflame litigation on same subject matter whose flame has been put out a previous litigation. The full trial of this case is a waste of time and resources which could otherwise be channeled to reduce the backlog of cases in our courts, and it underscores the principle of abuse of the court system."

The learned trial judge continued:

"This is a case in which each party made reference to an earlier case which should have concluded this matter as between the parties herein, and yet the same subject has found its way into this court to be re-litigated once again. Various decisions have been delivered on the subject matter herein as is evident from the many judgments tendered as exhibits. I will hope that the parties herein will put to rest this matter to preserve public confidence and trust in the administration of justice."

In the final analysis, the trial judge singled out the judgment by Dotse JSC in suit no. **L 383/89** intituled: **Nii Mate Tesa & 5 ors v Nuumo Nortey Adjeifio & 6 ors** and held that that judgment raised res per rem judicatam and was therefore binding on the plaintiffs/appellants. Appearing on ***pp 485-486***, the learned trial judge explained herself why she preferred that judgment to the judgment in suit no. **L/94/99 Empires Ltd v Topkings Ltd & ors** plaintiffs tendered. She ruled as follows:

"In as much as case entitled EMPIRES BUILDERS LTD v TOP-KINGS LTD & ORS suit no. L/94/99 tendered by the plaintiffs and

marked exhibit D does not have both parties herein represented, the plea of res judicata would not be applicable in this case. Nii Botrabi Obroni II represented the Nungua stool but defendants were not in this case."

The trial judge then continued:

"However in the case of NII MATE TESA & 5 ORS v NUUMO NORTEY ADJEIFIO & ORS suit no. L/383/89, the defendants were represented by Nii Mate Tesa and the plaintiffs were represented by Nii Afotey Odai IV. PW1 herein Nii Borketey Quao I contended that Nii Afotey Odai IV could not have represented the stool because even though he was the Dzasetse at the time, the chief had passed and with the death of every chief the Dzasetse also loses his position. This could be the true position of the Nungua chieftaincy procedure, however during and proceedings in that case capacity was not raised in relation to Nii Afotey Odai IV and his intention was to represent the stool in that case, but for the death of the chief he would have been unquestionably the full representative of the Nungua stool, and even after the death of the chief, the Dzasetse could have been substituted by a representative of the stool. The subject matter of that case is the same subject matter in the case herein. That case, NII MATE TESA & 5 ORS v NUUMO NORTEY ADJEIFIO & 6 ORS has been finally determined in the Supreme Court in the unreported case of civil appeal no. J4/44/2019, in which the decisions of the trial High Court and the Court of Appeal were

affirmed. This decision is binding on this court and has a force of estoppel on the plaintiffs herein……..”

Determination of the appeal:

Since the issue of estoppel lies at the heart of the case, we shall combine **grounds (ii), (iii) & (iv)** and address them together.

At ***pp 484-487 roa,*** the learned trial judge discusses the indices of estoppel and relies on some judicial authorities to back her claim. As she rightly held, for a judgment to operate as an estoppel it ought to be clear and unambiguous and a final decision that would have finally determined the rights and or issues between the parties. The question this court has to address however, is whether on proper evaluation of the facts and evidence led on record, the trial judge did rightly apply the principle to the instant case.

For a judgment to operate as estoppel, it must be clear, unambiguous and should determine finally the issues between the parties. See: ***Peniana v Affram (1962) GLR 220 SC.***

Reiterating the principle, this court speaking through Azu Crabbe JA (as he then was) in ***Robertson v Reindorf (1971) 2 GLR 289 @ 307*** expressed himself as follows:

“A party who relies on an earlier judgment as estoppel

per rem judicatam, must, if he is to succeed, establish:

(1) that there has already been a judicial decision by a court or tribunal of competent jurisdiction,

(2) that the decision is final,

(3) that the same question as that sought to be put in issue by the plea in respect of which the estoppel is claimed was decided in the earlier proceedings,

(4) that the case was between the same parties or their privies, as the parties between whom the question is now sought to be put in issue."

Ghanaian courts recognize 6 main kinds of estoppel. These are:

i) estoppel per rem *judicatam*

ii) estoppel in *pais*

iii) estoppel by conduct;

iv) estoppel by deed;

v) promissory estoppel; and

vi) estoppel by election.

See: **S.A Brobbey, Practice & Procedure in the Trial Courts &Tribunals of Ghana, 2nd Ed p. 333.**

The estoppel rule prevents a person from bringing an action where the cause of his claim or the issue he seeks in the new suit has previously been tried and disposed of between the parties by a court of competent jurisdiction. See: ***Foli v Agya-Atta (Consolidated) (1976) 1 GLR 194 C/A.***

The policy rationale of the principle is that there must be an end to litigation expressed in the Latin maxim: *interest rei publicae ut sit finis litium.* See: ***Conca Engineering (Gh) Ltd v Moses (1984-86) 2 GLR 319 C/A.***

Insofar as the facts and the evidence established in our instant case go, we are more concerned with *estoppel per rem judicatam.* Estoppel per rem judicatam is generally known as estoppel by record. The record is normally recognized as a judgment of the court. Estoppel per rem judicatam is a generic term, and can be classified under two distinct main heads. These are (a) Cause of action estoppel and (b) issue estoppel.

It is important to state that in ***Arnold v National Westminster Bank PLC [1991] 2 AC 93 @ 104***, Lord Keith of Kinkel discussed the leading authority on "cause of action" (res judicata) and "issue estoppel" and the difference between the two. He explained himself thus:

> *"Cause of action estoppel arises where the cause of action in the later proceedings is identical to that in the earlier proceedings, the later having been between the same parties or their privies and*

having involved the same subject matter. In such a case the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment ..... Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant one of the parties seeks to re-open that issue."

Res judicata is part of our received law by which a final judgment rendered by a judicial tribunal of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies and their privies and as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. See: ***In re: Sekyedumasi Stool; Nyame v Kese alias Konto (1998-99) SCGLR 476 @ 479***.

The rule covers matters actually dealt with in the previous litigation as well as those matters which properly belonged to that litigation and could have been brought up for determination but were not raised. See: ***Dahabieh v SA Turqui & Bros (2001-02) SCGLR 498 @ 507***.

Modern judicial authorities are to the effect that where a point was not raised and could not by reasonable diligence have been adduced in earlier proceedings, there may be an exception to issue estoppel, but not to action estoppel.

Now, having regard to the evidence led on record, it is our judgment that although the learned trial rightly stated the law on the issue of estoppel res judicata she wrongly applied it to the instant case. Justifying why the plaintiffs were caught by the rule

estoppel res judicata and having held that **Nii Mate Tesa v Nuumo Nortey Adjeifio (supra)** had a binding force on the plaintiffs, the trial judge stated in her judgment at ***p. 486 roa*** as follows:

> *"The plaintiffs cannot argue that because they took their grant before that judgment it is not binding on them; that argument does not follow the sequence of logic. The litigation and the judgment became necessary because of the grant of that land to them. They could not have taken their grant after the judgment because the decision of that judgment was that the Nungua Stool does not own the land in dispute……..."*

Admittedly, a judgment in a previous land suit was admissible in a subsequent suit though one of the parties in the subsequent suit was not a party to establish res judicata but as evidence of acts of possession and the exercise of acts of ownership. See: ***Peniana v Affram (supra).***

The learned trial judge erred in applying the issue res judicatam to the instant case because from the facts and the evidence led on record, it was obvious that the plaintiffs were not parties to any previous suit between Nungua Stool and the Tesa family. It is equally uncontroverted that the late Phebe Nii Amasah acquired the land, the subject matter of this suit long before a legal battle ensued between her grantor, the Nungua Stool and the Tesa family. By the evidence, the legal battle arises as to whether by reason of those judgments the defendants tendered, particularly **Nii Mate Tesa & 5 ors v Nuumo Nortey Adjeifio & 6 ors (supra)** as the trial judge stated, the plaintiffs have to lose their land when the overwhelming evidence is that their acquisition of the disputed land was for a valuable consideration and without notice of any encumbrance, and the

acquisition done before the judgments that seek to declare that the land in question did not belong to his grantor, were handed down. The answer is certainly, **No!**

There is an unbroken chain of judicial authorities that establishes the principle that a purchaser of land would not lose his land by virtue of judgment in litigation commenced after the sale. Starting with the case of ***Attram v Aryee (1965) GLR 341*** the Supreme Court held that a prior purchaser of land cannot be estopped as being privy in estate by a judgment against the vendor commenced after the purchase.

Reiterating the principle in ***R v Lands Commission; Exparte Vanderpuye Orgle Estates Ltd (1998-99) SCGLR 677 @ 687,*** the Supreme Court speaking through Bamford-Addo JSC held the law to be that a purchaser of land would not lose his land by virtue of judgment in litigation commenced after the sale. She held further that similarly, even if a valid deed is legally invalidated for the proper legal reason ie by a subsequent legally valid judgment the doctrine of bona fide purchaser for value without notice would apply to protect the title of such purchaser.

Similarly, in ***Abbey v Ollenu 14 WACA 567*** the land in contention was conveyed to the respondent who later built on it in ignorance of the fact that after its purchase but before he built thereon, the appellants sued his vendor and obtained declaration of title in their favour. After the respondent completed the building on the land in issue, the appellants as Plaintiffs, sued the respondent and obtained judgment for the recovery of possession and mesne profits. On appeal to the West African Court of Appeal, it was held, upholding the appeal:

> *"The respondent was not estopped as being a privy in estate by a judgment in an action against his vendor commenced after the*

purchase."

On the authorities, therefore, we hold that the learned trial judge misapplied the rule of res per judicatam to the case.

Consequently, we allow the appeal on grounds (ii) – (iv) contained in the notice of appeal.

That leads us to addressing the last ground of appeal.

Ground (i): Judgment against weight of evidence:

The settled rule is that an appeal is by way of rehearing. In ***Tuakwa v Bosom (2001-2002) SCGLR 61***, the Supreme Court laid down the rule as follows:

> *"An appeal is by way of re-hearing, particularly where the Appellant alleges in his notice of appeal that the decision of the trial court is against the weight of the evidence…… In such a case, it is incumbent upon an appellate court in a civil case on analyze the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before arriving at its decision, so as satisfy itself that on a balance of probabilities, the conclusions of the trial judge are reasonably or amply supported by the evidence."* **[emphasis mine]**

This court has always been guided by the principle that where an appellant has complained that the judgment cannot be supported having regard to the evidence led at

the trial, it was incumbent on the appellant to so demonstrate it. The settled law is that when an appeal hinges on that omnibus ground that the judgment is against the weight of evidence, duty is cast on the appellant to demonstrate the lapses contained in the judgment complained of. See: ***Djin v Musah Baaku (2007-2008) 1 SCGLR 686.***

The case, ***Owusu-Domena v Amoah (2015-2016) 1 SCGLR 790*** is the legal authority for saying that the contention that a judgment is against the weight of evidence throws up the case for a fresh consideration of all the facts and law by the appellate court. The Supreme Court in ***R v Central Regional House of Chiefs & Ors; Exparte Gyan IX (Andoh X – Interested Party) Civil Appeal No. J4/11/2013 of 19/07/2013 (unreported)*** restated the principle that an appellant has a duty to clearly show where the court below went wrong or where it failed to take into consideration all the circumstances and the evidence or had drawn wrong inferences without any evidence in support. See also: ***The R v Eastern Regional House of Chiefs; Exparte Divine Tetteh Ologo & 5 ors (KK Nyumutei & 5 ors – Interested Parties) (2017) 114 GMJ 63 CA.***

Making primary findings of fact is the preserve of the trial courts and whenever such findings are supported by evidence on record, they are not to be disturbed. See: ***Quaye v Mariamu (1961) GLR 93 SC; Nkansah v Adjabeng (1961) GLR 465.***

In sum, therefore, the appellant who contends that a judgment is against the weight of evidence carries the burden to demonstrate that per the judgment of the trial court, the court overlooked some vital and or relevant pieces of evidence which if it took into consideration and properly applied them, would have titled the outcome in his favour.

It is noted in our present case that the 2nd defendant counterclaimed for a declaration of title and other judicial reliefs. It is trite learning that a counterclaim is a claim by itself

independent of the plaintiff's claim and the counterclaimant ought to prove his title to justify any judgment or ruling given in his favour. The law is also that once the counterclaimant claims for a declaration he puts his title in issue and both parties then have equal task of identifying the land they each claimed with clarity. This they discharge, by showing clearly all the boundaries of the land and what overt acts of ownership they have exercised on the land over the years. See: ***Kpakpo Brown v Bosomtwi & Co. (2001-2002) SCGLR 876 @ 879*** per Ampiah JSC.

The question then arises as to whether the 2nd defendants were able to prove their case particularly the identity of the land they were claiming.

It has been argued on behalf of the appellants that the trial judge ought to have put the defendants to strict proof that the disputed parcel of land is part of the Numo Kofi Anum family land of 918.24 acres. Significantly, whereas the judgment on which the defendants relied gave the size of their land as 918.24 acres, the trial court gave judgment for the 2nd defendant on his counterclaim for 998.89 acres. Plots of land measuring 918.24 acres is clearly different from 998.89 acres. It was reasonable, therefore, to expect that the trial judge demanded strict proof as to how the difference came about. Without any explanation whatsoever and or with clear certainty shown on record, the trial judge rather gave judgment for 998.89 acres disregarding the difference of 80 acres.

It is instructive that whilst the evidence of the plaintiffs as regards the identity of the land they claim were consistent with their pleadings, the 2nd defendant's on the other hand, were fraught with inconsistencies as demonstrated supra. The law is quite settled that where there was a departure from pleadings at a trial by one party whereas the

other's evidence accorded with his pleadings, the latter's was as a rule, preferable. See: ***Appiah v Takyi (1982-83) GLR 1 C/A.***

Now, having regard to the inconsistencies in the identity of the land the 2nd defendant described, it is the judgment of this court that the learned trial judge erred in preferring his story to the plaintiffs'. On the basis of that the trial court could not have given judgment in their favour on the counterclaim.

The appeal therefore succeeds. The judgment of the lower court is hereby set aside. Consequently, we enter judgment for the plaintiffs on their reliefs as endorsed on their writ as against the defendants.

Gh¢10,000 costs assessed in favour of the plaintiffs.

sgd.

P. BRIGHT MENSAH

(JUSTICE OF THE APPEAL)

CONCURRING

OBENG-MANU JNR JA:

My learned brother Bright Mensah JA has written the lead judgment in this appeal. I have had the benefit of reading the lead judgment of my learned brother beforehand in draft. He allowed the Appellant's appeal and set aside the judgment of the High Court. He entered judgment for the Plaintiffs/Appellants for all the reliefs indorsed on their Writ of Summons. I entirely agree with the reasoning and conclusion of my learned brother.

I have, however, decided to add a few words of my own.

I am doing this for two reasons.

(a) because the judgment of the High Court in this case was delivered on 26th May, 2015, nearly six years ago, and specific orders were made directing the Land Title Registry to cancel the Land Title Certificate with No. GA 12317 of the Plaintiffs/Appellants which may have been complied with; in which case a specific order ought to be made by this Court directed at the Land Title Registry to cancel any registration it may have made in favour of the Defendant/Respondent in compliance with the order of the High Court and a further order that the Plaintiffs' Land Title Certificate with no. GA 12317 be restored by the Land Title Registry.

(b) To specifically dismiss the Defendant's counterclaim and consequential reliefs as well as reverse the award of damages including costs made against the Plaintiffs/Appellants.

In the judgment of the High Court, the learned trial Judge dismissed the claims of the Plaintiffs as indorsed on their Writ of Summons and entered judgment in favour of the Defendants on their counterclaim as follows:

"i. Defendant's title to the land situate and lying and being at Tesa within the "Adjiriganor Residential area Scheme" which land was acquired by settlement and bounded on one side by Otinshie, on another side by Agblesa, on another side by Martey Tsuru and on the last side by La-Bawaleshie and Adjiriganor and which encompasses a total area of 998.89 Acres is hereby confirmed.

ii. Defendant is to recover possession of the land in dispute.

iii. Plaintiffs, their successors in title, assigns, servants and agents are perpetually restrained from interfering with the quiet enjoyment of defendant's Land.

iv. The Land Title Registry is to cancel the Land Title Certificate obtained by the plaintiff with no. GA 12317.

v. GHC 10,000.00 damages including costs awarded against the plaintiffs."

In order to avert the usual situation in which a successful Appellant is denied the fruits of his victory by the refusal of the Land Title Registry or the Land Registration Division to amend their records to accord with the decision of the Higher Court, it is imperative that we specifically order the Land Title Registry to cancel any registration made (if any) in favour of the Defendant/Respondent herein namely: Ekow Richardson and/or Frederick Shamo substituted by Bernard Amartey Mensah.

We hereby order the Land Title Registry accordingly. The Plaintiff/Appellant need not be directed by the Land Title Registry to go to Court to obtain a specific order

compelling them to effect the necessary change to accord with the judgment of this Court. That will be a waste of time and resources.

We further specifically order the Land Title Registry to restore the registration of the Plaintiff/Appellant as the registered Land Title Proprietor with no. GA 12317 forthwith, as it was before its cancellation (if cancelled).

Lastly, we specifically dismiss the Defendant's counterclaim in its entirety and specifically reverse all the consequential reliefs granted in favour of the Defendants on their counterclaim as stated in reliefs (i) to (v) *supra* and in their place, we grant the following specific reliefs in favour of the Plaintiff/Appellant:

i. Plaintiffs/Appellants' title to the land situate and lying and being at Adjiriganor Accra bounded on the North West by proposed road measuring 600 feet more or less on the South West by Ghana Government Land measuring 600 feet more or less on the South East by the Nungua Stool Land measuring 570 feet more or less and on the North East by Nungua Stool Land measuring 560 feet.

ii. Plaintiffs/Appellants are to recover possession of the land in dispute.

iii. Defendants, their successors in title, assigns, servants and agents are perpetually restrained from interfering with the quiet enjoyment of Plaintiffs' Land.

iv. The Land Title Registry is hereby Ordered to cancel the Land Title Certificate (if any) obtained by the Defendant pursuant to the judgment and Order of the High Court dated 26th May, 2015 and the Land Title Registry is further Ordered to restore forthwith

Plaintiffs' Land Title Certificate with no. GA 12317 which was or may have been cancelled pursuant to the Order of the High Court on 26th May, 2015.

v. GHC 10,000.00 damages including costs awarded against the plaintiffs is hereby set aside.

sgd.

OBENG-MANU JNR

(JUSTICE OF APPEAL)

sgd.

I also agree **HENRY KWOFIE**

(JUSTICE OF APPEAL)

Counsel

Kofi Amoateng for the 1st and 2nd defendant/respondent

Kofi Bosompem for the plaintiffs/appellants