IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA

CORAM: - SENYO DZAMEFE, JA (PRESIDING)
AMMA GAISIE, JA
NOVISI ARYENE, JA

Civil Appeal
Suit No: H1/122/21
24TH NOVEMBER 2022

1. **NUMO OBENEY KODJO OKAN SRAHA**
   (SUBT. BY MADAM FOFO OBENEY OKAN SRAHA)

2. **NUMO SOWAH OBENEY @ OSABU WULOMO**
   - PLAINTIFFS/APPELLANTS

VRS.

1. **ADJETEY AGBOSU**

2. **RUEBEN QUAYE**

3. **ALFRED ADJEI ABLOR**

4. **LAND REGISTRATION DIVISION OF**
   LAND COMMISSION - DEFENDANTS/RESPONDENTS

JUDGMENT

DZAMEFE, JA

This is an appeal lodged against the judgment to the Land Court Division, High Court Accra dated 4th November 2019 in favour of the 1, 2, and 3rd defendants/respondent against the 1st and 2nd plaintiff/appellants. The appellants dissatisfied and aggrieved by the said judgment, lodged this appeal against the entire judgment on the follow grounds;-

a. That the judgment of the Accra High Court Land Division is against the weight of evidence on record and

b. Further grounds to be filled on receipt of the record of appeal.

c. the relief sought in for the said judgment to be reversed and judgment accordingly entered in favour of the plaintiff/appellants for the reliefs sought from the High Court Land Division.

PLAINTIFF'S CLAIM

The plaintiff's claim at the High Court Land Division is for;-

1. Declaration of Title to all that piece of land known as the Sraha Lands covering an approximate area of 312.68 acres the boundaries of which are as follows;-
   On the North, bounded by the road from Ashale Botwe towards the University of Ghana, Agricultural Research Station, commencing from a point marked OF1 in an easterly direction with the said road as a boundary and measuring 980 feet to the point marked OF2 and 265 feet between the points marked OF2 and OF3, and the boundary, like the said University Farm road, descending in a South Easterly direction and measuring between points OF3 and OF4, 180 feet and between OF4 and OF5, 800 feet and between points marked OF5 and OF6, another 800 feet and between the points marked OF6 and OF7, a distance of 1400 feet and the boundary descends sharply in a Southerly direction and measuring between points OF7 and OF8, a distance of 1440 feet with Nmaidzor Village, constituting the South-eastern boundary and between points OF8 and OF9, a distance of 2010 feet and the boundary taking a sharp Westerly direction and measuring between points OF9 and OF10 distance of 1100 feet and between points OF10 and OF11, a

distance of 630 feet and bounded on that side by Otinshie and Dzornaaman villages and the boundary taking a sharp straight Northerly direction and between points OF11 and OF12, a distance of 980 feet ad between OF12 and OF13, a distance of 1490 feet and bounded on that side by Onukpai aworhe, and between points OF13 and OF14, a distance of 1520 feet and bounded on that side Ogbodzo village and farms, which boundary passes through a sand/stone pit and between points OF14 and OF15, a distance of 680 feet and between points OF15 and OF1 a distance of 990 feet and bounded on that side by Freeman's land.

2. Recovery of possession of the entire land
3. Damages for trespass
4. Further or other reliefs as in the circumstances may be just proper, including in particular, a perpetual injunction restraining the defendants whether by themselves, their servants, agents, privies whosoever or otherwise from dealing or interfering with the plaintiffs' ownership, possession and/or control of the said tract of land known as SRAHA land or any part thereof.
5. An order directed at the Land Title Registry to withdraw any Land Title Certificate issued to any party under any purported grant other than that by the Obeney We family.

PLAINTIFF'S CLAIM

According to the plaintiff's, 1st plaintiff is the head of the Obeney We family of Teshie and Sraha whilst the 2nd plaintiff is the Wulomo of La and Teshie. The defendants are members of the Agbawe family of Teshie and encroaches of the Sraha lands lying and situate of Ashale Botwe East-Accra.

The plaintiffs described the Sraha lands and said it is part of the generality of lands stretching from Teshie on the Gulf of Guinea to the Akwapim Range at Adjenkote

originally founded and owned by Numo Nmashie family of Teshie. That their great grandfather, Nii Oko Fio a member of the Numo Nmashie family of Teshie, settled on a portion of the said land and founded the Sraha village in the 17th Century. That the descendants of Nii Oko Fio, now the Obeney Family had been in occupation of the said land since time immemorial exercising all rights of ownership, possession and control. These acts were endorsed per a Deed of Conveyance dated 30th July 1990, which Deed is being processed at the Land Title Registry, Accra.

The Plaintiffs aver that the defendants are descendant of one Kwao Fio (deceased) who migrated from Sesemi, Nsawam in the Eastern Region of Ghana and settled on a specific portion of the land as licensees of the late Okan Sraha, the then Head of Family of the Obeney We family of Sraha.

The plaintiffs aver further that the defendants have since made a claim as allodial owners of the Sraha lands and obtained a provisional certificate from the Land Title Registry on the 9th day of November, 1995 with certificate No. TD0031, which provisional Land Title Certificate has since been adjudged to be irregular by the Land Title Registry. They stated the particulars of irregularity.

It is the plaintiff's claim that the defendants rely of the said irregular Provisional Certificate to make grants of parcels of the Sraha Lands without the consent of the plaintiffs who are the owners of the land and this constitutes acts of trespass to the land. This act the defendant will continue until restrained by the court, wherefore their claim.

DEFENDANTS CASE

4th Defendant, The Land Title registry in their defence stated that the 1st, 2nd and 3rd defendants are known to them as the title holders of land situate at Sraha with Certificate No. TD0031 Vol. 019 Folio 2. That on 4th September 1995 they received an application for

a land certificate from 1st defendant, Samuel Adjetey,, Foster Adjei Akpor, Alfred Adjei Ablor (3rd defendant), Reuben Qyaye (2nd defendant) and Ablor Frema which application was supported with a statutory declaration dated 19th November 1992. In course of processing the said application the 4th defendant realized that the land was the subject matter of Suit No. 2970/93 entitled Adjetey Agbosu and 5 Others vrs Ebenezer Nikoi Kotei and 2 Ors. A caveat was therefore imposed on the land certificate that the land been issued to Adjetey Agbosu and others pending the determination of the matter by the court. They also received a caveat from the plaintiffs. The suit referred to travelled to the Supreme Court where judgment was given in favour of the plaintiffs therein in 2004 i.e. defendants herein.

Thereafter the 4th defendant by notice dated 23rd June 2005 notified all the parties who had lodged various caveats of its intention to remove the caveats since same had lapsed by way of judgment of the Supreme Court and by the effluxion of time. There was no response from either party so 4th defendant proceeded to remove all caveats that had been entered earlier on the defendant's Land Title Certificate and further changed the Provisional Land Certificate into a substantive Certificate on 20th July 2005.

The 4th defendant states that the defendants land certificate was processed in accordance with the provision of PNDCL 152 and that the said land Certificate was neither issued fraudulently nor by mistake. Finally that the plaintiff's is not entitled to his claim.

1ST -3RD DEFENDANTS

These defendants aver that their family, the Adjetey Agbosu and Freeman family are owners in possession of all that piece and parcel of land known and described as Adjetey Agbosu and Freeman family lands situate partly between South-East of the Motorway from Nkwantanang to the University Farm and partly North-East of the Onukpai Wohe stream at Sraha near Ashalebotwe-Accra and more particular contained in the attached

schedule 'A'. The boundaries of which were confirmed by the judgment of the Supreme Court in Civil Appeal No. 24/2002, Adjetey Agbosu & Ors. Vs. Ebenezer Nokoi Kotei

The Defendants' family originated from Teshie and became the owners by original settlement of a large and unbroken forest land, which has since been almost fully cultivated by members of the defendant's' family or persons deriving title from the family. The defendant's themselves were born on the lands and have lived there their entire lives.

That the Defendants' ancestor, Nii Adjetey Agbosu, first settled on the land and founded Agbosu village, later renamed 'Sraha', which was a corruption of the name 'Salaga', in recognition of a thriving cattle ranch established by Nii Mensah Kofi, who had learnt the occupation of cattle-rearing while stationed at Salaga in the Northern Region as a member of the water police. The original settler, Nii Adjetey Agbosu, was later joined by Nii Kotoko Odai Adjetey who also established a separate settlement known as 'Freeman Village' which subsequently merged with Agbosu village to constitute present-day Adjetey Agbosu & Freeman family or 'Sraha' lands.

Further that the defendants' family have from time immemorial exercised their right of ownership over their lands aforesaid by overt acts such as the digging of traditional wells, the construction of a cemetery to serve the inhabitants of Sraha, establishment of fetish groves, construction of an Apostolic Church and the cultivation of several farms by members of the defendant's' family, or persons deriving titles from them.

That at any rate, the defendants say that by a judgment of the High Court, Accra, delivered on 26th July 2000, in **Suit No.2970/93, entitled Adjetey Agbosu & 4 Ors. Vs. Ebenezer Nikoi Kotei & Ors.**, the Adjetey Agbosu & Freeman family was adjudged and declared the allodial owners of all that vast tract of land known as Adjetey Agbosu & Freeman (Sraha) lands. The said High Court judgment was eventually affirmed by the

Supreme Court in Civil Appeal No. 24/2002 aforesaid. By the said decision handed down on 5th May 2004 the Supreme Court, without any equivocation, decreed title to Adjetey Agbosu & Freeman family lands (otherwise known as Sraha lands) in favour of the defendants' family. The defendants says that the plaintiffs are estopped from asserting any claim of title to the said lands, having stood by and watched as the legal battle in the aforesaid matter was litigated through the courts from 1993 to 2004, in spite of the fact that at all material times they were aware, or ought to have been aware, of the litigation pertaining to title in the said lands.

The defendants deny paragraphs 10-12 of the statement of claim and contends that the plaintiffs are not entitled to their claim or any at all. The defendants further said that the plaintiff's' action is frivolous, vexatious and an abuse of process.

REPLY

In the reply filed by the plaintiffs, for the first time raised fraud on the part of the defendants and gave particulars of the said fraud. Plaintiffs in that reply pleaded that they were not parties to the suit titled ADJETEY AGBOSU & ORS VRS EBENEZER NIIKOI KOTEY & ORS and added that, the suit was between parties who do not own the land the subject of this suit. The plaintiffs also denied that there has ever been a village known as Agbosu village which was later named Sraha and narrated their version of how the name Sraha originated.

ISSUES

a. Whether or not the Sraha Lands form part of the generality of lands belonging to the Numo Nmashie family of Teshie.

b. Whether or not the plaintiffs' ancestors were the first settlers and founded the Sraha village.

c. Whether or not the plaintiffs' and their ancestors have been in possession of the disputed land referred to as Sraha Lands.

d. Whether or not the ancestors of the 1st and 2nd defendants were licencees of the ancestors of the plaintiffs.

e. Whether or not the settlers of Ashaley Botwe hail from Agbawe Clan of Teshie.

f. Whether or not the plaintiffs' ancestor's rather formed part of the Political Authority of the enclave as owners of Sraha land.

g. Whether or not the Obeney Family applied for the registration of a Statutory Declaration in May, 1982.

h. Whether or not the 1st and 2nd defendants' ancestors appeared as witnesses for the Obeney family in the 1982 dispute between the said Obeney family and Ashaley Botwe family that came before the Land Commission Secretariat.

i. Whether or not the Numo Nmeshie family has confirmed the possession and ownership from the Sraha Lands by the Obeney family of Sraha.

j. Whether or not the plaintiffs are entitled to their claim as endorsed on the Writ of Summons.

ADDITIONAL ISSUES

1. Whether the plaintiffs are estopped by conduct from asserting any claim of title to the disputed land?

2. Whether the Supreme Court's judgment in **Suit No. 2970/93, Adjetey Agbosu & 4 Ors. Vrs Ebenezer Nikoi** Kotei & 2 Ors. decreed title to the said lands in the defendants and operates as res judicata.

3. Whether the defendants are owners of the disputed lands, having from time immemorial exercised rights of ownership and possession by overt acts?

SUPPLEMENTARY ISSUES

1. Whether or not the ancestors of the 1st and 2nd defendants migrated from Sesemi, near Nsawam in the Eastern Region to live with the ancestors of the plaintiffs at Sraha.

2. Whether or not the ancestors of the plaintiffs were in possession and occupation of Sraha lands before the migration and arrival of the ancestors of the 1st and 2nd defendants.

After a full trial the High Court gave judgment in favour of the defendants. That the plaintiffs failed to prove their case and that their action fails in its entirety and same dismissed accordingly. The High Court said the plaintiffs are forever estopped by their own conduct from asserting title to the Sraha lands which has been adjudged to be owned by the family of the 1st, 2nd and 3rd defendants and which said family has been issued with land certificate.

NOTICE OF APPEAL

The plaintiff/appellants dissatisfied and aggrieved by the said decision in the judgment of the High Court, Land Division Accra dated 4th November, 2019 launched this appeal on the grounds stated earlier. Further grounds of appeal are as follows;-

1. The trial court erred in law in ruling that "Reply" to the statement of defence was not part of the pleadings.

2. The trial court erred in law in ruling that fraud had not been pleaded.

3. The trial court erred in law in dismissing the claim of fraud by the plaintiffs.

4. The trial court erred in law holding that the subject matter land under the Supreme Court judgment in **In Re Ashalley Botwe Lands; Adjetey Agbosu & Ors vrs Kotey & Ors [2003-2004] 1 SCGLR 420**, is the same as the land which is the subject matter of Suit No.FAL113/11.

5. The trial court erred in holding that the defendants in the suit are all members of one family and such family referred to variously as ADJETEY AGBOSU FAMILY, ADJETEY AGBOSU AND FREEMAN FAMILY AND ADJETEY AGBOSU AND FREEMAN FAMILIES respectively.

6. The trial court erred in holding that the plaintiff's had knowledge of the pendency of the case of ADJETEY AGBOSU AND ORS VRS KOTEY & ORS leading to the judgment at the Supreme Court.

7. The trial court erred in law in holding that the plaintiffs and their family are estopped from litigating on the subject matter land by conduct.

8. The trial court erred in disregarding traditional evidence adduced in the trial.

ADDITIONAL GROUND 1, 2 & 3

This court will deal with the three grounds together since they all are about the same issue. That the trial court erred in law in ruling that reply to the statement of defence was not part of pleading.

Counsel for the appellant stated that the trial judge in the judgment said ***"with all due respect to the learned counsel for the plaintiffs this does not qualify as a pleading on the subject. In fact they set up a new cause of action by pleading fraud without giving the 1st, 2nd and 3rd defendants the opportunity to answer".***

Counsel for the appellants submits that the above statement by the court gives the indication that the court acknowledge the reply to the statement of defence especially when it was the court which itself directed the filing of such reply and which direction was given on the 4th of June 2013. The contention of counsel for the appellants is ***"whether or not a reply qualifies as a pleading"***. It is his submission that under Ord. 11 Rule 3(1) of the High Court (Civil Procedure) Rules 2004 C. I. 47, Service of Reply, reply is part of the pleading, and such rule states as follows: - ***"A plaintiff on whom a defence is served shall file a reply if that is necessary for compliance with Rule 8, and if no reply is filed, Rule 14(1) shall apply"***

It is his submission that, the above rule indicates that a reply is part of the pleadings under C. I. 47. Counsel said under the rules of court a reply is a pleading in which the

plaintiff answers matters raised in the statement of defence and the appellant's defence to the counter-claim.

Counsel for the respondent is his response submitted that pleadings consist of statement of claim, statement of defence and a reply to the statement of defence and/or counterclaim. He said the objective of a reply is to give answers to specific matters that have been pleaded in the statement of defence. A plaintiff, he continued, may allege new facts in his or her reply, in support of his or her case as contained in the statement of claim but he is not allowed to set up in his reply, a new claim or an entirely new cause of action which is not contained in his or her writ and statement a claim.

It is his submission that though they concede that a reply forms part of pleadings, the trial judge was right in disregarding and or rejecting the reply filed by the 1st and 2nd appellants as it set up an entirely new cause of actions, to wit fraud. This gave the respondent no opportunity to answer same. The trial court was therefore right in disregarding same as well as any evidence led on it. The appeal on this ground must therefore fail and the judgment of the trial court upheld.

REPLY IN PLEADINGS

Order 11 r 3 of the High Court (Civil Procedure) Rules 2004 C. I. 47 states: - Service of Reply:-

> *3(1) A plaintiff on whom a defence is served shall file a reply if that is necessary for compliance with rule 8, and if no reply is filed, rule 14(1) shall apply.*
>
> *3(2) A reply to any defence shall be filed by the plaintiff before the expiration of seven (7) days after the service on the plaintiff of that defence.*

No pleadings subsequent to a reply shall be filed except with leave of the court.

Order 11 Rule 19 – Close of Pleadings

19(1) The pleadings in an action are closed

a. at the expiration of seven days (7) after service of the reply or, if there is no reply but only a defence to a counterclaim, after service of the defence to counterclaim or
b. if neither a reply nor a defence to counterclaim is served, at the expiration of seven (7) days, after service of the defence.

A "reply" should be carefully distinguished from a "defence to counterclaim" although if both are pleaded they must appear in one document – **Odgers on Civil Court Actions page 271.** The main function of a reply is to raise in answer to the defence any matters which must be pleaded by way of confession and avoidance or to make any submissions which the plaintiff may be disposed to make. In effect the reply is the proper place for meeting the defence by confession and avoidance. The plaintiff must therefore be careful not to join issue merely, where he ought to allege new facts in his reply. It is important to note that a reply must not set up new claims. A reply should not plead mere evidence or argument, or state conclusions of law to be drawn or inferred from the facts pleaded.

A reply may be filed to the defence. The reply seeks to provide answers in rebuttal of the defence and so should be confined to matters raised in the defence. Matters raised in the counterclaim should be responded to by way of a separate defence or answer by the plaintiff and should not be confused or mixed up with points made in reply. However, the plaintiff must serve a reply and plead specifically any matter, for example, performance, release, the expiry of a relevant period of limitation, fraud or any act showing illegality which he alleges makes the defence not available or which might

otherwise take the defendant by surprise or raise issues of fact not arising out of the defence – Odgers (supra) pages 273.

In the instant appeal, the defence filed by the respondents in the trial High Court in brief is that the defendants family have from time immemorial exercised their right of ownership over their lands aforesaid by overt acts such as the digging of traditional wells, construction of cemetery for Sraha inhabitants, establishment of fetish groves, construction of an Apostolic Church and the cultivation of several farms by members of their family.

That at any rate, they the defendants say by a judgment of the High Court Accra, delivered on 26th July 2000 in Suit No. 2970/93 entitled Adjetey Agbosu & 4 Ors vrs. Ebenezer Nikoi Kotei & 2 Ors, the Adjetey Agbosu & Freeman family was adjudged and declared the allodial owners of all that vast tract of land known as Adjetey Agbosu & Freeman (Sraha) lands. That the said High Court judgment was eventually affirmed by the Supreme Court in Civil Appeal No. 24/2002 aforesaid. By the said decision handed down on 5th May 2004 the Supreme Court, without any equivocation, decreed title to Adjetey Agbosu and Freemen family lands (otherwise known as Sraha Lands) in favour of the defendant's family. The defendants said the plaintiff's are estopped from asserting any claim of title to the said lands, having, stood by and watched as the legal battle in the aforesaid matter was litigated through the courts from 1993 to 2004, in spite of the fact that at all material times they were aware, or ought to have been aware of the litigation pertaining to title in the said lands.

In their reply to these averments in the statement of defence of the defendants therein the plaintiff's stated they were not privy to the said litigation as they were not parties to that suit neither was any process in respect of the suit served on them. Further that, the defendants have at all times been licencees of the plaintiffs' family of Sraha and cannot at

any time claim ownership of any part of Sraha lands. Plaintiffs say that the purported claim of the defendants of Sraha land is fraudulent and totally misconceived with falsehood. The plaintiff's then listed the particulars of the fraud.

It is at this point of the suit that the plaintiffs therein alleged fraud against the defendants for claiming that the Sraha lands belong to them and supported by a Supreme Court judgment.

The trial judge on the issue delivered himself thus:-

> ***"The plaintiff's say that the purported claim by the defendants for Sraha land is fraudulent and totally misconceived with falsehood. They then proceeded to provide particulars of the said fraud. With all due respect learned counsel for plaintiffs, this does not qualify as a pleading on the subject. In fact they set up a new cause of action by pleading fraud without giving the 1st, 2nd and 3rd defendants the opportunity to answer***".

From the record of appeal, the defendants therein raised an objection to the pleading of fraud in the plaintiff's reply which resulted in legal arguments by both sides on the issue. The trial judge Ocran (J) on 26th June 2015 gave his ruling on the issue thus:-

> ***"Defence counsel has argued that the fraud raise in the plaintiffs reply should be struck out because this is the first time that fraud has been raised in the reply in paragraph 38 and 41.***
>
> ***According to the defence this cannot be done in a reply. The plaintiff counsel on the other had has reargued that his can be done since Order 11 Rule 4 and Order 11 Rule 8(1) of the High Court (civil procedure) Rules 2004 C.I.47 permits.***

The new amended statement of defence for the 1st, 2nd and 3rd defendants was filed on 21st March 2014. The reply to this defence was filed on 16th July 2014. It is this reply that contained paragraphs 38 and 41 which had particulars of fraud.

It is however noted that in all the replies filed for the plaintiffs on 8th December 010, 6th May 2013, 14th June 2013 and 18th July 2013 fraud was leaded as an answer to the defence filed.

These pleaded frauds were not complained of till the plaintiffs closed their case on these pleaded facts in the statement of claim and on the reply.

The question is granted the plaintiffs cannot leaded fraud in their reply, but have pleaded and served same on the defendants why did the defendants not complain before the plaintiffs closed their case on these, can the defendants apply now to the court to strike out the fraud pleaded in the various replies? I think it is too late to apply now.

The plaintiffs' counsel is however of the view that he could plead fraud in a reply. Going through order 11 Rule 8 (1) the High Court (Civil Procedure) Rules 2004 C. I. 47, it is my candid opinion that is the rule that govern the situation at hand. Order 11 Rule 8 (1) is a follows:

8(1) A party shall in any pleadings subsequent to a statement of claim plead specifically any matter for example, performance release, any limitation provision, fraud or any fact sowing illegality.

a. *Which the party alleges makes any claim or defence of the opposite party not maintainable or*

b. ***Which if not specifically pleaded might take the opposite party by surprise or***

c. ***Which raises issues of act not arising out of the preceding pleading.***

Since the pleaded fraud was in response to the defence, the plaintiffs can take cover under order 11 Rule 8(1).

There is however a caveat in rule 10 of order 11.

Rule 10(1) says;

"A party shall not in pleading make any allegation of factor raise any new ground or claim, <u>in consistent</u> with a previous pleading made by the party"

In this case, defence counsel has said the pleading in the reply is <u>in consistent</u> with the statement of claim. I also do not see any inconsistency in the facts as contained in the statement of claim and in the reply.

I therefore dismiss, the objection raised by defence counsel to paragraphs 38 and 41 of the reply".

The trial High Court dismissed the objection raised by the defence counsel to paragraph 38 to 41 of the reply stating they were not inconsistent to the earlier pleadings of the appellant's and therefore did not set up a new cause of action.

In the final judgment of the trial court, Coram Apenkwa (J), dated 4th November 2019, the trial judge referred to the case of **Dzotepe vrs Hahomeh III (No.2) [1984-86] 1 GLR 294** by the Court Appeal as follows:-

"Fraud in all cases implies a wilful act on the part of anyone, whereby another was sought to be deprived by illegal or unequitable means of what he is entitled

to. Fraud vitiates transactions known to the law, including judgments of the courts".

The trial judge said what this means is that if the plaintiff's succeeded in establishing fraud, the Supreme Court decision in the "In re Ashalley Botwe Lands would be nullified on grounds of fraud. He asked *"but did the plaintiff's plead fraud"?* This calls for examination of their pleadings. In their reply to the defence filed by the 1st, 2nd and 3rd defendants. The plaintiffs sated at paragraph 38 and 41 as follows:-

(38) *"The plaintiffs say that the purported claim by the defendants for Sraha lands is fraudulent and totally misconceived with falsehood. They then proceeded to provide the particulars of the said fraud"*. The judge continued, *"With all respect to the learned counsel from the plaintiffs this does not qualify as a pleading on the subject. In fact they set up a new cause of action by pleading fraud without given (sic) the 1st, 2nd and 3rd defendants the opportunity to answer*".The learned judge said the plaintiffs could have sought leave of the court to amend the original statement of claim to include fraud but not to raise it in their reply to the defence filed by the 1st, 2nd and 3rd defendants.

With the greatest respect to the trial judge, that conclusion was wrong in law and inconsistent with the earlier ruling of Ocran J on the issue which said since the plaintiff's pleaded fraud in response to the defendants' defence, they were covered by Order 11 r 8 (1) of C.I.47. Ord 11 r 8(1) is clear on the issue "A party shall in any pleadings subsequent to a statement of claim plead specifically any matter for example performances, release, any limitation provision, fraud or any fact showing illegality. The plaintiff's pleaded fraud in their reply based on the defence filed by the defendants. Especially that they got the allodial title of the Sraha lands through litigation from the High Court to the Supreme court which they the plaintiffs were aware off but failed to participate in the litigation from 1993-2004. The plaintiffs claim they were not privy to the litigation since they were

not parties to the suit nor any process served on them. This is the basis for their claim of fraud against the defendants.

Its trite knowledge that he who alleges must establish what he alleges. The plaintiffs claim they were not aware of any litigation on the Sraha lands as alleged by the defendants. The onus therefore shifted onto the defendants to prove that the plaintiffs were aware of the litigation and not merely stating same in their averments.

The trial High Court Judge Apenkwa (J) referred to Ord 11 r 10 (1) of C. I. 47 which states *"A party shall not in any pleading make any allegation of fact or raise any new ground or claim inconsistent with a previous pleading made by the party*". He said from the plaintiff's statement of claim they only raised the issue of an irregular provisional land certificate given to 1st, 2nd and 3rd defendants by the Lands Commission at their paragraph "10" and gave the particulars of same. He said *"for them now to raise fraud in their reply is to depart from their earlier pleading and set up a new cause of action which is inconsistent with their pleading"* **(Page 183 Vol.3)**. With all due respect to the learned judge, he got it wrong because Ocran (J) had earlier taken a decision on that issue to the effect that it was not inconsistent with the plaintiff's pleadings.

The trial Judge, Apenkwa J, was right in his quotation from the case of **Odoi vrs Hammond [1971] 1 GLR 371 at 385 per Azu Crabbe JA** that "*the plaintiff may allege new facts in his reply in support of the case pleaded in his statement of claim but he is not permitted to set up in his reply a new claim* or cause of action which was not raised either in the writ or in the statement of claim. To his reply he can explain and define his original claim".

In the instant appeal I do not think the plaintiffs were setting up a new claim or cause of action. The allegation of fraud on the part of the defendants was raised when the defendants claimed they got title from the court to the knowledge of the plaintiffs. It is this confirmation of ownership by the court the plaintiff's challenged in their reply as

fraudulent since they knew nothing about the said litigation. A plaintiff may confess and avoid by his reply; for it is no part of the statement of claim to anticipate the defence, and the old rule of pleading still holds *"that you should not leap before you come to the stile"* – **Hall vrs Eve [1876] 4 Ch D 341** – See Odgers (supra) page 273.

Legally the plaintiff's by Ord 11 r 8(1) of the C.I.47 could raise the issue of fraud in the circumstances. The issue is whether they could prove same but definitely not that they could not raise same in their reply. It is thus a factual issue to be established by evidence by the defendants that the plaintiffs were aware of the litigation and therefore estopped and also whether the plaintiffs could prove the allegation of fraud against the defendants.

The trial judge therefore erred on point of law when he held in the judgment that a reply to the statement of defence was not part of the pleadings. That ground of appeal succeeds.

The ruling in ground one above takes care of grounds 2 and 3. It is pertinent to state that after a reply by plaintiffs, the defendants who by procedure cannot file any process thereafter except by leave of the court could have applied for leave to amend their defence. In that they could respond to the issue of fraud raised by the plaintiffs in their reply. From the record of appeal, the defendants failed to take advantage of that and so failed to respond to any of the averments including those on the fraud till the plaintiff's closed their case. The trial judge Ocran (J) in his ruling of 24th June 2015 (supra) on the issue of fraud raised by the plaintiffs in their reply stated ***"these pleaded frauds were not complained of till the plaintiffs closed their case on these pleaded facts in the statement of claim and in the reply".*** The trial judge continued, "***The question is granted the plaintiff's cannot plead fraud in their reply, but have pleaded and served same on the defendants why did the defendants not complain before the plaintiffs closed their case***

on these, can the defendants apply now to the court to strike out the fraud pleaded in the various replies? I think it is too late to apply now".

This was the ruling of Ocran (J) and I guess he was right. The law aids the diligent and not the indolent. If a party fails to object to some evidence which should not be admitted in the trial, it is assumed he has admitted same and so slept on his right of objection. Objections are to be raised at the very time the evidence is offered. In every action, and at every stage thereof, any objection to the admissibility of evidence by a party affected thereby shall be made at the time the evidence is offered. If a party failed as required by the Evidence Decree 1975, NRCD 323 Section 6(1) to object to the admission of evidence which is his view, ought not to be led, he would be precluded by Section 5(1) of the Decree (supra) to complain on appeal or review about the admission of that evidence unless the admission had occasioned a substantial miscarriage of justice.

See – (i) **Section 6(1) EVIDENCE DECREE NRCD 323**

(ii) **Edward Nasser & Co. Ltd vrs Mc Vroom & Anor [1996/7] SC GLR 468.**

In trite law that failure to cross examine a party on an issue alleged in the party's evidence is deemed to have been admitted – (i) **Akyea Djamson vrs Duagbor [1989/90] l GLR 224**, (ii) **Section 19 (a) of NRCD 323.**

In the instant appeal the defendants therein complained about the plaintiff raising fraud in their reply and the trial judge gave his ruling on the matter dismissing the defendant's objection. At that point if they were dissatisfied with the ruling could have appealed against same but they failed to do so. The meaning being that they accepted the ruling of the court. It was therefore wrong in law and procedure for the new judge Apenkwa (J) of concurrent jurisdiction to take a different position on the issue in the final judgment by him when same by Ocran (J) was not overturned on appeal.

It is trite law that fraud is an extrinsic collateral act, which vitiates the most solemn proceedings of a court of justice – **Duchess of Kingston Case [1776] 20 St Tr 355.** An allegation of fraud goes to the root of every transaction and a judgment obtained by fraud passes no right under it. **(i) Okofoh Estates Ltd vrs Modern Signs Ltd [1996/7] SC GLR 253/4, (ii) Brown vrs Quarshigah [2003/4] SC GLR 946**

Lord Denning on the issue said "No court is this land will allow a person to keep an advantage which he obtained by fraud. No judgment of a court, order of a minister can be allowed to stand if it has been obtained by fraud since fraud unravels everything – **Lazarus Estate Ltd vrs Beasley [1956] 1 AER 341.**

But then we are not oblivious of the fact that when a litigant has obtain a judgment in court of justice, he is by law entitled not to be deprived of that judgment without very solid and sound grounds – **Brown vrs. Dean [1910] AC 373**. So, therefore, when a party raises an allegation that a judgment was obtained by fraud, as in the instant appeal, the only way to investigate the allegations of fraud is by taking evidence. To grant the applicants request by dismissing the plaintiffs claim will clearly be in violation of the fundamental rules of natural justice and against the direction of the Supreme Court. See **SA TURQUI BROS VRS DAHABIEH [1987/88]2 GLR 486 (CA)**

This court is not by any thread of imagination thinking nor saying the defendant's judgment obtained from the Supreme Court in Civil Appeal No.24/2002, on the 5th of May 2004 titled "**Adjetey Agbosu & 4 Ors vrs Ebenezer Nikoi & 2 Ors**" was obtained by fraud. This allegation was made by the plaintiff's therein and it was incumbent on them to establish same and if they succeed then it vitiates that judgment but until that is done, that judgment stands solid as the **"Rock of Gibralter"**

On ground 3, the court was right in dismissing the claim of fraud by the plaintiff's in their reply. Though we held they could raise same in their reply they failed to establish same

with evidence to our satisfaction. They could not lead any solid and cogent evidence to establish their claim of fraud beyond reasonable doubt. He who alleges carry the burden to establish his allegation with cogent evidence and not just repeating same on oath in the witness box. The settled practice of the court was that the proper method of impeaching a completed judgment on the ground of fraud was by an action in which the particulars of fraud must be exactly given and the allegation established by strict proof – **Anning vrs Stanbic Bank Gh. Ltd [2017/18] SC GLR 794 at 788 per Dordzie JSC.**

In fact I must add that it must be by a fresh action and the allegation of fraud established beyond reasonable doubts since it is criminal in nature. The standard of proof or burden of persuasion of an allegation of a criminal act in a civil trial is governed by Section 13(1) of the Evidence Decree, 1975 NRCD 323. It provides that "***in any civil or criminal action the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt***" This view is supported by the Supreme Court in the case of **Fenuku &Annor vrs John Teye & Anor [2001/2] SCGLR 985 at 1003.** In the instant appeal we do not think the plaintiffs have established their allegation of fraud beyond reasonable doubt as required by Law. The trial judge was thus right in dismissing the claim of fraud by the plaintiffs. That ground of appeal is dismissed.

GROUND 4

The trial court erred in law by holding that the subject matter land under the Supreme Court judgment of **In Re Ashalley Botwe lands, Adjetey Agbosu & Ors vrs Kotey & Ors [2003/4] 1 SCGLR 420**, is the same as the land which is the subject matter of Suit No. FAL 113/11.

Counsel for the Appellants submits that the 2nd defendant tendered exhibit "2" which is a statutory declaration dated 19th November 1992; this statutory declaration described the land as that of Freeman family lands. 2nd defendant again in his evidence in chief on 9th

December 2014 tendered exhibit "3", a statutory declaration of land situate at Sraha. That both exhibits identify the land 1st to 3rd respondents are claiming as the Freeman Family lands. Both descriptions are consistent, he posited. It is his case that the Freeman Family lands share boundary in the North Western side of the disputed land as per exhibit 3 so therefore Freeman lands cannot be the same as Sraha Lands, the subject-matter of this suit. Counsel contends that ***"the land claimed in the case of Adjetey Agbosu & Ors vrs Ebenezer Nikoi Kotey (supra) is not necessarily the same as the Sraha lands, the subject matter of this suit"***.

Counsel submits further that the evidence of the appellants in respect of the location of the land of Freeman family and the fact that Freeman Family lands share boundary to the North-West of the disputed land was not challenged by the respondents. That it is trite law that unchallenged evidence is deemed to be admitted. He therefore urged this court to hold that the Freeman Family land upon which the Respondents litigated in the case titled In Ashalley Botwe (supra) is not the same as the land in dispute under Suit No. FAL 113/11.

Counsel for the respondents in his answer to this ground of appeal submits the judgment is the Re-Ashalley (Supra) was primarily concerned with the ownership of Sraha lands, which the respondent therein claimed to be owners thereof and had prepared and statutory declaration to cover same. He said in the action in the lower court which resulted in this appeal, 1st and 2nd appellants herein were claiming to be the owners of the Sraha lands by an indenture of lease dated 30th July 1990, granted to them by the Numo Nmashie family, which they belong to. Counsel referred this court to paragraphs 5, 21 and 23 of the amended statement of defence as filed by the respondents herein at the lower court, dated 21st March 2014 at pages 78-80 of record of appeal.

My lords, the judgment in the celebrated case of **In Re-Ashaley Botwe Lands; Adjetey Agbosu & Ors vrs Kotey & Ors [2003-2004] 1 SCGLR 420**, was primarily concerned with the ownership of Sraha lands, which the respondents herein claimed to be owners thereof and had prepared a statutory declaration to cover same. In the action in the lower court which has resulted in this appeal, 1st & 2nd appellants herein are claiming to be the owners of the Sraha Lands by an indenture of lease dated 30/07/1990, at page 314 V3 of the ROA granted to them by the Numo Nmashie family, which they belong to. The 1st, 2nd and 3rd respondents, in their amended statement of defence filed on 21/03/14 at **page 78-80 of ROA**, pleaded as follows in paragraphs 5, 21 and 23.

Paragraph 5 - 1st, 2nd and 3rd defendants say that their family, the Adjetey Agbosu Freeman family, are the owners in possession of all that piece and parcel of land known and described as Adjetey Agbosu Freeman family lands situate partly between South-east of the motorway from Nkwatanang to the University Farm and partly North-east of the Onukpai Wohe stream at Sraha near Ashale Botwe-Accra, and more particularly contained in the attached schedule 'A', the boundaries of which were confirmed by the judgment of the Supreme Court in Civil Appeal No.24/2002, Adjetey Agbosu & 4 Ors vrs. Ebenezer Nikoi Kotei & 2 Ors.

Paragraph 21 - At any rate, 1st 2nd and 3rd defendants say that, by a judgment of the High Court, Accra, delivered 26th July 2000, in Suit No.297, entitled Adjetey Agbosu & Ors vrs. Ebenezer Noikoi & 2 Ors., the Adjetey Agbosu Freeman Family, was adjudged and declared the allodial owners of all that vast tract of land known as Adjetey Agbosu Freeman (Sraha) Lands.

Paragraph 23 - The said High Court judgment, was eventually affirmed by the Supreme Court, in Civil Appeal No. 24/2002aforesaid. By the said decision, handed down on 5th May 2004, the Supreme Court, without any equivocation, decreed title to Adjetey Agbosu

Freeman Family lands (otherwise known as Sraha Lands) in favour of 1st, 2nd and 3rd defendants' family.

Counsel said the 1st appellants in his Evidence-in-chief at the lower court was asked;-

Q - What is the subject matter of this suit?

A - It is Sraha land

Q - Can you describe Sraha land by way of boundaries?

A - The boundary starts from Ashaley Botwe. There is a road leading to the University Fars. From the Eastern side we share boundary with Maijor. From the Southern side of the land we share boundary with Otanoh. Then from the South West side of the land, we share boundary with John Dzornaman, from there you get down to Otinshi village where we share boundary with them. From Otinshie village where we share boundary with them. From Otinshie, North West there is a land there Onukpawohe i.e. the sleeping place of the elders. We also share boundary with Ogbodzo. From there we continue and share boundary with Freeman and from there ends at Ashaley Botwe.

Counsel said the 2nd respondent also said same in his evidence-in-chief pages 115, 116, 117 volume 2 Record of Appeal. It is his contention that the identity of the land claimed by 1st 2nd and 3rd respondents had never been an issue. It is his submission that, the trial court's conclusion that the subject matter under the Supreme Court judgment in Re Ashalley Botwe is the same as the land which is the subject matter of Suit No. Fal 113/11, cannot be faulted as can be seen from the evidence adduced at the trial and contained in the record of appeal. That the appeal on this ground must fail.

In land suits, one of the major factors to grant a decision in a party's favour is the identity of the land the subject matter. Though not to mathematical precision, the exact identity of the land the subject matter must as much as possible be clearly identified by the party claiming ownership. This could be done by mentioning the exact boundaries of the land the subject matter, tendering of a site plan, and also naming the neighbours you share boundaries with.

See (i) **Kwabena v. Atuahene [1981] GLR 132 CA.**

(2) **Adjei v. Acquah & ors. [1991] 1 GLR 13 SC.**

The reasons for clear identification of the subject matter is very obvious. A claim of declaration of title or an order for injunction must always fail, if the plaintiff fails to establish positively the identity of the land, the subject matter of his suit. The rationale behind the principle is that if the boundaries of such lands are not clearly established a judgment or order of the court will be in vain. Again, a judgment for a declaration of title should operate as res-judicata to prevent the parties re-litigating the same issue in respect of the identical subject matter. The principle of res judicata cannot operate unless the subject matter thereof is clearly identified.

In the instant appeal, the issue about the identity of the land, the subject matter is that, the appellant claims the land in Re Ashalley Botwe (supra) is different from the *"Sraha lands"* they are claiming in the present suit. The respondents herein submit the land in the Ashalley Botwe is the same as what the appellants are claiming herein as the *"Sraha lands."*

The Supreme Court in its judgment of Re-Ashalley Botwe (supra) page 44 held thus: - ***"the first five appellants led credible evidence of the extent of land claimed by them in exhibit A, the statutory declaration whose attempted registration triggered off the***

litigation. Exhibit "A" contained a site plan that showed the bearings, grid lines and distances of the lands claimed by the first five appellants. When exhibit A was tendered, not surprisingly, the respondents did not object to it. The boundaries in exhibit 'A' that the respondent did not object to were the same as those described in the writ of summons and statement of claim of the appellants. Indeed, when the witness who tendered exhibit 'A' was cross-examined, no question was asked about the boundaries in exhibit 'A' or those mentioned in the evidence of the PW1. By implication, the respondents could be said to have accepted the identity of the land described in exhibit A".

The Supreme Court held that the identity of the land was never in issue and that the parties were ad idem on that and that the central issue related to ownership of the land in question. The identity of the land was never in issue because at all times throughout the proceedings, the respondents herein claimed to be owners in possession of Sraha lands which includes the lands described as Freeman Family Lands as they are one and the same family.

We are of the candid opinion that the issue of the identity of the land, the subject matter has already been decided upon by the Supreme Court. The apex court referring to Exhibit 'A' held that the parties were ad idem on that and the issue was about ownership of same. No other court has the power to overturn that holding of the Supreme Court and therefore that ground of appeal must fail and same is hereby dismissed.

Ground 5

The trial court erred in holding that the defendants are all members of one family and such family referred to variously as Adjetey Agbosu family, Adjetey Agbosu and Freeman family and Adjetey and Freeman families.

There is no need for this court wasting its precious time on this ground of appeal simply because the Supreme Court has already dealt with it. Georgina Wood, JSC (as she then was) speaking for the Supreme Court in the Re Ashally Botwe case (supra) held:- *"**In holding that the plaintiffs have no capacity to bring the action for and on behalf of the Adjetey Agbosu and Freeman family, the Court of Appeal failed to take into account the recent development in suits initiated on behalf of the family. That the evidence could be gathered from Exhibit 'A' which was tendered by the principal witness PW1, a statutory declaration, in which the position that they hold in the Agbosu Freeman family, were clearly spelt out**."*

This is the acceptance of the existence of that family by the Supreme Court. The trial High Court held that 1st, 2nd and 3rd respondents in the suit are all members of one family and such family referred to variously as ADJETEY AGBOSU FAMILY, ADJETEY AGBOSU AND FREEMAN FAMILY AND ADJETEY AGBOSU AND FREEMAN FAMILIES respectively. We do not doubt the existence of the Adjetey Agbosu and Freeman family being one and same family. Exhibit 'D' tendered by the plaintiffs therein reads *"CAVEAT AGAINST APPLICATION FOR LAND TITLE REGISTRATION BY ADJETEY AGBOSU FREEMAN FAMILY TO LAND AT SRAHA NEAR ASHALLEY BOTWE, IN THE GREATER ACCRA REGION"* was never objected to if in fact there was no family by that name. We do not think the trial Judge erred in his holding as such and same will not be disturbed. That ground of appeal is dismissed.

Ground 6 & 7:

6. **That the trial court erred in holding that the plaintiffs had knowledge of the pendency of the case of Adjetey Agbosu & ors. vrs. Kotey & Ors. pleading to the judgment at the Supreme Court.**

7. **The trial court erred in law in holding that the plaintiffs and their family are estopped from litigating on the subject matter land by conduct.**

Counsel for the appellants submits that the appellants were not aware or privy to the pendency of the suit referred to by the respondents in the statement of defence which the trial court accepted. It is his contention that the burden of persuasion rests with the person who substantially asserts the affirmation of the issue on the pleadings. It was therefore incumbent on the respondents to lead evidence to establish that the appellants were aware of that trial which they failed to do. Counsel prayed this court to hold that the respondents could not provide sufficient evidence to prove that the appellant's family was served with any processes of the case of Adjetey Agbosu & Ors. v. Kotey & Ors. neither did the appellants family had knowledge of the pendency of the suit.

On ground 7, counsel submits that since the appellant's family was not a party to the litigation nor had knowledge of the pendency of that suit, Adjetey Agbosu (supra) this court should hold that the appellants are not estopped from bringing the present action.

Counsel for the respondents in his response to the two grounds of appeal said the appellant family i.e. 1st and 2nd plaintiffs as well as their families were aware of the raging litigation between the Ashalley Botwe family and the 1st, 2nd and 3rd defendants family, which terminated in the Supreme Court in favour of the 1st, 2nd and 3rd defendants family. This he said is amply supported by the evidence of the 2nd defendant on 26/11/14, 09/12/14, 11/12/14 and 15/07/15 proceedings in court and corroborated by DW2.

Counsel contends that the appellants' family and their predecessors had never protested the alienation of Sraha lands by the respondent's family until 2011, when this action was mounted, almost 7 years after the Supreme Court had decreed title to the Sraha lands to the Respondents family. Counsel opined that it is trite learning that, judgments of the superior courts are presumed to be public knowledge, and the subsequent publication by

the respondents family in the "Daily Graphic" newspaper was to put on notice and or inform the whole world and anybody who may have interest in the Sraha lands that the respondent family have been declared and or adjudged the owners of Sraha lands.

The appellants claim they were not aware of the suit titled Adjetey Agbosu (supra) that travelled to the Supreme Court. They were also not parties nor were they served with any processes. This is possible, but then there is evidence unchallenged of some overt acts of ownership exercised by the respondents over the Sraha lands. There is evidence on record that the respondents' family alienated parties of the Sraha lands to third parties for all these years. The appellants never denied the allegation by the respondents' that after the Supreme Court gave its judgment they caused same to be published in the "Daily Graphic" newspaper.

The question that obviously arises is whether by their conduct the appellants are estopped by laches and acquiescence from challenging the ownership of the respondents' to the Sraha lands.

Estoppel is a principle of native custom, as also of equity, that one who, claiming a title to land, and knowing that another has no title, stands by and watches that other in good faith doing acts to his detriment with regard to the land, subsequently cannot be heard to say that, that other has no title to the land. Also, when one knows of litigation in which the title to his land is put in issue, but he stands by and passively countenances such litigation without intervening to protect his rights, may subsequently be estopped from asserting his rights to the land as against the person in whose favour the litigation was determined. This view was ably supported by Ollenu J. (as he then was) in the case of **Allotey v. Essien [1958] 3 WALR 627**.

Counsel for the respondents contended that the appellants and their predecessors having stood by when the respondents' family litigated over ownership and title to the Sraha

lands and had judgment in their favour, and the family having over the years made various grants to several individuals and corporate entities, cannot be heard to be saying that, they are the allodial owners of Sraha lands. He said the appellants as well as their families were aware of the raging litigation between the Ashalley Botwe family and the respondents family which terminated in the Supreme Court in favour of the respondents family.

It is trite that to establish acquiescence under equity and customary law five conditions must exist namely:-

i. *The person who enters upon another's land must have done so in an honest but erroneous belief that he has the right to do so.*
ii. *He should have spent money in developing the land.*
iii. *The actual owner must be aware of this person's entry upon the land.*
iv. *The acts must be inconsistent with the owner's rights.*
v. *The owner must have fraudulently encouraged his development of the land by not calling his attention to the error.*

See – **Nii Boi v. Adu [1964] GLR 410**.

From the evidence before us, the appellant's family have allowed the respondents family to possess, occupy and alienate the Sraha lands in ways inconsistent with and adverse to their alleged ownership, rights and cannot be seen to be contesting the respondent family ownership of those lands.

The evidence also is that the respondent's family were subsequently issued with land title certificate by the Lands Commission after the judgment of the Supreme Court concerning the Sraha lands. This stops the appellants from laying any adverse claims or rival ownership to the said Sraha lands.

From the evidence on record, there is no doubt that the respondents' family holds the land title certificate to the Sraha lands. There is also no doubt that since 1993, the respondent family has taken possession of and exercised overt acts of ownership over the entire Sraha lands including alienating same to individuals and corporate entities for residential and commercial purposes. These pieces of evidence went unchallenged by the appellants and the law is trite that where the evidence led by a party is not challenged by his own opponent in cross-examination and the opponent does not tender evidence to the contrary, the facts deposed to in that evidence are deemed to have been admitted by the opponent and must be accepted by the trial court.

See – **Takoradi Flour Mills v. Samir Faris [2005/6] SCGLR 882 HL.**

The case of the appellants is that they cannot be estopped once they were not parties to the Adjetey Agbosu case (supra). The general rule on estoppel per rem judicatam is that it is inapplicable to a person not named as a party in the first case but where it is established that though not named as a party, the person was not unaware of the existence of the suit, but chose not to join, that person cannot claim alibi or raise inapplicability to him of the plea of estoppel.

See – **Republic v. High Court, Accra Ex parte Hesse (Investcom Consortium Holding SA & Scancom Ltd. Interested Party) [2007/8] SCGLR 1230**.

The Adjetey Agbosu case travelled from 1993 to 2004 through all the Superior Courts of the land. We do not believe the appellants never got wind of same till in 2011 when they instituted this case. It is our holding that they were or ought to be aware of same since it was even published in the "Daily Graphic" newspaper. By their conduct, they are estopped from litigating this matter against the respondents. They are estopped by their conduct and therefore caught by the equitable doctrine of laches and acquiescence.

Secondly, The Limitation Act 1972 (NRCD 54) Section 10 states:-

> *"1. A person shall not bring an action to recover land after the expiration of twelve (12) years from the date on which the right of action accrued to the person bringing it or if it first accrued to a person through whom the first mentioned claims to that person.*
>
> *6. On the expiration of the period fixed by this Act for a person to bring an action to recover land, the title of the person to that land is extinguished."*

It is trite learning that by this Act, that title is extinguished in favour of possession when the person who claims to have title does not challenge the adverse acts of the party in possession. An action for declaration of title and recovery of land against an adverse claimant in possession cannot be brought after the expiration of 12 years. It is also noteworthy that the law of estoppel and acquiescence does not exempt privies and successors in title and applies to them fully.

The evidence before this court is that the respondents went to court in 1993 claiming title to the Sraha lands till they got same decreed in their favour by the Supreme Court in 2004. The appellants instituted this case in 2011. It will not be fair to calculate the respondents' adverse claim from 2004 when they had the Supreme Court judgment. In fact, they were in possession as far back as 1993 when they went to the High Court to establish their ownership of the land. The appellants' right, assuming the respondents were in adverse possession accrued since 1993. They are therefore caught by the Limitation Act. We held earlier we do not believe the appellants' case that though they were not parties to the Adjetey Agbosu case, were not privy to same. We also held there was evidence unchallenged of the respondent's overt acts of ownership over the Sraha lands.

The trial Judge was thus right in holding that the appellants and their families were estopped from litigating on the subject matter land by their own conduct and also by the Limitation Act in our view. Those grounds of appeal lack merit and same are dismissed.

Grounds 8 & 1:

8. **That the trial Court erred in disregarding the traditional evidence adduced in the trial.**

1. **That the judgment is against the weight of evidence.**

Counsel for the appellant submits that from all the evidence led and adduced at the trial, the conclusion to be drawn from the evidence of the defendants (respondents) is that their evidence is concocted. That they are relying on a judgment which does not bind the plaintiffs (appellants) in the suit as they were not parties in that suit. Counsel contends that with regard to estoppel, the evidence shows that the respondent cannot rely on it. It is his contention that the Adjetey Agbosu Freeman family is not one family according to the pieces of evidence before the trial court and therefore the judgment in the case that ended in the Supreme Court was fraudulently obtained, since it concluded that there is a family in Adjetey Agbosu and Freeman family when there is no family by that name.

Counsel for the respondent in response submitted that the appellants have failed to point out to this court the evidence in the trial court which if taken into consideration would have tilted the clock of justice in their favour. They also woefully failed to discharge the burden placed on them in proof of their case. On the contrary, in the facts and the law, the trial Judge came to the irresistible conclusion that the appellants were estopped from re-litigating on the Sraha lands as same had been judicially determined by the Supreme Court in the case of In Re Ashalley Botwe lands (supra). Counsel said the appellants and

their predecessors stood by while the respondents' family litigated over ownership of the Sraha lands and so the appeal be dismissed in its entirety.

The authorities are legion on the principle that, where an appellant appeals on the omnibus ground of appeal, the appellate court is duty bound to consider comprehensively the entire evidence on record, exhibits and all annexures before coming to a conclusion on the matter. The appellate court has a duty to go through the entire appeal record to satisfy itself that the evidence on record supports the judgment. It is however the duty of the appellant to point out the evidence on record which if used could have changed the decision in his favour or evidence that was wrongly used against him. The onus is on such an appellant to clearly and properly demonstrate to the appellate court the lapses in the judgment being appealed against.

See:-

1. ***Aryeh & Akakpo vrs. Ayaa Iddrisu [2010] SCGLR 891***
2. ***Djin vrs. Musah Baako [2007/8] 1 SCGLR 686***

There is no need for this court spending its precious time on those grounds of appeal since the positions we took on earlier grounds virtually covered those grounds to make it immaterial and therefore moot.

We are duty bound to go through the entire record of appeal to satisfy ourselves that the trial High Court's decision is supported by the evidence on record and this we did. On the first ground of appeal we felt the trial High court erred and therefore upheld the appeal. The other grounds lack merit since the appellant failed to establish the errors therein and all were dismissed.

We think in exception of the first ground of appeal, all the other grounds lack merit and the appeal is dismissed as unmeritorious.

Sgd.

SENYO DZAMEFE

(JUSTICE OF APPEAL)

Sgd.

AMMA GAISIE

(JUSTICE OF APPEAL)

Sgd.

NOVISI ARYENE

(JUSTICE OF APPEAL)

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