

**IN THE CIRCUIT COURT '1', ADENTAN, ACCRA, BEFORE HER HONOUR  
JUDGE DORA G. A. INKUMSAH ESHUN (MRS.) SITTING ON FRIDAY THE 5<sup>th</sup>  
DAY OF MAY 2023**

**SUIT NO. C1/16/2021**

**ALICE ESINU ASARE**

**PLAINTIFF**

**V.**

**DR. GEORGE MENDS**

**DEFENDANT**

**JUDGMENT**

The plaintiff filed a writ of summons and a statement of claim on 4<sup>th</sup> December 2020 praying for;

- a) a declaration of title to a parcel of land situate at Amanfro in the Ga East District of the Greater Accra Region of Ghana,
- b) recovery of possession of the same parcel of land,
- c) damages against the defendant for trespass,
- d) a perpetual injunction restraining the defendant from entry onto the land,
- e) costs of the action, including solicitor's fees, and
- f) any other relief deemed fit by the honourable court.

In her statement of claim, the plaintiff averred she was granted a parcel of land covering an area of 0.872 acres bounded on the North-East, by a proposed road measuring 159.6 feet more or less, on the South-East, by the assignor's land measuring 232.6 feet more or less, on the South-West, by the assignor's land measuring 167.3 feet more or less and on the North-West, by the assignor's land measuring 232.9 feet more or less.

The land that is the subject-matter of the case was assigned to the plaintiff on 8<sup>th</sup> November 2006 by Nii Adjetey Obour, Nii Adjetey Lomoh, Nii Adjetey Anang and Nii Nmai Anang all of Accra, who were leased the land on 10<sup>th</sup> January 2005 by Emmanuel Lomoh, Ataa Adjetey Kodjo and Lawrence Adjetey Anang with the consent and concurrence of Nii Kpobi Tettey Tsuru II, La Mantse.

The plaintiff realised during a visit to the property that someone had dug up parts of the property and deposited sand on it, so she decided to construct a fence wall. While her men were working, two men on motorcycles came to stop them. She reported the matter to the police who directed all interested persons to stop work on the land until the matter was resolved. In January 2020 when the plaintiff visited the property, she noticed that someone had trespassed on the property, built a fence wall, and made further development on the land. The workers told her the land belonged to the defendant and after she contacted him, the defendant refused to yield up possession of the property to the plaintiff. Hence the instant action.

The defendant averred in his statement of defence that he purchased the land from Nii Mensah Okpoti Kodia, Principal Elder of the Kplen We Family of Oyarifa for a residential project somewhere in 2012 and immediately started developing it. While working on the land, he was approached by an elderly woman (the plaintiff) who claimed the land belonged to her. She would not listen to any of his explanations. She refused his suggestion to go to the Ayi Mensah Police Station to present the case for settlement and left. After constructing the footing for a two-bedroom house and a fence wall, he was informed the woman had come to build a fence wall on his wall foundation.

According to the defendant, during the registration process for the land, he had to attorn tenancy to Nii Adjei Okpoti Kodia of the Kplen We Family. He was issued a new

indenture in 2015. After receiving his land title certificate, he looked for the plaintiff to try to settle the dispute with her, but she did not want to deal with him. Her representatives came to stop his workers from working on the land and she reported him to the Property Fraud Unit. He presented his documents for a search and four months later, he was asked to appear at the Unit. The parties were informed at the Unit that two searches were conducted at the Land Title Division and the Public Vested Land Management Division. The result from the Land Title Division revealed the land title certificate in the name of the defendant and his wife, while the result from the PVLMD showed a court judgment covered a part of the land. The defendant attempted to settle the matter again with the plaintiff and was rebuffed – therefore, the plaintiff is not entitled to her reliefs.

On 4<sup>th</sup> December 2020 the plaintiff filed an application for an interlocutory injunction under **Order 25 of C. I. 47** which was granted on 16<sup>th</sup> December 2020 by the relieving judge against the defendant, his servants, assigns, agents, workmen and other persons claiming through him. The application for directions was granted on 3<sup>rd</sup> March 2021 and the following issues were set down for trial;

1. Whether the plaintiff is the legal owner of the parcel of land that is the subject-matter of the suit,
2. Whether the defendant trespassed on the plaintiff's land,
3. Whether the plaintiff is entitled to her claim and the reliefs endorsed thereunder, and
4. Any other issue arising from the pleadings.

The plaintiff tendered the following documents in evidence:

1. Indenture between plaintiff and her grantors – Nii Adjetey Obour, Nii Adjetey Lomo, Nii Adjetey Annang and Nii Nmai Annang dated 8<sup>th</sup> November 2006 (Exhibits A – A10).
2. Extract from Police Dairy dated 5<sup>th</sup> of September 2013 (Exhibit B).

The plaintiff's first witness Nii Adjetey Lomo tendered the following documents:

1. Entry of Judgment in the case between Nii Dr. Kpobi Tettey Tsuru III v. James Nii Mensah Okpoti Kodia with Suit No. SOL/3/14 in the High Court, Land Division dated 5<sup>th</sup> June 2018 (Exhibit C).
2. Judgment in the case of: Nii Dr. Kpobi Tettey Tsuru III v. James Nii Mensah Okpoti Kodia with Suit No. SOL/3/14 in the High Court, Land Division, dated 5<sup>th</sup> June 2018 (Exhibits C1-C14).
4. Application for LRD Site Plan Search at the Lands Commission by Alice Asare for a parcel at Amanfro dated 2nd June 2020 (Exhibit D). Site Plan of Land for Alice Asare at Amanfro, Ga East, Greater Accra (Exhibit D1).
5. *Official Search on Land Situate at Amanfro for Alice Asare* at the Lands Commission, Land Registration Division, 7<sup>th</sup> February 2020 (Exhibit D2).
6. *Search in the Lands Commission* for Alice Esinu Asare, No. O/S14745/2013 (Exhibit D3).
7. Site Plan for Alice Esinu Asare for Land at Amanfro, Ga East, Greater Accra Region, dated 6<sup>th</sup> December 2006 (Exhibit D4).

The defendant tendered the following documents:

1. Indenture between Nii Mensah Okpoti Kodia and George Nana Sam Mends dated 6 February 2013 (Exhibits 1-1F).
2. Indenture dated 20 May 2015 between Kplen We Family of Oyarifa and George Nana Sam (Exhibits 2 – 2E).

3. Land Certificate of George Nana Sam and Theodora Mantebea Mends, GA 55065 (Exhibits 3 – 3B).
4. Deed of Variation dated 6 July 2020 (Exhibits 4 – 4F).

The defendant's witness, Klotia Okpoti Mensah, tendered the following document:

5. Land certificate number GA 10468 (Exhibits 5 – 5D).

The Court Expert at the Lands Commission Survey Department, Mr. Moro Salifu Zakaria, a geomatic engineer, tendered;

6. A report dated 13<sup>th</sup> July 2022, on the composite plan ordered by the court (Exhibit CEA-CEA3), and
7. A Composite Plan for the parties (Exhibit CEB).

The court will consider the first two issues, as the Supreme Court has held that the issue - whether a party is entitled to their claim is moot in the case of Dalex Finance and Leasing Company Limited v. Ebenezer Denzek Amanor, L.G.G. Company Limited and Huawei Technologies (Ghana) SA Limited, Civil Appeal No. J4/02/2020; DLSC 10163.

The court will first determine whether the plaintiff is the legal owner of the parcel of land that is the subject-matter of the suit. In **section 48** of the **Evidence Act, 1975 (NRCD 323)**, there is a rebuttable presumption that the things which a person possess are owned by that person and a person who exercises ownership over property, is its owner. In Issiw v. Wiabu IV, 12<sup>th</sup> January 1970 digested in (1970) CC 108 (CA), the Court of Appeal held that a plaintiff who pleads ownership of land in an action for trespass has put their title in issue and must therefore prove a right to possession of the land that is superior to that of the defendant.

In Sagoe & Others v. Social Security and National Insurance Trust (SSNIT) [2012] 2 SCGLR 1093 the Supreme Court held that, where a plaintiff claimed reliefs of damages

for trespass and an order of perpetual injunction, their reliefs required that their title to the land be determined, although there was no claim for declaration for title. The plaintiffs in that case assumed the burden of convincingly and satisfactorily proving their respective titles to areas they occupied before the defendant caused their building structures on the land to be demolished.

In **section 14 of the Evidence Act, 1975 (NRCD 323)** a party who makes an assertion, has the burden of persuasion as to the existence or non-existence of the fact that is essential to the claim or defence he is asserting, unless the burden is shifted, or the law provides otherwise. **Section 12(1) of NRCD 323** states that the burden of persuasion requires proof by a preponderance of probabilities, defined in **sub-section (2)** as *“that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence”* [GIHOC Refrigeration & Household Products Ltd. v. Hanna Assi [2005-2006] SCGLR 458].

The plaintiff testified that in 2005, she purchased three plots of land at Abotan in Amanfrom from Elder Emmanuel Afetor Lomoh and his family while she was visiting Ghana on holiday – she was not resident in the country at the time. She was introduced to the landowners by a cousin who had purchased land from them. She conducted a Search after purchasing the land at the Lands Commission and was told the land did not belong to anyone else. She was given an indenture for the land in 2006. The plaintiff initially testified in her witness statement that the land was purchased for about GH¢85,000 but explained in cross-examination that a receipt she found showed that the actual cost of the land was GH¢120,000. She paid an initial amount of GH¢85,000 and paid the rest in instalments through third parties, but she was not given receipts for some of the money she paid. The landowners asked her to send them money to register

the land in her name while she was out of the country. The plaintiff said she wrote the witness statement from memory.

In 2013 the plaintiff was informed by Ernest Lomoh, Elder Afetor Lomoh's son and some friendly neighbours, that someone was encroaching on her land. At the site, she noticed that the person had placed a trip of sand on the land and workers were digging trenches to build. When the workers confirmed they were working for the defendant and called him, the plaintiff told the defendant the land he was working on was hers. She purchased it in 2005, so he should stop working on it. The defendant suggested they meet somewhere to discuss it, but she declined, due to concerns for her safety and decided to immediately build a wall around the three plots.

**Thereafter, she conducted a search on the land in 2013 and brought to the defendant's attention that the result showed that the land was in her name.**

While purchasing materials for work on the land, the plaintiff's workers informed her that two men came to the site on motorcycles to stop them from working and left a message. When they returned, they told the plaintiff they were sent by a former Assembly Man for Oyarifa. The plaintiff informed Ernest Lomoh and the other elders about the incident. They told her to continue with the wall and appointed three men from the family to go to the Ayi Mensah Police Station to file a complaint. The police directed that no one should work on the land until the issue was resolved and gave the plaintiff an extract from the station dairy (Exhibit B), to take to the Police Headquarters after she wrote a statement. At the Police Headquarters, the investigator, Mr. Akowuah of the Criminal Investigation Department (CID), called the defendant who said the land was sold to him by Nii Mensah Okpoti of Oyarifa. Mr. Akowuah asked the defendant and Nii Mensah Okpoti to come to the Police Headquarters to respond to the plaintiff's complaint, however, neither of them showed up. Mr. Akowuah told the plaintiff

that Nii Mensah Okpoti told him he did not know the defendant and that was why he did not show up at the Police Headquarters.

After following up a few times, the plaintiff informed the police that since neither the defendant nor Mr. Nii Mensah Okpoti had shown up, she was going to wall the three plots of land to discourage future encroachment. According to defendant counsel, Nii Mensah Okpoti and the defendant came to the police station later – the plaintiff said she was not aware of this.

The plaintiff left a gap in her wall to enable the defendant to remove his building blocks, stones, and sand from the land. However, the defendant stayed away for 6 years. In August 2019, the plaintiff's neighbours informed her that the defendant had returned to clear the land to begin building. She visited the land when no one was there and noted that the land had been cleared.

Since the plaintiff planned to travel in September 2019 for an extended period, she had a one-bedroom building built on the land and left a caretaker there to monitor the situation and report to her. On 10<sup>th</sup> September 2019, while she and her workers were constructing the building, the defendant walked past her cousin without speaking to them and viewed the portion of the land that had been cleared. When he was leaving, the plaintiff stopped him to ask him if he was looking for something. He identified himself and told her the portion of land cleared for construction belonged to him – he had come to check on the land because he was about to begin building. The plaintiff introduced herself to him and told him she had owned the land since 2005. **When the defendant told her he had documents on the land, the plaintiff told him he had no right to acquire documents on the land since she told him in 2013 that the land belonged to her.** The defendant began to argue with them, and the plaintiff told her



cousin to let him go. He left and returned with an envelope thirty minutes later, telling the plaintiff he wanted to show her his documents. The plaintiff told him she was not interested in his documents, and he left. While the plaintiff was abroad, her caretaker went to Kumasi for work. While he was gone, the neighbours contacted the plaintiff to tell her the defendant had returned to continue work on the land. She asked her nephew and niece to visit the land and they reported to her that the defendant had started building on two plots. She called the defendant and told him to stop work because the land did not belong to him and when she returned, she would demolish whatever he built. The defendant responded that he had documents on the land. When she returned to Ghana in early March 2020, she visited the land and noted that the defendant had demolished part of the wall she had constructed and constructed a new wall inside her wall from the section he demolished, dividing the three plots into two plots, claiming two and a half plots, and leaving about a half plot for her. He also demolished the previous two-bedroom footing he constructed in 2013 and started two new separate footings on the portion he had walled. When she enquired of his whereabouts from his workers, particularly his foreman, she was told he had travelled. She took pictures of the goings-on and reported to the Police Headquarters the following day.

Detective Sergeant Rejoice Ama Bansah of the CID Headquarters, took the plaintiff's statement, visited the site, and took pictures. She took the defendant's number from the workers, summoned the parties, and took their statements. When she called them back a couple of months later, the plaintiff went with Mr. Korqu Baku, her nephew, a surveyor. Det. Sgt Bansah and Det Insp. George Amanoo, Acting Station Officer, presided over the meeting. They told the parties they conducted a search at the Lands Commission which showed that part of the land had been registered by the defendant. The defendant presented his documents for the land.

**While they were reviewing the documents, the plaintiff's nephew pointed out to the defendant that the portion he was building on was not the portion he presented the documents for.** The defendant began to argue with the plaintiff's nephew when he explained that the defendant was building on the wrong land. At that time, the parties were advised to pursue the matter in the courts and the plaintiff engaged the services of a solicitor.

Nii Adjetey Lomo (PW1), the head of the family of the plaintiff's assignors, a farmer who lives at La Amanfro, testified on behalf of Nii Adjetey Obour, Nii Adjetey Lomoh, Nii Adjetey Anang and Nii Nmai Anang that he is the head of the Nii Lomo family, the plaintiff's assignors. There is only one family left in Amanfro. The land was sold to the plaintiff by Nii Apetor Lomo, his uncle, whose father is the eldest of their siblings. PW2's father comes after Nii Apetor Lomo's father and Annang Lomo comes after PW2's father. They have one family head. He cannot remember the year and date they sold the land to the plaintiff. The family assigned a parcel of land to the plaintiff for which an assignment was executed, dated 8<sup>th</sup> November 2006, but he was not one of the signatories. He tendered a search report (Exhibit D), with the result that the plaintiff's land was not state land and was subject to a lease dated 10 January 2005 between Emmanuel Apetor Lomoh and Others and Nii Adjetey Obour and Others. There was also an assignment dated 10 December 2003 between Nii Adjetey Obour and 3 Others and Alice Esinu Asare.

The defendant, a project and construction manager, construction engineer and costs engineer, testified that somewhere in 2012, he and his wife purchased the land from Nii Mensah Okpoti Kodia, Principal Elder of the Kplen We Family of Oyarifa for a residential project and immediately started work on it after making the initial deposit. After working on the land for some time, they made final payment to the family, after

which an indenture was prepared in their names, dated 6<sup>th</sup> of February 2013. They continued to work on the land until they received a call from some of the workers that an elderly woman had come to claim ownership of the site. He went to the site and told the plaintiff the land belongs to him and his wife. To avoid a confrontation with her, he suggested they go to the Ayi Mensah Police Station to present the case for settlement. The lady however declined to do so and left.

Seven months later, the defendant decided to fence off the whole place to ward off encroachers. He asked his workers to start constructing a footing for a wall and hold off on constructing the two-bedroom guest house. After the footing was constructed, he stopped work to attend to other matters and was informed some weeks later by a worker that the lady had come to construct a fence wall on his footing. **Since he had initiated the process of registering the property and the project was being interfered with, he stopped work on the site to finish the registration process.** When he presented the indenture issued to him in 2013 to the Lands Commission, he found that another faction of the same family had registered the land in their name. He therefore had to attorn tenancy to the new family and a new indenture was issued to him by Nii Adjei Okpoti Kodia and Jacob Sowah Klotia Kwame, acting Regent and Principal Elder of the Kplen We Family of Oyarifa. After settling matters with the family, he proceeded to register the land and acquired a Land Certificate covering the entire land in 2015. He decided to look for the *elderly woman* claiming ownership of the land to settle issues with her, so the project could continue as planned. He was directed to a lady called Millicent who claimed to be the woman's caretaker. Several efforts to get through to the *elderly woman* through Millicent were unsuccessful.

Since the bank loans he acquired for the project were accruing, the defendant decided to continue with the project after applying for a building permit in 2015. The building

permit was not tendered in evidence. The defendant sent workers to clear the land to get ready for the main project. A lady and gentleman came to stop the work, and he was called to the site. They told the defendant they were the niece and nephew of the lady claiming ownership of the land. The defendant told them the land belonged to him and he had been trying to get in touch with their aunt who was also claiming ownership of the land to settle matters with her, but she refused to have anything to do with him. He did not hear from them or the plaintiff after that.

Three months later, he received a call from the Property Fraud Unit about a case filed by the plaintiff on the land and he was asked to bring his land documents. After presenting his land documents, the parties were asked to pay money for a search to be conducted at the Lands Commission. Some weeks later, the parties were called back to the Unit and informed that two searches were conducted. The search at the Lands Title Division of the Lands Commission revealed that there is a land title certificate on the land in the name of the defendant and his wife, while the search from the Public Vested Land Management Division revealed that a court judgment covered part of the land. **At the CID office, it came to their notice that the site plan given to the defendant by the Kplen We Family differed in terms of the actual land. However, the one taken by the Survey Department of the Lands Commission when he applied for registration happened to be the exact site plan in relation to the site. With the consent of his grantor family, the defendant applied for a deed variation so that the land shown on the site and on the site plan attached to the Lands Commission's registration would correspond with that of the site plan attached to the one issued by the family.**

Although he had a land title certificate covering the land and was the legal owner of the property, the defendant extended an invitation once again to Madam Asare to settle the issue because he wanted to see whether they could reach some sort of agreement.

However, she still declined, and he did not hear from her again until he was served with her writ for this case. According to the defendant, he has not encroached on anybody's land because, when they decided to purchase the land, they made sure they were purchasing it from the rightful owners and their search showed that the land belonged to the Kplen We Family. This Search was not tendered in evidence.

Klotia Okpoti Mensah (DW1) testified that he is an elder of the Kplen We Family and a witness to the indenture the family gave the defendant for the disputed land. As far back as 1996, the Kplen We family registered all its land, including the disputed land, by a land title certificate (Exhibits 5 – 5D). Somewhere in 2015, the defendant told the family he had bought the land from Nii Mensah Okpoti Kodia, a member of a section of the family. However, while he was registering the land, it was revealed that the land was already registered by another section of the same family. After paying some money to the family elders to attorn tenancy, a new indenture was prepared by Nii Adjei Okpoti Kodia and Jacob Sowah Klotia Kwame, the then Acting Regent and Principal Elder of the Kplen We Family of Oyarifa respectively. DW1 witnessed the document as the Family's Secretary. In the early part of 2021, the defendant informed the family that the plaintiff had sued him in court for trespass to her land. According to DW1, as far as the family is concerned, they have not sold land to the plaintiff. Neither does the family know the plaintiff for her to claim their family land. PW1 testified that his family has owned the disputed property for many years now and went to court over it 30 to 40 years ago. The land was leased to the plaintiff's assignors by a lease dated 10<sup>th</sup> January 2005 annexed as AR 442/2005 and plotted as Property No. V192 by Emmanuel Apetor Lomoh of Nii Ala We, with the consent and concurrence of Nii Kpobi Tettey Tsuru III, La Mantse. On 5<sup>th</sup> June 2018 the High Court (Land Division) Accra, pronounced judgment that Nii Dr. Kpobi Tettey Tsuru III, La Mantse, is entitled to a declaration of title to all Amanfro Lands measuring approximately 938.758 hectares/acres, bounded on

the northwest by Government land, on the northeast by Amrahia and a dairy farm, on the west by Oyarifa land, on the southwest by Oyarifa and on the southeast by Ahieve and Katamansu lands. Recovery of possession, a perpetual injunction restraining James Nii Mensah Okpoti Kodia, his workmen, servants, agents and assigns from further trespassing on the land, damages of GH¢50,000 for trespass and costs of GH¢11,800 were granted to Nii Kpobi Tettey Tsuru III.

PW1 tendered the Entry of Judgment and Judgment in the case of Nii Dr. Kpobi Tettey Tsuru

II v. James Nii Mensah Okpoti Kodia dated 5 June 2018 (Exhibits C – C14). He testified that Nii Adjei Okpoti Kodia's land is far from their land. Nii Mensah Okpoti Kodia's land is on the

side of the Oyarifa road heading towards the mountain, while their land lies from the side of Aburi, down towards Dodowa. He denied that in 2008 there was another judgment of the High Court that declared Nii Okpoti Kodia Mensah as the owner of their land. He could not confirm whether he had been able to plot the 2018 judgment. PW1 ended his testimony by stating that the plaintiff is the rightful owner of the land which is the subject-matter of the case, and the defendant cannot lay claim to the land.

In Aboa v. Keelson; Yima & Doku; Suit No. 20/92 16<sup>th</sup> March 2011, it was held that in trials involving title to land, the court must consider the following to determine whether the plaintiff has discharged the burden of proof to succeed;

- a) whether the plaintiff has been able to make a case upon his or her testimony, to entitle them to be granted reliefs upon their claim,
- b) whether the plaintiff's case will entitle them to relief in view of the defendant's evidence,

- c) whether, if the plaintiff, having failed to make a case from their testimony, can rely on the weakness in the defendant's case and ask for relief,
- d) the weakness of the defendant's case when they testified,
- e) whether the weakness in the defendant's case enures to the benefit of the plaintiff's case, and
- f) whether the plaintiff can rely on the weakness of the defendant's case to strengthen their case, contrary to the principle laid down by Webber CJ in Kodilinye v. Odu [1935] 2 WACA 336 at 337.

Mr. Moro Salifu Zakaria, a geomatic engineer from the Lands Commission prepared the court-ordered composite plan and tendered it with a report (Exhibits CEA-CEA3 and CEB). In his report (Exhibit CEA1), he stated that a team of surveyors visited the disputed land at Amanfro/Oyarifa. The plaintiff showed them her land boundaries first, which were surveyed according to her survey instructions. The process was then repeated for the defendant. He explained the process he took to execute the survey instructions thus: he asked the parties separately to show him their corners at the site and surveyed them with a GPS machine that coordinated the points of the corners of their plots. The GPS machine receives signals from satellites and stores them in the machine when it is put on for 5 – 10 minutes. The process is repeated at another point. If there are more machines, they can all be set at the same time. The parties' information was retrieved and downloaded on a laptop in the office. The downloaded coordinates were processed and used to prepare the composite plan which consisted of the parties' site plans and the corner points of their plots shown on the ground, shown on the composite plan in different colours.

The court expert testified that he found after preparing the composite plan (Exhibit CEB) dated 13 July 2022, that the plots on the site plans submitted by the parties fall on the parcel they showed him on the ground and the defendant's parcel falls within the plaintiff's parcel. He noted that the plaintiff's parcel showed on the ground is less than the parcel shown on her site plan. The parties agreed that the property they showed the surveyor on the ground belonged to them except a footing found on the plaintiff's land that was said to belong to Mr. Mensah Okpoti.

In Exhibit CEB, the plaintiff's land was shown hatched in black and white at points **A1, A2, A3, A4, A5, A6 or A1 – A6**. The defendant's land and the disputed portion of land was shown in the hatched area of points **A1, B1, B2, A6** excluding *A2, A3, A4, A5, B2 and B1*. According to the court expert, the plaintiff's site plan shows that there are 4 plots in her parcel. On the ground, one portion has been fenced and developed, shown on the site plan as A6, A5 and A4.

The plaintiff's indenture (Exhibit A series) is a 30-year lease subject to renewal, dated 8<sup>th</sup> November 2006 made between Nii Adjetey Obour, Nii Adjetey Lomoh, Nii Adjetey Anang and Nii Nmai Anang of the one part, and Alice Esinu Asare of the other part, for land bounded on the North-East, by a proposed road measuring 159.6 feet more or less, on the South-East, by the Assignor's land measuring 232.6 feet more or less, on the South-West, by the Assignor's land measuring 167.3 feet more or less, on the North-West, by the Assignor's land measuring 232.9 feet more or less, and containing an approximate area of 0.872 acres or 0.353 hectares. The recital states that the land was acquired by the plaintiff's lessors by a lease between Emmanuel Apetor Lomoh of Nii Ala We, Ataa Adjetey Kodjo of Nii Mensah We and Lawrence Adjetey Anang of Nii Anang We, with the consent and concurrence of Nii Kpobi Tettey Tsuru III, La Mantse. The site plan attached to the plaintiff's indenture (Exhibit A8) is faint. The same site



plan, attached to the Search Request and Report in Exhibit D4 is more legible. One can see land delineated, with another portion delineated within it, between the coordinates **1202000F** and **1203000E** to the **North** and **South** with the coordinate **398000N** running across in the middle, between the delineated plot from **West** to **East**. The locality of the land is **Amanfro** in the **Ga East District**.

The search report from the Lands Commission (Exhibit D3) numbered O/S 14745/2013 stated that the plaintiff's land was not state land and was subject to a lease dated 10 January 2005 between Emmanuel Apetor Lomoh and Others and Nii Adjetej Obour and Others, and an assignment dated 10 December 2003 between Nii Adjetej Obour and 3 Others and Alice Esinu Asare.

The defendant's first indenture (Exhibit 1 series) is a 99-year-old renewable lease dated 6<sup>th</sup> February 2013 between Nii Mensah Okpoti Kodia of the one part, and George Nana Sam and Theodora Mends of the other part, for land situate at Oyarifa, Accra, bounded on the North-West, by the Lessor's Family land measuring 5,000 feet more or less, on the South-West, by the Abesey Animlewe Family land, Abafum Family land and Odanteng Family land respectively, measuring 9,000 feet more or less, on the South-East, by Amanfrom Family land measuring 5,000 feet more or less, on the North-East, by the Lessor's Family land measuring 9,000 feet more or less and covering an approximate area of 1,033.06 acres or 418.08 hectares more or less. In Exhibit 1A, the recital states that the Kplen We Family of La, Accra were the original owners of the land by a High Court (Fast Track Division) judgment delivered by Justice Senyo Dzamefe J. (as he then was) on 29<sup>th</sup> June 2010 in the case between Joe Zakour and Mrs. Hetty Zakour v. Nii Mensah Okpoti Kodia, Jesse and Kplen We Family with suit number AL.3/2006. The judgment plan of 1,033.06 acres is said to have been registered at the Lands Commission in favour of Nii Mensah Okpoti Kodia. **The court notes that the**

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**area specified in the recital, which is an exceedingly large area, is the same area granted to the**

**defendant in the lease.** In the site plan attached to this indenture (Exhibit 1D), the delineated land is between the coordinates **1201000E** and **1202000E** to the **West** and **East** and is between the coordinates **398000N** and **397000N** to the **North** and **South**. The locality of the land is at **Oyarifa** in the **Ga East District**.

The defendant's second indenture (Exhibit 2 series) dated 20<sup>th</sup> May 2015, is a 99-year-old renewable lease made between The Kplen-We Family of Oyarifa (represented by Nii Adjei Okpoti Kodia and Jacob Sowah-Klotia Kwame, Acting Regent and Principal Elders of the Kplen-We Family of Oyarifa, Accra) and George Nana Sam and Theodora Mantebea Mends. In the Recital, the land is derived from Land Certificate number GA10468, Vol. 63 Folio 04, Block 1, Section 143 for a larger area of land at Oyarifa, Accra. The land is described as situate at Oyarifa in the Ga East District of the Greater Accra, containing an approximate area of 0.414 acres or 0.167 hectares more or less, bounded on the North-West, by a proposed road measuring 142.5 feet more or less, on the North-East, by the lessor's land measuring 174.0 feet more or less, on the South-East, by the lessor's land measuring 116.03 feet more or less and on the South-East, by the lessor's land measuring 105.5 feet more or less. The court notes that the area described in the defendant's second indenture although of a more reasonable size, **is completely different from the area granted in his first lease** and there is **no site plan attached to the indenture in Exhibit 2 series**.

The defendant's Land Title Certificate (Exhibit 3A) dated 16<sup>th</sup> July 2018 grants the defendant and his wife the land as tenants in common for the unexpired residue of the lease for a term of 99 years (with an option to renew for a further term of 45 years) etc. for land measuring **0.15 hectares or 0.38 acres** being Parcel No. 8075, Block 2, Section 148 situate at Oyarifa and delineated on Registry Map No. 005/148/1993 shown on Plan

No. 438/2013 annexed to the Land Certificate. It is important to note that the area of the land in the land title certificate differs from that of the land granted the defendant in Exhibit 2 series – which is approximately **0.414 acres or 0.167 hectares**. The site plan attached to the Land Title Certificate (Exhibit 3 B) for land at Oyarifa in the Greater Accra Region, shows land delineated between coordinates **1202000** and **1202500** from **North** to **South**, with the coordinate **398000** running through it from **West** to **East**.

The defendant also tendered a *Deed of Variation* between Nii Anum Kodia (Gravor) and Patrick Adjei Oko (Acting Regent and Principal Elders of the Kplen-We Family of Oyarifa, Accra) and George Nana Sam and Theodora Mantebea Mends dated 6<sup>th</sup> July 2020 (Exhibit 4 series). In the Recital of this Deed, the land was obtained by a Land Certificate issued by the Land Title Registry dated 26<sup>th</sup> February 1887 with registration number GA 10468, Vol. 63, Folio 04, Block 1, Section 143, to certify that the Kplen-We Family of Oyarifa, Accra owns a larger area of land situate at Oyarifa. The defendant was then leased land at Oyarifa bounded on the North-East, by a proposed road measuring 128'.0" feet more or less, on the South-East, by the Lessor's land measuring 116'.8" feet more or less, on the North-West, by a proposed road measuring 133'.8" and 13'.9" feet more or less, with an approximate area of **0.37 acres** or 5 hectares for 99 years from 6<sup>th</sup> July 2020. **The court finds that the measurement of the land granted the defendant in Exhibits 1 series, 2 series and 3 series are all different from that of Exhibit 4 series. The period of the defendant's grant also changes from one indenture to another.**

The site plan attached to the Deed of Variation (Exhibit 4C) places the land within the coordinates **1202000N** and **1203000N** from **North** to **South**, with the coordinate **398000** running between the upper portion of the plot. The court notes that the shape and size of the plot in Exhibits 4C, 1D and 3B are all different. The coordinates within which the land is situate also shifted from **1201000E** and **1202000E** (in Exhibit 1D) to **1202000** and

**1202500** (in Exhibit 3B) finally resting at **1202000** and **1203000** in Exhibit 4C. The land which fell between **398000N** and **397000N** from West to East (in Exhibit 1D), moved to lie across the **398000** line, in almost even parts (in Exhibit 3B) and then across the **398000** line with about a quarter of the plot to the north, going beyond the line (in Exhibit 4C).

DW1 tendered a Land Title certificate dated 18<sup>th</sup> December 1996 (Exhibit 5 series) for the Kplen-We Family of Accra for land measuring 85.702 hectares and 211.777 acres more less, as the remaining extent of Parcel No. 1, Block 1, Section 143, situate at Oyarifa in the Greater Accra Region, with Plan number 57/97. The land covered by the Certificate falls between coordinates **1198000** and a little beyond **1202000** to the **North** and **South**, and **398000** and **395000** from the **West** to the **East**. The shape of the Kplen We Family land is an obtuse rectangle that is wide from the left and tapers off to a smaller area on the right under the coordinate line **398000** between the coordinate lines **394000** and **395000** to the right. The plaintiff's coordinates – **1202000F** and **1203000E** to the **North** and **South** with the coordinate **398000** in the middle appears to begin in the land to the upper right side of the Kplen-We Family Land's boundary.

In Agyemang (Substituted by) Banahene v. Anane [2013-2014] 1 SCGLR 241 the Supreme Court held that where a party's title was derivative, he ought to demonstrate that his predecessor in title held a valid title, for if the foundation was tainted, the superstructure was equally tainted.

The case turns on the judgment tendered by PW1 (C1-C14) titled Nii Dr. Kpobi Tettey Tsuru II v. James Nii Mensah Okpoti Kodia with Suit No. SOL/3/14 prefaced by the Entry of Judgment dated 5<sup>th</sup> June 2018 (Exhibit C). The plaintiff in that case, was the occupant of the La Stool at the time, while the defendant was a member of the Kplen We of the Agbawe Quarter of the La Stool and therefore a subject of the La Stool. Justice

Emmanuel Amo Yartey of the High Court, Land Division held that the plaintiff in that case had proved that the La Stool was in possession of the land comprising Amanfro and Oyarifa, after it was procured by conquest centuries ago, and granted portions of it to other people, who have subsequently developed and are in effective possession of their portions of land. The defendant in that case, sought to take possession of the plaintiff's land by demolishing some of the property of the plaintiff's grantees without notice to them, after a judgment was granted to the defendant over a portion of the land without notice to the plaintiff and the plaintiff's stool's grantees, breaching the *audi alteram partem* rule. The High Court found therefore that the defendant had never exercised any possessory rights to the land and had slept on any interest he may have possessed in the land, while the plaintiff's stool continued to make grants to third parties who had registered and developed their land. The defendant in that case was therefore estopped from laying claim to the subject-matter in dispute.

The plaintiff's grantors derive their title to the land through Nii Dr. Kpobi Tettey Tsuru II, the plaintiff in Exhibit C series, while the defendant's grantors derive title from James Nii Mensah Okpoti Kodia, the defendant in Exhibit C series.

The court makes the following findings:

1. The plaintiff was given four plots of land by her grantors at Amanfro.
2. The defendant's grantors were granted land by a judgment of the High Court (Fast Track Division) in June 2010 over a wide area of land in Oyarifa.
3. The defendant's grantors gave the defendant a portion of their land in Oyarifa.

4. The plaintiff's grantors were confirmed as the lawful persons with title to and possession of lands comprising Amanfro and Oyarifa.
5. The defendant came onto the plaintiff's land and claimed it as his.
6. When the plaintiff told the defendant the land was hers and she had documents to prove it, the defendant went away and began processing documents for the land.
7. Due to the defendant's persistent encroachment on the land, the plaintiff reported the matter to the Property Fraud Office where her nephew, a surveyor, drew the defendant's attention to the fact that the land on his site plan was quite different from the plaintiff's land in her site plan.
8. The defendant then approached his grantors to grant him a deed of variation describing the land he was given at another location (Oyarifa) to fit within the plaintiff's land at a different location (Amanfro).
9. The defendant then managed to get a land title certificate plotting his land within the space of the plaintiff's land.
10. The defendant filed his new site plan with his survey instructions from which a composite plan was made, showing that his alleged land fell within the boundaries of the plaintiff's land.
11. The land the defendant's grantors claimed they owned, is adjacent to, but separate from the land granted the plaintiff.
12. The land the defendant's grantors claimed they own by a judgment in 2010, is subject to a later judgment in 2018 that granted title and possession of the entire area to the plaintiff's grantors.

In Amegashie v. Okine [1992] 2 GLR 319 it was held that a land title certificate only raises a rebuttable but not conclusive presumption, as to the holder's title. Registration of title was an official duty presumed to have been regularly performed, creating a presumption in favour of the title holder that the certificate was regularly obtained in

**section 37(1) of the Evidence Act, 1975 (NRCD 323).** Section 20 of NRCD 323 imposed the burden of producing evidence to nullify the rebuttable presumption on the party against whom the presumption operated. The party rebutting the presumption was at liberty to lead evidence in proof of the facts they alleged to prove that the certificate was irregularly obtained and therefore null and void. In Amuzu v. Oklikah [1997-98] GLR 89, it was also held the absence of the registration of an instrument affecting land under **section 24(1) of the Land Registry Act, 1962 (Act 122)** did not render the instrument null, void or invalid. It was also held that the **Land Registry Act, 1962 (Act 122)** did not abolish the equitable doctrines of notice and fraud and did not confer on a registered instrument a state-guaranteed title. Since equity would not permit a statute to be used as an instrument of fraud or inequitable conduct, **section 24(1) of Act 122** should not be interpreted in a way that would facilitate fraud in the acquisition and sale of lands. Therefore, a later executed instrument could only obtain priority over an earlier instrument by registration under **section 24(1) of Act 122** if the later instrument was obtained without fraud and without notice of the earlier unregistered instrument. Where the party who registered the later instrument had actual notice of the other party's purchase of the disputed property, they would be held to have had constructive notice of and to have been bound by the contract of sale between the party with the unregistered instrument and their vendor, the terms of contract and the equities they had against the vendor in their contract.

The facts in this case occurred during the existence of the Land Registry Act, 1962 (Act 122). In Boateng v. Dwinfour [1979] GLR 360, the Supreme Court held that Act 122 did not abolish the equitable doctrines of notice and fraud, neither had it conferred on a registered instrument like a deed of sale, a state-guaranteed title. The appellant who had constructive notice of the respondent's *parol* tenancy did not have an absolute and impregnable title because she registered the property officially.

The court finds that the defendant in this case, who had actual notice of the plaintiff's claim to the land and her registered indenture, registered documents for his land and then changed the documents he registered to ensure that they placed his grant within the plaintiff's land, finally obtaining a land title certificate to legalise his claim over the plaintiff's land. From the authorities cited, the defendant's registered deeds and land title certificate do not grant him an impregnable title to the land considering the evidence in the case. With respect to the case of Aboa v. Keelson; Yima & Doku (*supra*), the following constitute weaknesses in the defendant's case: the defendant's persistent attempts to "settle" with the plaintiff despite having registered the land in his name; obtaining a deed of variation to situate his land within the plaintiff's land after it was pointed out to him that he was building on the wrong land; and the varying descriptions and proportions of the land granted the defendant in the various deeds and indentures the defendant tendered.

The court finds that the plaintiff from her testimony, has discharged the burden of persuasion and burden of producing evidence that she has title to the land despite the defendant's registered documents. The court finds from the foregoing analysis that, the plaintiff has made a case upon her testimony to entitle her to be granted a declaration of title over the land plotted in Exhibit CEB (the composite plan) marked points A1, A2, A3, A4, A5 and A6.

The court will now determine whether the defendant trespassed on the plaintiff's land. Trespass to land is defined as,

*"...any unjustifiable intrusion by one person upon land in possession of another. It is not predicted upon ownership but upon occupation and possession, although a person does not derive title from the owner of the land. To constitute trespass, the act of entering onto the land must be voluntary in that, the quality of the nature of the acts of trespass will be known to him. Trespass*



*is actionable per se, that is, without any proof of special damage. However, where actual damage has been caused, a claimant is clearly entitled to recover damages for any loss suffered*" [Downing J in Kippion Harry v. Attorney General (1994) SC Vanautu cited in Ofei, 325]<sup>1</sup>. According to Ofei, trespass is a direct and intentional act. It may also be negligent [League Against Cruel Sports Ltd. v. Scott Park [1985] 2 AER 489]. Wrongfully entering another's land, remaining on the land, and placing objects on the land are all forms of trespass<sup>2</sup>.

~~The court finds that the~~ defendant trespassed on the plaintiff's land by entering onto it; remaining on it after she informed him of her right to it; placing his workers and building materials on the land; destroying the plaintiff's structures on it and constructing a building and wall on it. Consequently, the plaintiff is entitled to recover possession of the parts of the land the defendant encroached on.

In Ballmoos v. Mensah [1984-86] 1 GLR 724 it was held that trespass is actionable *per se* without proof of damages. Such trespass is a continuing injury that the plaintiff is entitled to abate by an order of interim injunction, especially as damages, which are a claim of right, are assessed only up to the date of the action. Therefore, a plaintiff awarded damages in an action for trespass to land is also entitled to an injunction under the discretion of the court.

In Mahama v. Issah & Another [2001-2002] 1 GLR 694 CA, the Court of Appeal held that a party who could not prove their claim for special damages for trespass to land, should be awarded nominal damages. Considering the duration of the period the defendant trespassed on the land – from 2013 to 2023 – (10 years); the inconvenience and costs the plaintiff was put to with filing police reports; placing a caretaker on the land; having the land sectioned off by construction on it that was not in her plan; having her structures

destroyed; and having to go through a lengthy and tedious process to reclaim her land; the court finds it just to award damages of GH¢80,000 for the plaintiff against the defendant.

Judgment is therefore entered for the plaintiff as follows:

1. The plaintiff is declared the legal owner of the land situate at Amanfro in the Ga East District of the Greater Accra Region of Ghana, marked yellow in the composite plan prepared and tendered into court by Mr. Moro Salifu Zakaria and signed by Eric Mensah-Okantey, Deputy Chief Geomatic Engineer for the Regional Surveyor, Greater Accra Region on 14<sup>th</sup> July 2022 – which encompasses the land the defendant claimed title to.
2. The defendant, having trespassed on the plaintiff's land, shall pay general damages of GH¢80,000 to the plaintiff.
4. The plaintiff is granted a perpetual injunction against the defendant, his workmen, assigns, agents and those claiming through and under him, from entry onto the plaintiff's land. Costs of GH¢10,000 are awarded against the defendant for the plaintiff, including solicitor's fees.
5. The plaintiff shall file the composite plan and the judgment with the Lands Commission.

Plaintiff                      Kwesi Dadzie-Yorke

Counsel:                      Stella Adu-Duodu

Defendant

Counsel:

(SGD)

**DORA G. A. INKUMSAH ESHUN**  
**CIRCUIT JUDGE**