**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON WEDNESDAY THE 13TH DAY OF SEPTEMBER, 2023 BEFORE HER HONOUR ENID MARFUL-SAU, CIRCUIT COURT JUDGE**

SUIT NO:C1/41/17

ELIZABETH ABAA ASHONG ... PLAINTIFF

VRS.

1.JOSEPH LAMPTEY
2.SAMUEL LAMPTEY
3.ROBERT TAGOE ... DEFENDANTS

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*PARTIES: PLAINTIFF ABSENT REPRESENTED BY BENJAMIN ALLOTEY*
*1ST DEFENDANT ABSENT*
*2ND DEFENDANT PRESENT REPRESENTING 1ST & 3RD DEFENDANTS*
*3RD DEFENDANT ABSENT*

*COUNSEL: DANIEL AGYEI ESQ. HOLDING BRIEF FOR FRANCIS YEBOAH ESQ. FOR PLAINTIFF ABSENT*
*ADJEI LARTEY ESQ. FOR DEFENDANTS PRESENT*

## JUDGMENT

By a Writ of Summons and Statement of Claim filed on 7th June, 2017, Plaintiff claims against Defendants the following reliefs:

1. "Declaration of title of the whole land under litigation.
2. Damages for trespass.
3. Perpetual injunction restraining the Defendants, their agents and any other assigns from any way dealing with the land.
4. Any other relief deemed by this Honourable Court."

It is the case of Plaintiff that she is a member of the Kofi Tsuru family of Obeyeyie which owns a large tract of land at Obeyeyie. Plaintiff says that the Defendants have trespassed on the land belonging to her. According to her, within the land belonging to the Kofi Tsuru family, there is a piece of land near the centre of the township measuring 500ft more or less to the North East, 250ft more or less to the East, 500 feet more or less to the

South West and 205 feet more or less to the East which was in the possession of Madam Vida Mensah, her mother. Plaintiff says that after the death of her mother, she as customary successor to her inherited the land. She says that there was no school at Obeyeyie so she agreed and had the land earmarked for a school. She says that a month prior to filing the instant action, the Defendants were seen inspecting the land and upon inquiry they intimated that the land was for them, and they were going to use same for a petrol filling station. She says that though the Defendants claimed to have documents covering the land, the documents shown her are forgeries and only cover part of the land in dispute. Based upon these facts, Plaintiff commenced the instant action.

Defendants entered appearance through counsel on 12th June, 2017 and filed a Statement of Defence on 21st June, 2017. They contend that Plaintiff has no capacity to maintain the instant action as the land in dispute falls within the larger part of the land belonging to the Numo Kofi Tsuru Family of Obeyeyie. They also contend that Plaintiff is not from the Kofi Tsuru family as she claimed in another action that she comes from the Tetteh Kofi family. Defendants say that the land in dispute belongs to the Kofi Tsuru family and was never in the possession of Madam Vida Mensah and therefore Plaintiff could not have inherited the said land. According to Defendants, the said land has never been earmarked for a school by the authorities. They say that the land belongs to them, and they were on same for their project and not to inspect it. They state that they have been in quiet possession of the land without any let or hindrance and they have valid documents to the land. Defendants contend that they acquired the land in dispute in 2009 from Nii Tei Ayi then head of family of Nsakina and Obeyeyie near Amasaman who trace their roots of title to a Deed of Gift dated 12th October, 1993 between Nii Odartei III, Chief of Nsakina and Nii Tei Ayi which is registered and stamped as AR/6722/99 and LVB14028/2000. Defendants contend that they have proceeded to register their title in the land at the Land Title Registry and have been issued Land Certificates. They say that by virtue of the Land Certificates, their title to the land is indefeasible and they have been in possession of the land since 2009.

Plaintiff filed a Reply on 5th July, 2017. She contended that the Tetteh Kofi family is not part of the Kofi Tsuru family, but she is part of the Kofi Tsuru family. She maintains that the land was in the possession of her mother, and she inherited same. She says that the Defendants had never been seen

on the land until recently when they forcefully came unto same in an attempt to construct a petrol filling station. She says that the Kofi Tsuru family land is at Obeyeyie and not at Nsakina and the land belonging to the family was never a gift from Nii Odartei III of Nsakina but rather in accordance with a Judgment by Sarkodie J in 1959 and therefore the Defendants root of title is tainted. She says that the Land Certificates obtained by Defendants cannot confer title to them because their root of title is defective. She says that the court should make an order for cancellation of the Land Certificates and grant the reliefs sought.

On 17th October, 2017, this court differently constituted adopted and set down the following issues for trial:

1. "Whether or not the land in contention forms part of the larger land belonging to the Kofi Tsuru family of Obeyeyie.
2. Whether or not the Plaintiff is a member of the Kofi Tsuru family of Obeyeyie.
3. Whether or not the Plaintiff became the owner of the land as a successor to Plaintiff's mother a member of the Kofi Tsuru family who originally owned the land.
4. Whether or not the Defendants acquired the land under litigation from the owners of the land, the Kofi Tsuru family of Obeyeyie.
5. Whether or not the land certificates of the Defendants should be cancelled due to improper root of title.
6. Whether Plaintiff is entitled to reliefs sought."

Hearing commenced on 21st May, 2018 by the court differently constituted and on 24th March, 2021 I adopted proceedings in the matter with 2nd Defendant testifying before me on 24th May, 2021.

Defendants have insisted since the inception of this case per paragraph 1 of their Statement of Defence filed on 21st June, 2017 that Plaintiff has no capacity to bring this action in so far as the land in dispute falls within the larger part of the land belonging to the Numo Kofi Tsuru family. This issue was argued strongly by counsel for Defendants in his Written Address to the court filed on 30th August, 2023. Counsel for Plaintiff in his Written Address to the court filed on 24th August, 2023, argued that the land in dispute was no longer Kofi Tsuru family land but the property of Plaintiff through her late mother and as such she could fight for it and even if she was not successor but daughter, the authority of **Kwan v. Nyeni [1959]**

**GLR 67 CA** absolves her capacity to fight for family property in the interest of the other children.

The issue of capacity is a matter of law which could be raised at any stage of proceedings, even on Appeal. Capacity could also be raised by the court suo motu. In **FOSUA AND ADU POKU V DUFIE (DECEASED) AND ADU-POKU MENSAH (2009) SCGLR 310** it was held as follows:

> *"On the facts of [the] instant case, the issue whether the plaintiffs had the requisite capacity to sue was made an issue for trial. However, the trial judge did not consider the issue of capacity anywhere in the entire judgment. In considering whether or not the properties in dispute were for the family, the trial judge should have gone forward to also consider, on the assumption that they were family properties, whether or not the plaintiffs had the requisite capacity to sue in respect thereof. That was irrespective of whether or not the parties had made that an issue for trial. Capacity to sue was a matter of law and could be raised by the court suo motu… "*

It is an elementary principle of law that where the Plaintiff's capacity is being questioned the onus lies on the Plaintiff to establish to the satisfaction of the court that he had been duly authorized. Though not forming part of the issues set down for trial, I shall first determine the issue of the capacity of Plaintiff to institute the instant action as same goes to the root of the case. I consider that the capacity of Plaintiff is challenged on two positions the first being that she is not the proper person to institute proceedings for family property and also that she does not have letters of administration in respect of her mother's estate.

In the case of **NARTEY AND OTHERS v. KOSHI AND ANOTHER [1961] GLR 728** it was held that:

> *"By custom, the head of family is normally the proper person to sue in respect of family property…"*

In this case Plaintiff has stated expressly both in pleadings and under oath that she has the requisite capacity to bring the instant action because the land in dispute belongs to her mother and she is fighting for same. Therefore, to the extent that Plaintiff does not bring this action in a capacity for and behalf of the Kofi Tsuru family, I find that she has the requisite capacity to institute the instant action.

Likewise, it was suggested during cross examination of Plaintiff by counsel for Defendants that Plaintiff had no Letters of Administration in respect of her mother's estate hence she lacks capacity. In the case of **SUSAN BANDOH VRS DR. MRS. MAXWELL APEAGYEI-GYAMFI, ALEX GYIMAH CIVIL APPEAL NO. J4/16/2016 DATED 6TH JUNE, 2019** it was held by **MARFUL-SAU, JSC (as he then was)** as follows:

> *"I therefore, entirely agree with the legal proposition enunciated by Gbadegbe JSC, and hold that even in this appeal the appellant, being a beneficiary child, was a competent party, notwithstanding the fact that she had no letters of Administration."*

Thus, being a daughter of the said Vida Aba Mensah, Plaintiff is a beneficiary and is competent to initiate action in respect of the said mother's property in the absence of Letters of Administration. For the foregoing reasons, I find that the Plaintiff has the requisite capacity to initiate the instant action and I so hold. I shall now proceed to consider the issues set down for trial.

It is trite law that in a civil case, where a party sues for a declaration of title to land, damages for trespass and an order for perpetual injunction, the onus is on him to prove on a balance of probabilities ownership of the land in dispute.

See. ***ADWUBENG V. DOMFEH (1996-1997) SCGLR 660;***
***JASS CO LTD & ANOR V. APPAU & ANOR (2009) SCGLR 265 AT 271)***

Section 12(2) of the **EVIDENCE ACT,1975 NRCD 323** defines 'preponderance of probabilities' as follows:

> *""Preponderance of the probabilities" means 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."*

I shall first consider issue 1 which is '*whether or not the land in contention forms part of the larger land belonging to the Kofi Tsuru family of Obeyeyie*.' At paragraph 3 of Plaintiff's Statement of claim, she stated that 'within the land belonging to the Kofi Tsuru family is a piece of land near the centre of the township …which was in the possession of Madam Vida Mensah, the mother of the Plaintiff." At paragraph 4 of their Statement of Defence, Defendants admitted that the land belongs to the Kofi Tsuru family but

however denied that the land was ever in the possession of Madam Vida Mensah.

In the case of **WEST AFRICAN ENTERPRISES LTD v WESTERN HARDWOOD ENTERPRISE LTD [1995-96] 1 GLR 155** it was held as follows:

> *"Where an averment made by one party in his pleadings was denied by the other in his defence or reply, it was necessary for the one who made that averment to produce evidence in proof of it. However,* ***no principle of law required a party to prove an admitted fact****..." (emphasis mine)*

In the instant case, since the fact that the land in dispute forms part of the larger tract of land owned by the Kofi Tsuru family was admitted by the Defendants, that fact was not in dispute and no proof was required of it and therefore no issue was even joined on it by the parties in the summon for directions. Issue 1 is therefore answered in the affirmative that the land in dispute forms part of the larger land belonging to the Kofi Tsuru family of Obeyeyie.

Issue 2 is '*whether or not the Plaintiff is a member of the Kofi Tsuru family of Obeyeyie*.' Though Plaintiff claims to be a Principal member of the Kofi Tsuru family, the Defendants have contended that in another suit Plaintiff claimed to come from the Tetteh Kofi family and therefore she cannot be a member of the Numo Kofi Tsuru family. During cross-examination of Plaintiff by Counsel for Defendant on 21st May, 2018 the following ensued:

> "**Q:** You once instituted an action against Nartey Kobla at the Amasaman District Court.
> **A:** Yes, my lord, I remember
> **Q:** In that court, you claim to belong to Tetteh Kofi family of Obeyeyie
> **A:** That is not true my lord.
> **...**
> **Q:** You aren't being truthful to the Court because you now say you are from the Kofi Tsuru family when you initially gave another family at the District Court.
> **A:** I am from the Kofi Tsuru family"

I note that Exhibit 1 is a decision of the High Court dated 28th October, 2016 presided over by His Lordship Justice Kwabena Asuman-Adu titled

ELIZABETH ABAA ASHONG VRS NARTEY KOBLAH. In recounting the facts of the case, the learned trial Judge stated as follows:

> "Brief facts of the case are that both the plaintiff and defendant are second cousins and **both belong to the Tetteh Kofi Family of Obeyeyie**." (emphasis mine)

In that same Exhibit 1, it is stated at page 3 that:

> "The defendant is a cousin of the plaintiff whilst the plaintiff is the biological daughter of Numo Tei Aryee."

It is not in dispute that Nii Tei Ayi was once the head of the Nii Kofi Tsuru family. Indeed, at paragraph 3 of DW1's Witness Statement which stands as his evidence in chief he stated as follows:

> "That there has been several Heads of Nii Kofi Tsuru Family notably among them was Nii Tei Ayi was installed as Head of Family in 1990 and died 2009."

This fact was never challenged. In the case of **ANKRAH v. ANKRAH [1966] GLR 60, SC;** the court held as follows:

> *"Where a witness was proved in a previous suit to have sworn the contrary of what he testified in a subsequent suit, two situations arose: one was where the witness was unable to give a satisfactory account for the inconsistent testimonies and the other, where he gave an explanation which the trial court accepted as reasonable. In the former case the effect of the contradiction was to destroy his credibility and to render the evidence he gave at the subsequent trial negligible; but the earlier testimony or statement used to contradict him was not admissible evidence of the truth of the facts stated therein and was not evidence upon which the court ought to act to make findings. In the latter case where the witness offered an explanation for his previous inconsistent statement, it would be for the judge trying the case to form his own opinion of the credibility and veracity of the witness and either accept or reject the evidence given before him. But there again the previous statement or testimony used to contradict the witness was not admissible evidence of the truth of the facts stated therein. The decision*

*of the judge as to credibility of the witness and the weight to be attached to his evidence was a question of fact and a court of appeal should not interfere with the same except upon well settled rules."*

I find from the evidence before me that though the Judgment contained in Exhibit 1 provides that the parties therein which includes Plaintiff herein belong to the Tetteh Kofi Family of Obeyeyie, it has not been shown that this conclusion flows from the sworn testimony of the Plaintiff herein in that case. Indeed, from the above authority, even if it were the case that there is evidence that Plaintiff's sworn testimony in the action in Exhibit 1 contained the fact that she was from the Tetteh Kofi family, and no satisfactory explanation was provided in this case, that would go to the credibility of the Plaintiff but would be incapable of proving the truth or otherwise of that fact. In the instant case, Plaintiff has maintained that she is a member of the Kofi Tsuru family. During cross examination of Plaintiff by Counsel for Defendants on 21st May, 2018, Plaintiff stated that the name of her father is Ashong Kofi and also stated that Nii Tei Aryee was the youngest of her father's siblings who died in 2009. I find from the evidence before me that Plaintiff has two brothers named Edward Kissei Ashong and David Kissei Ashong who are undisputed members of the Kofi Tsuru family; flowing from that and the evidence before me, I find that Plaintiff is a member of the Kofi Tsuru family.

I shall turn to issue 3 which is '*whether or not the Plaintiff became the owner of the land as a successor to Plaintiffs mother a member of the Kofi Tsuru family who originally owned the land*'.

Plaintiff testified that she is the customary successor of her mother. During cross examination by counsel for Plaintiff on 11th July, 2018, the following ensued:

"**Q:** Were they the people who made you successor to your mother or you imposed it upon yourself to be her successor?
**A:** My mother told me to succeed her; because I brought her to my home for 30 years and took care of her. She put everything in my care before she died."

In the case of **EDAH v. HUSSEY [1989-90] 1 GLR 359; CA** it was held as follows:

*"Under customary law no person had the right to appoint his successor before his death…"*

Therefore, on the evidence, Plaintiff could not claim to have been made successor to her mother at a time when her mother was still alive. In her evidence in chief before this court, Plaintiff testified that the land in dispute was in the possession of her mother and upon her death the said land became her property by descent as a customary successor to her mother. PW1, David Kissei Ashong also testified that the land in dispute was allocated to his mother Vida Mensah who used to farm on it and after her death the Plaintiff inherited it and used to farm on the land. Defendants on the other hand strongly refuted the claim that the land in dispute belonged to the mother of Plaintiff and stated that the said land belongs to the Kofi Tsuru family and was never in the possession of Plaintiff's mother. They claimed that the land was acquired by Defendants in 2009 from Nii Tei Ayi, the then head of the Kofi Tsuru family. In the case of **AMAH v. KAIFIO [1959] GLR 23** it was held as follows:

*"The plaintiff having pleaded ownership of the land, the defendant having denied that averment in her Statement of Defence and the plaintiff having joined issue with the defendant thereon, the onus of proof lay on the plaintiff, for it was he who would fail if no evidence were led after the close of the pleadings."*

Now, what evidence was led by Plaintiff to establish that her mother was owner in possession of the said land in dispute? Plaintiff relied on oral evidence of herself and her witness, PW1 who also happens to be her brother. She also relied on a site plan tendered as Exhibit B.

Sections 32 (1) and 32(6) of the **STAMP DUTY ACT, 2005 (ACT 689)** provide as follows:

*"32 Admissibility of insufficiently stamped or unstamped instrument*
*32 (1) Where an instrument chargeable with a duty is produced as evidence*
*(a) In a Court in a civil matter, or*
*(b) Before an arbitration or referee*
*the judge, arbitrator or referee shall take notice of an omission or insufficiency of the stamp on the instrument.*
*…*
*32(6) Except as expressly provided in this section, an instrument*

*(a) executed in Ghana*

*(b) executed outside Ghana but relating to property situate or to any matter or thing done or to be done in Ghana.*

*shall except in criminal proceedings, not be given in evidence or be available for any purpose unless it is stamped in accordance with the law in force at the time when it is first executed."*

It was held further in the case of **THOMPSON V. TOTAL GHANA [2011] 34 GMJ 16 SC** thus:

*'If inadmissible evidence has been received (whether with or without objection), it is the duty of the judge to reject it when giving judgment, and if he has not done so, it will be rejected on appeal, as it is the duty of courts to arrive at their decision upon legal evidence only.'*

(*See also* ***NARTEY v. MECHANICAL LLOYD ASSEMBLY PLANT LIMITED [1987-88] 2 GLR 314***)

Also, in the case of **LIZORI VS. BOYE SCHOOL OF DOMESTIC SCIENCE AND CATERING [2013-2014] SCGLR 889**, the Supreme Court held as follows:

*'The provision in Section 32 of Act 689 was so clear and unambiguous and required no interpretation. Either the document has been stamped and appropriate duty paid in accordance with the law in force at the time it was executed, or it should not be admitted in evidence. There was no discretion to admit it in the first place and order the party to pay the duty and penalty after judgment. Thus, the trial court would have been perfectly justified to reject the receipts without stamping'.*

Clearly then, the law places an obligation on a party who seeks to rely on an instrument relating to property situate in Ghana intended to be produced in Court as evidence to ensure that same is duly stamped and the appropriate duty paid. This is a mandatory requirement which cannot be derogated from.

Exhibit B falls short of the requirements of the law and same is hereby rejected. It is my considered view that any other Exhibits which fall short of the requirements of Section 32 of Act 689 ought to suffer a similar fate. The Court has critically examined the following documents and is satisfied that they have not been stamped in accordance with Act 689:

1. Exhibit 5: Receipt dated 4th May, 2017

2. Exhibit 5A: Receipt dated 6th March, 2017

The aforementioned Exhibits are inadmissible in evidence to prove the averments of the Plaintiffs or Defendants as the case may be; they are hereby rejected.

During cross-examination of Plaintiff she insisted that the land belonged to her mother who farmed on the land until they grew up. According to Plaintiff her mother told her that the site should be used for a school so she is trying to have that done.

In the case of **ZABRAMA v. SEGBEDZI [1991] 2 GLR 221** it was stated per curiam as follows:

> *"…The correct proposition is that, a person who makes an averment or assertion, which is denied by his opponent, has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden…"*

Besides repetition of her pleadings, the Plaintiff failed to adduce credible evidence before this court in proof of the claim of possession of her mother on the land in dispute. As the case of Plaintiff case hinges entirely on the possession of her mother on the said land in dispute, it required that she leads vital evidence in that regard and a failure to do so is fatal to her case.

During cross-examination of PW1 by Counsel for Defendant on 14th August, 2018 he stated as follows:

> "**Q:** The Obeyeyie lands, did it belong to your father?
> **A:** Yes, my lord
> **Q:** Your father's own land
> **A:** Yes, my lord
> …
> **Q:** The land of Obeyeyie is a family land and not the individual land of Kofi Ashong, your father.
> **A:** It is not true. The land belongs to our father."

PW1 also stated as follows:

"**Q:** Who is the owner of the land in dispute
**A:** It belongs to Nuumo Tei Aryee
**Q:** Who is Numo Tei Aryee
**A:** The customary successor of our father
**Q:** Is he alive
**A:** He is dead now, my lord
**Q:** Who succeeded Nuumo
**A:** Myself, my lord
**Q:** So by succession you are the owner of the land
**A:** Yes, my lord
**Q:** I am putting it to you that your testimony is in sharp contrast to that of your sister because she claims ownership of the land by succession of her mother.
**A:** I am speaking the truth"

PW1 continued to state as follows:

"**BY COURT:** So you are saying the land is for Nii Tei Aryee and yours, by succession and not for the plaintiff and your mother?
**A:** The land was gifted to our mother, Yoomo Aba
**Q:** Was it ever gifted to the chief for a school
**A:** Yes, the old lady said we should use it for a school."

PW1's evidence under cross examination was fraught with inconsistencies. In one breath he stated that the Obeyeyie lands belonged to his father and in another, he stated that the land in dispute belonged to Nuumo Tei Aryee and he succeeded him upon his death therefore the land belongs to him. Another story of PW1 was that the land was gifted to his mother which was then gifted to the chief for a school. In the case of **BOAFO v. GYETUA [1962] 1 GLR 4** it was held that:

*"At customary law a gift of land inter vivos is irrevocable once it is completed and the donee has been put in possession."*

Had it indeed been the case that the land was given as a gift to Plaintiff's mother, that gift would have been irrevocable by virtue of possession. Yet, the testimony of PW1 that the land was gifted to his mother is not supported by the evidence on record and is indeed at variance with the case of Plaintiff herself.

I consider that having established that the land in dispute forms part of Kofi Tsuru family lands, if it was indeed the case that it had even been proven that Plaintiff's mother was in possession of the land by virtue of farming, any interest therein would have been a life interest after which that portion of land would on her death, revert to the family as family property. See **BINEY v. BINEY AND OTHERS [1965] GLR 619**.

On the evidence, I find that the inconsistencies in the case of Plaintiff and her witness put together, render the case of the Plaintiff much less probable of belief on the balance of probabilities. I find that Plaintiff has failed to establish that the land in dispute belonged to her mother and subsequently became hers by succession.

I shall consider issues 4 and 5 together. Issue 4 is '*whether or not the Defendants acquired the land under litigation from the owners of the land, the Kofi Tsuru family of Obeyeyie* and Issue 5 is '*whether or not the land certificates of the Defendants should be cancelled due to improper root of title.*'

Defendants have maintained that they acquired the land in dispute sometime in 2009 from Nii Tei Ayi the then head of the Kofi Tsuru family and have since registered their interest in the land which was tendered before this court as Exhibit 2. Plaintiff alleged that the documents of Defendants were forgeries because those Defendants claimed executed the documents were dead at the time the documents were supposed to have been executed. Plaintiff added that Kofi Tsuru family never got their land as a gift from Nii Odartei III Chief of Nsakina but rather derived from a Judgment in 1959 tendered as Exhibit A. Accordingly, the root of title of Defendants is false.

2nd Defendant under cross examination indicated that he was not present when his documents were executed but it was signed by Nii Tei Aryee and handed to him by the secretary. He stated that he was introduced to Nii Tei Aryee. He also stated that the people of the family have been taking care of the land for him till date.

The Supreme Court stated in the case of **DON ACKAH VRS PERGAH TRANSPORT [2011] 31 GMJ 174** as follows:

> *'It is a basic principle of the law of evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. It is*

*trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more probable than its non-existence'.*

Defendants have before this court documentary evidence in proof of the fact that they acquired the land in dispute from the Kofi Tsuru family and have gone ahead to register same. I note that the indenture attached to the Land Certificate of Defendants bears the date 22nd April, 2009 with Nii Tei Ayi being the grantor. I note from the case put across by counsel for Plaintiff during cross-examination of the 2nd Defendant on 8th June, 2022 that it was suggested that Nii Tei Aryee passed on in June, 2009. Thus, it can be concluded that when the indenture of Defendants was signed in April, 2009, Nii Tei Aryee was indeed alive and not dead as alleged by Plaintiff. Having purported that the said documents obtained by Defendants were forgeries, the burden shifted unto Plaintiff to establish this assertion, which I find she failed to discharge. Section 119 of the **LAND ACT, 2020 ACT 1036** provides as follows:

*"(1) Subject to subsections (2), (3) and (4) and to section 118, the rights of a registered proprietor of a parcel of land whether acquired on first registration or subsequently or by an order of a Court are indefeasible and shall be held by the proprietor together with the rights and privileges attaching to the parcel of land free from all other interests and claims.*
*(2) The rights of a proprietor are subject to the interests or other encumbrances and conditions, shown in the land register.*
*(3) This section does not relieve a proprietor from a duty or an obligation to which the proprietor is otherwise subject as a trustee.*
*(4) The registration of a person as the proprietor of land or a holder of an interest in land does not confer on that person a right to minerals in the natural state in, under or upon, the land."*

Indeed, the testimony of Defendants aside the Land Certificates has been that the family has been taking care of the land in dispute for them till date and they paid development fees to the family. During cross examination of Plaintiff and PW1 by counsel for Defendants the following ensued:

**Plaintiff**

"**Q:** Do you know that the Kofi Tsuru family of Obeyeyie and Nsakina received monies from the defendants in respect of this land in dispute

**A:** For that I am not aware. My mother said the land should be used for a school and so I am trying to have that done."

**PW1**

"**Q:** Do you know that at Obeyeyie, any person who intends to develop the land has to pay fees to the Kofi Tsuru family

**A:** Yes my lord. They pay money.

**Q:** Before Nii Tsuru family obtains money from any developers they would have ascertained the ownership of the land

**A:** That is correct

**Q:** On the 4th March, 2017, the Nii Tsuru family of Obeyeyie collected GH₵3,500 from the 2nd Defendant as development fees

**A:** For that I do not know about

**Q:** On 6th March another GH₵2,500 was taken from 2nd Defendant as part payment of development fees

**A:** I don't know about that my Lord"

The above extracts clearly show that Plaintiff and PW1 are unaware of Defendants dealings with the family in respect of the land and thus cannot speak to same. I therefore find that on a balance of probabilities it has been established that Defendants purchased their land from the Kofi Tsuru family of Obeyeyie.

I shall now consider issue 5. Defendants testified that they acquired the land in dispute from Nii Tei Ayi then head of Kofi Tsuru family of Nsakina and Obeyeyie near Amasaman who trace their roots of title to a Deed of gift dated 12th day of October, 1993 between Nii Ordartei III, chief of Nsakina and Nii Tei Ayi which is registered as AR/6722/99. Plaintiff has testified that Kofi Tsuru family never got their land as a gift from Nii Odartei III Chief of Nsakina but rather derived from a Judgment in 1959 tendered as Exhibit A.

During cross-examination of PW1, he stated as follows:

"**Q:** The history is clear on the point that the entire Obeyeyie lands formed part of Nsakina lands.

**A:** Yes, we are descendants of Nsakina

**Q:** And that it was sometime in 1973 when official declaration was made by Nii Odartei II of Nsakina, gifting about 700 acres of land to the people of Obeyeyie
**A:** That is not true. Obeyeyie lands fell into the 'plan' of Nsakina and so the chief had to give us back our land and that is what he did.
**Q:** Every land that is conveyed at Obeyeyie bears a recital stating clearly that the Obeyeyie lands was gifted by Nii Odaretei III, the chief of Nsakina
**A:** That is not true my lord"

The recital on Exhibit 2 provides as follows:

"1. WHEREAS by a Deed of Declaration dated 15th day of August, 1973 and stamped as No. AC 43372/72 and registered as No. 16600/1973 and made NII ODARTEI III, Chief of Nsakina (herein described as "THE DECLARANT") the land hereditaments hereinafter described in the above recited indenture became vested in the declarant forever from all encumbrances and charges:

3. AND WHEREAS by a Deed of Gift dated 12th day of October, 1993 with Land Commission Secretariat No: AR 6722/99 and stamped as LVB 14028/2000 and made between NII ODARTEI III Chief of Nsakina, Accra of the one part and NII TEI AYI, the Lessor herein of the other part the land hereditaments hereinafter described where GRANTED to the said NII TEI AYI by way of Gift forever."

Though Plaintiff relies solely on the decision in Exhibit A as the root of title of Kofi Tsuru family lands, it is not disputed by her own witness, PW1 that some lands belonging to the family fell into that of Nsakina which was returned to them by the Chief of Nsakina. It is trite that documentary evidence should prevail over oral evidence. See **FOSUA AND ADU POKU V DUFIE (DECEASED) AND ADU-POKU MENSAH 2009 (SCGLR) 310**. In the instant case, the recitals in the indenture given to Defendants contains the fact of the conveyance of the land from the chief of Nsakina to Nii Tei Ayi and I do not find from the evidence on record that the said document has been impeached. In **BOAFO v. GYETUA [1962] 1 GLR 4** it was held that:

*"For where a plaintiff pleads a particular root of title but the evidence proves that title is vested in him but by another root, a trial court is not entitled to dismiss his claim."*

In the same vein, I find that there is no evidence before me or reason in law to cancel the Land Certificates of the Defendants having regard to the fact that the said land was owned by the Kofi Tsuru family which conveyed same to Defendants.

In an action for declaration of title to land, each party claiming to be an owner of the land must succeed on the strength of his own title. In this case the burden of proof lay on the Plaintiff to establish her claim as Defendants have no counterclaim before the court.
See - **RE ACCRA INDUSTRIAL ESTATE ACQUISITION; ANKRAH AND OTHERS v. BOTOKU AND OTHERS [1966] GLR 119; SC**

- **IN RE ADJANCOTE ACQUISITION; KLU v. AGYEMANG II [1982-83] GLR 852**

I find on the evidence before me that Plaintiff has failed to discharge the burden of proof imposed on her by law and in the circumstance her action fails in its entirety.

In his written address to this court, Counsel for Plaintiff has urged that "the contrasting evidence of DW2 regarding his lineage and the sworn affidavit raises a matter of perjury for the court to consider suo motu as it is clothed with enough facts and evidence." I note that Defendant had just one witness before this court in the person of George Asanai. I thus note that the reference to DW2 in Plaintiff's Address is in fact DW1.

Section 152 of the **CRIMINAL AND OTHER OFFENCES (PROCEDURE) ACT, 1960 ACT 30** stipulates as follows:

*"152. Perjury*
*(1) Where it appears to it that a person is guilty of perjury in a proceeding before it, the Court may*
*(a) commit that person for trial on indictment for perjury and bind any other person by recognisance to give evidence at the trial; or*

*(b) commit that person to prison for a term not exceeding six months with or without hard labour, or impose a fine not exceeding one hundred and fifty penalty units, or impose both penalties on that person in each case as for a contempt of court."*

In the case of **ADUSEI II v. THE REPUBLIC [1975] 2 GLR 225** it was held as follows:

*"The powers of the court under section 152 (1) (b) of Act 30 to commit summarily a person to prison for perjury without formal trial were only intended to be employed in exceptional circumstances and the witness must be called upon to explain why he should not be so punished. The essential conditions for the exercise of the court's powers under this section were: (a) that the witness took an oath; (b) that he made or verified a statement upon the oath; and (c) that he made or verified the statement knowing it to be false in a material particular or had no reason to believe it to be true. The witness in this case never lied in any material particular and the fact that the trial judge disbelieved his evidence was no reason for committing him summarily into custody."*

The powers given a court under section 152(1)(b) of Act 30, to commit summarily a person to prison for perjury without formal trial are only intended to be employed in exceptional cases, that is, where a statement is glaringly false and where it is proved quite clearly by other evidence on the record that the witness swearing to it knows that his testimony is false, or that the witness swore to it recklessly without any reason to believe in its truth. *See.* ***KWAME v. THE STATE [1964] GLR 612*****.** It does not appear to me from the evidence that exceptional circumstances arise which call for the court to exercise its powers under Section 152 of Act 30. I shall thus refrain from citing DW1 for perjury as entreated.

In view of how long the instant case has been pending before this court, I shall award costs of Fifteen Thousand Ghana Cedis (GH₵15,000.00) in favour of Defendants against the Plaintiff.

**H/H ENID MARFUL-SAU**
**CIRCUIT JUDGE**
**AMASAMAN**