IN THE HIGH COURT OF JUSTICE, WESTERN REGION, HELD AT SEKONDI, ON THE 18TH DAY OF DECEMBER, 2023, BEFORE HER LADYSHIP AFIA N. ADU-AMANKWA (MRS.) J.

SUIT NO. E1/80/20

1. NANA ETIASE II	**1ST PLAINTIFF**
2. NANA NERNE II	**2ND PLAINTIFF**

VRS.

1. JOHN PATRICK AMOAH	**1ST DEFENDANT**
2. VICTORIA KWAJAH	**2ND DEFENDANT**

JUDGMENT

By their writ of summons filed on 17th June 2020, the plaintiff herein claimed against the defendants and one other for the following reliefs:

> "a) Declaration of title to the property identified as plot Nos. 139, 140, 141 and 142 lying, situate and being at Kikam in the Ellembelle District of the Western Region of the Republic of Ghana measuring approximately 0.64 of an acre more or less and bounded on all sides by Kikam Stool lands.
>
> b) An order for the revocation or cancellation of the entry of names of the 1st and 2nd Defendants in the records of the 3rd Defendant in respect of the property in dispute.

c) An order of this Honourable Court directed at the 3rd Defendant, the Lands Commission, to amend its records and register the interest of the 2nd Plaintiff and her siblings as the registered owners of the property.

d) Recovery of possession of the portion(s) of land trespassed upon by the 1st and 2nd Defendants.

e) Damages for trespass.

f) Perpetual injunction restraining the 1st and 2nd Defendants, their assigns, agents, workmen, representatives or persons deriving interest under them from claiming any interest in the property.

g) Costs."

The crux of the plaintiffs' claim is that the disputed land forms part of the Kikam Stool lands. In 1979, the late chief of Kikam, Nana Kerma Bertu III, granted their mother, Madam Etti Agoba, who is presently deceased, the disputed land. According to the plaintiffs, their late mother had been in control and possession of the land and exercised various acts of control and possession without let, hindrance, protest or challenge from the defendants or anyone from 1979 until her demise in November 2019. In her lifetime, the late Madam Etti Agoba and her children cultivated a portion of the land with food crops and oil palm and granted a portion to someone to cultivate. The late Madam Etti Agoba and her children also had stones, sand and cement blocks on the land. The 2nd plaintiff further averred that her brother had a welding workshop on a portion of the land until the 2nd defendant brought a bulldozer to destroy their properties on the land. Due to modern development and the growing scarcity of land, the late Madam Agoba decided to finalise the customary grant made to her by the late Nana Kerma Bertu III. Consequently, she submitted an indenture executed by the current occupant of the Kikam

stool to the Lands Commission in Sekondi for processing and registration. Lands Commission informed her that her plots were the subject of a lease dated 1st July 1991 between the late Ebu. John Blackie Ocran and the 1st defendant for a term of 99 years. The plaintiffs contend that the acts of John B. Ocran and the defendants constitute trespass as the late Ocran had no authority or consent from the Kikam stool nor the 2nd plaintiff and her siblings to dispose of the land in their possession. They further contend that the lease dated 1st July 1991 was improperly registered by the 3rd defendant, for which it ought to be revoked, cancelled or deleted in favour of the 2nd plaintiff and her siblings. The plaintiffs further contend that the defendants had no legal or equitable interest in the property to be registered by the 3rd defendant in the light of the legal interest conveyed by Nana Kerma Bertu in 1979 to the 2nd plaintiff's mother.

The plaintiffs failed to serve the 1st defendant with the writ of summons and statement of claim. Upon being served with the writ of summons, the 3rd defendant applied to be disjoined from the suit, which application was granted by the court. Thus, the only defendant who contested the plaintiffs' claim was the 2nd defendant. The case of the 2nd defendant is that the disputed land is family and not stool land. According to her, in 2018, the 1st defendant approached her to offer the disputed land for sale. Being satisfied that the land belonged to the 1st defendant, she purchased the unexpired term of the lease from him. She registered her interest with the 3rd defendant and took effective possession of the land. She started to develop the land. However, the plaintiffs and their agents went to the disputed land and destroyed the development made on the land, for which she reported to the police. Subsequently, the 1st plaintiff expressed his intention to settle the matter and, in the process, requested for the indenture registered by the 1st defendant, which was provided to him. She withdrew from the settlement and asked her lawyers to write to the 1st plaintiff to withdraw from the intended settlement when she heard that

the 1st plaintiff had informed the 2nd plaintiff of agreeing with the 2nd defendant to compensate them. She counterclaimed for the following reliefs:

> "(a) A declaration of title to Plot Nos. 139, 140, 141 and 142 measuring 0.64/0.73 acres situate at Esiama Layout Block "C" and sufficiently described in both land documents with Deed registration number 16668 under Serial No. 1133/2020.
>
> (b) Recovery of possession and perpetual injunction restraining the Plaintiffs and their assigns, privies and anybody claiming authority from the Plaintiffs from having anything to do with the disputed land.
>
> (c) General Damages for trespass
>
> (d) Costs

After the close of pleadings, the following issues were adopted for resolution.

i. Whether or not the disputed lands originally formed part of the Kwame Kyi Ahwea Family of Esiama or the Kikam stool lands.
ii. Whether or not the 2nd Defendant had notice of any encumbrance on the disputed lands before purchasing same from the 1st defendant.
iii. Whether or not the 2nd defendant acquired a valid title of the disputed lands from the 1st defendant.
iv. Whether or not the 2nd defendant is in possession of the disputed lands.
v. Whether or not the plaintiffs are entitled to their claims.

BURDEN OF PROOF

It is the plaintiffs' case that the disputed land is stool land, which was granted to the mother of the 2nd plaintiff by the late chief of Kikam in 1979. The 2nd defendant contends otherwise, claiming it is family land assigned to her by the 1st defendant. The Evidence

Act, 1975, NRCD 323, prescribes the procedure to be applied in every proceeding. It provides a useful guide on the burden required to be discharged by a party to a dispute at a trial. Section 11(1) of NRCD 323 obliges a party to introduce sufficient evidence to avoid a ruling against him on an issue. In seeking a declaration of title to the disputed land, the plaintiffs have the initial burden to produce such evidence as would satisfy the court that the land was granted to Madam Etti Agoba in 1979. Kpegah JSC pithily captures the position of the law on proof in **Zabrama vrs. Segbedzi [1991] 2 GLR 221**, wherein he restated the well-known principle in Majolarbi vrs. Larbi 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."*

This burden is not discharged by merely entering the witness box and repeating the claims or averments in the pleadings. The burden is discharged by leading admissible and credible evidence from which the facts being asserted can be properly and safely inferred or concluded. The 2nd defendant has also counterclaimed for a declaration of title to the disputed property and equally bears the same burden as the plaintiffs. Once made, a counterclaim proceeds as an independent action even if the original action were concluded, stayed, discontinued or dismissed. The rules provide that in proceedings arising out of a counterclaim, the counterclaim is deemed as a writ and statement of claim. The party making the counterclaim and the party against whom it is made are also deemed as the plaintiff and defendant, respectively. Therefore, the parties bear the burden of proving their respective claims on a balance of probabilities.

Before discussing the merits of the case, it would be appropriate to summarise the parties' evidence at this juncture.

SUMMARY OF EVIDENCE

The 2nd plaintiff, Nana Nerne II, the Obaahemaa of Assuawah, testified for herself and on behalf of the 1st plaintiff. She testified that she and her siblings were the current usufruct owners of plot numbers 139, 140, 141 and 142, the subject matter in dispute. According to her, plots Nos. 139,140,141 and 142 formed part of the Kikam Stool Lands. The four plots were customarily granted to her late mother, Madam Etti Agoba of Kikam, by Nana Kerma Bertu III (deceased), the then chief of Kikam, around 1979. Her late mother had been in control and possession of the subject matter in dispute from 1979 until her demise in November 2019 and exercised various acts of control and possession without let, hindrance, protest or any challenge from the defendants or anyone else. In her lifetime, the late Madam Etti Agoba and her children cultivated a portion of the land, planted food crops and oil palm on it, and granted a portion to someone else to cultivate. Her late mother and her children also had sand, stones and cement blocks on the land. Her brother had had his welding workshop on a portion of the land for many years until the 2nd defendant brought a bulldozer onto the land to destroy their properties. Due to modern development and the growing scarcity of land in Kikam, the late Madam Etti Agoba decided to formalise the customary grant made to her by the late Nana Kerma Bertu III in September 2018. Consequently, she submitted an indenture executed by the current occupant of the Kikam Stool, the 1st plaintiff, with the consent and concurrence of the elders of the stool to the Lands Commission in Sekondi for processing and registration. In response by the Lands Commission to the letter for the said indenture to be processed, the Lands Commission informed the late Madam Etti Agoba and her children that the plots were the subject matter of a lease dated 1st July 1991 between the late ebusuapanyin John Blackie Ocran and John Patrick Amoah for a term of 99 years. A copy of the

indenture shown them indicated that the said stool land, conveyed by the said deceased John Blackie Ocran, had on the 18th day of July 1991 been registered at the Lands Commission, Sekondi, as Deed No. WR399/91 without the consent of the Stool. After the demise of the late Madam Etti Agoba, her children decided to use the sand, stones and cement blocks, which had been on the land for years, to put up a building on the land. Subsequently, she and her siblings caused foundation trenches to be dug on a portion of the land and laid the foundation for the building. However, to their utmost shock, on the 3rd day of May 2020, the 2nd defendant brought a bulldozer onto the land and demolished the foundation they had put up together with the iron rods and blocks. After unlawfully demolishing their properties on the land, the 2nd defendant brought sand and cement blocks onto the land. The 2nd plaintiff contended that the acts of John Blackie Ocran (deceased) and the 1st defendant together with the 2nd defendant constituted trespass as the late ebusuapanyin John Blackie Ocran had no authority or consent from her and her siblings or the Kikam Stool to dispose of the stool land in their possession.

She further contended that the late John Blackie Ocran and the 1st defendant both acted fraudulently by selling and buying, respectively, pieces or parcels of their land when they both knew that John Blackie Ocran had no authority to sell those parcels or pieces of land to the 1st defendant.

PW1, Yarleh Ndede testified that she was the oldest woman in the Kikam Kwame Kyi Ntwea Royal Family. According to her, the land in dispute was granted to the 2nd plaintiff's mother by Nana Kerma Bertu III (deceased) long ago. She was also granted a portion of land by the late Nana Kerma Bertu III at that same time. She had built her house on it and had been in control and possession of that land till now. Even though she could not recall the exact number of years the 2nd plaintiff's mother had been in possession of the land, she and her children had exercised various acts of ownership over it, including cultivating the land with various crops and depositing sand and stones on the

land. Recently, she heard that someone had sold the land, and a dispute had arisen over the ownership of the said land. According to her, only the chief could grant or alienate any portion of the stool land, and no individual could do that without the chief's knowledge or consent.

PW2, Rebecca Eshun, a farmer, testified that the disputed land belonged to the 2nd plaintiff's mother. According to her, the 2nd plaintiff's mother granted her a portion of the land in dispute more than fifteen years ago to farm on. When she went onto the portion granted to her, she saw sand, stones, and palm trees on the land. The 2nd plaintiff's brother had a container shop on a portion of the land where he carried out aluminium and glass-cutting activities. She planted cassava, plantain, maize and sometimes groundnuts. Whilst on the land, no one ever asked or challenged her about her authority to enter and farm on it. She recounted that one day, she went to the farm and, to her shock, saw that someone had destroyed her crops with a bulldozer. Her sister Awareye, whose land shared boundary with her farm, told her that a man carried out the demolishing exercise and pointed out the man to her. When she confronted the man about the unlawful destruction and demanded compensation for the destruction of her crops, he gave her GHC400.00 as compensation. The man told her that the land belonged to him, and he needed his land, necessitating the destruction of the crops.

The 3rd witness for the plaintiff, Paul Annan, an aluminium fabricator, testified that the disputed land belonged to his late mother, Madam Etti Egoba. The disputed land had been under his family's control and possession for as long as he could remember until the defendants' trespass. His mother granted him the portion of land on which he operated his aluminium fabrication workshop. He had occupied the land from 2012 until July 2020 when a man popularly called "Red" came to his workshop to tell him that they had bought the land he occupied and gave him a week to remove his container workshop and every other thing of his. After about one month, he was in the workshop when Red and another

man called Nana One came onto the land and started destroying crops and a foundation they had on the land. To avoid destroying his workshop, he sought assistance to help him move it to another portion of land belonging to his grandmother, Madam Yarleh Ndede, where it had been since then. The next day, Red deposited sand and stones on the land and laid a foundation for shops. They subsequently started building a fence wall around the property.

The 2nd defendant, Victoria Kwajah, a businesswoman, testified that in 2018, the 1st defendant, through his Lawful Attorney, approached her to offer the disputed land for sale. Before she acquired the 0.64 acres of the disputed land, she did her due diligence by investigating the title of the disputed land and satisfied herself that she was buying the disputed property from the rightful owner. She further visited the disputed land and satisfied herself that it was unencumbered. Her investigation revealed that the 1st defendant was the bona fide owner of the disputed property, having acquired same from his grantors, Kwame Kyi Ahwea Family of Esiama, in 1991 and registered same with the Lands Commission Secretariat, Sekondi, as Deed No. 1654/1993, dated 18/07/1991.

Having ascertained the 1st defendant's grantors, she further enquired from the 1st defendant's grantors concerning ownership of the disputed land, and they confirmed that they granted the disputed land to the 1st defendant. Being convinced that the 1st defendant possessed good title to the disputed property, she entered into a contract of sale with the 1st defendant's lawful attorney to purchase the unexpired term of the lease from the 1st defendant for valuable consideration, following which the 1st defendant transferred his interest in the disputed land to her. The transaction between her and the 1st defendant was reduced into writing in the form of an assignment, and the assignment has since been registered with the Lands Commission Secretariat, Sekondi, as LVD WR85 1489/462020 with Deed No. 16668. She gave the 1st defendant's document to the Municipal Building Inspector of Nzema East Municipal Assembly, who also investigated the title deeds of

the 1st defendant and also confirmed its authenticity. When she visited the disputed land, there was no visible human activity as the place was weedy, so she hired an excavator to clear the land for her intended development. Around the same period, the 1st plaintiff demanded to inspect the 1st defendant's document, for which she detailed the Municipal Building Inspector and one American man to send him a copy of the document. Upon perusal, he confirmed that his family granted the disputed land to the 1st defendant. She took effective possession of the disputed land and started developing it until the 2nd plaintiff and her agents went onto the disputed land and caused destruction to the development made on it, for which she reported it to the police. Later, she hired some people to monitor any new development on the land. She was briefed that the 2nd plaintiff and her agents had clandestinely deposited sand and stones on portions of the disputed land and were busily developing the land. She reported the matter to the Esiama Police, and upon their arrival on the disputed land, the 2nd plaintiff and her agents took to their heels.

Later, she received a message from the 1st plaintiff, who expressed his intention to settle the matter. However, it came to her attention that the 1st plaintiff had informed the 2nd plaintiff that he would agree with her to compensate them, and this made her resist any form of settlement by the 1st plaintiff. She caused her lawyers to write to the 1st plaintiff to withdraw from the intended settlement. The 2nd defendant denied the presence of the welding shop prior to her purchase of the disputed land, contending that this was a recent act by the plaintiffs to throw dust into the eyes of the court as she would not have purchased the disputed land had she seen any welding shop on it. According to her, the 1st defendant, who was resident outside the country, came to Ghana and, upon his inspection of the land, caused the owner to remove the welding shop. She contended that the disputed land had never been stool property as the predecessor of the 1st plaintiff

before his demise was privy to the transaction between the 1st defendant and his grantors and never questioned same until his death.

DW1, John Amihyia Ocran, the chief of Assuawuah and a principal member of the Kwame Kyi Ahwea Family of Esiama, testified that the Ahwea family, which he belonged to could be found at Esiama, Kikam, Assuawuah, Asaasetre and Tandan, all within the Ellembelle and Nzema East Municipal Assembly. He confirmed the fact of the late John Blackie Ocran being the head of the Kwame Kyi Ahwea family of Esiama at the time of the transaction between the 1st defendant and his family. He further testified that some time ago, the late chief of Kikam, Nana Kerma Bertu III, together with one Famiye Fule, a principal member of the family, took care of the family lands at Esiama. According to him, in 1989, one Agya Moro initiated an action against the late chief at the Sekondi High Court. During the subsistence of that action, the late chief always came to court with ebu. John B. Ocran, who was the head of family. At a point in time, during the pendency of the suit, it got to a point where the late chief needed money to fuel the action, so he proposed to Ebu. Ocran for the sale of some of the family lands to proceed with the court action. The 1st defendant approached Ebu. Ocran for land to purchase and, together with the consent and concurrence of the principal members of the family, including himself, granted the disputed land to him. An indenture was prepared to evidence the grant to the 1st defendant. He, together with Famiye, Fule and the head of the family, signed the indenture. The indenture was registered at the Lands Commission Secretariat with Deeds Registry Number 1654/1993 dated 1st July 1991. Subsequently, it came to his attention that the 1st defendant had assigned his interest in the disputed land to the 2nd defendant.

MERITS

One of the hotly contested issues has to do with the nature of the disputed land. The plaintiff claims that the disputed land forms part of the Kikam stool land and, therefore,

stool land, but the 2nd defendant contends that it is family land. It is easy to understand why this is a contentious subject between the parties. For the resolution of this question would significantly impact the outcome of the case. The 2nd plaintiff testified that the disputed land was customarily granted to her late mother by the late chief of Kikam, Nana Kerma Bertu III. On the other hand, it is the 2nd defendant's case that by an assignment dated 24th April 2020, the 1st defendant conveyed the disputed land to her, having acquired same from the Kwame Kyi Ahwea family of Esiama. As the plaintiff and the 2nd defendant seek a declaration of title to the disputed land and assert that it is stool and family land, respectively, they both bear the burden to prove same.

To start with, the family's grant of the disputed land to the 1st defendant is evidenced by the lease agreement tendered in evidence as exhibit "1". The 2nd defendant's acquisition of the disputed land from her grantor, the 1st defendant, is also evidenced by the assignment tendered in evidence as exhibit "3". The Lands Commission has registered both documents. It would be noted that quite apart from PW1, who claimed that she was also granted a portion of the land by the late Nana Kerma Bertu III around the same period as the grant to the 2nd plaintiff's mother, there is no other proof of the customary grant but for the testimony of the 2nd plaintiff that the land was customarily granted to her mother in 1979. Certainly, she could not have witnessed the event as she was only seven years old at the time, having been born in 1972. The 1st plaintiff, as the occupant of the Kikam stool, did not corroborate the 2nd plaintiff's testimony on the stool's grant of the land to her mother. In view of the death of the chief, who is alleged to have granted a portion of the stool land to the 2nd plaintiff's mother, it is imperative that such claims against the dead are weighed carefully. For the rule is that evidence against a deceased person must be scrutinised with the utmost suspicion whose proof by such evidence must be strict and utterly convincing. See **Moses vrs. Anane [1989-90] 2 GLR 694.**

Having reviewed the evidence led by the parties, I am more inclined to accept the defendants' assertion that the land is family and not stool land. In the first place, unlike the plaintiffs' oral testimony, the defendants' proof of the family's alienation of the disputed land is supported by documentary evidence in the form of exhibits "1" and "3." This is not to say that the plaintiffs were required to provide documentary evidence in support of their claim, for customary law knows no book. As held in the case of **Adisa Boya vrs. Zenabu Mohammed & Mujeeb [2018] DLSC4225:**

> *"Writing is not sine qua non to a customary grant in land transactions. Thus, a conveyance (indenture) only adds to a customary grant, and its absence does not render a prior grant made under customary law invalid.*

However, the plaintiffs' oral evidence was conflicting. As already indicated, PW1 is the only person who witnessed the stool's grant of the land to the 2nd plaintiff's mother. The 2nd plaintiff could not have witnessed it, given that she was a child then. She did not testify about witnessing the aforementioned transaction. Neither has the present occupant of the stool said anything about the grant. However, PW1 is not a credible witness since she alternates between the contested land being stool land and family land. While she says that the late chief conveyed the land to the 2nd plaintiff's mother, she also claims that the land belonged to her grandmother, who was buried on the property. Under cross-examination from the 2nd defendant, she stated thus:

> *"Q: In the course of sharing the land, who became the owner of the disputed land.*
>
> *A: Because the land belonged to our grandmother, it became ours because I was the elder of person then. The chief told me that I should ensure that the land we share should be from our direct ancestry. The land that we shared was my grandmothers, and I shared it with one of my sisters. There were four elderly parents there. And we shared it amongst the children of these elderly parents".*

By this line of evidence, the disputed land was family land, which she shared amongst the children of the elderly parents. This conflicts with her earlier testimony that the disputed land is stool land. The defendants' documentary evidence contradicts the plaintiffs' oral evidence regarding the disputed land. The rule has been to lean favourably towards documentary evidence as against oral evidence, which is in existence on the same transaction, especially when the documentary evidence is authentic while the oral evidence is conflicting. See **Hayfron vrs. Egyir [1984-86] 1 GLR 682**.

In addition, the plaintiffs and their witnesses, in one way or the other, confirmed that the disputed land is family land. The 2nd plaintiff, PW1 and PW2, have stated the disputed land to be family land. The 2nd plaintiff, whilst contending that the land formed part of Kikam lands, also stated that the disputed land was family land. Under cross-examination from counsel for the 2nd defendant, this is what she stated:

> *"Q: In respect of the disputed land, whom did John Blackie Ocran grant the land to.*
>
> *A: He sold the land to John Patrick Amoah…We told him to go for his money since it was family land".*

Under cross-examination, PW3 also indicated that the land was family land. The cross-examination went as follows:

> *"Q: It is your case that the disputed land belonged to your mother. How did she become the owner of the land.*
>
> *A: I know it is a family land but I don't know the history regarding it".*

In his evidence, DW1 testified that in times past, the late Nana Kerma Bertu III took care of the family lands at Esiama with one Famiye Fule, a principal member of the family. Through his instrumentation, he proposed to the head of the family to sell the disputed lands, which were eventually sold to the 1st defendant.

In essence, the plaintiffs and their witnesses corroborate the claim of the 2nd defendant that the disputed land is family land. It is a principle of law that where the evidence of one party on an issue was corroborated by a witness of his opponent, whilst that of his opponent on the same issue stood uncorroborated even by his witness, a court ought not to accept the uncorroborated version in preference to the corroborated one unless for some reason the court found the corroborated version incredible or impossible. See **Banahene vrs. Adinkra and others [1976] 1 GLR 346.**

Quite apart from the bare assertion of the plaintiffs and their witnesses that the disputed land was stool land, there was no corroborative evidence showing that the disputed land was stool land forming part of Kikam lands. The court can hardly place any reliance on the oral evidence of the witnesses who have contradicted themselves. The plaintiffs' contention through their counsel that the late chief was in charge of Kikam Ndwea Stool lands is not borne out by the evidence on record. Exhibits "1" and "3" show that the disputed land is family land. DW1, a principal member of the family and signatory to exhibit "1", also confirmed that the head of the family at the time, with the consent and concurrence of the principal members of the family, conveyed the land to the 1st defendant. The 2nd defendant further testified that the 1st plaintiff demanded to see the 1st defendant's title documents to the land, which she gave to him. He also confirmed that his family had granted the disputed land to the 1st defendant. He did not contest the fact that the family could not alienate the land, thereby confirming the defendants' assertion that it is family land.

For argument's sake, granted that the disputed land is stool land, the evidence only discloses that the chief granted it to the 2nd plaintiff's mother. There is no showing that he did so with the consent and concurrence of the elders of the stool, which is required of every grant by the stool. As held in the case of **Akunsah vrs. Botchway & Jei River Farm Ltd [2011] 1 SCGLR 288**,

"…in the case of a grant of stool land by the occupant of the stool, the chief or the head of family in case of family land which is communally owned, such grant is only so made subject to the approval and consent of the elders of the stool or the principal members of the family".

Clearly, a grant by the occupant of the stool to anybody is rendered void by the lack of consent of the principal elders of the stool.

I, therefore, hold that the disputed land is family land. It is trite that it is the head of the family acting with the consent of the principal members of the family who can alienate family land. Exhibit "1" shows that Ebu Ocran, the head of the family, acting in concert with the principal members of the family, including DW1, conveyed the land to the 1st defendant. The 1st defendant obtained a good title from the family. That being the case, the late chief could not have made a grant of the land to the mother of the 2nd plaintiff. He passed no title to the 2nd plaintiff's mother.

The plaintiffs contend that the plaintiff's mother had been in possession of the disputed land since 1979 when the chief granted it to her. She and her children had cultivated the land and even granted portions of the land to others to farm and operate a welding shop on it. PW2 testified that she had been on the land for the past fifteen (15) years cultivating cassava, plantain, maize and groundnuts, which were recently destroyed by the 2nd defendant. PW3 also stated that he had operated his welding shop from the land since 2012. The 2nd defendant denies these assertions, claiming that there was no visible human activity when she went onto the land. She found the land weedy and hired an excavator to clear it for her intended development. However, the evidence suggests that PW2 and PW3 were on the disputed land. The 2nd defendant, in her evidence, testified that PW2 had crops on the land that one American man had destroyed. She further indicated that the welding shop was not on the disputed land but in front of the disputed land. I find

this hard to believe because if it was in front and not on the disputed land, why was she so concerned about it enough to warn him to remove it to develop the land? The evidence shows that the 2nd defendant's grantor acquired the disputed land in 1991. Thus, when PW2 and PW3 occupied the disputed land after more than ten years of its acquisition, it belonged to the 1st defendant. The fact that the 2nd plaintiff's mother may have erroneously possessed the land since 1979 is of no consequence. Possession, no matter how long, cannot ripen into ownership. See **Osei(substituted by) Gilard vrs. Koran [2013-2014] 1 SCGLR 221**. Thus, even though PW2 and PW3 may have been in possession of the land at the behest of the 2nd plaintiff's mother, that possession could certainly not ripen into ownership in favour of the 2nd plaintiff's mother.

The question to ask is what acts of possession were made by the 1st defendant following his acquisition of the land in 1991. As was earlier indicated, the plaintiffs failed to serve the writ on the 1st defendant. As her grantor, the 2nd defendant also failed to call him a witness. However, it is evident from the records that the 1st defendant is not a resident of Ghana. Regarding the contract of sale, the 1st defendant acted through his attorney, Ophelia Kangah, whom the 2nd defendant identified as his daughter. According to the 2nd defendant, the 1st defendant came to Ghana to execute the assignment agreement in January 2020. Even though abroad, the evidence of the plaintiffs and their witnesses suggest that the 1st defendant had an eye on his property and, whenever he was in the country, came unto the land. This is captured by the cross-examination of the 2nd plaintiff by counsel for the 2nd defendant as follows:

> *"Q: In respect of the disputed land, whom did John Blackie Ocran grant the land to?*
>
> *A: He sold the land to John Patrick Amoah. Whenever John Patrick Amoah came to the land, the family resisted him. This happened in the 1990s. We were working on the land when John Patrick Amoah came to the land to deposit sand. It was then that we told him*

that the land had been shared among the families and he had no right to be on the land. John Patrick Amoah then said John Blackie Ocran sold the land to him. We told him to go for his money since it was family land.

Q: I put it to you that your answer that John Patrick Amoah was resisted is not correct because he is always resident outside of this country.

A: Not true. Last two years, I had three bedrooms on the disputed plot. It was the 1st defendant who led the demolition of my three bedrooms on the disputed plot. It was the 1st defendant who led the demolition of my three bedrooms building with the excavator. My palm trees and wall I had constructed on the site as well as plantain and cassava trees, cement, sand and stones deposited were all destroyed by him through the excavator.

Q: Your evidence in paragraph 12 of your witness statement that your mother has been in uninterrupted possession of the land in dispute is not correct.

A: it is true. The only person who came unto the land was John Patrick Amoah and we drove him away and he never returned".

PW2 also confirmed the fact that it was the 1st defendant who destroyed her crops and compensated her with GHc400.00 for the destruction. Clearly, anytime the 1st defendant returned from abroad, he would destroy whatever development he found on his land. Over time, he destroyed crops, building structures and containers that he found on the land. These acts were clearly acts of possession.

FRAUD

The plaintiffs contend that the late John Blackie Ocran and the 1st defendant *"acted fraudulently by selling and buying respectively pieces or parcels of our land when they both knew that John Blackie Ocran had no authority to sell those parcels or pieces of land to the 1st defendant".*

In accordance with the requirements of Order 11 Rule 12(1) of CI 47, the plaintiffs particularised the fraud in paragraph 23 of their statement of claim as follows:

> *"Particulars of Fraud*
>
> *Trespassing onto Plaintiffs' land and selling pieces or parcels of same to the 1st Defendant when both Ebusuapanyin John Blackie Ocran (deceased) and the 1st Defendant knew or ought to have known that Ebusuapanyin John Blackie Ocran had no right whatsoever do so".*

The question to determine is whether the evidence on these set of particulars constitutes fraud. In the case of **Derry vrs. Peak (1889) 14 App. Cas 337 at 374**, the court per Lord Hershell defined fraud as:

> *"Fraud is proved when it is shown that a false representation has been made: (1) knowingly, (2) without belief in its truth or (3) recklessly, careless whether it be true or false. To prevent a false statement being fraudulent, there must I think, always to be, an honest belief in truth and this probably covers the whole ground, for one who knowingly alleges that which is false has obviously no such honest belief".*

As fraud is criminal in nature, the standard of proof required is proof beyond a reasonable doubt. As was held in the case of **Nana Asumadu II (deceased) and Nana Dankyi Quarm IV (deceased) vrs. Agya Ameyaw [2019] DLSC6295**

> *"In law, fraud is a deliberate deception to secure unfair or unlawful gain, or to deprive a victim of a legal right. It is both a civil wrong and a criminal wrong. Fraud, be it civil or criminal, has one connotation. It connotes the intentional misrepresentation or concealment of an important fact upon which the victim is meant to rely, and in fact, does rely to the harm of the victim. It is therefore criminal in nature even where it is clothed in civil garbs".*

The rule in section 13(1) of the Evidence Act, 1975 (NRCD 323), emphasises that where in a civil case, crime is pleaded or alleged, the standard of proof changes from the civil one of the balance of probabilities to the criminal one of proof beyond a reasonable doubt.

The evidence so far shows that the disputed land is family land. The late ebusuapanyin John Ocran disposed of the land in his capacity as the head of the family. The plaintiffs failed to lead any evidence to the contrary that the late John Ocran did not have the capacity to convey the disputed land to the 1st defendant. As a matter of fact, the plaintiffs have failed to prove any evidence of fraud against the 1st defendant and ebu. John Ocran.

In the case of **Veneer (GH) Ltd vrs. Amuah Gyebu XV [2011] SCGLR 466**, the Supreme Court held that:

> *In land litigation, even where living witnesses, directly involved in the transaction, had been produced in court as witnesses, the law would require the person asserting title and on who bore the burden of persuasion, as the defendant company in the instant case, to prove the root of title, mode of acquisition and various acts of possession exercised over the disputed land. It was only where the party had succeeded in establishing those facts on the balance of probabilities that the party would be entitled to the claim.*

The 2nd defendant traces her root of title to the Kwame Kyi Ahwea family of Esiama, acting per its head, the late John Blackie Ocran, who granted a 99-year lease to her grantor, John Amoah, evidenced by exhibit "1", who also assigned the remainder of his interest to the land to her as evidenced by exhibit "3". The Lands Commission has registered both documents. The proposed indenture (exhibit "B"), which the plaintiffs attempted to register had no site plan of the land sought to be registered and, therefore, have not been able to identify the land which they claim was granted to the 2nd plaintiff's mother by the late chief. Evidence on record shows that the 1st plaintiff was aware of the grant to the 1st defendant and initially attempted to settle the matter between the 2nd

plaintiff and the 2nd defendant. However, the 2nd defendant withdrew from the settlement by her letter to the 1st plaintiff, as evidenced by exhibit "4", when she had information that the settlement was intended for her to pay off the 2nd plaintiff and her family. One can question the need for a settlement when it is your claim that the land belongs to you.

The 2nd defendant was in possession of the land when the plaintiffs issued the writ. As a matter of fact, the instant action was precipitated by her activities on the disputed land. In the course of the proceedings, the court restrained the 2nd defendant to prevent her from developing the land pending the determination of the dispute. However, it is evident from the record that prior to the conveyance of the land to her, the 1st defendant exercised acts of possession by destroying any development he found on the land whenever he came to Ghana.

Having considered the case in its entirety, I hold that the disputed plot is family and not stool land and belongs to the 2nd defendant. I therefore declare title to the parcels of land known as plots Nos. 139, 140, 141, and 142 measuring 0.64/0.73 acres situate at Esiama Layout Block "C" and sufficiently described in both land documents with deed registration number 16668 under serial No. 1133/2020 and tendered in evidence as exhibit "3" to the 2nd defendant. The 2nd defendant is entitled to recover possession of the lands.

The 2nd defendant claims damages against the plaintiffs for trespass. It is trite learning that trespass is a wrong to possession. By virtue of this claim, the 2nd defendant is required under the law to provide evidence to warrant the award of damages. She must also provide facts that would form the basis of the assessment of the damages he is claiming. Factors to be considered in assessing damages were given in the case of **Laryea vrs. Oforiwaa [1984-86] 2 GLR 410 @ 429**. The Court of Appeal, per Abban J. A. (as he then was) stated thus:

"In awarding damages for trespass to land, regard should be had to the acreage of the land on which the trespass was committed, the period of wrongful occupation and the damage caused".

The 2nd defendant acquired the disputed land in 2020 and started to develop it. The plaintiffs' trespass to the 0.64 acre land following her acquisition could only have been brief. An award of GHc5000.00 as damages for trespass is reasonable under the circumstances.

I grant an order of perpetual injunction restraining the plaintiffs, their assigns, privies and anybody claiming authority from them from having anything to do with the 2nd defendant's land, i.e. plots Nos. 139, 140, 141 and 142 measuring 0.64/0.73 acres, situate at Esiama Layout Block "C".

The plaintiffs' claims are dismissed.

(SGD.)

H/L AFIA N. ADU-AMANKWA (MRS.)

JUSTICE OF THE HIGH COURT

COUNSELS

Araba S. Abaidoo (holding Edem Diaba's brief) appears for the Plaintiffs.

Phillip Otchere-Darko (holding King David Addai's brief) appears for the 2nd Defendant.