

IN THE SUPERIOR COURT OF JUDICATURE. IN THE HIGH COURT OF JUSTICE
(LAND DIVISION 10) HELD AT ACCRA ON MONDAY THE 25TH DAY OF MARCH
2024 BEFORE HIS LORDSHIP JUSTICE KWAME GYAMFI OSEI

SUIT NO. LD/0880/2017

ALHAJI SADIQ ABUBAKAR

PLAINTIFF

VRS

1. BERCHIE ACHEAMFOUR
2. LANDS COMMISSION
3. LIBERTY CAPITAL (GH) LIMITED

DEFENDANTS

JUDGMENT

INTRODUCTION

Article 258 of the 1992 Constitution mandates the Lands Commission to manage all State/Public Lands vested in the President on behalf of, and in trust for, the people of Ghana. When Public Lands are assigned to Public Institutions by the State and that Public Institution has no need for the land, or immediate use of the land, who manages that land? Is it the Lands Commission or that Public Entity? In this case the Plaintiff has been granted land compulsorily acquired by the State under the Public Lands Ordinance 1876 [CAP 134] by the Plaintiff's grantor i.e. the Ghana Railway Development Authority (hereinafter would be referred to us GRDA). The 2nd Defendant excising its mandate under the Constitution and the Lands Commission Act 2008 (Act 767) has also granted the same land to the 3rd Defendant. This judgment therefore seeks to answer the question posed supra but before that I would relate the facts and the evidence adduced before this court by the parties.

THE CASE OF THE PLAINTIFF

The Plaintiff claiming to be a lessee of the Ghana Railway Company has brought the present action against the Defendants claiming the following reliefs

- a. A declaration that the Plaintiff is the bonafide owner of the land mentioned and described in paragraph 2 of the statement of claim
- b. An order directed at the 1st Defendant to demolish any structure on the said land
- c. An order directed at the 2nd Defendant to cancel any certificate issued to the 1st Defendant transferring title in the disputed land to him
- d. A perpetual injunction to restrain the 1st Defendant whether by himself, his servants, agents, workmen, assigns or whomsoever from interfering with the Plaintiff's ownership, occupation and possession of the land
- e. Cost and any further order(s) as this Honourable court may deem fit."

According to the Plaintiff his grantor's predecessor i.e. The Ghana Railway Corporation acquired the disputed land for a quarry and the said acquisition was gazetted between 14th March and 4th April 1908 and same is now vested in the Ghana Railway Development Authority per the Railway Act 2008 (Act 779). After the said grant he took possession by placing a container and blocks on the land. According to the Plaintiff the 1st Defendant trespassed unto the land and fenced a portion of the land. He realized later that it was the 2nd Defendant who granted the disputed land to the 1st and 3rd Defendants. According to Plaintiff the 2nd Defendant has no right to lease the land to the other Defendants.

THE CASE OF THE FIRST DEFENDANT

The 1st Defendant in his defence denied ownership of the disputed land and claimed he only executed some works on the land for the 3rd Defendant. He said his land adjoins the disputed land and due to the relationship, he has with the 3rd Defendant he advised the

3rd Defendant to contact the 2nd Defendant for a grant of the disputed land, and this was upon his realization that the 3rd Defendant had taken its grant from the Nii Okuwe Family of Abofu. This is was because the land is State Land and the said family had no title to same. He maintained that the Plaintiff has not been in possession of the disputed land before.

THE CASE OF THE 2ND DEFENDANT

The 2nd Defendant's defence is that the disputed land falls within lands which were acquired by the State under the Public Lands Ordinance 1876 [CAP 134] and same are covered by Certificate of Title dated 29th May 1926 and registered in the Deeds Registry as No. 235/2926 and Certificate of Title dated 20th July 1909 and registered at the Deeds Registry as No. 217/1909. Being State Land same vests in the President of the Republic of Ghana by virtue of the said Cap 134. According to the 2nd Defendant the disputed land has not been specifically vested in the Plaintiff's grantor to clothe it with capacity to grant portions of same to the Plaintiff. It contended that being State Land it is the 2nd Defendant who under Article 257 (2) of the 1992 Constitution is constitutionally mandated to manage same and has duly granted portions of same to Nan Enterprise and Liberty Capital Co. Ltd (3rd Defendant) who has registered its title with Certificate No. GA 51 332. The 2nd Defendant asserts that the Plaintiff by law has no power to dispose of any public land and it is only the 2nd Defendant which is constitutionally mandated to manage those public lands on behalf of the President. The 2nd Defendant maintained that it followed due process in the allocations and the Plaintiff is not entitled to any of the reliefs.

THE CASE OF THE 3RD DEFENDANT

The 3rd Defendant claimed the land was granted to it by the 2nd Defendant because same is state land. The 3rd Defendant said he initially acquired the land from Nii Okuwe Royal Family of Abofu but later when he was informed that same belonged to the state he

contacted the 2nd Defendant who granted same to it and has been issued with a Land Title Certificate by the 2nd Defendant. The 3rd Defendant therefore counterclaimed for

- i. A declaration of title to all that piece or parcel of land known as Plot Nos. 1 and 2 and containing an approximate area of 1.19 acres situate at ABOFU NORTH in the Accra Metropolis in the Greater Accra Region of the Republic of Ghana, bounded on the North-East by High Tension Line measuring a distance of 333.1 feet more or less, on the East by proposed Road measuring a distance of 100.0 feet more or less, on the South by proposed road measuring a total distance of 259.0 feet more or less, on the South-West by Proposed Road measuring a total distance of 16.3 feet more or less, on the West by proposed Road measuring a total distance of 242.2 feet more or less be the same dimension little more or less particularly described and delineated on Plan N0. LCS/GAR 588/AC 10393.
- ii. Perpetual Injunction to restrain the Plaintiff, his assigns, agents, directors, shareholders, grantors and any person(s) claiming title through the Plaintiff from dealing howsoever with the land In dispute”

ISSUES FOR TRIAL

The following issues were settled for determination

- a. Whether or not the Plaintiff is the bonafide owner of the disputed land
- b. Whether or not the Plaintiff is entitled to its reliefs
- c. Whether or not the 3rd defendant is entitled to its counterclaim”

With the additional issues being

1. Whether or not the land in dispute is state land
2. Whether or not the 2nd Defendant for and on behalf of Government of the Republic of Ghana can grant a fifty (50) years term lease and Land Certificate in respect of the land in dispute to the 3rd Defendant

3. Whether or not Ghana Railway Company has title to the parcel of land in dispute
4. Whether or not Ghana Railway Company, the Plaintiff's grantor has capacity to grant the land in dispute to the Plaintiff.
5. Whether or not the alleged grantor of the Plaintiff has any capacity to grant the disputed land to the Plaintiff."

BURDEN OF PROOF

In civil suits, the onus of proof first rests on the party whose positive assertions have been denied by his opponent. Depending on the admissions made or denied, the party on whom the burden of proof lies is enjoined by the provisions of Sections 10, 11(4), 12 and 14 of the Evidence Act, 1975 (NRCD 323) to lead such credible and admissible evidence such that on the totality of the evidence on record, the court will find that party's version of the rival accounts more probable than its non-existence.

All issues settled for determination ought to be determined by the court, unless same is irrelevant, not germane to the resolution of the actual dispute between the parties, moot or even superfluous. See the case of **FATAL VRS WOLLEY (2013-2014) SCGLR 1070**. Issues "b" and "c" are no issues which ought to be interrogated as they are superfluous. The parties are obviously in court for the said reliefs thereby making same superfluous. (See the case of **DALEX FINANCE & LEASING CO. LTD VRS EBENEZER DENZEL AMANOR & 2 ORS [2012] 171 GMJ 256 at 304. SC.**) Issue "5" of the additional issues is just a repetition of issue "4" of the additional issues hence same is struck out. From the pleadings and the evidence the Plaintiff would bear the evidential burden on Issues "a", "3" and '4" whilst the Defendants would assume the burden to prove issues "1" and "2".

EVALUATION OF THE EVIDENCE

Just as there is no duty cast on a party to prove an admitted fact, there is also no duty cast on a court to evaluate further evidence in a bid to establish an admitted fact, which before trial was denied by one party. If the admission resolves an issue set down for resolution the court should make a finding and apply the law.

During the trial the Plaintiff through PW1 admitted that the disputed land was acquired by the Government under the Public Lands Ordinance 1876 [Cap 134.]PW1 further admitted that the disputed land is also vested in the State. Indeed throughout the trial the Plaintiff could not tender a Certificate of Allocation issued in favour of the Plaintiff's grantor by the State. For emphasis, on the 11th of April 2022, PW1 made these admissions

“Q: Have you heard of the Public Lands Ordinance 1876 Cap 134?

A: Yes.

Q: Do you know that the subject matter of dispute was acquired under this law?

A: That can be true.

“Q: Do you also know that under the Public Lands Ordinance 1876 Cap 134 all the lands that were acquired under that law became vested in and held by the then governor of Gold Coast in trust for Her Majesty for the Public Service of Ghana. Do you know?

A: Yes I know.

Q: Then you will also know that upon acquisition, a certificate of title is issued by the Supreme Court to certify and declare that indeed the land is vested in the governor and his successors in title in trust for Her Majesty.

A: Yes I know.

Q: Then you will also know that all Public Lands that were acquired under Cap 134 are vested in the President of the Republic of Ghana.

A: Yes.”

That aside on the 12th April 2022 PW1 made further admissions when was further asked;

“Q. I put it to you that all compulsory acquisitions are made in the name of the president and title is vested only in the president irrespective of the purpose of acquisition

A. That is so.”

What PW1 brought to court were Certificates of Title vesting the land in the Crown and not Certificates of Allocation. The State therefore did not assign the disputed land to GRDA for same to form part of its assets. There is no document assigning the disputed land either by the colonial Government to the Gold Coast Government Railway or from the Military or Republican Governments to the Ghana Railway Company Limited or its predecessors (i.e. Gold Coast Government Railways, the Ghana Railway and Ports Authority or the Ghana Railway Corporation). Without doubt the **RAIL-WAYS ACT, 2008 [Act 779]** mandates the GRDA to hold and manage assets of the Ghana Railway Company. (including leasing and selling) Section 2 states

“Objects and functions of the Authority

- 2. (1) The objects of the Authority are to**
 - (a)* promote the development of railways and railway services,
 - (b)* hold, administer and improve the Railway Assets; and
 - (c)* promote the development and management of suburban railway.
- (2) To achieve the objects the Authority shall**
 - (a)* implement and ensure compliance with Part Two of this Act,

- (b) **grant licences, concessions, and leases which are necessary for the operation of railways and railway services** and perform other related functions including the keeping of a register of railway
 - (i) operations,
 - (ii) licensees, and
 - (iii) sub-licenceses,

- (c) **exercise ownership rights over assets that are transferred to the Authority from Railway assets,”**

Whilst Section 32 of the same Act also provides

“Vesting, management and improvement of the railway assets

- 32. (1) On the commencement of this Act, assets belonging to the Ghana Railway Company Limited shall vest in the Authority.**
- (2) The Authority shall keep and manage the assets and may make any improvements that it considers expedient to the assets in accordance with its objects.
- (3) **The Authority may sell, grant a concession, convey, lease, or otherwise dispose of the assets on terms** and subject to conditions that the Authority considers desirable but ownership of the right of way of a line of railway, and all structures, works and other enhancements on these shall at all times remain vested in the Authority.”

These provisions are however applicable to lands acquired by the Railway Company or lands vested in the Ghana Railway Corporation and its predecessors (i.e. Gold Coast

Government Railways, the Ghana Railway and Ports Authority or the Ghana Railway Corporation) by the State. The land in dispute has not been vested in the GRDA or its predecessors by either the Crown or the State hence same cannot form part of assets vested in the Railway Company. Even if state land is assigned to a public institution and the said land is no longer needed same reverts to the state and is managed by the State as part of State or Public lands through the Lands Commission. The evidence is clear that the disputed land is not being used for a quarry and the GRDA has no immediate plan to use same and this account for the purported alienation of same to the Plaintiff. PW1 who testified for the Plaintiff's grantor admitted same on the 12th of April 2022 when he was asked

“Q: Is the subject land currently required for use as a quarry site?

A: No.”

The case of **DAKPEM ZOBUGU NAA HENRY A. KALEEM (SUB. BY RICHARD ADAMS VRS LANDS COMMISSION & 2 OTHERS [2020] DLSC. 10083**, is apt on this issue. In that case the Government compulsorily acquired the disputed land in 1905 and gave it to the Military through a Letter of Authority (Certificate of Allocation) and same was used to construct the Kaladan Barracks, Tamale in 1955. When the Barracks was relocated to Kamina Barracks, the then Minister of Defence wrote the Minister of Lands, Forestry and Natural Resources asking for a disclaimer to be issued in favour of the pre-acquisition owners i.e. the Dakpema Skin. Before the disclaimer could be issued the Lands Commission, Tamale granted leases to individuals which compelled the Plaintiff to sue the Lands Commission and others claiming amongst other reliefs that the grants were ultra vires, null and void since same was skin land. The Lands Commission contended that the land was state land same having been acquired by the then Gold Coast Government under the Administration of the Northern Territories Ordinance 1902 Cap 111 as amended by the Northern Territories Administration Ordinance 1923 for the

Tamale Township Development and Administration. The High Court and the Court of Appeal came to the conclusion that action of the Lands Commission was ultra vires, null and void. Judgment was therefore entered in favour of the Plaintiff. Upon further appeal to the Supreme Court, this is how the apex court dealt with the status of such lands acquired by the state and given to public institutions.

“LANDS ACQUIRED BY THE STATE & ASSIGNED TO PUBLIC INSTITUTIONS

“ Every land compulsorily acquired by the State whether vested in itself or assigned to a particular public service institution remains State land. Apart from the power vested in the State to acquire land for the use of various public service bodies created by the Constitution or an Act of Parliament, section 5 of the State Lands Act, 1962 (Act 125) as amended by section 4 of the State Lands (Amendment) Act 2000 (Act 586) also authorizes the Lands Commission to grant a lease or a licence in respect of any land acquired under the Act. Besides, one of the functions of the Lands Commission under section 5 of the Lands Commission Act 2008, (Act 767) is on behalf of the Government, to manage public lands and any other Lands vested in the President by the Constitution or by any other law and any lands vested in the Commission.

. . . . In our view, when the State acquires land and assigns it to a public service institution and that body has no further use of the land as in this case, the military, the land reverts to the State represented by the Land Commission. A division of the Lands Commission called the Public and Vested Land Management Division which under section 23 of Act 767 of 2008 is charged with managing state acquired and vested lands in conformity with approved land use plans steps in to manage the land.”

State lands allocated to Public Institutions therefore do not lose its status as State land even if same is specifically assigned to that Public Institution. The disputed land before me was not specifically assigned to GRDA and once it has no need for same, same ought to be managed by the 2nd Defendant. This position is supported by the following provisions.

Article 257 (1) (2) provides

- “(1) All public lands in Ghana shall be vested in the President on behalf of, and in trust for, the people of Ghana.**
- (2) For the purposes of this article, and subject to clause (3) of this article, "public lands" includes any land which, immediately before the coming into force of this Constitution, was vested in the Government of Ghana on behalf of, and in trust for, the people of Ghana for the public service of Ghana, and any other land acquired in the public interest, for the purposes of the Government of Ghana before, on or after that date.”**

Whilst Section 32 (1) of the Transitional Provisions of the 1992 Constitution also states;

- “(1) Subject to the provisions of Articles 257 and 258 of this Constitution, all properties and assets which immediately before the coming into force of this Constitution were vested in any authority or person for the purposes of, or in right of, the Government of Ghana or in the Government of Ghana, shall, on the coming into force of this Constitution, without further assurance than this section, vest in the President.**

Article 258 of the Constitution provides as follows;

“(1) There shall be established a Lands Commission which shall, in co-ordination with the relevant public agencies and governmental bodies, perform the following functions -

(a) on behalf of the Government, manage public lands and any lands vested in the President by this Constitution or by any other law or any lands vested in the Commission;

These constitutional provisions were operationalized with the passage of the Lands Commission Act 2008 (Act 767). Section 5 (a) states

“Functions of the Commission

5. For the purpose of achieving its objectives, the Commission shall
(a) on behalf of the Government, manage public lands and any other lands vested in the President by the Constitution or by any other law and any lands vested in the Commission;”

The right of the Lands Commission to grant leases in respect of State Land or public Lands acquired under other enactments such as the Public Lands Ordinance 1876 [Cap 134] commenced following the enactment of the **LANDS (MISCELLANEOUS PROVISIONS) ACT 1963 (ACT 161)** Section 1 provides

“Section 1 - Application of State Lands Act, 1962 (Act 125).

The provisions of sections 5 and 6 of the State Lands Act, 1962 (Act 125), (which sections relate respectively to the grant of leases and licences by the President and the making of regulations by the Minister) shall apply in relation to any land vested in the President by or by virtue of the State Property and Contracts Act, 1960 (CA 6) (hereinafter referred to as "the Act of 1960"), **or any other enactment,**

other than the enactments specified in the Schedule hereto, as they apply in relation to land acquired under the said State Lands Act.

By the said provisions in the 1992 Constitution and the said Acts it is the 2nd Defendant which has the right to lease the disputed land.

With these findings, I am of the view that the Plaintiff's action ought to fail and judgment entered on behalf of the 3rd Defendant on his counterclaim.

Consequently I declare the 3rd Defendant as the lawful leasehold owner of all that piece or parcel of land known as Plot Nos. 1 and 2 and containing an approximate area of 1.19 acres situate at ABOFU NORTH in the Accra Metropolis in the Greater Accra Region of the Republic of Ghana, bounded on the North-East by High Tension Line measuring a distance of 333.1 feet more or less, on the East by proposed Road measuring a distance of 100.0 feet more or less, on the South by proposed road measuring a total distance of 259.0 feet more or less, on the South-West by Proposed Road measuring a total distance of 16.3 feet more or less, on the West by proposed Road measuring a total distance of 242.2 feet more or less be the same dimension little more or less particularly described and delineated on Plan No. LCS/GAR 588/AC 10393.

I perpetually restrain the Plaintiff, his assigns, agents, workmen, grantors or any person(s) claiming title through the Plaintiff from dealing howsoever with all that piece or parcel of land known as Plot Nos. 1 and 2 and containing an approximate area of 1.19 acres situate at ABOFU NORTH in the Accra Metropolis in the Greater Accra Region of the Republic of Ghana, bounded on the North-East by High Tension Line measuring a distance of 333.1 feet more or less, on the East by proposed Road measuring a distance of 100.0 feet more or less, on the South by proposed road measuring a total distance of 259.0 feet more or less, on the South-West by Proposed Road measuring a total distance of 16.3

feet more or less, on the West by proposed Road measuring a total distance of 242.2 feet more or less be the same dimension little more or less particularly described and delineated on Plan N0. LCS/GAR 588/AC 10393.

I award cost of GH¢ 60,000.00 against the Plaintiff in favour of the Defendants.

The Plaintiff's claim is dismissed.

(SGD)
JUSTICE KWAME GYAMFI OSEI
JUSTICE OF THE HIGH COURT
LAND DIVISION (10)

COUNSEL

- 1. EBENEZER AHIATOR FOR PLAINTIFF**
- 2. FAUSTELL COFIE FOR 1ST DEFENDANT**
- 3. CARLIS APPIAH BRAKO FOR 2ND DEFENDANT**
- 4. ALHAJI SEIDU FAROUCK FOR 3RD DEFENDANT**