

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, LAW COURT COMPLEX, (LAND DIVISION ONE) HELD IN ACCRA ON TUESDAY THE 23RD DAY OF JANUARY 2024 BEFORE JUSTICE ABENA A. OPPONG

SUIT NO. LD/0972/2018

MALIN INVESTMENT COMPANY LIMITED

V.

RAYMOND KOFI YOUNG

PLAINTIFF ABSENT

DEFENDANT PRESENT

PHILIP MORGAN HOLDING THE BRIEF OF HAROLD ATUGUBA FOR THE PLAINTIFF PRESENT

MARESE OKPEI HOLDING THE BRIEF OF DAVID AMETEFE FOR THE DEFENDANT PRESENT

J U D G M E N T

1. The Plaintiff company claims to be the bonafide owner of all that piece of land situate, lying and being at LA - DADEKOTOPON-AMA District in the Greater Accra Region of the Republic of Ghana containing an approximate area of 1.07 Acre or 0.43 Hectare more or less and bounded on the North East by Sublessor's Land measuring 371.6 feet more or less, on the South East by proposed Road measuring 100.3 feet more or less, on the South West by Sublessor's Land measuring 274.2 feet more or less, on the North West by proposed Road

measuring 210.7 feet more or less (the "Property"); which it acquired from the La Hillview Development Limited. It traces the title of the La Hillview Development Limited by a lease to the East Dadekotopon Development Trust (EDDT). It is the story of the Plaintiff that after acquisition of the land, it took vacant possession, exercised overt acts of ownership and remained in possession by placing a caretaker on the property until the 11th of August when it had information from the caretaker that the Defendant had deposited cement blocks and other building materials on the property. The Plaintiff's director confronted the Defendant and showed him the Plaintiff's deed of assignment but the Defendant failed to produce any deed of title. It conducted a search at the Land Title Registry which confirmed that the property belongs to its grantor. However, by threat of life on its caretaker, the thugs and agents of the Defendant destroyed the layout of the property and started erecting a wall on the property evincing a clear intention to dispossess it of the property. The Plaintiff thus prays for:

- a) A declaration of title to all that piece of land situate, lying and being at LA - DADEKOTOPON-AMA District in the Greater Accra Region of the Republic of Ghana containing an approximate area of 1.07 Acre or 0.43 Hectare more or less and bounded on the North East by Sublessor's Land measuring 371.6 feet more or less, on the South East by proposed Road measuring 100.3 feet more or less, on the South West by Sublessor's Land measuring 274.2 feet more or less and on the North West by proposed Road measuring 210.7 feet more or less (the "Property").
- b) An order for recovery of possession of the Property described above.
- c) An order of perpetual injunction restraining the Defendant, his servants, agents, privies, assigns, workmen and other personal representatives howsoever described from encroaching, building, disposing off, or generally dealing with the Property the subject matter of this suit or doing

anything in respect thereto which is inconsistent with the Plaintiff's legal title or amounts to interference with the Plaintiff's quiet enjoyment of same.

- d) General damages for trespass to the Property and for the destruction of the Plaintiff's land.
 - e) An order for the demolition of all structures erected by the Defendant on the property as well as the cost of any such demolition.
 - f) Costs including but not limited to the cost of litigation assessed at 25% of the open market value of the Property the subject matter of this suit;
 - g) Any further relief(s) this honourable court may deem fit.
2. In defence, the Defendant claims that the entire root of title of the Plaintiff being land certificate number GA19319 of 2003 in favour of the EDDT was found to be fraudulent and cancelled by the High Court in its judgment in the case of Edward Mensah Tawiah & anor v. The Ag. Registrar of Lands & the Trustees of the EDDT with suit no. BL/431/2006. The fraudulent activities of the Plaintiff's grantors have been found in a number of decisions of the courts where the courts have held that the EDDT had no trustees since April 2006 to have lawfully acted as such. The title and the entire root of title of the Plaintiff are founded on fraud and listed the particulars of fraud as:
- a. That the settlors of/and the EDDT did not prove to own the said land over which they had sued in Suit No. L.353/97, and yet purported to obtain consent judgment thereon.
 - b. That per the said suit, the Suit No. L.353/97 and the purported consent judgment, EDDT and its Settlers knew and were aware the grantors of the Defendant herein own the subject land but they failed to join the said family or seek their consent.
 - c. That the EDDT failed to comply with its own terms of settlement/consent judgment but went ahead to unlawfully and fraudulently register land not belonging to it.

- d. That the above was a finding of two (2) valid judgments named herein.
 - e. That beside the above point (d), the judgment of Justice Ofori Atta dated 7th December, 2010 found that the EDDT never applied for land title certificate but purported to obtain one; that the parcel plan was prepared in 2004 after the land title certificate had been obtained in 2003, and the public notice had been published in 1998 long before the Trust was formed, etc.
 - f. That further acts of fraud that affect the Plaintiff's root of title include the signatories to its purported grantor's lease claiming to be a trustee or chairman of the Trust, knowing he was not by the Trust Deed dated 10th April, 2002.
3. The Defendant relied on the following decisions in support of his allegation of fraud:
- EDDT v. La Traditional Council & 13 ORS, Suit No. LD/0487/2017, decided on 31st July, 2017.
 - The Rep v. Samuel Quaye Tawiah & Director, Survey Division, ex parte EDDT, Civil Appeal No. H1/41/2014, (C.A).
 - EDDT v. Col. (Rtd) Sadungu & 7 ORS, Suit No. LD. 1466/2016 (H.C)
 - The Rep v. Esther Korkoi Quaye & Anor ex parte EDDT Suit No. CR 133/2017;
 - Nii Kpobi Tettey Tsuru III v. Chief of Defence Staff & Goil Ghana Ltd, EDDT (Applicant) Suit No. SOL/27/2013;
 - The Rep. v. Nii Kpobi Tettey Tsuru III and 2 Ors. ex parte East Dadekotopon Development Trust, Suit N°. FALM/64/2013;
 - Consent Judgment of the Nii Kpobi Tettey Tsuru III v. Ato Quarshie & Ors. Suit N°. L.353/97 dated 12th July, 2001.
 - Judgment of the Court of Appeal in Civil Appeal dated 13th May, 1998 in Nii Kpobi Tettey Tsuru III v. Ato Quarshie & Ors. Civil Appeal N°.2/98.

4. The Defendant states further that the attempt by the EDDT to compromise the judgment of Justice Ofori Atta in suit no. BL/431/2006 dated 7th December 2010 at the Court of Appeal per consent judgment in civil appeal no. H1/175/2011 dated 27th April, 2015 was declared void by Justice Abada on grounds of fraud in suit no. BMISC/720/2015 dated 21st May, 2019. The Plaintiff could therefore not have obtained any valid title since the Lands Commission knew and has always been aware of the decisions above or most of them. The Defendant claims title through the Ataa Tawiah Tsinaiatse & Numo Ofoli Kwashie families of La and states that he only used reasonable force to protect his land. He states further that he took his grant over ten years ago except that his grantors who are law abiding citizens advised him and other grantees to exercise patience as there were a number of pending suits against them or that they were taking steps to get the Lands Commission to erase the wrongful acts of the EDDT and its grantees. The Lands Commission has started correcting its records to reflect the decisions of the courts and has published the cancellation of the title of the EDDT. So far as the Plaintiff traces its title to the EDDT, its title is defective, void and the instant suit is without merit.
5. Based on the pleadings of the parties, the following issues were set down for trial:
 - i. Whether or not the land the subject matter of this suit belongs to the Plaintiffs.
 - ii. Whether or not the Defendant has trespassed on the land the subject matter of this suit.
 - iii. Whether or not the land the subject matter of the case of Edward Mensah Tawiah and Another v. The Ag. Registrar of Lands and The Trustees, East Dadekotopon Development Trust (Suit No. BL/431/2006) is the same as the land the subject matter of the instant suit.

- iv. Whether or not the decision of the High Court in the case of Edward Mensa Tawiah and Another v. The Ag. Registrar of Lands and The Trustees, East Dadekotopon Development Trust (Suit No. BL/431/2006) has been overturned by the Court of Appeal.
 - v. Whether or not the decision of the High Court in the case of Adolph Tetteh Adjei v. Anas Aremeyaw Anas and Holy Quaye (Suit No. LD/0256/2017) has been overturned by the Court of Appeal in the case of Adolph Tetteh Adjei v. Anas Aremeyaw Anas and Holy Quaye (Civil Appeal No. H1/107/2018).
 - vi. Whether or not the instant suit is *res judicata*.
 - vii. Whether or not the Plaintiffs are entitled to the reliefs endorsed on the Writ of Summons.
 - viii. Whether the Judgment of Justice K. A. Ofori Atta dated 7th December, 2010 in Edward Mensah Tawiah and Anor. v. The Ag. Registrar of Lands and Anor. Suit No. BL. 431/2006 was restored by the Judgment of Justice Anthony K. Abada in Daniel Ofoli Ewormienyo v. Edward Nsiah Akuetteh Suit No. BMISC 720/2015 dated 21st May, 2019.
 - ix. Whether Plaintiffs title founded on conveyances made *pendente lite* and/or subsequent to the cancellation of the Land Certificate No. GA19310 of the East Dadekotopon Development Trust for fraud, is sustainable.
 - x. Whether the entire root of Plaintiff's title and those of his grantor or head grantors are tainted by fraud, illegality and therefore void.
 - xi. Any other issues arising from the pleadings filed.
6. In **SERWAH V. KESSE**ⁱ it was held that in an action for declaration of title to land the onus of proof is on the plaintiff and never shifts. In title cases as in all civil cases the preponderance of probability in favour of a party may constitute sufficient ground for a judgment in favour of that party.

7. A party pleading estoppel per rem judicatam has the burden of establishing the claim he alleges (see **OTU X & ORS V. OWUODZI AND ORS**¹). In **IN RE SEKYEDUMASE STOOL; NYAME V. KESE ALIAS KONTO**² the Supreme Court held that the principle of res judicata is now a well-established and acceptable principle in judicial proceedings. Its objective is to prevent an abuse of the court's process by estopping a party to a litigation against whom a court of competent jurisdiction has already determined the issue now being raised by reopening the same subject matter for further litigation. The principle can also be raised against privies of the original parties. The plea of res judicata really encompasses three types of estoppel: cause of action estoppel, issue estoppel in the strict sense, and issue estoppel in the wider sense.
8. It is the Defendant who alleges that the instant suit is res judicate so he bears the burden of producing evidence to support his claim. However, after pleading res judicata, the Defendant seemed to have lost the appetite as he did not lead any evidence on it. The Defendant is therefore deemed to have abandoned the plea.
9. The Plaintiff's witness tendered into evidence as exhibit "A" the sublease between La Hillsvie Development Limited and the Plaintiff company dated 8th July 2016. Per exhibit "B", La Hillsvie Development Limited obtained a lease from the East Dadekotopon Development Trust on the 7th of June 2007. On 18th December 2007, the La Hillsvie Development Limited obtained a land certificate over the land it obtained from the East Dadekotopon Development

¹ [1987-88] 1 GLR 196

² [1998-99] SCGLR 476

Trust (see exhibit "C"). The Defendant on the other hand told the court that he and his colleague soldiers who acquired land from the Ataa Tawiah Tsinaiatse family became aware that there was a protracted litigation over the land so upon their acquisition, they were given only site plans with the assurance that when the litigation was over, the family would give them indentures. He tendered exhibit 11 as the indenture which was given to him by the family after many years of litigation. Exhibit 11 is dated 14th December 2010. The Defendant told the court that he acquired the land in the year 1999 but got his documents in the year 2010 because of the litigation. Despite this evidence, the contents of exhibit "11" show that the document could not have been executed any time before the year 2017. Paragraph 4 of exhibit "11" refers to a family meeting which was held on the 5th of April 2015 at which a family head was elected and endorsed while paragraph 7 refers to a ruling of Justice A. A. Anokye Gyimah which was delivered in August 2017. I agree with the Plaintiff's lawyer when during cross-examination of the Defendant he made the point that a document which was executed in the year 2010 could not have foreseen events subsequent to the execution of the document. When the Defendant was challenged with these facts, he changed his story to say that exhibit 11 was prepared in the year 2010 but it was not until the year 2019 that the head of family executed it and it was handed over to him. The law is that it is the head of family who is clothed with the capacity to alienate family lands. If the head of family has not executed the document, there cannot be said to be a valid grant. From the oath of proof and per the Defendant's own admission, his lease was executed in the year 2019. The Defendant admitted that in the year 2018 when the Plaintiff sued him, exhibit "11" had not been executed. It therefore means that on 18th December 2007, when La Hillview Development Limited obtained a land certificate over the land it obtained from the East Dadekotopon Development Trust per exhibit "C", the Defendant had not acquired the disputed land. I agree that exhibit "11" was made in an attempt to overreach the Plaintiff.

10. It is trite law that the holder of a land title certificate to the land, has an indefeasible title to the disputed land and in the absence of proof of any vitiating circumstances such as fraud and or mistake, the registered proprietor was entitled to be adjudged as the owner of the area comprised in the land title certificate (see **MRS JENNIFER KANKAM NANTWI AND MARTIN KANKAM NANTWI V. JOSEPH AMENYA**³). The Defendant therefore bears the burden of producing evidence to displace the presumption in favour of the Plaintiff.

11. The Defendant relies on the judgment of Ofori Atta J in suit number BL/431/2006 that his grantor's family obtained judgment against the EDDT. In the said judgment, the court found that the Plaintiffs in that suit had been the owners in possession of Opintin lands since 1927 and as such, no transactions involving the Opintin lands could be concluded without the consent of the Plaintiffs. The issuance of the land certificate to the EDDT without first mapping out the land of the Plaintiff was therefore fraudulent. This judgment was given on the 7th of December 2010. It was pursuant to this judgment that the parties on the 30th day of March 2015 entered into a compromise settlement when the matter went on appeal. The terms of settlement entered into by the parties at the Court of Appeal was set aside by Abada J on grounds of fraud in the case of **DANIEL OFOLI EWORMIENYO V. EDWARD NSIAH AKUETTEH**⁴. However, the Supreme Court in the case of **THE HIGH COURT, LAND DIV. (7) ACCRA, EXPARTE: THE REGISTERED TRUSTEE OF EAST DADEKOTOPON DEVELOPMENT TRUST, ADOLPH TETTEH ADJEL,**

³ [2019]DLSC7842

⁴ BMISC 720/2015

ANAS AAREMEYAW ANAS AND HOLY QUAYE⁵ held that following the consent judgment entered into by the Court of Appeal in **Edward Mensah Tawiah, Ewormenyo Ofoli Kwashie V. The Ag Chief Registrar of Lands and The Trustees, East Dadekotopon Development Trust**, the Ofori Atta 2010 judgment ceased to have the force of law. It was reversed in its entirety. The Supreme Court went ahead to quash the ruling of Abada J in relation to the setting aside of the consent judgment and held that the said ruling relating to the consent judgment cannot provide a foundation for a finding of estoppel per res judicatam. The Supreme Court stated that between the parties in **Edward Mensah Tawiah, Ewormenyo Ofoli Kwashie v. The Ag Chief Registrar of Lands and The Trustees, East Dadekotopon Development Trust, Suit No BL 431/2006** and their privies, the final judgment on the matters settled by Ofori Atta J was the Consent Judgment entered by the Court of Appeal on 27th April 2015.

12. The Defendant claims that the Labadi people using the Trust as a vehicle have tried to take the land of his grantors. They have employed strong people who have formed companies such as the Plaintiff and his grantor to execute their fraudulent activities. The Defendant claims that the terms of settlement entered into at the Court of Appeal was also another fraudulent act which does not affect him because his grant was made before the said terms of settlement. The Defendant stated that the decisions he sought to rely on in his statement of defence as establishing fraud are no longer relevant because his grantors are currently in court challenging the terms of settlement on the basis of fraud. Counsel for the Defendant admitted in his written address that they have

⁵ [2020] DLSC 9161

instituted a fresh action at the General Jurisdiction of the High Court to set aside the consent judgment as having been obtained by fraud. The focus of this action is therefore not to set aside the consent judgment on the allegations of fraud. Until the consent judgment is set aside, the title of the EDDT remains valid and this court is not under any obligation to await the outcome of the fresh action to set aside the consent judgment; an action which may or may not succeed.

13. From the evidence on record, I have no difficulty in concluding that it is the EDDT that has the right to grant the disputed land since the land is registered in the name of the EEDT. The grant to the Plaintiff is therefore valid as against that of the Defendant.
14. The Plaintiff's witness told the court that after acquisition of the land the Plaintiff took possession, graded it and remained in undisturbed possession until the 1st of August 2018 when a director of the Plaintiff discovered that the Defendant had entered the land and deposited cement blocks and other building materials on it. When confronted, the Defendant failed to produce any title deeds to justify his presence on the land. Despite warning the Defendant to stop his encroachment, the Defendant's thugs and agents destroyed the layout of the land, continued depositing building materials and even started erecting a wall on the land. Even after this court granted an injunction, the Defendant continued to build. The Defendant on the other hand told the court that he and his colleague soldiers who acquired land from the Ataa Tawiah Tsinaiatse family have maintained their possession and control of the land, cleared, weeded, graded the land and used their machines to create access roads. He said he had constructed a fence wall and structures which were at an advanced stage and so the land is not bare at all.

15. On the 18th of October 2018, this court granted an injunction application restraining the parties from undertaking any further development of the disputed land. In the ruling of the court, it noted that it would be unfair for the Defendant to be allowed to continue to develop the land. The Defendant cannot therefore claim to have fully developed the disputed land in the face of an injunction. If the Defendant ignored the injunction order and proceeded to develop the land, he cannot benefit from his wrong (see. **NANTWI & NANTWI V. AMENYA**⁶). Besides, at the time the Defendant was sued and in October 2018 when the court put an injunction on the disputed land, per the findings I have made, the Defendant did not have any documents covering the land. I find as a fact that the Defendant indeed trespassed on the Plaintiff's land.

16. From the evidence on record, I enter judgment for the Plaintiff as the sub lessee of all that piece of land situate, lying and being at LA - Dadekotopon-AMA District of the Greater Accra Region of the Republic of Ghana containing an approximate area of 1.07 Acre or 0.43 Hectare more or less and bounded on the North East by Sublessor's Land measuring 371.6 feet more or less, on the South East by proposed Road measuring 100.3 feet more or less, on the South West by Sublessor's Land measuring 274.2 feet more or less and on the North West by proposed Road measuring 210.7 feet more or less (the "Property"). The Plaintiff is to recover possession of the said land from the Defendant.

17. The Defendant, his servants, agents, privies, assigns, workmen and other personal representatives howsoever described are restrained from encroaching, dealing with the said property or doing anything in respect

⁶ [2017-2018] 1 SCGLR 972 AT 984

thereto which is inconsistent with the Plaintiff's title or amounts to interference with the Plaintiff's quiet enjoyment of same.

18. In assessing damages for trespass, I take into consideration the number of years the Plaintiff has been deprived of the use of its land and award damages of twenty thousand cedis to the Plaintiff against the Defendant.

19. The Defendant is ordered to demolish any structures he has erected on the disputed land forthwith. In the alternative, the Plaintiff is to demolish same and the cost surcharged to the Defendant as part of the cost incurred against the Defendant.

20. Cost is assessed at twenty thousand cedis to the Plaintiff against the Defendant.

(SGD) ABENA A. OPPONG

(JUSTICE OF THE HIGH COURT)

ⁱ [1960] GLR 227