IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: DOTSE, JSC (PRESIDING)

APPAU, JSC

PWAMANG, JSC

DORDZIE (MRS), JSC

OWUSU (MS), JSC

CIVIL APPEAL

NO. J4/25/2019

20TH MAY, 2020

ANYETEY CHANTEY …….

PLAINTIFF/RESPONDENT/RESPONDENT

VRS

TEI KWABLAH KWEINOR …….

DEFENDANT/APPELLANT/APPELLANT

JUDGMENT

APPAU, JSC:-

The Court of Appeal, in a unanimous decision, affirmed the judgment of the trial High Court in favour of the plaintiff/respondent/respondent against the defendant/appellant/appellant in this land matter. In the said judgment, the trial High Court dismissed appellant's counter-claim, which was also affirmed by the Court of Appeal. Aggrieved by the concurrent judgment of the Court of Appeal, the defendant/appellant/appellant has brought this appeal before us, praying for the reversal of same on the following grounds:

1. **The Court of Appeal erred in coming to a conclusion that the identity, extent and size of the land, the subject-matter, was not in issue as same was one of agreed fact.**
2. **The Court erred by holding that Exhibit 'B', which is the judgment in the case of AMEODA v PORDIER and AMEODA v FORZI & Ors [1967] GLR 479; C.A., is binding on the defendant and operated as Estoppel per rem judicatam.**
3. **The Judgment was against the weight of evidence.**

For the purposes of this appeal the parties shall, hereinafter, be referred to as respondent and appellant respectively.

In his written submissions filed on 15th May 2019, the appellant decided to argue all three grounds of appeal together under the last and omnibus ground; i.e. **"The judgment was against the weight of evidence."** He claimed the disputed land as belonging to his family and that the respondent's family is their licensee as they permitted them to settle on the land. He faulted the two lower courts for deciding in favour of the respondent by dismissing his counterclaim in the wake of the overwhelming evidence on record, which suggested that his Tei Kwabla Forzi family is the owner of the disputed land. He again challenged the trial court's preliminary finding that he was not the head of his family and

for that matter could not pursue a counterclaim against the respondent. He referred the Court to previous cases which he had pursued for and on behalf of his said family as family head without any challenge from anybody. He contended that the judgment in the consolidated cases of *Ameoda v Pordier and Ameoda v Forzi and Ors.* (supra), which the two lower courts based their decisions on in dismissing his counterclaim, was not applicable to him, since his immediate Forzie family of Terkpenya, was neither a party nor privy to that litigation. That judgment, he reiterated, could not therefore operate as estoppel per rem judicata against his family as contended by the two lower courts. He prayed the Court to reverse the decisions of the two lower courts and grant him judgment on his counterclaim.

Before we venture into the merits or otherwise of the appeal, we wish to recall in brief the respective cases the parties canvassed both in their pleadings and evidence before the trial High Court. In his amended statement of claim, the respondent prayed, inter alia, for declaration of title to a piece of land described in a schedule attached to his statement of claim, which he claimed was his family land, recovery of possession of the said land and perpetual injunction. He described the land, which he said was popularly known and called Kpodor, as bounded; ***"On the North by the Tema-Aflao motor road; on the South by the Ta River tributary through Mgedor stream; on the South-East by the Jange lagoon; on the East by the Lakpleku Amewoda family land and on the West by the Prampram Traditional land".*** He traced the roots of his family's title to his ancestor called Nartey Asamoah who, according to respondent, permitted the appellant's family to settle on a portion of their family land as described. This was after they had been ejected by Ameoda's family from their land at Terkpenya several years ago after unsuccessfully challenging the Ameodas' title to the said land. He described the appellant and his family as their licensees. However, notwithstanding their status as licensees, appellant started laying claim to ownership of portions of the land thus defeating his status and that of his

family as licensees. He therefore took this action, as the current head of his family, to reclaim the land. In his reply to appellant's statement of defence and counterclaim, he challenged appellant's claim of being the head of his family for which reason he thought appellant had no capacity to pursue a counterclaim against him.

The appellant, on the other hand, denied respondent's claim. He contended that the disputed land respondent is claiming belonged to his immediate Tei Kwabla family of Terkpenya, of which he was the head. He also challenged plaintiff's capacity to institute the action, as according to him, plaintiff was not the head of his family. He again said it was his ancestor by name Ashalley Botwe who permitted respondent's ancestor Nartey Asamoah to settle on that portion of their land so the respondent's family was rather their licensees. He described the disputed land as commonly known and called 'Terkpenya' but not 'Kpodor' and gave the boundaries under paragraph 5 of his amended statement of defence and counterclaim as follows: ***"On the North by the Tema-Aflao motor road; On the East by Lakpleku Osabunya family lands; on the West by Prampram Traditional lands; on the Souh-East by the Dzange lagoon, which piece or parcel of land encompasses an area of 9,404.28 acres".*** *{See page 181 of Volume One of the RoA)*

It is interesting to note that apart from the Ta River, which respondent says marks his family's boundary in the South (the only feature the appellant never mentioned), both parties mentioned the same boundary owners and features as the description of the disputed land. They all mentioned the Tema-Aflao motor road as their boundary on the North; Lakpleku family lands as their boundary on the East; the Jange or Dzange lagoon as their boundary on the South-East and Prampram Traditional lands as their boundary on the West. Undoubtedly, the pleadings of the parties and the evidence they and their witnesses led in the trial court, did not suggest in any way that they were talking about different pieces or parcels of land as the appellant wanted this Court to believe in his submissions. Aside of the description of the disputed land indicated under paragraph 5

of his amended statement of defence as quoted above, appellant's pleading under paragraphs 2 and 4 of his amended statement of defence and counter-claim read:

"2. Save that it is admitted the defendant is a descendant of Tei Kwablah Forzie, the defendant denies that <u>the land the subject-matter of this dispute,</u> is owned by plaintiff's family as alleged or at all.

4. Defendant says further that he is the head of the Tei Kwablah Forzie family <u>who are owners of the land in dispute</u> and that the said Tei Kwablah Forzie family acquired <u>the said lands</u> by cultivation and settlement and has occupied the said land from time immemorial over 300 years ago".{Emphasis ours}

The contents of paragraphs 2, 4 and 5 of appellant's statement of defence, were emphatic that the appellant was ad idem with the respondent on the identity of the land in dispute. This made the respondent to plead under paragraph 3 of his reply filed on 21st June 2011 as follows: ***"3. Plaintiff joins issue with the defendant on paragraphs 4 and 5 and that the description of the land in paragraph 5 of the statement of defence, <u>is the description of the plaintiff's family land and not the defendant's family land."</u>*** {Emphasis ours}

It is important to note that the term **<u>'land in dispute'</u>**, as used by the appellant in his pleadings referred to above, was in relation to the land over which the plaintiff had sued him. Therefore, when appellant responded to respondent's claim and registered his denial of respondent's contention that the disputed land belonged to his family, appellant was referring to no other land but the one over which the respondent had sued him. So, if the defendant, in a traverse, denied that plaintiff was the owner of the land over which he had sued but rather he defendant was the owner, then there is no denial that they both agreed on the identity of the subject-matter of the suit. We have to emphasize that the appellant did not raise any issue with regard to any boundary dispute between his alleged family and that of the respondent, likewise the respondent. Appellant claimed

that it is his family that owned the land over which the respondent had sued him and that it was his predecessor or ancestor who permitted the respondent's family to settle on the land. This was why he said respondent and his people were their licensees, contrary to respondent's claim. Again, in his appeal against the judgment of the trial High Court to the Court of Appeal, the appellant did not raise any issue with regard to the identity of the land in dispute. The only grounds of appeal filed in the Court of Appeal as the basis for the appeal were three and they were as follows:

a. ***The judgment was against the weight of evidence.***
b. ***That the trial court erred when it failed to take full cognizance of the evidence adduced at the trial.***
c. ***That the trial court failed to determine the real issues in controversy based on the oral and documentary evidence before it on the issue of ownership of the land and the size/extent of the land.***

Having considered the submissions filed by the parties, particularly the appellant, the Court of Appeal came to the conclusion, and rightly so, that grounds **'b'** and **'c'** could be taken care of under the omnibus ground **'a'** since the central issue urged in the appeal was the question as to which of the two families was the true and legal owner of the subject property. The fact is that the respondent traced his family's ownership of the land in dispute to one Nartey Asamoah whom he said was the original settler. The appellant also contended that it was rather his predecessor by name Ashalley Botwe who permitted Nartey Asamoah to settle on the disputed land. So clearly, the appellant never talked of any different land aside of the one over which respondent sued, which he also clearly identified in his counterclaim with similar descriptions.

In his own written submissions filed on 15th May 2019, the appellant, in setting out his case, contended at paragraphs 24 and 25 at page 6 as follows:

"24. Defendant contended in paragraph 6 of his statement of defence that plaintiff's family occupies part of the land as licensees of the defendant's family. Defendant said it was one member of his family called Ashalley Botwe who put plaintiff's family on a portion of the land as licensees.

25. Defendant maintains that plaintiff's family has no interest in any portion of the land beyond that of licensees…"

From the record before us, the issues set down for trial in the trial High Court, which the court settled in favour of the respondent, did not include any boundary issue or disparity in identity of the disputed land. It was purely a question of: ***(i)*** *which of the two families owned the disputed land;* ***(ii)*** *whether the disputed land was known as 'Kpodor' or 'Terkpenya';* ***(iii)*** *whether or not both parties or any of them had capacity to pursue claims for and on behalf of their respective families;* ***(iv)*** *which of the parties was a licensee of the other and* ***(v)*** *whether or not the Ameoda v Pordier case (supra) operated as res judicata against the appellant with regard to Terkpenya lands*. It is therefore strange that the appellant tried to challenge the findings of the two lower courts that the identity of the disputed land was not in issue when he raised it as a ground of appeal for the first time in this Court, but failed to canvass any points to support same. We shall therefore dismiss that argument and affirm the decision of the two lower courts that the identity of the land over which the parties disputed, was not in issue whatsoever notwithstanding the different names given to it by each of them.

The next point appellant canvassed was with regard to the trial High Court's initial dismissal of his counterclaim on the basis that he was not the head of the Forzi family and therefore had no capacity to maintain a counterclaim against the respondent. This preliminary finding by the trial High Court made the appellant to amend his statement of defence and counterclaim. In this amended statement of defence and counterclaim, appellant maintained that he did not counterclaim on behalf of the overall Forzi family, which was a party in the *Ameoda v Pordier case* (supra), but rather on behalf of his

immediate Tei Kwabla Forzi family of which he was the head and whose land at Terkpenya was different from the Terkpenya land, which was the subject-matter in the *Ameoda v Pordier case*.

Ironically, both parties challenged each other's capacity to mount the action and counterclaim respectively. This made the trial court to, undesirably; decide to take as a preliminary point, the issue of capacity with regard to each of the parties' locus to mount the action. Whilst the rules permit the issue of capacity to be determined as a preliminary point where its determination could curtail the litigation without going into its merits - **ASANTE-APPIAH v AMPONSAH [2009] SCGLR 90**, the facts in the instant case, where each of the parties was challenging the capacity of the other, among other reliefs, did not call for such a preliminary determination as that determination alone could not have brought the dispute to a final close. The decision of the trial High Court therefore, to determine the capacity issue involving the two parties as a preliminary point before delving into the real issues of controversy, though permissible under the law, was not a better choice or option to have been charted by the trial court. That decision, as the record shows, made the whole trial unwieldy and very difficult to comprehend. In our view, since it was the respondent who sued the appellant for interfering in the ownership of his family's land as alleged, the appellant was compelled or obliged under the circumstances, to defend the action and possibly counterclaim for title for and on behalf of his family, where appellant thought the land rather belonged to his family, even granted he was not the accredited head of his family. He could do so under the authority of **KWAN v NYIENI [1959] GLR 67** and other related authorities like; **IN RE ASHALLEY BOTWE LANDS: ADJETEY AGBOSU & Ors v KOTEY & Ors [2003-2004] 1 SCGLR 420,** etc. on the principle of necessity and then call the actual family head to support him on the claim. The trial court's initial dismissal of appellant's counterclaim on the ground that he was not the head of his family when he was the very person the respondent

decided to sue was therefore erroneous, taking cognizance of the decision of this Court in the *In re Ashalley Botwe lands case* (supra). However, since the trial court later addressed this anomaly and determined appellant's counterclaim on the merits, likewise the Court of Appeal, we shall not belabour that point.

The main contention of the appellant in his submissions under the omnibus ground centred on the concurrent decision of the two lower courts that his family was bound by the *Ameoda v Pordier case* (supra). According to the appellant, the land belonging to his Tei Kwabla Forzi family at Terkpenya is different from the land Ameoda litigated over with his father's half-brother Forzie, which was also called Terkpenya. His argument was that ever since the Ameoda case was determined, he has litigated with several people over his family land as the head of his family without any challenge to his position, which was proof that his family land at Terkpenya is different from the Forzi land at Terkpenya over which Ameoda succeeded in taking over. He cited those litigations as suits entitled: **1. KWEINOR TEI KWABLAH FORZEE v NENE KWAKU DARPOH & ORS; CIVIL APPEAL NO. J4/38/2015 DATED 17/02/2016** and then **2. NENE DORKUTSO TEI KWABLA v LANDS COMMISSION & ANOR; CIVIL APPEAL NO. J4/21/2016, DATED 26/07/2016.** The appellant herein was the plaintiff in those two cases referred to above. Appellant said though he did not mention those two cases in this present suit, he cited them in his submissions to show that; **(i)** his father was not part of the *Ameoda v Pordier suit* and therefore his family was not affected by it and **(ii)** he was currently the head of his family. Incidentally, I happened to be on the Supreme Court panel that determined those two cases on appeal and coincidentally, I authored the two unanimous judgments for and on behalf of the Court. We therefore take judicial notice of those two cases and their effect on the instant case before us.

Though none of the other parties in those two cases referred to above, challenged the appellant's alleged position as head of his family as described in the two cases, the

appellant lost in both suits from the trial stage up to the Supreme Court. The first of the two cases referred to by the appellant and recalled above, was titled; **KWEINOR TEI KWABLA FORZEE (HEAD OF FAMILY, TERKPENYA MANYA, H/NO. A/A/84, OLD NINGO) v (1) NENE KWAKU DARPOH, (2) LANDS COMMISSION & (3) NUMO AWULEY KWAO; SUIT NO. J4/38/2015, DATED 17th FEBRUARY 2016.** The appellant herein was the plaintiff in that case and interestingly, the land over which he sued the three defendants listed above is the very land over which he counterclaimed for title against the respondent herein in the instant case. The first relief the appellant herein, then plaintiff therein, sought from the trial High Court then was: **"A declaration of title to the vast tract and parcel of land being, lying and situated at Terkpenya in the Greater Accra Region, containing an approximate area of 9,404.28 acres more or less and which piece of land is more particularly described in paragraph 5 of the accompanying statement of claim".**

The name and description of the land at paragraph 5 of his statement of claim and the size of the land (**i.e. 9,404.28 acres**) in that case, was the same as the one in the instant suit. In that suit, appellant contended that his family acquired the land over three hundred (**300**) years ago as he did testify in the instant suit. In short, the case the appellant put forward in that case was the same case he put forward in the instant case before the trial High Court, which is now on appeal before us. The trial High Court then, in its judgment of 27th October, 2011, dismissed the appellant's claim as unproven and gave judgment to the 3rd defendant therein. The appellant appealed against the judgment of the trial High Court to the Court of Appeal and lost the second time. After losing in the Court of Appeal, the appellant herein failed to pursue the matter to the Supreme Court. It was the 1st defendant in that case who pursued an appeal against the dismissal of his counterclaim against the 3rd defendant to the Supreme Court. In effect, the appellant herein lost his claim over the Terkpenya lands as described herein, as far back as 2011 in the High Court,

which judgment was finally affirmed by the Court of Appeal in 2014, since the appellant did not pursue any further appeal to the Supreme Court. So with regard to Terkpenya lands as described herein by the appellant, the judgment of the Court of Appeal per Aduamah Osei, JA, which affirmed the judgment of the trial High Court dated 27th October, 2011, operates as res judicata against appellant and his family. Having lost his claim to Terpkenya lands as described herein in that case, the appellant is estopped from re-litigating title over the same piece of land with any other party.

After losing his claim to Terkpenya lands in 2014, appellant shifted his attention to Bundase lands, where he again attempted, albeit unsuccessfully, to claim those lands too as belonging to his family. This is the second case appellant referred to in his written submissions titled; **NENE DOKUTSO TEI KWABLA (HEAD OF TEI KWABLA FAMILY SUING FOR HIMSELF AND ON BEHALF OF TEI KWABLA FAMILY) v (1) LANDS COMMISSION & (2) VOLTA (GH) INVESTMENT COMPANY LTD**. In this second case, the appellant herein, as plaintiff therein, claimed title to; **"all that piece of land situate and lying at Bundase containing an approximate area of 33,000 acres bounded on the North-East by Shai Hills, on the South-East by Bundase lands, on the South-West by Dawhenya and on the North-West by Prampram lands".** When the appellant lost in the trial High Court, he climbed further to the Court of Appeal where he lost the second time and finally to this Court, which sealed his doom. Since the subject-matter in this second case is not the same as the one in the instant case, we shall not waste precious time to discuss it further. However, the conduct of the appellant herein, in all these cases, portray him as a desperate man, who, after his family had lost its claim over Terkpenya lands to the Ameodas as far back as 1967, tried vainly to lay claim to other peoples land by giving them the same description.

The question is, does the *Ameoda v Pordier case* (supra), operate as res judicata against the appellant's family as contended by the two lower courts? These two consolidated cases

started as two separate cases in 1962. The plaintiff in both cases instituted two separate suits against Pordier and then one Forzi. Ameoda claimed against Pordier title of his family to lands known as 'Akwaaba' and against Forzi & Ors, title of his family to lands known as 'Terkpenya', all at Ningo. The trial High Court then consolidated the two cases. During the trial, the defendants therein, which included appellant's predecessors, denied the plaintiff's (i.e. Ameoda's) contention that the lands belonged to his family. They claimed the lands as belonging to the Ningo Stool and that they were in occupation as subjects of Ningo Stool. This claim compelled the paramount chief of Ningo to join the action as co-defendant to defend his so-called Stool lands. The trial High Court's finding was that the disputed lands (i.e. 'Akwaaba' and 'Terkpenya') were not family lands but rather Stool lands belonging to the Ningo Stool. The High Court, accordingly, dismissed plaintiff's action against the defendants, i.e. Pordier and then Forzi and others. Aggrieved by the decision of the trial High Court per Ollenu, J (as he then was), the plaintiff Ameoda, appealed against same to the Court of Appeal. The Court of Appeal, which was then the highest court of the land, allowed the appeal and held that those two parcels of land (i.e. 'Akwaaba' and 'Terkpenya') were not Ningo stool lands as contended by the defendants but rather belonged to Ameoda's family as the Ningo Stool had no lands of its own.

The Court recounted the history of how the original Forzi (also spelled as Forzee) who is the predecessor of the appellant herein came to settle on Terkpenya lands. It must be emphasized that in that suit, the appellant's predecessors did not claim the land as their family land. Their claim was that the land was Ningo Stool land and they were in occupation of same as subjects of Ningo Stool. There was no evidence that there was another parcel of land elsewhere at Ningo called Terkpenya, which belonged to another branch of the Forzi family as the appellant is now claiming, aside of the Terkpenya which the Forzis then said belonged to the Ningo Stool. The appellant's claim in this action that the Terkpenya land he is claiming as belonging to his immediate Tei Kwabla family is

different from the Terkpenya land over which Ameoda litigated with his predecessor cannot therefore be true. The two lower courts did not therefore err when they held that though the respondent herein was neither a party nor a privy in the *Ameoda v Pordier case*, that judgment operated as res judicata against the appellant and his family.

This was what the Court of Appeal said at page 28 of its judgment, which can be found at page 626 (Vol. Two) of the RoA: ***"Can the plaintiff who is a stranger and not a privy to any of the parties in the Ameoda case succeed on a plea of estoppel per rem judicatam? Indeed, evidence on record indicates that the plaintiff and his forefathers were not parties to the dispute in Ameoda case which terminated in favour of Ameoda family against the Forzi family, the defendant's ancestors/predecessors. However, since it has been established in this case that the defendant's predecessors/ancestors, including the defendant's father were parties to the Ameoda land case, it is ipso facto that the defendant is not only privy to the Ameoda judgment but is bound by it. It follows that the Ameoda judgment, Exhibit B, is binding on the defendant and operates as estoppel by record against him. In such situation, the plaintiff as a stranger to the Ameoda case, can rely on the Ameoda judgment against the privies in that case, that is, the descendants of Forzi family including the defendant herein, as an exception to the general principle under the doctrine of estoppel".***

The term **'Estoppel'** has been defined in the Black's Law Dictionary, Ninth Edition, edited by Bryan A. Garner as; ***"1. A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or <u>what has been legally established as true; 2. A bar that prevents the relitigation of issues, etc</u>."*** The term estoppel has kaleidoscopic varieties. We have estoppel by conduct, by deed, by laches, by misrepresentation, by negligence, by silence, by judgment, by verdict, and so on. The estoppel applicable in this case is *'estoppel by judgment'*, which is also known as *'collateral estoppel'* or *'issue estoppel'*. It is a doctrine barring a party from relitigating an issue

determined against that party in an earlier action, even if the second action differs significantly from the first one. It has other terms like; *'issue preclusion', 'direct estoppel', estoppel by record, 'estoppel by verdict', 'cause-of-action estoppel', 'technical estoppel'* and *'estoppel per rem judicatam'. {See Black's Law Dictionary cited supra, page 298).*

The issue as to whether or not Terkpenya lands situate at Ningo belong to the Tei Kwabla Forzi family of Ningo as the appellant was claiming in this case, has been determined against appellant's family in the cases of **AMEODA v PORDIER and AMEODA v FORZI & OTHERS (Consolidated)** and **KWEINOR TEI KWABLA FORZI v NENE KWAKU DARPOH & 2 Others (supra).** The appellant is therefore estopped per rem judicatam from relitigating that issue as the two lower courts rightly contended. With this finding, we deem it unnecessary to go into the other aspects of this appeal. We accordingly affirm the concurrent judgments of the two lower courts and dismiss the appellants appeal as having no merits whatsoever.

Y. APPAU

(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS)

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