IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: DOTSE, JSC (PRESIDING)

GBADEGBE, JSC

APPAU, JSC

MARFUL-SAU, JSC

AMEGATCHER, JSC

CIVIL APPEAL

NO. J4/17/2020

13TH MAY, 2020

DAKPEM ZOBOGU-NAA HENRY A. KALEEM

(SUBSTITUTED BY RICHARD ADAMS) ….

PLAINTIFF/RESPONDENT/RESPONDENT

VRS

1. LANDS COMMISSION,

   NORTHERN REGION ……. 1ST

   DEFENDANT/APPELLANT/APPELLANT

2. ATTORNEY-GENERAL

3. DAKPEMA ALHASSAN MOHAMMED DAWUNI

JUDGMENT

AMEGATCHER, JSC:-

On 13th May 2020, we allowed the appeal by the appellant against the judgment of the Court of Appeal dated 22nd February 2019 and indicated that we will file our reason at the registry of the court on or before 29th May 2020. We proceed with our reasons.

In this appeal, the Lands Commission who were the 1st defendant at the trial court but the sole appellant here shall be referred to as the appellant while the plaintiff shall be referred to as the respondent.

INTRODUCTION

The dispute arising from this appeal is about the status of a parcel of land at Tamale in the Northern Region of Ghana. The respondent, a sub chief of the Dakpema skin of Tamale by his amended writ of summons and claim sued the appellant as 1st defendant and the Attorney-General as 2nd defendant at the High Court Tamale for the following reliefs:

1. **i. A declaration that the conduct of the 1st defendant is ultra vires and therefore null and void.**

ii. A declaration that the conduct of the 3rd defendant in the circumstances of this lawsuit is unconscionable, inequitable, unfair and unjust.

iii. A declaration that any purported alienation of any portion of the subject matter of this lawsuit by the 3rd defendant alone is illegal, null and void.

iv. A declaration that the Dakpema skin as a corporation sole is bound and or estopped from refusing to share or cause to be shared the subject matter of the law suit among the 3 gates that constitute the Dakpema skin.

2. Recovery of possession for the benefit of the 3 gates that constitute the Dakpema skin any portion of the Land unlawfully alienated by the defendants.

i. Judicial distribution of the land amongst the 3 gates that constitute the Dakpema skin or in the alternative a mandatory order directed at the 3rd defendant to release and share the subject matter into 3 parts/portions for each skin gate within such period as the Court may deem fit.

ii. Perpetual injunction against the 1st defendant restraining it from entering upon or doing anything and or interfering with the Dakpema skin rights, or title to the said land.

3. An order of perpetual injunction or prohibitive (sic) restraining the defendants, particularly the 1st defendant, its agents, assigns etc. and persons driving (sic) title through it from disposing of and alienating any portion of Dakpema skin land in any manner whatsoever.

The appellant entered appearance and filed a defence on 14th November 2013. Following an amendment of the Writ and statement of claim, an amended Writ and statement of claim were filed and served pursuant to the order of the trial court. It appears as if the averments in the amended statement of claim were substantially the same as the original claim so the appellant did not file any amended defence to the amended claim. The

Attorney-General, after service of the Writ and statement of claim entered an appearance and filed a defence on 3rd December 2013. Apart from this process, the Attorney-General did not file any further process and did not participate in the trial.

On 30th January 2014, one Dakpema Naa Alhassan Mohammed Dawuni from the Dakpema Palace Tamale applied to the High Court to join the suit as 3rd defendant in his capacity as the incumbent Dakpema and the overlord and the rightful person to sue and be sued in respect of Dakpema lands. The 3rd defendant was joined to the suit and filed a defence on 6th May 2014. During the pendency of the suit and before the trial court could start, the original plaintiff passed away on 6th December 2014 and was substituted by the present respondent, Richard Adams.

THE PLAINTIFF'S/RESPONDENT'S CASE

The case of the respondent as can be gleaned from the record is that he is a sub-chief from the Gumbiliya gate under the Dakpema skin of Tamale. According to the respondent, the Dakpema skin lands belonged to three gates namely the Gumbiliya, Nambiligu and Nun-Kora. These gates have six sub-chiefs who together with the occupant of the Dakpema skin took decisions affecting the skin lands collectively. The respondent avers that in 1905, part of Dakpema skin lands was acquired by the British Colonial Administration for varied purposes including an area of 208.84 acres for the Gold Coast Military at a location commonly known as Kaladan Barracks without the payment of compensation.

By operation of law, the respondent states that the lands became vested in the President of the Republic of Ghana. However, according to respondent, the Kaladan Barracks was relocated by the state to the Kamina Barracks so for over 20 years or more, the Military no longer used the lands for the purposes for which it was acquired. Respondent, therefore, states that the Dakpema skin petitioned the state on numerous occasions for

the release of the land but only part was released in 1997 leaving the other part which the appellant had assumed control and management of and has been disposing of, allocating and making grants of portions to private individuals without recourse to the pre-acquisition owners. It is the case of the respondent that as an indigene, a subject and sub-chief with an inalienable right and stake in the Dakpema skin lands, its proper utilization, protection and preservation, he instituted the instant action because the occupant of the Dakpema skin and its principal elders were reluctant to maintain an action in defence of the skin property.

THE 1ST DEFENDANT'S/APPELLANT'S CASE

The summary of the appellant's resistance to the claim of the respondent is that the property commonly known as the Kaladan Barracks measuring 108.84 acres forms part of a large track of land acquired for the state 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 law, however, excluded the payment of compensation. It is the case of the appellant that sometime in 1955, the Gold Coast Army was granted licence to use the land for military purposes but over time that area known as the Kaladan Barracks became unsuitable for use of the military and so they were relocated by the state to the Kamina Barracks. The appellant avers that the land attracted encroachers and drug addicts and being a state land, the Commission decided to redevelop the land to decongest the Central Business District of Tamale. The Commission, therefore, revoked the authority or licence granted the military in 2013. The Commission also reserved some of the plots for the chiefs but those plots were to be allocated by the Commission because the land in dispute is state land and subject to the

management by the Commission within the meaning of articles 257(2) and 258 of the Constitution, 1992.

3RD DEFENDANT'S CASE

The 3rd defendant challenged the capacity of the respondent to institute the action. According to him, as the overlord of Dakpema skin, his consent is necessary before any sub-chief and caretaker land holders can either allocate their lands or go to court to litigate over the lands. In his opinion, until Dakpema lands were released by the state to the skin, they remained state lands. According to him negotiations with the military and the Commission was in progress and that the Dakpema lands were not in danger of being lost as claimed by the respondent. It is interesting to note from the pleadings, reliefs and evidence that respondent acknowledged the overlordship of the 3rd defendant while the 3rd defendant also acknowledged the position of the respondent as a sub-chief of the skin and a caretaker of the lands allotted to his gate. It appears the approaches to reclaiming portions of Dakpema lands from the state was where they differed. While the approach of the respondent appears to be the militant "self-government now," that of the 3rd defendant took the gentle "self-government at the shortest possible time."

HIGH COURT JUDGMENT

The High Court, Tamale delivered its judgment on 30th November, 2016 in favour of the respondent and granted all his reliefs. The trial court made the following findings:

1. Dakpema skin is the pre-compulsory acquisition owners of Kaladan lands inclusive of the subject matter in dispute.

2. The letter signed by the Minister of Defence to 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 because the military no longer had interest in the land is an executive act of the government and binding on the government and Lands Commission. The military's interest in the land lapsed when it entreated the Minister for Lands to issue a disclaimer in favour of the owners.

3. Kaladan lands were compulsorily acquired by the Colonial Government by virtue of CAP 111 for the military. As such it was owned by the military and not the Lands Commission. After the Lands Commission in 2013 revoked the 1955 Letter of Authority vesting the land in the military the lands reverted to the pre-acquisition owners i.e. the Dakpema skin and no longer the property of the Government to be managed by the Lands Commission. Section 5 of CAP 111 itself was repealed by the State Property and Contracts Acts, 1960 (CA6) and therefore the indefeasible title or any interest acquired by the Government in 1955 has been extinguished by the revocation of the Letter of Authority.

4. Section 5(8) of CAP 111 under which the Kaladan lands were compulsorily acquired gave the owners of the land an accrued right that where the Chief Commissioner under his hand and seal at any time rescind or vary any certificate or schedule, the certificate shall become void of effect and any land affected by such order shall from that date thereof vest and be held and enjoyed as though it had never been taken for the Government or held or occupied as Government property. Thus, though section 5 of CAP 111 was repealed by the State Contract Act of 1960 (CA6), the right that has accrued to the pre-acquisition owners to have the land revested in them when the certificate of acquisition is rescinded or varied will accrue to the Dakpema skin under section 8(1)of the Interpretation Act CA 4 as amended by section 34 of the Interpretation Act, 2009 Act 792. Section 34 of Act

792 provides that the repeal or revocation of an enactment would not affect a remedy in respect of a right acquired, accrued and or incurred under the repealed Act and so any legal proceedings in respect of any right, duty, and obligation under the repealed law could be addressed under the repealed Act. The court, therefore, is enjoined to apply section 5(8) of the repealed CAP 111 to the current case because of the right to have the reversionary interest if the Commissioner revokes the certificate.

5. The 3rd defendant pleaded one fact and led evidence on another to demonstrate that it engaged the Lands Commission for the release of part of the land in dispute on an agreed ratio to the Skin. Since the evidence led by the 3rd defendant on this issue was not credible and sufficient, the court will rule against the 3rd defendant.

6. The 3rd defendant did not lead credible and admissible evidence to show that he could allocate portions of Kaladan lands which fall under a sub-chief such as the Silimboma-Naa. As the superior, the Dakpema has several sub-skins and so cannot descend down the ladder to make allocation of land under a sub-skin. His authority is that it is the sub-skins who make the allocation of land and then bring it to him for either endorsement or confirmation. The 3rd defendant, therefore, cannot allocate portions of Kaladan lands which fall under a sub-skin or in this case specifically lands of the Silimboma sub-skin.

7. From the totality of the evidence on record, the court is satisfied that the three gates under the Dakpema skin benefitted from portions of Kaladan lands which fell under the Kukuo skin. The grants involving members of the three gates were not by accident but a conscious act to make sure the gates to which the land belong benefitted.

COURT OF APPEAL JUDGMENT

Dissatisfied with the decision of the High Court, the appellant filed an appeal on 21st December 2019 to the Court of Appeal. The appeal court delivered its judgment on 22nd February 2019 dismissing the appeal and confirming the decision of the trial court. It is from the decision of the Court of Appeal that the appellant on 15th April 2019 has appealed again to us. The grounds of appeal are as follows:

1. The judgment of the Court of Appeal is against the weight of evidence.
2. The learned Justices of the Court of Appeal erred in law in holding that the lands reflected on exhibits LC and LCI do not constitute compulsory acquisition by operation of Section 29(7) of Cap 111.
3. The learned Justices of the Court of Appeal erred in law by holding that Exhibits LC 2, LC 3 and LC 4 were acquisition instruments that appropriated the Kaladan lands for the military when the said Exhibits do not comply with No. 1 of 1923, i.e. Cap 111, the law upon which the Kaladan Lands were acquired.
4. The learned Justices of the Court of Appeal erred in law by relying on the phrase, "vested in the president in trust" and applied in the case of Omaboe 111 and others v Attorney-General & Lands Commission to interpret the phrase 'vested absolutely in His Majesty the King' as appears under Section 29 (7) (a) of Cap 111 and concluded that the two phrases have the same effect notwithstanding that they are two different phrases in two different statutes.
5. The learned Justices of the Court of Appeal erred in law by holding that all lands held and occupied as government properties by 31st December 1922 in the

Northern Territories as depicted on exhibit LC and LCI were vested in the Crown by provisions of the said Section 29 (7) (a) of Cap 111.

6. The learned Justices of the Court of Appeal erred in law by placing the burden of proof on the 1st Defendant/Appellant/Appellant to prove the allegation that there was a larger acquisition of which the land in dispute formed part, which allegation was indeed pleaded by the plaintiff/Respondent/Respondent and admitted by 1st Defendant/Appellant/Appellant.
7. Further grounds shall be filed upon receipt of the Record of proceedings.

EFFECT OF CONCURRENT FINDINGS OF FACT BY TWO LOWER COURTS

We are once again confronted with an appeal from concurrent judgments of two lower courts. This court has stated time and again in several decisions that where findings of fact by a trial court has been concurred with by the first appellate court, the second appellate court must be slow in interfering unless under some limited circumstances. Dotse JSC summarizes the position of the court in the case of **Gregory v Tandoh [2010] SCGLR 971 at 985** as follows:

"There is this general principle of law which has been stated and re-stated in several decisions of this Court that where findings of fact such as in the instant case have been made by a trial court and concurred in by the first appellate court, in this case the Court of Appeal, then the second appellate Court such as this Supreme Court must be slow in coming to different conclusions unless it is satisfied that there are strong pieces of evidence on record which are manifestly clear that the findings of the trial court and the first appellate court are perverse.

Dotse JSC cited some of the previous cases on the issue decided by this court as follows:

1. Akuffo-Addo vrs Cathline [1992] 1 GLR 377 per Osei Hwere JSC
2. Doku vrs Doku [1992-93] GBR 367
3. Achoro vrs Akanfela [1996-97] SCGLR 209 holding 2
4. Koglex Ltd. (No. 2) vrs Field [2000] SCGLR 175
5. Jass Co. Ltd. vrs Appau [2009] SCGLR 265
6. Awuku Sao vrs Ghana Supply Co. Ltd. [2009] SCGLR 710
7. Obeng v Assemblies of God Church, Ghana [2010] SCGLR 300 at 322-323:

At page 986 the learned justice went on:

"There are however a host of other respected authorities to support the contention that the above principle is not a cast iron situation which is incapable of being departed from…From the reading of the cases referred to supra and others not referred to, it appears the rationale for the principle is that, an appellate court must be slow in interfering with the findings of fact, made by a trial court because it is the trial Judge alone who had the advantage of seeing, hearing and observing the demeanour of the parties and the witnesses which appeared before him…… However, where the findings were based on established facts such as in the instant case, then the appellate court was in the same position as the trial court and was perfectly in a position to draw its own inferences from the established facts……."

On the circumstances under which a second appellate court will interfere with concurrent findings by two lower courts, this is what the learned justice stated from pages 986-987.

"It is therefore clear that, a second appellate court, like this Supreme Court can and is entitled to depart from findings of fact made by the trial court and concurred in by the first appellate court under the following circumstances:

1. Where from the record the findings of fact by the trial court are clearly not supported by evidence on record and the reasons in support of the findings are unsatisfactory.

2. Where the findings of fact by the trial court can be seen from the record to be either perverse or inconsistent with the totality of evidence led by the witnesses and the surrounding circumstances of the entire evidence on record.

3. Where the findings of fact made by the trial court are consistently inconsistent with important documentary evidence on record.

4. Where the first appellate court had wrongly applied the principle of law in Achoro vrs Akanfela (already referred to supra) and other cases on the principle, the second appellate court must feel free to interfere with the said findings of fact, in order to ensure that absolute justice is done in the case.

Dotse JSC then referred to the unanimous decision of the Supreme court in the case of **Fosua and Adu - Poku vrs Dufie (deceased) & Adu Poku Mensah [2009] SCGLR 310 at 313** and quoted the dictum of Ansah JSC on the legal position as follows:-

"A second appellate court would justifiable reverse the judgment of a first appellate court where the trial court committed a fundamental error in its findings of fact but the first appellate court did not detect the error but affirmed it, and thereby perpetuated the error. In that situation, it becomes clear that a miscarriage of justice had occurred and a second appellate court will justifiable reverse the judgment of the first appellate court".

Then his own observations in the same Fosua and Adu Poku vrs Dufie case referred to as follows:

"An appellate court such as this court may interfere with the findings of fact of a trial court where the latter failed properly to evaluate the evidence or make the proper use of the opportunity of seeing or hearing the witnesses at the trial or where it has drawn wrong conclusions from the accepted evidence or where its findings are shown to be perverse. It is clear that there are cogent and credible pieces of evidence which this court on its own can use to differ from the findings of fact made by the trial court and the first appellate court."

We have examined the entire record and the statement of case filed by counsel for the parties in support of their respective position in this appeal. We have come to the conclusion that the trial court committed a fundamental error in its findings of fact. The first appellate court did not detect the error but affirmed it, and thereby perpetuated the error. This is evidenced in the pleadings filed, the evidence led and the application of the law on the burden of proof and compulsory acquisition. It is clear that there are cogent and credible pieces of evidence and proper application of the law which this court on its own can use to differ from the findings of fact and exposition of the law made by the trial court and the first appellate court.

BURDEN OF PROOF IN LAND CASES:

Our starting point is ground 6. This is on the burden of proof in land cases. In paragraphs 7 and 11 of the statement of claim and 12 of the witness statement of the respondent, he averred and testified that the Kaladan lands forming 208.84 acres was acquired or appropriated by the British Colonial Administration. In paragraph 4 of the defence and 3 of the witness statement, the appellant admitted the fact of the acquisition and stated that the 208.84 acres was only a fraction of a larger area of land which was compulsorily acquired for the State by the then Gold Coast Government

under the Administration of the (Northern Territories) Ordinance CAP 111 for Tamale Township administration. The appellant did not counterclaim for either the 208.84 acres Kaladan land or the larger area testified in its evidence. However, in his judgment, the learned trial judge made a lot of capital out of the larger area pleaded by the appellant and held at page 352 of the record that:

"**If there was the acquisition of a larger area of which the land in dispute formed a part, the certificate in respect of that larger area should have been tendered…..I therefore, make a finding of fact that there was no such larger acquisition and that if same existed, the requisite admissible and relevant evidence was not brought before the court**."

On appeal, the Court of Appeal was swayed by the trial judge's appreciation of the party the burden of proof rested on when it concluded at page 505 of the record as follows:

"**On a rehearing of this case, we are satisfied that the Appellant failed to prove that there was compulsory acquisition of the larger area of land reflected on exhibit LC and LC1 which rendered them state lands by operation of Section 29(7) of Cap 111**…."

At page 516, the Court of Appeal went on:

"**The Appellant's position that Cap 111 is a statute that compulsorily acquired larger land is not only against the weight of evidence, but also flies in the face of the full content of cap 111**."

Our appreciation of the evidential burden in law is that a defendant who did not counterclaim in a dispute over land bore no burden to prove or establish his title to any area of the land. It is sufficient to plead the facts establishing his ownership in his defence and lead evidence in support of it. However, the defendant's failure to lead any evidence will not relieve the plaintiff of the time tested burden placed on him to establish his title on the balance of probabilities. This court has explained the onus of proof in land cases in several decisions. The case of **Jass Co Ltd v Appau [2009] SCGLR 265 at 270-271** is one such case dealing with declaration of title to land at Odorkor, Accra, in which the defendant counterclaimed. Dotse JSC speaking on behalf of the court re-echoed the evidential burden in such land litigation as follows:

"We wish to observe that, the burden of proof is always put on the Plaintiff to satisfy the court on a balance of probabilities in cases like this. Thus, if in a situation, the defendant has not counterclaimed, and the Plaintiff has not been able to make out a sufficient case against the defendant, then his claims will be dismissed. See case of Odametey v. Clocuh [1989 -90] 1GLR, 15 holding 1…… Thus, whenever a defendant also files a counterclaim, then the same standard or burden of proof will be used in evaluating and assessing the case of the defendant just as it was used to evaluate and assess the case of the Plaintiff against the defendant. In the instant appeal, the defendants counterclaimed and this meant that they also assumed the position of Plaintiff in respect of their counterclaim. Having thus dismissed the claims of the Appellants, the learned trial judge in our view proceeded to evaluate the case of the Respondents in respect of their counterclaim using the time-tested principles enunciated long ago in Majolagbe vs. Larbi [1959] 1 GLR 190, at 191."

The appellant who was 1st defendant at the trial court admitted the averments regarding the land in issue and the history given by the respondent in his statement of claim. What the appellant added to its pleadings and witness statement was that the land formed part of a larger portion. The appellant did not counterclaim for either the 208.84 acres or the larger portion of the land. There was, therefore, no issue which the appellant was required to prove and more especially when no evidential burden shifted to the appellant in this case. The findings by the trial judge and affirmed by the Court of Appeal that the appellant failed to adduce evidence that the state compulsorily acquired the larger area of the land is contrary to the evidential burden in our law and authorities decided by this court. We hereby set same aside and allow this ground of appeal.

EVIDENCE OF COMPULSORY ACQUISITION:

Equally worrying on the shifting of the burden of proof in land cases is the assertion that the appellant failed to lead evidence to prove the compulsory acquisition of the land. The consideration of this will lead us to grounds 2, 3, 4 and 5 of the grounds of appeal.

The respondent who instituted the action was emphatic in his pleadings particularly in paragraphs 7 and 8 of the statement of claim that in 1905, part of Dakpema skin lands was released or acquired by the British Colonial Administration and occupied by the Gold Coast Military or Army. In paragraphs 11 and 12 of the witness statement of the plaintiff, Richard Adams, the respondent again testified that 208.84 acres of Dakpema skin lands was acquired/appropriated by the British Colonial Administration by a certificate under the hand of the Lands Officer for the Gold Coast Military. The

respondent tendered letters the skin had written to successive governments petitioning for the release of the lands after the military relocated to the Kamina Barracks. In two of the letters dated 16th October 2001 and 22nd August 2008 the respondents were emphatic about the acquisition. Paragraph 1 for example of the letter dated 16th October 2001 stated as follows:

"**Your Excellency, as you may be aware the government of Ghana years ago acquired land belonging to the Dakpema skin to house the then Kaladan Barracks**."

The response of the appellant to the averment of the respondent was to admit those facts and reiterate the acquisition of the Kaladan Barracks within the Tamale metropolis by the Colonial Administration by a Certificate of Appropriation under the Northern Territory Ordinance of 1902 (CAP 111). Paragraph 3 of the witness statement by Peter Osei Owusu who gave evidence for the appellant Commission stated that:

"**The land in dispute otherwise known as Kaladan Barracks situate within the Tamale metropolis, measuring 208.84 acres forms a fractional part of a larger area of land which was compulsorily acquired, for the State, by the then Gold Coast Government under the Administration of the (Northern Territories) Ordinance, CAP 111, for Tamale Township development and administration**."

So, at the trial, there was no dispute whatsoever between the parties in court about the legal status of the Kaladan lands as at the date of the institution of the action on 1st November 2013. Not surprising, the learned trial judge in his evaluation of the law and evidence contained in his judgment dated 30th November, 2016 held at page 345 of the record as follows:

"**I agree with the position taken by all the learned Counsel for the parties and concludes that the Dakpema skin is/was the pre-compulsory acquisition owners of**

Kaladan lands inclusive of the subject matter in dispute……..” and at page 360, the judge went on **“Learned Counsel for the 1st and 3rd Defendants considered this issue in the light of the rights, obligation etc that should accrue to the government upon repeal. I am of a different opinion as the land was compulsorily acquired by the Government and the right and privileges that accrue are in reference to the original owners of the land**.”

Neither the respondent nor the appellant appealed against the conclusion arrived by the trial judge that the Kaladan lands were compulsorily acquired from the Dakpema skin by the British Colonial Administration. However, this issue became central in the judgment of the Court of Appeal delivered on 22nd February, 2019. After holding that the appellant failed to prove compulsory acquisition, the learned justices of the Court of Appeal proceeded as follows at page 506 of the record:

“**Appellant and its counsel misconceived the import of Cap 111 generally, and the meaning of Section 29(7) of Amendment No 1 of 1923 specifically. Further, the certification on exhibits LC and LC1 did not constitute a certificate of appropriation of the lands described thereon in the nature of compulsory acquisition. This is because the clear, literal and purposive meanings of Section 5(7) and 29(7) of Cap 111 was the vesting in the crown the legal interest in lands occupied and held by government as at 31st December 1922 and not the compulsory acquisition of those lands without a right and possibility of reversion to the original land owners.**”

Admittedly, the Court of Appeal was entitled to have a second look at and review an interpretation of a legal provision even if the parties failed to question that before the court on appeal. In doing so, the court was obliged to point where the trial court went wrong in its interpretation and what in its opinion is the correct proposition of the law on the issue. In this case, the Court of Appeal after shifting the burden of proving

compulsory acquisition by the Colonial Administration on the appellant examined sections 5 and 29 of the Administration of the (Northern Territories) Ordinance, CAP 111 as amended in 1923 and tendered in the trial as LC and LC1. The Court of Appeal concluded that the appellant and his counsel did not produce the certification of appropriation in compliance with the statute to prove that the acquisition was complete. Further the appellant misconceived the meaning of the provisions of the Ordinance and that the Kaladan lands were not compulsorily acquired.

The Court of Appeal stated at page 507 of the record as follows:

"On a simple reading of these words, the two documents simply identified the parameters of lands held and occupied as government lands by the 31st December 1922. Exhibits LC and LC1 therefore do not contain a certification of appropriation for acquisition purposes (as paragraph 4 of the Statement of Defence seemed to suggest), but a certification that the documents reflect the area held and occupied as government property as at 31st December 1922."

Section 29 is reproduced verbatim from section 5. For want of repetition we will only refer to the relevant provisions in section 5. Section 5(1) & (4) reads:

"**5(1) It shall be lawful for the Chief Commissioner or any person appointed by him with all necessary workmen and other servants to enter any land required for public services and to set out, appropriate and take so much of such land for the said service'**

5(4) Notice of the acquisition of any land for the public service shall be given by the District Commissioner as soon as possible after the deposit in his office of the plan of the land to the Chief or Chiefs to whose stool or stools he believes such land to be attached, or to such other person or persons as he may believe to be the owner or owners thereof."

Various key phrases and words were used by the lawmaker in this statute. It would be helpful for our course in this judgment to understand the meaning of the words carefully selected and used in this legislation. This will enable us appreciate the real intention of the lawmaker. The reason is the Court of Appeal went at great length in applying canons of interpretation such as the literal approach and purposive approach in the construction of a statute. The court also examined the use of clear words, reading statute as a whole and the grammatical construction, title and preamble to enable it determine the intention of the lawmaker.

As stated correctly by the Court of Appeal in the formulation of the legal proposition on interpretation of statutes, a statute must be interpreted within the context of its clear words. The title of the statute may help but that alone should not derogate from the words used to determine the intentions of the lawmaker. Thus, where the words used are clear and ordinary meaning of the words could be discerned from the language of the Act itself, effect should be given to it before any resort to the other rules and canons of statutory interpretation. We must also add that in interpreting certain statutes, recourse must be had to the history and factors prevailing at the time the statute was made. This will enable the court to discern the real intention of the lawmaker. What were the prevailing circumstances in the Gold Coast Colony and the Protectorate at the time Cap 111 was enacted in 1902 and the acquisition of the Kaladan land in 1905? Some historical perspective will give us a clue.

According to Dr Lennox Agbosu in his article titled **Land Administration in Northern Ghana published in 1980 Volume 12 Review of Ghana Law 104**, prior to 1900, the Gold Coast Colony and the Northern Territories (The Protectorates) were being administered differently by the British. However, in 1901, an Order-in-Council was passed to annex the Northern Territories to the Gold Coast. This paved the way for the passage of the

Administration (Northern Territories) Ordinance of 1902, Cap 111 to provide for the general administration of those territories. That Act covered general administration as well as land acquisition under sections 5 and 7. See also **Bentsi-Enchill-Ghana Land Law, Chapter One, Sweet and Maxwell, 1964**

The British Colonial government was able to push these land laws through in the Northern Territories because, unlike the Colony and Ashanti where there was sentimental attachment to land and rights in land was fundamental to structure of government, in the Northern Territories, land had no market value. No economic value was attached to land as the chiefs and community leaders did not appreciate its economic value. This is how Agbosu puts it:

"In the Northern Territories, however, there was no concrete evidence of such sentimental attachment to land. Land control functions did not necessarily devolve on those exercising political power in the community. The political and economic powers associated with the control of land in Ashanti and the Colony were thus absent in the Northern Territories. For these reasons, the government was aware that no serious opposition to its authority was likely, even if it introduced laws affecting land, having regard to the general notion of land by the people in that region, which may be summed up in the words of a Gonja chief of Pombe, who in reply to a question as to whom, in native opinion, the land belonged to, replied, "As the people belong to the government, how much more then, does not the land they live on"

So, for convenience of the British Colonial Administration, it decided to enact one law headed **'AN ORDINANCE TO PROVIDE FOR THE ADMINISTRATION OF THE NORTHERN TERRITORIES OF THE GOLD COAST'** to cover general administration as well as land acquisition. Section 5 of the Ordinance conferred powers on the Chief Commissioner, or anyone appointed by him, to enter upon any land required for the

public service, and to appropriate and take so much of such land as shall be required for the said service. Where such land was taken for such service, no compensation shall be paid except for growing crops, or in respect of, or interference with, any buildings, works or improvement on or near the land taken. Section 7 (a) vested ownership in all lands, premises and buildings, which were on the 31 December 1922, held and occupied as government property absolutely in Her Majesty the Queen, free from all encumbrances, titles, interests, liens, charges and claims of whatsoever nature.

By 1931, the Colonial government had pushed the Northern Territories land matter a step further with the enactment of the Land and Native Rights Ordinance, 1931, (Cap 147). Under this Ordinance, all rights in and over lands within the Protectorate were declared to be native lands and were then held and administered for the use and common benefit of the natives (persons whose parents are or were members of some tribes indigenous to the Northern Territories). These laws exercising control over lands in the Protectorate continued until 1960 when they were repealed and replaced by the State Property and Contracts Act (C.A. 6)

With the history surrounding the enactment of Cap 111 in place, we now focus our attention on the peculiar words and phrases used in the statute. The key words and phrases in sections 5(1) & (4) of this Colonial statute were ""**required for public services"**, "**set out, appropriate, take" and "acquisition."**

The word "**required**" is defined by the Advanced English Dictionary to mean compulsory, mandatory, needed, or necessary for. Black's Law Dictionary, 11th edition defines "**set out**" as to recite, explain, narrate, or incorporate. "**Appropriation**" is also defined in the same dictionary as the exercise of control over property; a taking of possession; expropriation. "T**ake**" is defined as to obtain possession or control, whether legally or illegally; to seize with authority; to confiscate or apprehend; to acquire

(property) for public use by eminent domain; to seize or condemn property. "**Acquisition**" is also defined by Black's Law Dictionary as the gaining of possession or control over something.

Putting the words and phrases used in sections 5 and 29 of Cap 111 (as amended) together it will be obvious that the rationale behind the Colonial Administration enacting section 5 and possessing the 208.84 acres Kaladan lands in Tamale was to compulsorily acquire the land from the Dakpema skin for the public services. Sub-section (5) & (7) of section 5 puts that intention behind the statute beyond doubt with the following provisions:

"5(5) No compensation shall be allowed for any land so taken except for growing crops or in respect of disturbance of or interference with any buildings, works, or improvements, on or near the land.

5(7). (a) The ownership in all lands, premises, and buildings, which were on the 31st day of December, 1922, held and occupied as Government property, is hereby declared to be vested absolutely in Her Majesty the Queen, free from all competing estates, incumbrances, titles, interests, liens, charges, and claims, of whatsoever nature and by whomsoever alleged to be held or claimed.

(b) The Chief Commissioner shall with all convenient dispatch cause to be prepared a schedule of all the said lands, premises, and buildings, together with proper plans thereof; and he shall cause the original of such schedule and plans, duly certified under his hand and official seal, to be deposited in his office, and a duplicate original of such schedule and plans similarly certified to be transmitted for deposit to the office of the Commissioner of Lands at Accra. Such original land duplicate original schedule and plans, and any duly certified office copy of or extract from such schedule and plans, shall for all purposes and without proof of signature be deemed to

constitute conclusive evidence of the facts as to Crown ownership of which they purported to be a record.

Interpreting these provisions in its judgment, the Court of Appeal held at page 509 as follows:

"When these proper canons of and guidelines to interpretation of statutes are applied, one finds the purpose of Cap 111 is set out in these words 'AN ORDINANCE TO PROVIDE FOR THE ADMINISTRATION OF THE NORTHERN TERRITORIES OF THE GOLD COAST'. As a statute created for the general administration of the Northern Territories, the scope of Cap 111 of 1902 stretched from the sale of drinks to management of landed property. It was not a statute created for the compulsory acquisition of property for the State. In these circumstances and given that the compulsory acquisition of property without payment for it or the option of reversal of that acquisition must be repugnant to any society that is not practicing slavery, it is important to ensure that the clear words of the statute give that direction before construing it to arrive at that meaning."

It appears the Court of Appeal did not consider the historical factors prevailing in the Colony and the Protectorate at the time of the passage of Cap 111 for the Northern Territories of the Gold Coast. The Court of Appeal, thus, questioned the basis for the lumping of administration, sale of drinks and management of landed property in one statute. The Court of Appeal also questioned the type of society in which such a statute could be passed for the compulsory acquisition of land without the payment of compensation.

It must be observed that one of the distinguishing characteristics of compulsory acquisition of land which shall be explained later in this judgment is the payment of

compensation to the owners of the land. Colonial Rule was an imposition on the people of the then colony and protectorate by the British. As such the Colonial Administration made the decision on law and policy for the Territories. Aware, therefore, of the need to pay compensation for compulsorily acquired lands, the lawmaker in Cap 111 explicitly excepted the payment of any compensation for the land acquired. Only compensation for growing crops or interference in any buildings, works or improvements on or near the acquired land was permitted. This provision would have been unnecessary if section 5 was not intended to compulsorily acquire lands taken under it.

DIFFERENCES BETWEEN LAND COMPULSORILY ACQUIRED AND VESTED LAND:

In their judgment, the learned justices of the Court of Appeal attempted to differentiate between lands compulsorily acquired and lands vested in the State before arriving at the conclusion that the disputed Kaladan lands were not compulsorily acquired. This is what the Court of Appeal said at page 512:

"There is a distinct difference between vesting lands in a body other than its original owner for the purposes of administration, and compulsorily acquiring it as State lands without a right of reversion to its owner. While both practices have been consistently regulated by statute and incorporated in land administration of the country, the second practice has been accompanied by provisions to ensure proper compensation to the original owner.

While we agree with the Court of Appeal that there is a distinction between vested and compulsorily acquired land, to 'vest' or 'vested' land has acquired two different meanings in legislation. A critical look at Act 123 and 125 will bring to the fore the characteristics and legal effect of the distinction.

In one sense, land is vested in the President in trust for stools, skins and communities. In another sense, land is acquired and vested absolutely in the President in trust for the public services or on behalf of the people of Ghana free from any incumbrances, titles or interest whatsoever. The characteristics and legal effect are as follows.

Vested Lands in trust for the benefit of stools, skins & communities:

Such vested lands were lands previously owned by stools, skins and traditional indigenous communities and by law were vested in the President and administered in trust for the benefit and on behalf of the communal owners. One characteristic of such vested land held in trust is that though the State possesses the legal interest in the land as the trustee, the community possesses the beneficial interest as the beneficiary. Another characteristic is that no compensation is paid for such lands. The allodial interest remains in the community despite the fact that the customary authority over the land has been taken over by the State.

Further, another characteristic is the title of the original owners to those land is not extinguished as the land is vested for administrative and management purposes only. Yet another characteristic is that proceeds from income derived from minerals or any economic activity on the land is paid into a Stool Land Account to be shared among the District Assemblies in whose areas the lands are situate, and the community for the maintenance of the Stool, the Traditional Council, the construction of projects and scholarships for educational purposes. Such vested land is currently governed by the Administration of Lands Act, 1962 (Act 123). The Act makes it clear that it is to consolidate the enactments relating to the administration of Stool and other lands in the country. Section 7 provides as follows:

"(1) Where it appears to the President that it is in the public interest so to do he may, by executive instrument, declare any Stool land to be vested in him in trust and accordingly it shall be lawful for the President, on the publication of the instrument, to execute any deed or do any act as a trustee in respect of the land specified in the instrument.

(2) Any moneys accruing as a result of any deed executed or act done by the President under subsection (1) shall be paid into the appropriate account for the purposes of this Act."

Vested lands in the President absolutely in trust for the public service or the people of Ghana free from all encumbrances, titles and interest:

This expression used in legislation constitutes land taken by the State for development purposes and vested in the President absolutely in trust for and on behalf of the people of Ghana for the Public Service of the Republic of Ghana free from all competing estates, encumbrances, titles, interests, liens, charges, and claims, of whatsoever nature. The absolute and allodial ownership and title of such lands are vested in the President as with expropriation thus extinguishing all previous interests in the land. This power is exercised by the State to acquire rights in private property belonging to an individual, stool, family, skins or communities without the consent of the owners.

The legal effect of this type of vesting which in law constitutes compulsory acquisition of the land from the owners was succinctly explained by Gbadegbe JSC in **Sagoe & Ors v Social Security & National Insurance Trust [2012] 2 SCGLR 1093 at 1099** that compulsory acquisition by the State would operate to extinguish any title and/or interests that a person might have had at the date of the publication of the instrument of acquisition.

Acquisitions of this nature are needed for the development of roads, hospitals, electricity, railways, airports, housing, harbours, law enforcement and defence. Others are schools, dams, game reserves and protecting the environment among others. Because the original owners are stripped of their legal and equitable title to the land, provision was made in most laws for the payment of adequate compensation to those dispossessed of their lands but this was not always the case as provided for in Cap 111. Pre-Independence laws and Constitutions, however made it mandatory for compensation to be paid to pre-acquisition owners. Examples of current laws on compulsory acquisition are the State Property and Contract Act, 1960 (CA 6) (as amended), State Land Act 1962 (Act 125) (as amended), the Lands (Statutory Wayleaves) Act, 1963 (Act 186) and articles 20 and 257(1) & (2) of the Constitution, 1992. The Constitution specifically defines public lands and makes provision for the appropriation of land in the interest of defence, public safety, public order, public morality, public health, and the development or utilization to promote the public benefit.

The State Property and Contracts Act, 1960 (CA 6) passed in 1960 repealed section 5 of Cap 111 and made provision for the vesting of all property hitherto acquired and vested in the Crown or in Her Majesty the Queen in the President of the Republic in trust for and on behalf of the people of Ghana for the Public Services. Sections 1 & 2 provides:

"(1) Any property vested in the Crown as trustee for the Public Service of Ghana and whether situate in or outside Ghana shall, on the coming into operation of this Act, vest without any further authority than this section in the President in trust for and on behalf of the people of Ghana for the Public Service of the Republic of Ghana.

(2) Where in any Act provision is made that property shall be controlled or conveyed or surrendered to and become vested absolutely or otherwise in, and held by the

Crown that property shall vest in the President in trust for the Public Service of the Republic of Ghana; and accordingly in any such Act references to "Her Majesty the Queen", "Her Majesty the Queen in trust for the Public service of Ghana", "Crown ownership" and "the Governor-General" shall be construed as a reference to "the President in trust for the Public Service of the Republic" or "Republic ownership" as the case may be."

The State Lands Act, 1962, (Act 125) was enacted as a statute to provide for the acquisition of land in the national interest. Section 1 and 2(3) provides that:

"(1) Whenever it appears to the President in the public interest so to do, he may, by executive instrument, declare any land specified in the instrument, other than land subject to the Administration of Lands Act, 1962 (Act 123), to be land required in the public interest; and accordingly on the making of the instrument it shall be lawful for any person, acting in that behalf and subject to a month's notice in writing to enter the land so declared for any purpose incidental to the declaration so made."

2 (3) On the publication of an instrument made under this section, the land shall, without further assurance than this subsection, vest in the President on behalf of the Republic, free from any encumbrances.

The distinction between 'vest' or 'vesting' used in the Administration of Lands Act, 1962 (Act 123), a legislation enacted for administration and management of those vested lands and 'vest' or 'vesting' used in the State Lands Act, 1962 (Act 125), another legislation passed to compulsorily acquire land is fortified by the fact that the two Acts were all assented to by the President on the same date, 14th June, 1962. This is a clear indication that even though the word 'vest' or 'vesting' was used in the two enactments, they were placed there to serve different purposes and to have different legal effect.

The learned justices of the Court of Appeal failed to properly draw the distinction between vesting land for administration purposes and vesting land for compulsory acquisition and misled itself in concluding that the vesting of Kaladan land in the Crown in 1923 did not constitute compulsory acquisition. Again, the learned justices of the Court of Appeal failed to appreciate the historical underpinnings leading to the enactment of Cap 111 and the clear words selected and used in the section 5 or 29 of the Ordinance. If the Court of Appeal had considered the factors raised above, it would have been obvious to it that the state did compulsorily acquire Kaladan lands as admitted by the parties at the trial and found as a fact in the judgment of the learned trial judge. In our opinion, the Court of Appeal, therefore, erred in law by concluding that Kaladan lands were not compulsorily acquired but vested with the reversion in the pre-acquisition owners. We uphold this ground of appeal and set aside the conclusion that the State did not compulsorily acquire the 208.84 Kaladan land from the Dakpema skin.

The appellants also questioned the conclusion of the learned justices of the Court of Appeal that Kaladan lands were vested lands which reverted to the Dakpema skin when they interpreted and applied **Omaboe III and others v Attorney-General & Lands Commission [2005-2006] SCGLR** 579 to the peculiar facts of this case.

This is what the Court of Appeal said at page 513-514:

"**In Omaboe III cited supra, the Supreme Court provided direction on the meaning of the similar term 'vested in the President in trust' used in section 7 (1) of Administration of Lands Act 1962 (Act 123). It said 'the term ordinarily connoted the real transfer of the allodial ownership to the President as trustee, not simply the management and control functions of land administration. It signifies the non-derivative title to the maximum range of liberties with respect to the ownership and use of land….However**

any moneys accruing as a result of any deed executed or other act done by the President were to be paid into 'an appropriate account' for specified uses to the benefit of the statutory local authorities and the communities concerned…….Again in Omaboe III cited supra, the Supreme Court examined the vesting and acquisition regimes over stool lands from previous statutes and the effect of relevant provisions in the 1992 Constitution and described as 'clearly misplaced' the position taken by the Lands Commission that the vesting of stool lands in the President under section 7 (1) of Administration of Lands Act, 1962 Act 123 is equivalent to compulsory acquisition of the land. The court clarified that once lands had become public lands through vesting, they 'continue to be vested in the President or Government of Ghana until the State takes measures by an express statutory language to de-vest itself and re-vest in the original stool owners' Vested lands may be de-vested, and re-vested, and this is done by express measures."

It appears to us that the Court of Appeal misread and misapplied the import of Omaboe 111 case to the facts of this case. Stool lands vested under section 7 of Act 123 fall under the first category of vested lands described above and were held by the President in trust for the stools, skins and communities who owned the lands. In the Omaboe 111 case, the Supreme Court was called upon to interpret whether E.I. 108 of 1964 passed pursuant to section 7 of Act 123 vesting certain lands in the Osu Manche layout in Osu in the President to hold in trust for the stool was inconsistent with article 267(1) of the Constitution, 1992 which vest all stool lands in the appropriate stools to hold in trust for the subjects of the stool. Kaladan lands were not acquired or vested under Act 123 and were inapplicable so far as interpreting "vesting" in Act 123 and article 267 were concerned. On the contrary, the statute which replaced section 5 of Cap 111 under which the Kaladan lands were taken by the Crown is the State Property and Contracts Act, 1960 (CA 6). That statute left no doubt whatsoever about its purpose. It was enacted to vest in the President of Ghana

in trust for and on behalf of the public services of the Republic of Ghana any land which was vested in the Crown or Her Majesty the Queen on the coming into force of the Act. Kaladan lands was caught by the State Property and Contracts Act 1960 and not the Administration of Lands Act 123 subsequently passed in 1962. One basic tenet of statutory interpretation is that statutes are deemed to be prospective and not retrospective. Omaboe 111 is, therefore, inapplicable to the facts in this case.

EFFECT OF THE PROVISIONS OF ARTICLE 257 ON LANDS COMPULSORILY ACQUIRED FROM THE NORTHERN, UPPER EAST & UPPER WEST REGIONS:

In coming to a conclusion whether Kaladan lands reverted to the Dakpema skin, the Court of Appeal considered the provisions of article 257 of the Constitution, 1992 and held at page 520 as follows:

"**By operation of the 1992 Constitution, public lands in the Northern, Upper East and Upper West Regions which had been vested in the State reverted to the owners or the appropriate skin without further assurance than Article 257 clauses (3) and 4. This right of reversion directly to its owners for any public lands would affect any lands vested under Cap 111 or other statute that enabled the vesting of lands in the Northern, Upper East and Upper West Regions from as far back as 1992…...Thus, when the military ceded their right of occupation granted through the appropriation done in 1955, the lands reverted not to the Lands Commission, as trustees of public lands, but to the original owners, as a constitutionally conferred right. And once again, the holding by the learned trial judge that the Lands Commission should have issued a disclaimer in favour of the original land owners is in consonance with this position."**

We appreciate that article 257 of the Constitution, 1992 reproduced almost verbatim article 188 of the Constitution, 1979 in the following words:

Article 257 of Constitution, 1992.

> **(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.**
>
> **(3) For the avoidance of doubt, it is hereby declared that all lands in the Northern, Upper East and Upper West Regions of Ghana which immediately before the coming into force of this Constitution were vested in the Government of Ghana are not public lands within the meaning of clauses (1) and (2) of this article.**
>
> **(4) Subject to the provisions of this Constitution, all lands referred to in clause (3) of this article shall vest in any person who was the owner of the land before the vesting, or in the appropriate skin without further assurance than this clause.**
>
> **(5) Clauses (3) and (4) of this article shall be without prejudice to the vesting by the Government in itself of any land which is required in the public interest for public purposes.**

The language of this constitutional provision is clear and does not admit of any other interpretation. Public lands in article 257(2) as defined is made up of the following:

a. Lands which immediately before the coming into force of the Constitution were vested in the Government of Ghana on behalf of, and in trust for the people of Ghana for the public services of Ghana. As explained earlier in this judgment this category will fall under lands compulsorily acquired.
b. Any other land acquired in the public interest for the purposes of the Government of Ghana. This is also categorized under lands compulsorily acquired.

When it came to article 257(3), there is the proviso "**for the avoidance of doubt.**" The language used after the proviso has this disclaimer: "**all lands in the Northern, Upper East and Upper West Regions of Ghana which immediately before the coming into force of this Constitution were vested in the Government of Ghana are not public lands within the meaning of clauses (1) and (2) of this article.**" The language of article 257(3) explicitly excluded the phrase "**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"** used to define "public land" in 257(2).

Thus, while public land was defined to include land vested in the Government of Ghana on behalf of, and in trust for the people of Ghana as well as acquired land, when it came to land to be excluded from the definition of public lands from Northern, Upper East and Upper West Regions, the framers limited it to vested land simpliciter.

In our opinion, the framers of the Constitution by careful choice of language excluded compulsorily acquired lands from those to be vested in the persons and skins in the three Regions specified. The lands excluded were limited to land vested in the State by

virtue of the Administration of Lands Act, 1962, (Act 123). For the Northern Region, the vested lands in trust for the skins were contained in the Stool Lands (Northern Region) Instrument, 1963 E.I. 109 dated 4th September, 1963. For the Upper East and Upper West Regions, the vested lands in trust for the skins were listed in the Stool Lands (Upper Region) Instrument, 1963, E.I. 87 dated 11th July, 1963.

The distinction between vested lands which were held in trust for the stools and vested lands held in trust for and on behalf of the people of Ghana escaped the critical eyes of the learned justices of the Court of Appeal. In our opinion, the application of article 257 by the Court of Appeal to the Kaladan lands which were compulsorily acquired is contrary to the clear provisions stated in that article. We have no hesitation in setting aside that conclusion reached by the two lower courts, that is to say, article 257 permitted all lands from the three Regions to be returned to the owners including the Kaladan Lands in Tamale.

LANDS ACQUIRED BY THE STATE & ASSIGNED TO PUBLIC INSTITUTIONS:

The appellant has also urged on us that the Court of Appeal erred in confirming the finding of the trial judge that Kaladan land was acquired for the military and that when the military ceded possessory right to the land, it was the duty of the government to issue the disclaimer requested by the Minister of Defence in favour of the Dakpema skin. This is how the Court of Appeal put it at pages 517-518:

"**And this is true. Exhibits LC2, LC3 and LC4 were acquisition instruments that appropriated the kaladan lands for the military. Exhibits LC2, LC3 and LC4 supported the taking or appropriation of the 208.84 acres of land for the military by the colonial government, as required by the language of sections 5 and 29 of Cap 111……."What**

we also understand the trial judge as saying was that having been convinced that the Kaladan land was acquired for the military, then when the military ceded possessory right to the land, it was the duty of the government to issue the disclaimer requested by the Minister of Defence in favor of the original owners. It is not the request in P1D1 that bound the minister to issue a disclaimer, but the operation of the law that allowed the appropriation of the land for the use of the military in 1955."

We could not comprehend the legal basis for this finding made by the trial judge and concurred to by the Court of Appeal. 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

The State, therefore is at liberty to assign any property compulsorily acquired to any public institution such as the military for use in the public interest. In this case, though Kaladan lands were compulsorily acquired in 1905, it was not until 1955 that the land was assigned to the military through a Letter of Authority. The military occupied the land for some years and were later resettled at the Kamina Barracks after which they moved out of the Kaladan land. The question is, did the land the military moved from automatically revert to the pre-acquisition owners? Did the land belong to the military for it to issue directives regarding how the land should be treated after its exit? Our

answer would be in the negative in both cases. 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 Lands Commission. A division of the Lands Commission called the Public and Vested Lands 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. It is the responsibility of the State to determine whether to use the land for the purpose for which it was acquired or in the public interest or revert it to its pre-acquisition owners.

Again, a state agency like the military has no authority to direct how acquired land assigned to it be dealt with after its exit as was done in this case and accepted by the trial judge and Court of Appeal to be binding on the State. In our opinion, the letter exhibit P1D1 dated 12th August, 2010 and signed by Lt General J. H. Smith, then Minister of Defence to 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 because the military no longer had interest in the land was not and could not be an executive act of the government binding on the government and the Lands Commission. The finding, therefore, by the trial court and confirmed on appeal by the Court of Appeal that the military having ceded possessory right to the land, it was the duty of the government by operation of law to issue the disclaimer requested by the Minister of Defence in favour of the original owners is not warranted by law and accordingly set aside.

EFFECT OF REPEAL OF AN ENACTMENT ON RIGHTS STATED IN THE STATUTE:

A final legal issue which came up at the trial as well as on appeal is the misapplication of section 8(1)(c) of the Interpretation Act, (CA 4) as amended by section 34(1)(c) of the

Interpretation Act 2009 (Act 792). The Court of Appeal confirmed the interpretation of this legislation by the trial judge at page 518 as follows:

"As pleaded by the 2nd defendant, all lands vested in the monarch became vested in the President of the Republic under the State Property and Contracts Act, 1960, after independence. Although Section 5 of Cap 111 was repealed by Section 26 of the State Property and Contract Act 1960, C.A.6, all rights accrued under Section 5 of Cap 111, including the rights of reversion under Section 5 (8) in the event of rescission of the vested status of the land remained. This was the holding of the trial judge and we agree with him."

In coming to this conclusion, the Court of Appeal relied on the 1923 amendment which introduced section 5(8) into Cap 111 and concluded that a right had accrued to the Dakpema skin to have the land reverted to it. Section 5(8) provides as follows:

"**8. The Chief Commissioner may at any time by order under his hand and official seal rescind or vary any certificate or schedule issued under this section, and thereupon such certificate or schedule shall become void of effect or shall have effect as varied, as the case may be, and any land affected by such order shall from the date thereof vest and be held and enjoyed as though it had never been taken for the Government or held or occupied as Government property. Such order shall be deposited in the office of the Commissioner of the district in which such land is situated, and a certified copy thereof shall be deposited in the office of the Chief Commissioner, and shall also be transmitted for deposit to the office of the Commissioner of Lands at Accra. (Section added by N.T. 1 of 1923, s. 2; subsection (8) added by 6 of 1931, and amended by 4 of 1932, s.2.)"**

Thirty-seven years after the introduction of this amendment, the State Property and Contract Act 1960, (C.A.6) was enacted. The Act transferred any property within and outside Ghana vested in the Crown or Her Majesty as trustee for the Public Service of Ghana in the President in trust for and on behalf of the people of Ghana for the Public Service of the Republic of Ghana. Section 26 of the Act repealed section 5 of Cap 111 under which Kaladan land was acquired in 1905.

The Court of Appeal confirmed the holding of the learned trial judge that section 5(8) of CAP 111 under which the Kaladan lands were compulsorily acquired gave the owners of the land an accrued right. That right provides that where the Chief Commissioner under his hand and seal at any time rescinds or varies any certificate or schedule, the certificate shall become void of effect and any land affected by such order shall from that date vest and be held and enjoyed as though it had never been taken for the Government or held or occupied as Government property.

On that basis the trial judge concluded that though section 5 of CAP 111 was repealed by the State Contract Act of 1960 (C.A. 6), a right had accrued to the pre-acquisition owners to have the land reverted in them. This was because the certificate of acquisition is deemed to have been rescinded or varied by the repeal and under section 8(1) of the Interpretation Act CA 4 as amended by section 34 of the Interpretation Act, 2009 Act 792 a right had accrued to the Dakpema skin. That Act says the repeal or revocation of an enactment would not affect a remedy in respect of a right acquired, accrued and or incurred under the repealed Act. Therefore, any legal proceedings in respect of any right, duty, obligation under the repealed law could be addressed under the repealed Act.

Section 34(1)(c) of the Interpretation Act, 2009 (Act 792) provides as follows:

"Effect of repeal

34. (1) Where an enactment repeals or revokes an enactment, the repeal or revocation shall not, except as in this section otherwise provided,

***(c)* affect a right, a privilege, an obligation or a liability acquired, accrued or incurred under the enactment that is repealed or revoked;"**

It is the submission of the respondent that section 26 of C.A. 6 vested him with an accrued right under section 5(8) of the repealed enactment to have Kaladan land vested in the Dakpema skin as the land was no longer acquired by the state because of the repeal of the acquisition section.

We find the interpretation put on CA 4 as amended by Act 792 erroneous in law. We have not found evidence from the record of any right acquired or accrued to the Dakpema Skin prior to the repeal of section 5 of Cap 111 in 1960. The trial judge and the Court of Appeal in our opinion misapplied the interpretation Act to the facts of this case.

According to Bimpong-Buta in his seminal book-**The Law of Interpretation in Ghana (Exposition and Critique) at page 180**, the implication of the provisions made in section 8(1)(c) of C.A. 4 which is equivalent to 34(1)(c) of Act 792 is:

"It is vital to draw a distinction between a right which has "accrued" or a liability which has been "incurred" under a repealed legislation within the meaning of section 8(1) of the Interpretation Act, 1960 and the existence of a mere right or obligation under the repealed legislation. The former is enforceable notwithstanding the repeal whilst the latter is not."

It would be observed that no suit was instituted and pending in the courts prior to the repeal of section 5 of Cap 111 in 1960. What existed was a mere right in the repealed Ordinance to have the land reverted in Dakpema skin as though the land had never been

taken or acquired as Government property when the certificate of acquisition is rescinded or varied by the Chief Commissioner. Mere right is unenforceable while accrued right is. Unfortunately for the respondent, this rescission by the Chief Commissioner did not take place before the repeal of section 5 of Cap 111 in 1960. After the repeal of section 5 of Cap 111, that law ceased to be in existence and any action instituted after that date to enforce any right in the law would have to be pursued under the replaced enactment i.e. C. A. 6.

In this case the action was instituted by the plaintiff at the High Court, Tamale fifty-three years after section 5 of Cap 111 was repealed. The learned trial judge purported to invoke the provisions of the repealed enactment to decide the suit on the basis that an accrued right had inured to the benefit of the plaintiff. This was concurred to by the Court of Appeal. Clearly, the trial court and the intermediate appellate court misread the Interpretation Act and erred in applying Cap 111 to the determination of this case. It was for these reasons that we allowed the appeal on this ground as well.

CONCLUSION

Before we are done, there was a procedural issue which came up in the record and which we have decided to comment on briefly. Order 38 of the High Court (Civil Procedure Amendment) Rules, 2014 (CI 87) introduced the filing of witness statements which is to replace oral evidence -in-chief of each witness. The Order states as follows:

"Requirement to serve witness statements for use at trial

38. (1) A witness statement is a written statement signed by a person which contains the evidence which that person would be allowed to give orally at the trial.

(2) The Court shall at the application for directions order a party to file and serve on the other parties any witness statement of the oral evidence which the party serving the statement intends to rely on in relation to any issues of fact to be decided on at the trial. '

(3) The Court may give directions at the application for directions as to the order in which a witness statement is to be served.

Statement of truth

3C. A witness statement shall be verified by a statement of truth:

Use at trial of witness statements which have been served

3E. (1) If a party has served a witness statement and that party wishes to rely at the trial on the evidence of the witness who made the statement, that party shall call the witness to give oral evidence unless the Court orders otherwise or that party puts the statement in as hearsay evidence.

(2) Where a witness is called to give oral evidence under subrule (1), the witness statement of that witness shall stand as the evidence in chief of that witness unless the Court otherwise orders.

(3) A witness giving oral evidence at trial may with the permission of the Court give evidence in relation to any new matter which has arisen since the witness statement was served on the other parties.

(4) The Court will grant leave under subrule (3) only if it considers that there is good reason not to confine the evidence of the witness of the witness statement of that witness.

Cross-examination on a witness statement

3F. A witness called to give evidence at the trial, may be cross examined on the statement of that witness whether or not the statement or any part of it was referred to during the evidence in chief of that witness."

At the hearing of the application for Directions on 21st January 2016, the learned trial judge gave directions and time lines for the filing of witness statement by each party and witnesses in accordance with Order 38 (3). The parties and witnesses subsequently filed their witness statements verified by statements of truth as ordered by the court. The trial then started on Friday 24th June 2016. After the swearing in of the plaintiff to give his evidence, the following is recorded as having transpired at the hearing on that day:

"By Court: The witness statement shown to the plaintiff.

The paragraph signature on the witness statement is mine and I gave the witness statement. With the leave of the court I wish to tender same in evidence.

Counsel for the 1st Defendant: No objection.

Counsel for the 3rd Defendant: No objection.

By Court: The witness statement of the plaintiff dated 25th April, 2016 is admitted and marked exhibit RA. Attached to exhibit RA are the following exhibits……"

Similar procedure was adopted during the evidence of PW1 at page 221 of the record, evidence of DW1 at page 228 of the record and evidence of DW2 at page 240-241.

The procedure adopted by the learned trial judge for the witness statement to be admitted into evidence leaves much to be desired. As a general rule, any fact which needs to be proved by evidence of a witness is to be proved at the trial by oral evidence given in public. With the amendments to the civil procedure rules and the introduction of written evidence, a witness statement under the rules is the written summary of the oral evidence a witness will give at the trial. The rationale is to have the witness statement, prepared, signed, verified by a statement of truth and all the exhibits attached to it. After that, it is supposed to be discovered, accepted at the case management conference and properly filed. When all these processes are followed through, the witness statement will then serve as the actual testimony in chief of the witness unless the court otherwise directs. At the date fixed for the hearing of the case, all that the court is required to do is to swear in the witness and ask him to authenticate the witness statement and his signature.

Once this confirmation is made, the witness statement is intended to stand as the evidence in chief and cross-examination is to proceed without the need to tender the witness statement in evidence or invite counsel on the other side to indicate their objection or otherwise, or to give the witness statement an exhibit number.

Again, from our understanding of the amended rules, a witness giving oral evidence at the trial could only amplify his witness statement or give evidence in relation to a new

matter which has arisen with leave of the court. The leave must be based on good reasons after which the court will direct whether that evidence should go in orally or the matter adjourned for an amended witness statement to be filed. We are not surprised that these teething problems in the rules of evidence have occurred at the initial stages of the introduction of the new procedure introduced to replace the old practice the courts have been used to for over half a century. It is our hope that going forward with judicial education and the reconciliation of the Rules with the Evidence Act, this problem should be behind us.

The appeal, therefore, succeeds. We allow the appeal on all the grounds and set aside the judgment and all orders made by the Court of Appeal.

N. A. AMEGATCHER

(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

N. S. GBADEGBE

(JUSTICE OF THE SUPREME COURT)

Y. APPAU

(JUSTICE OF THE SUPREME COURT)

S. K. MARFUL-SAU

(JUSTICE OF THE SUPREME COURT)

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