

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: DOTSE JSC (PRESIDING)

AMEGATCHER JSC

LOVELACE-JOHNSON (MS.) JSC

AMADU JSC

KULENDI JSC

CIVIL APPEAL

NO. J4/13/2020

22ND MARCH, 2023

1. BOI STOOL
2. PAUL NORTEY
3. EMMANUEL NARH OKWEI
4. NICHOLAS NORTEY DOWUONA
5. DR. AGYEMANG
6. ESTHER APPIAH
7. MOHAMMED
8. EMMANUEL NORTEY DOWUONA
9. MILLICENT AGYEMANG
10. PETER OKWEI NORTEY
11. ABIGAIL NORKOR OKWEI
12. SAMUEL NORTEI OKWEI
13. GEORGE KWESI
14. STEPHEN SAMPSON

**PLAINTIFFS/RESPONDENTS/
APPELLANTS**

VS

1. DANIEL ADDOQUAYE

2. BENJAMIN TETTEH ADDO

3. NUMO NMASHIE FAMILY

DEFENDANTS/APPELLANTS/

RESPONDENTS

JUDGMENT

AMADU JSC:-

INTRODUCTION

- (1) My Lords, on the 22nd day of March 2023, we allowed this appeal by reversing the judgment of the Court of Appeal dated 26th November, 2015 and restored the judgment of the High Court dated 8th March 2011 *“Subject to such modifications and variations as are contained in the reasoned decision of this court....”* We now proceed to give our reasons;
- (2) At the heart of this appeal, is an invitation to this court to determine the scope and effect of the decision of the Court of Appeal arising from a compensation claim from which the 3rd Defendant family, (*described as Co-Defendant*) the Numo Nmashie Family emerged victorious. The decision of the State Lands Tribunal in favour of the Nana Adu Mireku Agyemang III by Abban J. (*as he then was*) was reversed in favour of the Numo Nmashie Family of Teshie (*3rd Defendant/Respondent herein*) by the Court of Appeal coram of Apaloo C.J, Boison J.A and Wiredu J.A (*as he then was*). This appeal therefore involves a review of the decisions of some of the most celebrated jurists in our post-independence era, three of whom have been Chief Justices and all of whom of blessed memory.
- (3) The determination of the key issues in this appeal therefore, will necessarily turn on our re-examination of the narrow issue of compensation for the state

acquisition of 25.031, acres for public purpose and the eventual outcome of the decision of the Court of Appeal which had vested ownership rights of seventy (70) villages and land falling within a far larger area of about 72,000 acres which the Plaintiffs/Respondents/Appellants herein in their action at the High Court have alleged to have been fraudulently procured.

- (4) Our determination of this appeal, and any orders to be made therefrom, require great circumspection especially when the judgment which is central to the appeal, that is, **Civil Appeal No.49/80 IN RE: ADJANCOTE ACQUISITION; KLU VS. AGYEMANG III [1982-83]852** has subsisted in regulating the ownership, rights and interests in land within the entire area affected for more than three decades until the instant action commenced in the High Court on 25th June 2007.

(5) **BACKGROUND FACTS:**

What therefore started as a compensation claim, has now led to the present dispute seeking a determination of whether the Numo Nmashie Family of Teshie (*the 3rd Defendant/Respondent*) are owners of seventy (70) villages and land which they claim cover an acreage of over 72,454.09. Following the State acquisition of 25.031 acres of land on the Adjancote Hill by E.I.163, by the government of the National Liberation Council, (NLC) numerous claims were pursued for compensation. The State Lands Tribunal, set up then, and chaired by Abban J. (*as he then was*) declared the Chief of Brekusu Nana Adu Mireku Agyemang III (*the 1st Claimant herein*) as entitled to the compensation against the Numo Nmashie Family of Teshie and the Dowuona Family of Osu.

- (6) The Numo Nmashie Family of Teshie (*3rd Respondent herein*) mounted an appeal against the decision in Suit No.CA.49/80 as reported in the case of **IN RE: ADJANCOTE ACQUISITION; KLU VS. AGYEMANG III** (*supra*). As aforesaid, the then Court of Appeal, Coram Apaloo CJ, Mensa Boison J.A and Edward Wiredu J.A (*as he then was*) decided that, the Numo Nmashi Family of

Teshie, their grantees and licensees were in possession of the lands and villages almost contiguous to the 25.031 acres of land compulsorily acquired by the state at the Adjancote Hill area, and as such, they were entitled to compensation from the government for the acquisition. The decision by the Court of Appeal that, the Numo Nmashi Family of Teshie, were owners of the lands contiguous to the acquisition area therefore, firmed for the 3rd Defendant family that, the seventy (70) villages and land covering about 72,000 acres which were contiguous to the acquisition area also belong to them.

- (7) My Lords, the main grief of the Plaintiffs/Respondents/ Appellants (*hereinafter referred to as "Plaintiffs"*) in this appeal is that, the judgment of the Court of Appeal was procured by fraud, principally because, the court was misled in relying on a composite plan which listed seventy (70) villages as belonging to the Numo Nmashie Family. For the Plaintiffs, most of those villages do not belong to the 3rd Defendant Family yet, they misled the Court Appointed Surveyor at the time to prepare the composite plan to include those villages. The 3rd Defendant Family contends however, that the Plaintiffs are estopped from seeking to relitigate the action.
- (8) As the highest court of the land, it is our expectation that this judgment will forever settle the unfortunate confusion that has characterised ownerships of lands belonging to several families and stools within the area affected by the judgment obtained by the 3rd Defendant Family by virtue of decision of the Court of Appeal in *In Re ADJANCOTE ACQUISITION* (supra) which ought to be confined to the claim for compensation for the acquisition of 25.031 acres by the State. It needs to be placed on record from the outset therefore that, although the instant appeal is being contested by few persons, various families,

stools and individuals, shall benefit directly from this judgment or will forever hold their peace.

BACKGROUND

- (9) On the 21st day of October, 1966, the government of the National Liberation Council (NLC) per Executive Instrument, E.I. 163 *State Land (Adjancote) Instrument, 1966* compulsorily acquired 25.031 acres of land on Adjancote Hill, in the then Eastern Region of Ghana. The purpose of the acquisition was for the establishment of a Television Station for the Ghana Broadcasting Corporation.

THE STATE LANDS TRIBUNAL

- (10) As it is the law, where the state compulsorily acquires land belonging to another, the affected person, family or stool is entitled to compensation. In pursuance of this, three families applied for compensation in 1966. They are Nana Adu Mireku Agyemang III, the Chief of Brekusu, Nii Azaria Adjei Klu the head of the Numo Nmashie Family of Teshie and the Dowuona Family of Osu. On the 26th day of February, 1976, the then State Lands Tribunal, chaired by Abban J (*as he then was*) decided that, the Brekusuhene, Nana Adu Mireku Agyemang III was entitled to compensation. The respective claims of the Numo Nmashie Family of Teshie 3rd Defendant herein, and the Dowuona Family of Osu were therefore rejected.

- (11) **THE JUDGMENT OF THE COURT OF APPEAL IN CIVIL APPEAL NO. 49/80-IN RE ADJANCOTE ACQUISITION; KLU VS. AGYEMANG III [1982-83] GLR 852:** Dissatisfied with the decision of the State Lands Tribunal, the Numo Nmashie Family of Teshie, the 2nd Claimant (*3rd Defendant herein*) mounted a challenge of the decision in the Court of Appeal. On the 15th of December 1982, the Court of Appeal reversed the decision of the State Lands Tribunal, and declared the Numo Nmashie Family of Teshie 3rd Defendant herein as the rightful family entitled to compensation.

(12) In the course of the hearing, the Court of Appeal ordered a composite plan to be drawn to identify the various villages named in the proceedings. All parties to the appeal consented to one Mr. Lassey as Surveyor to undertake the survey work. The surveyor did testify in the suit to the effect that, the villages within the disputed area were occupied by members of the 3rd Defendant's Numo Nmashie Family of Teshie and that, some villages had also been established there. The Court of Appeal also did recognise that, the entire evidence produced at the trial was traditional. The Court of Appeal denounced the State Lands Tribunal's approach in preferring the testimony of one side against the other while failing to conform with the time honoured principles of evaluating traditional evidence by analysing same in the light of such more recent facts as exposed by the evidence. The Court, speaking through Wiredu J.A (*as he then was*) held as follows: *"It seems clear from the detail examination of the evidence I have made that, the Appellants have shown a better claim to title to the land acquired than the Respondents. The latter, apart from bare assertion of ownership, have not shown any (sic) of title. At all events, as it is clear on the evidence that: "the Appellants and his grantees and licensees are in possession of the land and villages almost contiguous to the acquired land as owners it is reasonable to conclude that they are in possession of the acquired Hill as well. That being so, they should "be deemed to have been lawfully entitled to such lands unless the contrary be shown". The Respondent attempted to show the contrary but failed to do so. . . . In my opinion, had the Tribunal applied the proper principles of law to a determination of this case and made an objective examination of the evidence, they would have had no hesitation in coming to the conclusion that the appellants established a better claim to the land. I hold that they have done so. Accordingly, I judge them entitled to compensation payable for its acquisition by Government. (Our emphasis).*

(13) It needs to be placed on record at this juncture that, what has triggered the instant dispute, substantially stems from the pronouncement of the Court of

Appeal that, the 3rd Defendant Family, in the instant appeal, together with its grantees and licensees have been in possession of the lands and villages contiguous to the acquired area, and hence, must be deemed to be lawfully entitled to same, unless the contrary is proved. In the events that followed, the 3rd Defendant now claims to be owner of the about seventy (70) villages, which they allege comprise over 72,000 acres. We shall revisit this shortly.

Suit No. L323/83

- (14) Subsequent to the judgment of the Court of Appeal aforementioned, per Suit No.49/80, the **Mantse of Boi, Nii Narh Dowuona II** suing for himself and on behalf of the Boi Stool, sued two grantees of the Numo Nmashie family; **Adokweifio Tetteh Olewolon and Abotsie Tetteh Olewolon** claiming 87.68 acres which had been alienated to them by the Numo Nmashie Family. The Numo Nmashie Family was later joined to the suit as 3rd Defendant. At the end of the trial, the Plaintiffs' case was dismissed on the 21st of January 1999 by Her Ladyship, G. T. Wood JA (*as she then was*). The Court held that, the Numo Nmashie family of Teshie owned the about 82 acres of land. The Court's decision therein was influenced by the earlier judgment of the Court of Appeal in Suit No.49/80 with the supposition that, the Numo Nmashie Family were the owners of the Adjancote Lands and all the land contiguous to them.

APPEAL AGAINST SUIT NO. L323/83:

- (15) An Appeal against the judgment in Suit No.L323/83 was dismissed by the Court of Appeal on the 12th of November, 2004. A further appeal to the Supreme Court was also dismissed in a judgment delivered on the 21st of June, 2006.

THE PRESENT ACTION:

- (16) It is important to state that, the 3rd Defendant Family, believing to be the owners of the seventy (70) villages started proclaiming same and asserting ownership rights. On Tuesday, April 30th, 2002, the Executive Secretary of the Lands Commission published in the Daily Graphic these villages as belonging to the

3rd Defendant Family. The publication emphasised that the High Court had ordered the Lands Commission to plot the judgment plan of the Numo Nmashie Family in respect of these seventy (70) villages. They are:

Peduase, obuom, Nsaky, Agyemanti, Brotrease, Danfa, Adoteiman, Otinibi, Malidzano, Okyrekomo Kotei, Taboadidi, Ayim, Adenkrebi, Abefia, Ayimensa, Kweiman, Odonkorkurom, Kwadwokurom, Otiakurum, Otopram, Birekuso, Kponko, Dedekurom, Sesemi, Teiman, Papao, Ogbodzo, Adaman, Mpehuasem, Otinshi, Otanor, La-Bawaleshie, Tesa, Agirigano, Okpoi Gonno, Manmormo, Oshiyie, Amanfro, Bobamase, Abokobi, Nyamekurom, Oyarifa, Ogoha, Ajangote, Akpomang, Boiman, Pantang, Sempene, Frafraha, Apenkwa, Abladdzei, Ankome, Ashonman, Agbogba, Adenta, Otuwa, Madina, Nkwantanang, Ashale-Botwe, Atwuo-Okuman, Martey Tsuru, Gbatsuma, Okpegon, Ablekuma, Odediben, Agbleshia, Alegon, Mangoase, Teshie and Kpeshie Ridge.

(17) The Numo Nmashie Family again sought to enforce its alleged ownership of the over 72,000 acres of land. It is important to emphasise as rightly observed by the Trial Court that, in Suit No.L323/83, the High Court only dismissed the Plaintiffs' claims. The Court did not order recovery of possession in favour of any Defendant. Hence, it was improper for the 3rd Defendant Family to suppose that, following the dismissal of the Plaintiffs' action they could recover possession.

(18) Intriguingly, on the 5th day of March, 2007, the 3rd Defendant Family successfully obtained an order *ex-parte* from the High Court to go into possession and demolition. That order stated as follows :

"Upon Reading the affidavit of Daniel Addo Addoquaye of Accra the 1st Defendant applicant herein, filed on the 19th day of February, 2007 in support of Motion Ex-Parte for an order to enforce execution by demolishing of building.

And upon hearing G.S.K. Babanawo Esq., Counsel for and on behalf of the Defendants Applicants herein,

It is hereby ordered that leave be and is hereby granted to Defendants/Applicants herein to go into possession by demolishing the structures put on the land by the trespassers. However, they may accept those who will offer the olive branch by atoning tenancy to the Defendants.

It is hereby further ordered that the Ghana Police Service, Panther Unit do provide security to the defendants in their demolishing exercise and also flush out the land guards."

- (19) This naturally resulted in resistance and led to another legal tussle, the instant action. The Plaintiffs have pursued a case of fraud against the 3rd Defendant Family. The Plaintiffs contention is that, the 3rd Defendant Family procured the judgment in Suit No.49/80 fraudulently, and as such, same be set aside. Per the Plaintiffs' amended writ of summons and statement of claim, the Plaintiffs claimed against the 1st, 2nd and 3rd Defendant Family the following reliefs:

"1. Declaration that in the light of the fact that the Defendants

in Suit No.323/83 never sought the relief of recovery of possession, the High Court presided over by Justice Lartey Young ought not to have granted an order for possession by demolition of Plaintiffs buildings as prayed by the Defendants in their Ex-Parte Application for Order of Demolition.

II. An order declaring the said High Court Order that the

Defendants go into possession by demolition Plaintiffs buildings null and void.

III. A declaration that the filing of praecipe for a writ of possession to issue based on the order or possession by demolition by G.S.K. Babanawo Esq covering area of land with approximately an acreage of 543.92 covered by Plaintiffs proprietary site plan

in Suit No. L323/83 tendered in the said suit as CW2 and filed on 4/7/91 which is far larger than the area in dispute in Suit N. L 323/83 clearly depicted in the said CW2 is legally impermissible.

IV. *A Declaration that the Co-Defendants (Numo Nmashie) Family's representation and or assertion that they are the owners of towns and villages such as Ashongman, Abladjei, Sempene, Aboman, Pantang, Abokobi, Akporman, Boi, Kweiman, Otimibi, Ocherekomfo, Ashalebotwe, Agbogba, Ayim, Bawaleshie, Madina, Mpehuasem, Ogbojo, Otele, Batchona, Agblesia, Danfa, Adoteiman, Berekusu, Adjeimantin, Avimensah, Sesemi, Fafraha, Papao, Hacho, Apenkwa, Oyarifa, Oshiye, Adentan, Ablekuma, Peduase, Amrahia, Kitase, Obuom, Okpoi Gonnor, Nkwantanang, Ofinsho, Teima, Odonkorkrom villages which said assertion and or representation resulted in the preparation of survey Plan by Mr. Larsey which occasioned the finding by the Court of Appeal in a judgment dated 15 / 12 / 1982 in Civil Appeal entitled: In the matter of State Lands Act and in the matter of Lands acquired for Ghana Broadcasting Corporation ...etc. in suit No.49/80 to the effect that Numo Nmashie Family the Co-Defendant herein are the owners of villages almost contiguous to the acquired land as owners as vividly captured in the said Survey Plan submitted at Court of Appeal in the said civil appeal was made through fraud.*

V. *A declaration of title to all that piece or parcel of land situate and being at **BOI NEAR ABOKOBI** in the Greater Accra Region of the Republic of Ghana lying to the West of Ashonman to Seem motor Road and to the East of the Ajancote highlands the boundary whereof commencing from a point marked DSL1 which point is approximately at the South West edged of the ancient crossroads of Boi to Abladjei and Sesemi to Ashongman and is 460:0" feet from a bearing of 210° which bearing together with all further bearings are referred to the Meridian 1 West of Latitude to a point DSL 2 which is 490.0 feet on a bearing of 225° along Bantama*

Ruins to a point DSL 3 which is 450.0 feet on a bearing of 263°30 along Awara Dede's property to a point BP1 which is on the southern edged of the Boi to T.V station road on top of a bridge spanning a tributary of the Onyasia River and is 3015 feet on a bearing northwest to DSL 5 north-west which is 570.0 feet and bearing south-west to a point BP 2 along Charles Quist's property which point is 2,425.0 feet and bears south-west to BP 3 along Abe Kwao's property to the south and approximately parallel to the Boi T.V. station road to the north which point is 365.0 feet and bears north-west to BP 4 along Sakumotsosisibi's property to the south and parallel to the T.V. station motor road to the North to a point BP 5 which is 1375.0 feet and bears north-west along Addy's property to the South and parallel to the T.V station road to the north which point is 1060.0 feet and bears north east to BP 5 along Oje Ablorh's property to the West and G.B.C. Television Mast, to the East which point is 1200.0 feet and bears South East to BP.7 which point is west of G.B.C. Television Station Acquisition to a point BP 8 which is 800.00 feet and bears South East between Kokor Tsuru's property and the Summit of thandiankote highlands, which point is 3,730.0 feet and bears north mit along Teacher Kotei's property on the Ajancote highlands to the point BP 9 where the Boi to Aboasa Road intersects a valley, which point is 380.0 feet along Goo's property, 400.0 feet along Sowah Canno's property and which is 400.0 feet along Adjei Kplen's property and bears South east all along the Aboasa to a point BP 12 which is 700.0 feet and bears north east to DSL 74 along Adjei Kplen's on Maman footpath which point is 886.0 feet and bears south east to BP.14 which is 630.0 feet and bears 56° To a point DSL 78 where the valley is intersected by south east to a junction point DSL 82 where the Sesemi to Ashonman road and crosses to the T.V. station to Abokobi motor road which point is 320,0 feet and bears south west point BP 15 near the Akporman which point is 1465.0 feet and bears 1690.00' to the point of commencement thus 220.12 Hectares to the same several dimension little more or less and same is vividly described in the site plan in the statutory declaration with Land Registry No.3107/1979.

VI. *An order declaring any judgment based on the said finding that Numo Nmashie Family are the owners of the lands and villages almost contiguous to the said acquired land null and void on grounds of fraud.*

VII. *A Declaration that the Co-Defendant (Numo Nmashie Family) is not the owner of all the villages and their lands mentioned in Plaintiffs relief 6 supra.*

VIII. *General damages for Trespass.*

IX. *Perpetual injunction restraining the 1st, 2nd Defendants and Co-Defendant, Nuumo Nmashie Family, their agents, servants, privies, Workmen and all people claiming through them from entering and dealing in any manner with Plaintiffs' land known as Boi land.*

(20) The 1st and 2nd Defendants also filed their statement of defence and counterclaimed against the Plaintiffs as follows:

“(i) Declaration of title to al that 87.68 acres of land described in paragraph 37b of the amended statement of defence.

(ii) An order for recovery of possession of all the 87.68 acres.

(iii) An order for nullifying all grants made by the Plaintiffs to Lessees.

(iv) An order for perpetual injunction against the Plaintiffs from interfering with the 1st and 2nd Defendants enjoyment of their land.”

(21) The 3rd Defendant Family also filed its defence and counterclaimed as follows:

“a. Declaration of title to all that piece or parcel of land

containing an approximate area of 72,454.09 Acres or 29, 256.06 Hectares bounded on the North by Akwapim lands measuring 25,819.04 feet more or less on the East by Nungua lands from South Oyibi through the University Farms and Motorway mile Post 12 to Aklenao (Woko Bokcemo Naa Te) at the Gulf of Guinea respectively measuring at distance of 17,642.84 feet, 38,590.13 feet and 26,695.85 feet respectively more or less on the South by the Gulf of Guinea from Aklenaa to the Keshie Lagoon and the University of Ghana boundary measuring 21,024.23 feet and 9,637.36 feet respectively more or less on the South-West by La lands and the Kpeshie Lagoon course to the Gulf Guinea measuring 22,355.11 feet, 8,695. 12 feet and 25,908.32 feet moiré or less respectively, on the West by La lands measuring 30,099.00 feet more or less on the North-West by the Akwapiom lands measuring 20,426.26 feet and 5,651.38 feet more or less respectively.

- b. Recovery of Possession of land still being unlawfully occupied by the Plaintiffs Family.*
- c. Perpetual Injunction restraining the Plaintiffs, their servants, agents, workmen and all those claiming through them from entering on to the land in dispute or interfering with the land in dispute until the final determination of the case."*

THE PLAINTIFF'S CASE

- (22) The Plaintiffs' case is simply that, the judgment in Civil Appeal No.49/80 was obtained by fraud and ought to be declared null and void. Further that, any judgment or order based on the said judgment is equally fraudulent. According to the Plaintiffs, the Numo Nmashie Family, misled the court in Civil Appeal No. 49/80 to the effect that, it is the owner of the lands and villages almost contiguous to the acquisition area. Plaintiffs contended that, Surveyor Lassey's

report, which was the fulcrum of the consequential order in Suit No.49/80 was fraudulent, as some of the villages that the 3rd Defendant Family pointed out to the Surveyor as belonging to them were not theirs. The Plaintiffs alleged that the 3rd Defendant Family by misleading the surveyor in producing that report acted fraudulently.

THE CASE OF THE 1ST & 2ND DEFENDANTS

- (23) Like the 3rd Defendant, the 1st and 2nd Defendants contend that the Plaintiffs were estopped from seeking to relitigate the action. For them, the issue of ownership of the lands the subject of the suit, had been judicially settled much earlier in time ago by the Court of Appeal in Civil Appeal No.49/80.

THE CASE OF THE 3RD DEFENDANT FAMILY (CO-DEFENDANT)

- (24) For the 3rd Defendant Family, the Plaintiffs are just seeking to relitigate what had already been dealt with by the Court of Appeal. Their position is evident in paragraphs 27 and 28 of their amended statement of defence dated 23rd March 2009 where they pleaded as follows :

27. The Co-Defendants family says that by virtue of the judgment in Civil Appeal No.49/80 and later the Supreme Court in Suit No.L323/83 the Plaintiffs are estopped from bringing this present action and their claim should be dismissed.

28. The Co-Defendants family therefore says that the Plaintiffs by their action are seeking to have a second bite of the cherry but they cannot be allowed to do so as litigation must end.

THE JUDGMENT OF THE HIGH COURT

- (25) The High Court delivered its judgment on the 8th of March 2011, and found in favour of the Plaintiffs. The High Court granted the Plaintiffs' reliefs 1,2,3,4 and

6 and dismissed reliefs 5, 8 and 9 on grounds that those reliefs had been earlier dealt with. The Trial High Court Judge further held as follows:

“In conclusion, it is my considered opinion that, the judgment granted to the 3rd Defendants i.e. Numo Nmashie Family, upon which plotting was ordered and done in their name had been tainted with fraud. They cannot stand and so whatever plotting that had been done in the name of Numo Nmashie Family is hereby declared null and void because of the fraudulent nature the survey plan had been procured.

- (26) The two issues which the Trial Court set for itself were captured in its statement as follows: *“The main issue that the Court had been called upon to decide, is what is contained in claims 4 & 6 of the reliefs -i.e. the declaration in Suit No.49/80 to the effect that Numo Nmashie Family and the other Defendants are the owners of the land and villages as captured in the Survey Plan submitted during the hearing of the Court of Appeal, was procured through fraud. Further, the Plaintiffs pray that this court declares any judgment based on such findings as null and void, because the earlier judgments based on the survey report was fraudulent.”*
- (27) The High Court rejected the 3rd Defendant’s plea of *res-judicata* reasoning that, in actions grounded on fraud, a plea of *res-judicata* is not a valid defence. The Trial Court further pointed out that, although all the parties were seeking declaration of title to respective lands, that of the Plaintiffs to parcels of land situate at Boi, near Abokobi and of the 3rd Defendant Family to a total area of land measuring about 72,000 acres, they failed to lead evidence on them but were more concerned with whether the judgment in Suit No.49/80 had been procured by fraud.

(28) Further, in the judgment of the High Court, the Trial Judge did observe that, several of the seventy (70) villages which the 3rd Defendant's Family claimed, and captured in the survey work of Surveyor Lassey are not owned by the family. In some situations, the 3rd Defendant's own representatives and witnesses admitted that, some of the villages did not belong to them. The High Court also made references to previous decisions, some pre-dating the judgment in Suit No.49/80 which had declared some of the lands within the area in dispute as belonging to other families and/or Stools. Some of the cases include but not limited to:

- **NARTEY VS MECHANICAL LLOYD [1987-1988]2 GLR 314**
- **IN RE ASHALLEY BOTWE STOOL LANDS [2003-2004]SCGLR, 420.**
- **ODONKOR VS. AMARTEI [1992]1 GLR 577.**

THE JUDGMENT OF THE COURT OF APPEAL

(29) Aggrieved and dissatisfied with the judgment of the High Court, the 3rd Defendant Family appealed against same to the Court of Appeal on the 17th of March, 2011. The grounds set out in the notice of appeal are:

*"a. The judgment of the learned judge was manifestly
against the weight of evidence before the court.*

b. The Learned Trial Judge's declaration as null and void the Judgment in Civil Appeal No.49/80 was as a result of the Learned Judge's misconstruction of the said Judgment as reported in 1982/83 Ghana Law Report at page 852."

(30) The 1st and 2nd Defendants also appealed against the judgment on the 20th of April, 2011. The Court of Appeal delivered its judgment on the 26th day of November, 2015. It reversed the Judgment of the High Court, and granted the

counterclaim of the 3rd Defendant Family. In arriving at its decision, the Court of Appeal set for itself two principal issues :

- “(i) *Whether or not the decision of the Court of Appeal in Civil Appeal No. 49/80 that the 3rd Defendant's family are the owners of the lands and villages almost contiguous to the land acquired in the Adjancote Acquisition was procured by fraud; and*
- (ii) *Whether or not in the light of the judgment in Suit No. L.323/83, plea of res judicata avails the Defendants.”*

(31) In resolving these issues, the Court of Appeal held that, the Plaintiffs had failed to lead adequate evidence to establish the claim of fraud. Consequentially, the Court of Appeal held that, they were bound by the decision in Suit No.49/80. The portions of the unanimous judgment of the Court of Appeal which we find most instrumental to the instant appeal are the following pronouncements at pages 155-156 of Vol.4 of the Record of Appeal:

“In the survey exercise in Civil Appeal No.49/80, the Numo Nmashie family were entitled to claim what they honestly believed to be theirs and the Plaintiffs' family were also entitled to claim what they honestly believed to be theirs. In fact, this is what a court assumes when it orders the preparation of a composite plan. If the Plaintiffs had cause to believe that the Numo Nmashie family were making false claims, they were entitled to challenge the claims and support their challenge with evidence. And this had to be done in Civil Appeal No.49/80 or in some other proceedings relating to Civil Appeal No.49/80 timeously instated. Having failed in that respect and the passage of time having drawn various forms of legal and equitable bars against them, it is only upon proof of fraud or dishonesty against the Numo Nmashie family that the Plaintiffs can successfully impugn the decision in Civil Appeal

No.4980. I do not however find fraud or dishonesty established against the Numo Nmashie family in the present suit. In my view, the evidence on record does not lend reasonable support to the Trial Court's decision that the decisions of the Court of Appeal in Civil Appeal No.49/80 was procured by fraud. I will therefore set aside the said decision of the Trial Court."

- (32) The court pronounced further that: "...In my view therefore, in a case, as in the present suit, where fraud and *res judicata* had both been raised, it would have been helpful for the Trial Court if it had first satisfied itself that fraud had been established before launching into a reopening of issues already determined between the parties. What happened in the judgment appealed from is that the trial Court re-opened the issue of ownership (which was *res judicata*), carried out its own "research" on that issue, and made findings different from those already determined between the parties. Then having contradicted the determinations already made with its own findings, the trial Court used its findings as evidence of fraud to support the setting aside of the judgment which it had itself acknowledged as operating as estoppel. I think the approach by which the Trial Court came to a decision of fraud in respect of Civil Appeal No.49/80 was flawed and the decision lacked logical support."

- (33) The Court of Appeal then proceeded to declare title in the Defendants per their counterclaim. On the issue of recovery of possession against the Plaintiffs, the Court of Appeal pronounced as follows: "What I think I should do in the circumstance, which I hereby do, is to grant recovery of possession in favour of the 1st and 2nd Defendants against the Plaintiffs in this suit specifically, and also make an order nullifying all or any grants made by the Boi Stool in favour of any of the Plaintiffs herein in respect of the disputed land or any portion thereof. Again, I perpetually restrain the Plaintiffs from interfering with the 1st

and 2nd Defendants' enjoyment of their land. For the avoidance of doubt, subject to any further legal steps the Defendants may take and its outcome, possession may not be recovered against grantees of the Boi Stool who are not parties to the present suit, and any grants they hold in respect of any portions of the disputed land shall remain valid."

THE INSTANT APPEAL.

(34) Dissatisfied with, and aggrieved by the judgment of the Court of Appeal, the Plaintiffs per notice of appeal filed on the 23rd of December 2015 appealed to this court where the following grounds were formulated and set out.

- 1. "The judgment is against the weight of evidence.*
- 2. The Learned Justices of the Court of Appeal erred when they held that the 3rd Defendant (Numo Nmashie Family) did not obtain the judgment in Civil Appeal No.49/80 through fraud.*
- 3. The Learned Justices of the Court of Appeal failed to appreciate that fraud is an exception to res-Judicata.*

PARTICULARS OF ERROR

The Court of Appeal erred when they held that Plaintiffs cannot relitigate with the Defendants on the issue of ownership of the Adjancote Hill and ownership of the land and villages contiguous to the Hill.

- 4. The Learned Justices of the Court of Appeal erred when they failed to make any pronouncement in respect of the 3rd Defendant (Numo Nmashie family) counterclaim.*
- 5. The Learned Justices of the Court of Appeal erred when they granted the 1st and 2nd Defendants counterclaim.*
- 6. Further or other grounds of appeal shall be filed upon receipt of certified true copy of the proceedings."*

THE LAW ON CIVIL APPEALS

- (35) An appeal, as we have severally held, is by way of rehearing. This is particularly the case when an Appellant anchors an appeal on the omnibus ground. In such a situation, the Appellant first, assumes the burden of pointing out to the court, the pieces of evidence alleged to have been misapplied or not applied at all by the Court below in its evaluation of the evidence on record. The Appellant must therefore, walk the appellate court through the entire record of appeal by demonstrating how the improper evaluation or non-evaluation of the evidence, has occasioned the Appellant, a miscarriage of justice. In **NORTEY (NO.2) VS. AFRICAN INSTITUTE OF JOURNALISM AND COMMUNICATION & OTHERS (NO.2) [2013-2014] 1 SCGLR 703**, this Court, pronounced that:

"This Court has stated in numerous cases such as TUAKWA VS. BOSOM [2001-2002] SCGLR 61, 65; QUARCOOPOME VS. SANYO ELECTRIC TRADING CO. LTD. [2009] SCGLR 213, 229; OPPONG VS. ANARFI [2011] 2 SCGLR 556 that an appeal is by way of re-hearing, particularly where the Appellant alleges as in the omnibus ground that the decision of the Trial Court is against the weight of evidence. In such a case it is incumbent on an appellate court such as this, in a civil case, to analyse the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before arriving at its decision so as to satisfy itself that, on a preponderance of probabilities that, the conclusions of the Trial Judge are reasonably or amply supported by the evidence."

- (36) It needs reiteration also that, this court will not disturb findings of facts made by a Trial Court or the first appellate court, unless there are exceptional circumstances warranting so. This normally arises in situations where the

findings are so perverse and inconsistent with the evidence on record or are so adverse to the proceedings at the trial or was based on misapplication or non-application of the relevant law.

- (37) In the instant appeal, the Court of Appeal reversed all the findings made by the Trial Court. The settled law is that, where the Trial Court's findings are supported by the evidence on record and properly made following a judicious assessment of the witnesses at the trial, the appellate court should be careful to disturb those findings. In the case of **AMOAHS VS. LOKKO & ALFRED QUARTEY (SUBSTITUTED BY) GLORIA QUARTEY & OTHERS [2011] 1 SCGLR 505**, this court decided *inter alia* that:

"For the Trial Court's finding to be irrefutable: first, it must be supported by evidence on record; second, it must be based on credibility of witnesses; third, the Trial Court must have had the opportunity and advantage of seeing and observing the demeanour of witnesses; and fourthly, it must be satisfied of the truthfulness of the testimonies of witnesses on any particular matter."

FRAUD VIS-À-VIS RES-JUDICATA

- (38) The contentions of the parties in this appeal straddle a balancing of two judicial policies. They are; that no judgment of the court procured by fraud must be made to stand; and secondly that, as a matter of public policy, litigation must come to an end one day: While the Defendants contend that, the Plaintiff's action is caught by *res judicata*, the Plaintiffs' also submit that, the judgment which affirms the Defendants' alleged defence of *res judicata* was fraudulently procured. It is settled law that, fraud which is simply dishonesty vitiates everything. Once detected, it crumbles the most solid foundations and pales the existence of otherwise solemn judicial decisions into extinction as it throws

the entire proceedings into perdition. See cases such as **OKOFO ESTATES LTD. VS. MODERN SIGNS [1996-97] SCGLR PAGE 254-255; BROWN VS. QUARSHIGAH (2003-2004) 2 SCGLR 930; DZOTEPE VS. HAHORMENE III [1987-1988] 2 GLR 681; DERRY VS. PEEK [1889] 14 APP CAS 337.**

- (39) We wish to reiterate that, where a court finds that, a judgment being impeached for fraud is actually fraudulent, the plea of *res judicata* is untenable and ought not be allowed to supplant an order setting aside that judgment where appropriate. With this legal framework, we shall proceed to analyse the grounds of appeal in the appeal. We find that, the appeal can be conveniently disposed of through the determination of the omnibus ground of appeal and we proceed to so do.

THE JUDGMENT IS AGAINST THE WEIGHT OF EVIDENCE

- (40) It is far from dispute that, what has led to the present action and several others is Suit No.49/80 which reversed the judgment of the State Lands Tribunal, to the effect that, the Adjancote Area belongs to the 3rd Defendant Family, the Numo Nmashie Family. More specifically, in determining who was entitled to compensation following the State's acquisition of the about 25.031 acres at Adjancote, the Court of Appeal in Civil Appeal No.49/80 pronounced further that, the 3rd Defendant Family was entitled also to the lands contiguous to the acquisition area until the contrary is proved.
- (41) Indeed, EI.63 proclaimed the State's compulsory acquisition of 25.031 acres only of the Adjancote Hill area for the purposes of a television station. It would have been expected that, since the originating evidence had at all times been in respect of 25.031 acres, the said crucial fact would have been given prominence in all proceedings, particularly, when the subject matter of the claim before the State Lands Tribunal was for compensation. This 25.031 acres, has however

been given less prominence and all the attention is now on about seventy (70) villages stretching over 72,000 acres as claimed by the 3rd Defendant Family, the Numo Nmashie Family of Teshie. It is ownership and possession of the entire over 72,000 acres, and the villages located thereon which the 3rd Defendant Family seek to enforce as if a dispute over title or ownership of that extent of land constituted the factual basis of the decision of the Court of Appeal in Suit No.49/80.

(42) The critical issue which arises from this action therefore, is whether Suit No.49/80 was procured by fraud? This issue arises from the 3rd Defendant's reliance on the said judgment to ground their claim of being entitled to over 72,000 acres of land. In resolving this issue, bearing in mind the higher standard of proof for fraud, which is beyond reasonable doubt, the Plaintiffs will thus, assume the statutory burden to adduce sufficient and credible evidence to prove the allegation of fraud.

(43) We first observe that, the subject of Suit No.49/80 **KLU VS. AGYEMANG III** (supra) was for a determination of whether the Numo Nmashie Family 3rd Defendant herein, was entitled to compensation and not whether certain seventy (70) villages covering land area of over 72,000 acres belonged to the Family. Thus, the said suit was not one for determination of title, ownership, or interest in respect of the 70 villages nor of the land situate thereon. We do recognize that, contingent upon the determination of entitlement to compensation was the necessity to determine the issue of ownership of the subject matter of the compensation. Unfortunately, in determining ownership of the about 25.031 acres of land being the subject of the Adjancote acquisition, the Court of Appeal veered into pronouncing on villages contiguous to the acquisition area which constitute the seventy (70) villages claimed by the Numo Nmashie Family, 3rd Defendant herein.

(44) Further, a careful introspection of the proceedings at the Trial Court would reveal that, prior to the determination of Suit No.49/80, there had been several pronouncements by various courts which had judicially determined the ownership of some of the lands/villages which the 3rd Defendant Numo Nmashie Family of Teshie is claiming as belonging to it. The question is, if the Court of Appeal merely pronounced on ownership of the villages, which the 3rd Defendant Family believed to be owned by it at the material time of the preparation of the composite plan in family's honest belief that they were the true and lawful owners, then it is fair to agree with the Court of Appeal that, the allegation of fraud cannot seriously be upheld against them. What shatters this supposition however is that, their own representatives and witnesses in the course of the trial, did admit variously that, some of the villages as a matter of fact did not belong to them.

(45) This is clearly manifest from the record of proceedings at the Trial Court. For instance, the following evidence elicited through cross-examination is on record;

"Q: Now look at Exhibit "F", Baatsonaa falls within the 72

(sic) acres that you are claiming as per your counterclaim, is that not so?

A: My Lord, Baatsonaa is included and the land belongs to Teshie people and not the people of Nungua."

(46) Under further cross-examination the 3rd Defendant's witness, at a point testified that, there were no villages in the acquired area: Part of the testimony of the 3rd Defendant's witness is as follows:-

"Q: Now you said the acquired area is 25 acres it is marked

green with the red television station. It is true, isn't it?

A: That is the mistake of the Surveyor because it is stated when we went for the compensation it was stated 25 acres.

Q: Now the area acquired is marked by a television station with light green. It is true, that is in Exhibit "29" Television station. Is that not the acquired area?

A: Yes it is

Q: The top most part of the Hill it is true, isn't it?

A: Yes My Lord.

Q: Now is there any village in the acquired area or indicated around the acquired area 25 acres?

A: It is from Akpor area it is not from the acquired area itself.

Q: So there is no village in the acquired area or in an inch close to the area it is true there is no village?

A: There is no village."

(47) A further weakening of the case of the 3rd Defendant Family which gives credence to the fraud alleged were the earlier judgments by the courts and

tribunals which had settled some of the villages in favour of Stools other than the Numo Nmashie Family of Teshie. For instance, a witness for the 3rd Defendant Family, had once testified before a special sub-committee which investigated Labadi Stool Lands and stated in his testimony *inter alia* as follows : *“It is also well-known to the Numo Nmashie family of Teshie that Madina which they lay claim to was started as a settlement in 1959 with the permission of the La Stool under the Ex-La Mantse Nii Anyetei Kwakwanya II. If the land were part of Numo Nmashie family lands, they would have challenged the La Stool long ago. What is more is that the Government, since Colonial times, had acquired various tracts of land around Madina, Bawaleshie and Mpehuasem from the La Stool. Accordingly, compensations have been paid for some of these acquisitions but Numo Nmashie family of Teshie has never raised a finger. As at now, there are several acquisitions in Madina in particular to be compensated for but the Numo Nmashie family of Teshie has not put in any claims as the La Stool and some of its quarters and individuals have done...”*

We need to place on record that while under cross-examination this piece of evidence which was used to contradict the 3rd Defendant’s witness was admitted.

- (48) Consequently, we accept and endorse the finding of the Trial Court, that, Nkwantanang village belongs to the La Stool as was held in: *The Matter of the Public Lands Ordinance And In the Matter of Land Acquired for the Service of the Colony and Ashanti Situate at Mile Post 9 on the Accra-Dodowa Road for Presbyterian Secondary School dated 13th February 1965*. Likewise, in the case of *NARTEY VS. MECHANICAL LLOYD ASSEMBLY PLANT [1987-88] 2 GLR 314*, as rightly pointed out by the Trial Court, this Court had decided that, Frafraha lands, belonged to the Agbawe Family of La.

(49) Against this factual and judicial background, how can the Numo Nmashie Family claim ownership of the same lands judicially determined by this court as belonging to other stools and families? In reading the **NARTEY CASE**, it can be easily deciphered that, Frafraha, Oyarifa, Adenta, Mpehoasem and Nkwantanang villages do not belong to the Numo Nmashie Family, yet by virtue of the judgment in Suit No.49/80, they have laid claims to those lands. We take judicial notice that the lands situate at **PAAPAO AND HAATSO** had also been held by the Supreme Court in **ODONKOR VS. AMARTEI** (supra) to be part of land belonging to families from Osu. They cannot therefore be said to belong to the 3rd Defendant Numo Nmashie Family. While under cross examination, the 3rd Defendant's own witness did admit that, the Ashongman lands belong to the Odai Ntow Family of Teshie and therefore, cannot be said to belong to the 3rd Defendant Numo Nmashie Family, contrary to the scope the judgment in Suit No.49/80 had assumed.

(50) Further, we agree with the Trial Court in its analysis which it placed on record *in extenso* as follows:-

Yet another claim by the Numo Nmashie family was on the lands of Pantang, Danfa, Adoteiman and Otinibi. On Exhibit "5", Danfa has been listed as No. 6, Adoteiman No.7, Otinibi No. 8 and Pantan No.47. On Exhibit "F" the writings is faded but straining my eyes, I could see Otinibi listed as No. 10, Danfa No. 24 and Adoteiman No. 25.

Now upon what evidence do the 3rd Defendants have to ask the Court to declare such towns/villages as theirs? The simple answer they always gave was that, their ancestor Numo Nmashie founded these villages

However, with all these claims by the 3rd Defendant and infact the 1st and 2nd Defendants, it is found to be untrue. On the 8th of July 1914, the Court gave judgment for Afutufio and Amongfio. The case was between Tettey Tsuru and Afutufio and Amongfio. The Court in the said judgment held that, Pantang, Danfa, Adoteiman and Otinibi were founded by Nii Afutu BrempongI, a hunter who left Teshie after returning from the Katamanso ware of 1826.

*Again in the Suit No.AL 26/2005 between **NII AMONGIO KOTEI V SUSANA DOHUYOO KOMIETTEH** and **LANDS COMMISSION**, Justice V.D Ofoe J.A (sitting as an additional High Court Judge) a judgment given on the 12th of February, 2009 also held that the Pantang lands were founded by Nii Afutu Brempong I. In the said judgment, reference was made to the 8th July, 1914 judgment with all these, it is unheard of for the Numo Nmashie family to claim that Pantang, Danfa, Adoteiman and Otinibi are their lands. Such villages have also been listed in the Gold Coast Chief List. See Exhibit “A”.*

- (51) We find therefore that, the Trial Court properly evaluated the evidence which evidently exposed the Numo Nmashie Family’s false claim to the seventy (70) villages and land contiguous to them. As already observed, while the witness to the Numo Nmashie Family was under cross examination he did admit that, some of the villages which were identified as belonging to them by Surveyor Lassey did not in fact belong to them. Yet, the judgment in **KLU VS. AGYEMANG III** (supra) has metamorphosed into a proclamation of their ownership of over 72,000.00 acres of land. Therein lies the fraud alleged by the Plaintiffs.
- (52) We must however emphasise that the fraud we find apparent from the 3rd Defendant’s conduct in asserting ownership rights over seventy (70) villages and contiguous lands which from their own testimony do not belong to them

is not fraud to be understood in the criminal sense, but in the civil sense in its application. This is so, notwithstanding that both species of fraud require the same standard of proof which is *beyond a reasonable doubt* whenever it is alleged. In the case of **GOODSHEPHERD MISSION VS. SYKES & ORS** [1997-1998] I GLR 978 at page 991 Wood J.A (*as she then was*) explained the difference between the incident of fraud in the civil sense and fraud in the criminal sense by reference to the classical difference in the two species defined by two distinguished English legal writers, D.L. McDonnell J.G Monroe in their invaluable book, "*Treaties on the Law of Fraud*" which definition is sourced from "**Kerr on Fraud and Mistake (7th Edition)**". Kerr states on the scope of fraud at page 1 as follows:-

"It is not easy to give a definition of what constitutes fraud in the extensive signification in which that term is understood by Civil Courts of Justice. The Courts have always avoided hampering what shall be held to constitute fraud. Fraud is infinite in variety. The fertility of man's invention in devising new schemes of fraud is so great, that the courts have always declined to define it, or to define undue influence, which is one of its many varieties, reserving to themselves the liberty to deal with it under whatever form it may present itself. Fraud, in the contemplation of a Civil Court of Justice, may be said to include properly all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another. All surprise, trick, cunning, dissembling and other unfair way that is used to cheat any one is considered as fraud. Fraud in all cases implies a wilful act on the part of any one, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled to".

- (53) Consequently, the fixation by the Court of Appeal on *res judicata* in its judgment when from the evidence on record, the nature of the fraud alleged

was apparent is with all due respect to the Learned Justices of the Court of Appeal demonstrably erroneous. The Court of Appeal ought not have glossed over this insurmountable evidence of fraud against the 3rd Defendant's Family.

(54) We are aware that, Counsel for the 3rd Defendant in particular has urged on us that some of the decisions which informed the judgment of the Trial Court post-dated the judgment in Suit No.49/80 and ought not to have been relied upon. That argument is not in the least appealing to us. This court, has itself even after the judgment in Suit No.49/80 pronounced on ownership of lands which fall within the area of the 3rd Defendant Family's. We find no justifiable reason to depart from those decisions nor overrule them. For instance, in **IN RE ASHALLEY BOTWE LANDS [2003-2004] SCGLR 420** it has been settled that, Ashalley- Botwe Lands formed part of the Teshie Division and hence, cannot be claimed by the 3rd Defendant Numo Nmashie Family as they could have, if the scope of the judgment in **KLU VS. AGYEMANG III** (supra) as they claim it should be allowed to subsist.

(55) With respect to the Teshie Artillery Range Lands which was also affected by the said judgment in Suit No.49/80, we affirm the following pronouncement and findings of fact by the Trial Court which we also reproduce *in extenso* as follows:-

- (i) *"The next town/village I would like to comment on is the Kpeshie Ridge listed as 70 under Exhibit "5", tendered in by the 3rd Defendant. This Kpeshie Ridge also has the Artillery Range established on it. On the 10th of December, 1935, the acting chief of Nungua, acting for himself and as representation of the members of the Nungua Stool, where consent and concurrence is required for the alienation of Nungua lands entered into a lease agreement with James Alphansus Rice, acting commissioner of Lands of the Gold Coast, and to a supplementary to a lease dated*

15th October, 1923 gave permission to the Gold Coast Government to use the land for artillery and machine gun practice. The lease was between the Nungua and the Government of the Gold Coast. See Exhibit "EE"...."

- (ii) *"However, the 3rd Defendant tendered Exhibit "6" from the National Archives of a judgment dated 26th May, 1952 in the matter of land acquired for the School of Infantry, by Jackson J. The matter was between Nungua, Teshie and La. In Jackson J's judgment at page 6, he stated:*

"Upon the evidence before me I am satisfied that the Teshie Stool is the only family who was in possession of the land acquired as being the owner thereof at the time it was taken and that the Teshie Stool is entitled to receive the compensation....."

- (iii) *Again, Exhibit "HH" which is an extract from Gold Coast Gazette dated 9th December, 1933 gives a list of instruments registered at the Deeds Registry, Accra, during the month of November, 1933. at number 659, which has a date of receipt as November, 27 and the nature of instrument was Renewal of Lease " the deed covered the land referred to as "Artillery Range", Nungua. The grantor of the land was "Odoi Tawiah IV, Chief of Nungua acting for himself and as the representative of all members of the Nungua Stool whose consent to or concurrence in this indenture is requisite or desirable according to native customary law."*

- (iv) *If the Kpeshie range therefore includes the artillery range, the land therefore in my opinion, does not belong to the Numo Nmashie Family. The judgment of Jackson J was on the 26th May, 1952 concerning the School of infantry. I do not know whether the School of infantry is within the Kpeshie arrange. If it is within the said range, I have not seen any reference to the lease that had been gazetted way back in 1933 in the judgment. Be that as it*

may, even if the infantary school is within the Kpeshie range, it is not for the Numo Nmashie family per se, but the Teshie Stool.

(56) Clearly therefore, per their own admissions, the 3rd Defendant Family knew at all material times that, several of the villages they were laying claim to, belonged to other families and stools, yet relied on the impugned judgment to buttress their claim on them. That, in our view is manifestly dishonest and untenable to say the least. The Court of Appeal should not therefore have shut their eyes on those claims which on the evidence on record had been disproved. Judicial decisions are not made to create new or radical roots of title or interest in land. They determine from the facts and evidence adduced and the application of the relevant law which of two or more contesting claims are more probable than not. In doing so, courts not only apply the ground rules of evidence to the facts, they determine from the mass of evidence adduced which party's evidence has passed the statutory threshold of proof on the balance of the probabilities. However, the incident of fraud where proved or apparent on the face of the record will vitiate every proceeding or judgment.

(57) Consequently, we have no difficulty in pronouncing the judgment in Suit No.49/80 **KLU VS. AGYEMANG III** (supra) as claimed by the Plaintiffs is implicitly fraudulent and accordingly, set the judgment aside. Having so held, it follows that any judgment, decision or order that is founded on the said judgment is a consequential nullity, and of no effect. Subject to our directions, we affirm fully, the findings of fact of the Trial Court that the judgment in Suit No.49/80 was procured by fraud. Accordingly, we allow the appeal and reverse the judgment of the Court of Appeal dated 26th November, 2015 subject to such modifications and variations as set out below:

VARIATION OF THE JUDGMENT OF THE TRIAL COURT

(58) While we substantially affirm the findings of fact and conclusion reached by the Trial Court that the judgment in Suit No.49/80 which proclaimed the 3rd Defendant Family as owners of the said seventy (70) villages and land comprising over 72,000 acres was procured by fraud, it must be clarified that, this decision does not affect the issue of entitlement to compensation determined in **KLU VS. AGYEMANG III** (*supra*) wherein the then Court of Appeal pronounced that the 3rd Defendant Numo Nmashie Family, own the about 25 acres which constitute the acquisition area. By upholding the Plaintiffs allegation of fraud therefore, this court must not be misconstrued as having held that, the aspect of the judgment of the then Court of Appeal which proclaimed the Numo Nmashie Family's entitlement to compensation is also fraudulent. That issue has never been contested since the decision was delivered.

(59) We further make the following consequential orders :

- a. *The pronouncements and declarations herein made in favour of the numerous families and stools, most of whom are not parties to the instant suit, should be treated merely as declaratory. That is, our judgment is not to open the flood gates, for attempts to recover possession and trigger demolition orders particularly in relation to grantees of the 3rd Defendant Family in respect of some of the lands we have pronounced as not falling within the scope of the judgment in Suit No.49/80. IN RE ADJANCOTE ACQUISITION, KLU VS. AGYEMAN III (supra).*
- b. *All persons who have acquired grants from the Numo Nmashie Family in areas which by this judgment have been held not to belong to the said 1st and 2nd Defendants and 3rd Defendant Family and have taken possession of those*

pieces of lands shall not be dispossessed of their interest. They shall however, atone tenant to the relevant stool or family as per the decision reached in this judgment and other like cases on them.

- c. *We further affirm the order of the Trial Court that, the name of the 3rd Defendant, the Numo Nmashie Family be deleted from the records of the Lands Commission as being owners of the lands afore-declared as not forming part of the Numo Nmashie Family land.*

I.O TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

N. A. O. AMEGATCHER

(JUSTICE OF THE SUPREME COURT)

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