IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: BAFFOE-BONNIE JSC (PRESIDING)

PROF. KOTEY JSC

OWUSU (MS.) JSC

LOVELACE-JOHNSON (MS.) JSC

KULENDI JSC

CIVIL APPEAL

NO. J4/59/2021

12TH JULY, 2023

1. NII AHINQUASRO BADDOO **2. NII KWAKU FOSU III** **3. ALBERT BADU** **4. OFORI BADU**	**PLAINTIFFS/RESPONDENTS/ RESPONDENTS**

VS

1. NII TETTEY OKPE II **2. NUMO NARTEH** **3. SAMUEL LARYEA** **4. ESHMAEL ADDO** **5. JAMES TETTEH** **6. JOSEPH LARTEY**	**DEFENDANTS/APPELLANTS/APPELLANTS**

JUDGMENT

PROF. KOTEY JSC:-

INTRODUCTION

On 21st May, 2020 the Court of Appeal, Accra, dismissed the appeal of the Defendants/Appellants/Appellants (Defendants) and affirmed the decision of the High Court, Accra dated 31st May, 2017.

CASE OF PLAINTIFF

On the 2nd of December, 2010 the Plaintiffs caused a writ of summons and its accompanying statement of claim which was amended on 20th June, 2013 to be issued in respect of a dispute concerning Amamole lands seeking the following reliefs:

a. *Declaration of title to all that piece or parcel of land situate, lying and being at Ablekuma in the Greater Accra Region of the Republic of Ghana and bounded on the North East by Asofa and Ofankor land measuring Seventeen Thousand One Hundred and Fifty Feet (17,150ft) more or less on the North West by the River Nsaki measuring Twenty Six Thousand, Four hundred and fifty feet (26,450ft) more or less on the South East by Suotuom and Anyaa Lands measuring Thirty Two Thousand, Nine Hundred Feet (32,900ft) more or less on the South West by Gbawe and Joma Lands measuring Seventeen Thousand, Seven Hundred and Thirty Feet (17,730ft) more or less covering an area of approximately 14.37Sq. Miles or 9201.48Sq Feet.*

b. *Declaration that the unlawful criminal and illegal activities of land guards terror group that commit acts of trespass and enforcements must be declared null and void.*

c. *Declaration that all the areas of trespass and encroachment that the defendants herein and their accomplices have invaded come within the area of ownership and control of the plaintiffs herein and their Royal family and this constitute acts of trespass and must be pulled down as illegal structures*

d. *Declaration that the Defendants herein are not members of or do not form part of the patrilineal Royal family of the plaintiffs herein and accordingly are not entitled to be trespassing on their lands and be third parties or worst still to be purporting to be using or hiding under the authority and name of the late Nii Robert Badoo the past head of their family to be executing Deed of indentures to give their lands away to others.*

e. *An order cancelling and nullifying any such acts of trespass and illegal acquisitions of plaintiffs lands.*

f. *An order permitting plaintiffs to destroy and bull doze down all such unauthorized structures put up on plaintiffs' lands without their knowledge consent or permission.*

g. *An order for ejectment and recovery of possession*

h. *An order for demolishing all unauthorized structures, excavations, buildings on plaintiffs' land.*

i. *An order to the Lands Commission and or the Land Title Registry compelling the registration of any portion of the piece or parcel of land belonging to the plaintiffs herein that has been trespassed and encroached upon without the express written authority or consent or permission of plaintiffs herein.*

j. *General damages for trespass, unlawful entry, unlawful grant of plaintiffs land.*

k. *An order of perpetual injunction (mandatory and prohibitory) restraining the defendants herein their agents, assigns workmen, privies, servants caretakers and all people claiming through them from entering and dealing in any manner with plaintiffs' land.*

l. *Interest at the prevailing bank rate up to the date of payment.*

The Plaintiffs described themselves as the head of family (1st Plaintiff), member (2nd Plaintiff) and elders (3rd and 4th Plaintiff) of the Nii Larbi Mensah We, family of Sempe, Accra.

It is the case of the Plaintiffs that the Nii Larbi Mensah We Family is a part of larger Sempe stool whose villages comprise Ablekuma, Anyaa, Oduman, Nsakina, Asofaa, Ayawaso, Oshiuman/Abeman, Gbawe, Ofankor, Sowutuom, Odumase and others. They allege that Amamole, Asofaa, Agape, Olebu, Fanmilk, Ablekuman New Town, Kyeremanteng Estate are under Ablekuma stool.

They also alleged that Amamole was a farm cottage of Nii Tetteh Okpe II who sent Tetteh Korbla there as a caretaker. The son of Tetteh Tsuru of Alata who was sent to live with Tetteh Korblah at Amamole subsequently married Maanan, the daughter of Tetteh

Korblah, the caretaker. It is their case therefore that the Amamole lands belong to Larbi Stool which is part of Sempe and Ngleshie Alata.

They further contend that in 1938 in the case of ***T.I Attoh alias Tetteh Tsuru v Pordieh &Others, Suit No. 1157/37,*** the James Town Court affirmed the title of the Plaintiffs to the Amamole Land. The Plaintiffs also allege that they claim their root of title through a statutory declaration made by Mr. Robert Baddoo. The Plaintiffs further alleged that the Defendants and their people were allowed to stay on the land out of their leniency but in recent times, the Defendants, with the help of land guards, are denying the title of the Plaintiffs who are the rightful owners by alienating the lands without the consent and concurrence of the Plaintiffs.

CASE OF DEFENDANT

The first Defendant is the substantive Chief of Amamole. The Defendants allege that chieftaincy in Ablekuma is a thorny and unsettled issue. There are three other contending chiefs. Two of them are both called Nii Larbi Mensah, the Atofotse of Sempe as well as the 2nd Plaintiff.

The Defendants allege that the Plaintiffs have no capacity to institute this action due to the decision in **Emmanueul Kwartey Quartey-Papafio (substituted by Ishmeal Walter Allotey) vrs Lands Commission & Nii Larbie Mensah IV (a.k.a. Adjin Tetteh) Head of Nii Larbi Mensah Family, Suit No. L77/2003 Dated 24th February, 2015.** They further contend that they are not proper parties to the suit and that Amamole lands being family lands, the rightful persons to be sued are the head and principal members of the family.

They also alleged that Amamole is under James Town (Ngleshie) stool. They alleged that Abbeyman/Oshiuman shares boundary with Ablekuma. Amamole and Ablekuma are separated by Abbeyman and therefore Amamole cannot be said to be within Ablekuma.

Amamole lands, they contended, belong to Nii Tettey Okpe family of Amamole and not Nii Larbi Mensah family and that the statutory declaration is a self-serving document produced in bad faith to perpetuate fraud.

The Defendant also contend that the size of Ablekuma is grossly exaggerated as 14,377 square miles and that the supporting site plan is inaccurate and deceptive. They denied that they have engaged in any illegal activities involving land guards and that it is rather, the Plaintiffs who have engaged in vicious acts with the aid of land guards putting the people of Amamole in fear and panic.

The Defendants did not counterclaim.

TRIAL AND DECISION OF THE HIGH COURT

At the close of pleadings, the following issues were set down for trial:

a. Whether or not one of the basis of the claim of the plaintiffs herein is statutory declaration made by Mr. Robert Baddoo
b. Whether or not the Lands Commission has mapped out noted and duly registered the said statutory declaration of the late Mr. Robert Baddoo.
c. Whether or not the piece or parcel of land in dispute including the Amomoley lands fall within the lands registered by Lands Commission as part of the Robert Baddoo Statutory Declaration.
d. Whether or not there are official search reports of the Lands Commission showing that Robert Baddoo statutory declaration has been registered.
e. Whether or not the area sheet or site plan covering the lands claimed by the plaintiffs herein is 14,377 sq miles or 14.377 sq miles.

f. Whether or not the records show that the defendants herein are aliens and settlers who have come to perch on the lands of Ablekuma people.
g. Whether or not there is evidence that defendants herein directly attempted to execute Deed of indentures covering Ablekuma lands.
h. Whether or not there had been any hearing on the merits by any court of competent jurisdiction to determine the issues in controversy between the parties in this court.

The following additional issues were added by the Defendants after the Plaintiffs amended their Statement of Claim.

1. Whether or not Amamole is in Ablekuma
2. As preliminary issues whether or not Nii Kwaku Fosu III (Ablekuma Mantse) and Nii Ahinquansro Badoo, head of family (Nii Larbi We Sempe) have capacity to issue out the writ as Plaintiffs.
3. Whether or not the rights of the Plaintiffs are consistent with each other.
4. Whether or not Ablekuma lands and Amamole lands are stool or family lands.
5. Whether or not Ablekuma land owners are automatically Amamole land owners or vice versa.
6. Whether or not there is any overlap between Ablekuma and Amamole upon imposition of site plans.
7. Whether or not the writ and statement of claim are frivolous, vexatious and incompetent.
8. Whether or not the statutory declaration relied upon by the plaintiffs is a self-serving, fraudulently obtained document.
9. Whether or not there is a proper root of title or legal basis or process of inheritance of the land claimed by the plaintiffs.

10. Whether or not Ablekuma stretches for 14,377 sq miles.

At the end of the trial, the trial High Court held that although the Defendants indicated in their Statement of Defence that they intend to raise the issue of capacity as a preliminary issue, they did not do so and would therefore be deemed to have abandoned that issue.

The court also held that the Plaintiffs, by the statutory declaration, have proved their root of title. The Court held that exhibit 3, a recent order of the High Court dated 12th October, 2009 which confirmed a boundary settlement between the various villages in the area was not binding on the Plaintiffs as they were not party to that trial.

The court held that it is evident that the Plaintiffs land is 14.377 sq miles as stated in their pleadings and not 14,377sq miles as shown in exhibit A. Also, exhibit F shows that the defendants attempted to execute a deed of indenture covering the Ablekuma lands in favour of one Shardrack Asare.

The Court held that exhibit G shows that the land in question is in Ablekuma in the Ga East District of the Greater Accra region and that by virtue of the judgment of the James Town Tribunal it is clear that the land in disputes belongs to the Plaintiff family. That judgment has not been set aside and is therefore binding on the Defendants.

The Court therefore gave judgment for the Plaintiffs and granted the reliefs they were seeking.

APPEAL TO THE COURT OF APPEAL

The court found that the main issue for determination is whether or not the statutory declaration, Exhibit E, upon which the trial judge based his judgment is valid and a good root of title.

The Court held that a statutory declaration is not a deed of conveyance and therefore cannot purport to convey any interest in land hence could not form the basis of a better title. However, the court on the basis of **Gregory v Hanson** [2010] SCGLR 971, held that a statutory declaration is a solemn, serious and sacred document and should be treated as such and that under the circumstance, the trial judge was right in basing his judgment on the statutory declaration.

On the issue of the capacity of the Plaintiffs, the court held that the parties and circumstances of **Emmanuel Kwartey Quartey-papafio (substituted by Ishmeal Walter Allotey) vrs Lands Commission & Nii Larbie Mensah IV (a.k.a. Adjin Tetteh) Head of Nii Larbi Mensah Family** are not the same as those in the present case and therefore does not affect the Plaintiffs. The Court of Appeal held that the court in that case and the current trial court have co-ordinate jurisdiction therefore their decisions are not binding on each other.

APPEAL TO THE SUPREME COURT.

Dissatisfied with the decision of the Court of Appeal, the Defendants filed this appeal praying this court to reverse the judgment of the Court of Appeal. The notice of appeal was filed on 26th May, 2020 but the grounds were amended as follows:

1. *The judgment of the trial court as affirmed by the Court of Appeal is against the weight of evidence on record.*

2. *The Court of Appeal erred in law when it accepted and gave evidential value to a statutory declaration of the Plaintiffs/Respondents/Respondents.*

PARTICULARS OF ERROR

i. *A statutory declaration is a self-serving document and a conveyance and of no legal consequence against the claim of an adversary.*

ii. *The probative value ascribed to the statutory declaration of the Plaintiffs/respondents/respondents is inconsistent with the position of the law elucidated in the case of* ***ADJETEY AGBOSU V KOTEY*** *[2003-2004] SCGLR 420.*

3. *The Court of Appeal erred in law when it accepted the findings and conclusions of the trial court in an action involving a large parcel of land when the plaintiffs/respondents/respondents had failed to prove essential ingredients in proof of their claim to the land.*

PARTICULARS OF ERROR

i. *The plaintiffs/respondents/respondents claim failed to provide the proper particulars of the size of the area claimed.*

ii. *The plaintiffs/respondents/respondents failed to identify their boundaries to entitle them to the reliefs claimed.*

4. *The Court of Appeal erred in law when it failed to consider the lack of capacity of the Plaintiffs/respondents/respondents over Ablekuma and Amamole lands already determined by the High Court.*

5. *That their Lordships with respect failed to give any or any proper credence and probative value to the boundary settlement judgment of the High Court.*

PARTICULARS OF ERROR

i. *The decision of the High Court in Suit No. L77/2003 dated 24th February, 2015 on the plaintiffs/respondents/respondents' lack of capacity has not been set aside by any court of competent jurisdiction.*

ii. *The previous judgment which supported the Defendants/appellants/appellants possessory right over the area of the land in dispute in excess of 300 years has not been set aside.*

6. *Further grounds of Appeal to be filled upon receipt of the Appeal Court Judgment.*

However, no further grounds of appeal were filed.

CONSIDERATION AND ANALYSIS

In **Gregory v Tandoh IV and Hanson [2010] SCGLR 971 at page 985** the Supreme Court reiterated the principle in **Obeng v. Assemblies of God Church, Ghana [2010] SCGLR 300** as follows;

"findings of fact made by a trial court, and concurred in by the first appellate court, i.e. the court of appeal, then the second appellate court, such as the supreme court must be slow in coming to different conclusion unless it was satisfied that there were strong pieces of evidence on record

which made it manifestly clear that the findings of the trial court and the first appellate court were perverse"

The Supreme Court continued

*"The court held that a second appellate court like the supreme court could and was entitled to depart from findings of facts made by the trial court under the following circumstances; 1) where from the record of appeal, the findings of fact by the trial court were clearly not supported by the evidence on record and the reasons in support of the findings were unsatisfactory; 2) where the findings of fact by the trial court could be seen from the record of appeal to be either perverse or inconsistent with the totality of the 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, the forth, where the first appellate court had wrongly applied a principle of law. In all the above situations the second appellate court must feel free to interfere with the said findings of fact, in order to ensure that absolute justice was done in the case - **Gregory v. Tandoh IV and Hanson at page 986-987. See also Fynn & Osei [2013-2014] 1 SCGLR***

This Court has also held in **Comfort Offeibea Dodoo v. Nii Amartey Mensah. SC. Civil Appeal No. J4/12/2019. 5th FEB2020. See also, Tamakloe & Partners Unltd v. GIHOC Distelleries Co. Limited [2018-2019] 1 GLR 887** that *"It is now generally settled, that an appeal constitute a re-hearing. What the re-hearing implies is an evaluation of the evidence and assessment of all documentary evidence and case law"*

By way of rehearing, we will now evaluate all the evidence on record. A careful reading of the record of appeal and evaluation of the evidence on record, brings to light certain misdirections of law and misapplication of some documentary evidence which have made it necessary for us to depart from the findings of the two lower courts.

First, we shall address the defendants' argument about the Court of Appeal granting leave to the plaintiffs to file their written submission after 6 months. Then, we shall address the issue whether the plaintiffs had capacity to initiate the suit. Lastly, we shall discuss the main issues as pointed out by the Court of Appeal, that is, whether the two courts below were right in the probative value they gave to the statutory declaration and the judgment of the James Town tribunal.

Leave to File Plaintiffs' Written Submission out of Time.

The Defendant cites rule 20(8) of Court of Appeal Rules, 1997, C.I 19 to argue that it was wrong for the Court of Appeal to grant leave of 14 days to the Plaintiffs to file their written submission after 6 months of been served with the Defendants' written submission. The rule 20(8) states:

"where a respondent does not file a written submission of his case and does not agree to make a joint written submission under the provision of this rule, he shall not be heard at the hearing of the appeal except as to question of cost."

The Plaintiffs on the other hand, argue that the circumstance beyond their control like correction of the record of appeal by the registry led to such delays and hence the court was right in granting the leave.

In our view, rule 20(8) of C.I 19 is subject to rule 20(4) of C.I 19. The Plaintiffs filed their written submission as directed by the court therefore the Court was within its right to hear the Plaintiffs in the appeal. Rule 20(4) of the C.I. 19 as amended by Court of Appeal (Amendment) Rules, 1998 states that,

"a party upon whom an appellant's written submission is served shall, if he wishes to contest the appeal, file a written submission of his case in answer to the appellant's written submission within 21 days of the service, ***or within such time as the Court may upon terms direct****.*

The rule therefore gives the Court the discretion to grant extension of time for a party to file his written submission. It does not dictate a specific time after which such extension cannot be given. Therefore, the Court has the power to give such extensions as it deems fit in the interest of justice. The Court of Appeal was therefore not wrong in granting leave to the Plaintiffs to file their written submission.

Capacity.

In the Defendants argue in their Statement of Case, they argued that the judgment in the case of **Emmanuel Kwartey Quartey-Papafio (substituted by Ishmeal Walter Allotey) vrs Lands Commission & Nii Larbie Mensah IV (a.k.a. Adjin Tetteh) Head of Nii Larbi Mensah Family** should operate as estoppel res judicata to estop the Plaintiffs from instituting this action. They argue that the Plaintiffs in this suit are privies of the Plaintiffs in that action and that the decision that they had no capacity to institute that action is binding on the Plaintiffs in this case.

The Court of Appeal reasoned that,

"In our view, upon our observation of the record of appeal, we are persuaded that, the plaintiffs in the instant suits are not the same as those who were mentioned by the trial judge in the case relied on by the appellants. In our view, the trial court considered the legal effect of the judgment. At any rate, both Courts have coordinate jurisdiction and their decisions are not mandatorily binding on each other."

It is our considered view that the two lower courts misdirected themselves on the law concerning coordinate jurisdiction.

Even if the issue of capacity was abandoned, issues of capacity can be raised at any time, even for the first time on appeal. The Court of Appeal was therefore right in considering

it. In ***Tamakkloe & Partners Unltd v. GIHOC Distilleries Co. Limited, supra***, this Court speaking through Amegatcher JSC held that,

"It is trite that the issue of capacity can be raised at any stage of the proceedings and even for the first time in the second appellate Court. However, in Fatal v. Wolley [2013-2014] 2 SCGLR 1070 this Court highlighted certain conditions precedent that will enable this court resolve an issue of capacity that is belatedly raised. In holding (1) thereof, it was held as follows: (1) The legal question of capacity, like other legal questions, such as jurisdiction may be raised even on appeal. But it is trite learning that the principle is clearly circumscribed by law. The right to raise legal issues even at such a late stage is legally permissible only if the facts, if any, upon which the legal question is premised, are either undisputed; or if disputed, the requisite evidence had been led in proof or disproof of those relevant facts, leading to their resolution by the trier of facts; failing which the facts could, and based purely on the evidence on the record, and without any further evidence, decidedly be resolved by the appellate court."

First, the coordinate jurisdiction of the High Court applies in invoking precedents or principles of law. Those pronouncements are not binding on each other. On the other hand, it does not operate to subvert the decisive authority or final judgment of each Court. If that were the case, litigation would not end and it would undermine the principle of estoppel per res judicata. The question is not whether the Court has to apply the decision of another High Court but rather whether there is an existing judgment binding on the parties herein? In **Wilson Kofi Kutsokey v E. Sowa Nartey, and Others (2004) JELR 63940 (CA),** the facts were that on 9th July, 2003, His Honour Kwadwo Owusu sitting at the Circuit Court, Accra granted an order for possession of house No. 15 Community 16, Lashibi which was a subject of a public auction. On the 7th August, 2003, the judgment debtor and all the occupants were lawfully ejected. The ejected parties unlawfully moved back into the house and filed another suit in another Circuit Court

challenging the public auction which was validly and lawfully conducted. On 9th September, the Plaintiff/Applicant obtained an interim injunction granted by His Honour Anthony Oppong also a Circuit Court judge. The Defendant/Respondent filed a motion on notice to vacate the order of interim injunction which the judge refused. On appeal to the Court of Appeal, the Court held that,

"In my candid opinion it was not proper or rather an abuse of court process for plaintiff/respondent to ask for an interim injunction while the proper and legitimate order of His Honour Kwadwo Owusu was existing. The failure of His Honour Judge Anthony Oppong to vacate the interim injunction granted by him on 9th September, 2003 is wrong ***as a court of co-ordinate jurisdiction cannot make an order i.e. interim injunction, to subvert a valid and existing order of another coordinate Court."***

The two Courts below were therefore wrong in holding that the final judgment of another High Court does not bind the other on grounds of coordinate jurisdiction.

Second, estoppel per rem judicatem applies to a matter that has been conclusively determined among same parties or their privies on the same subject matter which has not been overturned. The only option available to such parties is appeal and not relitigation of the matter. In the case of **In Re: Sekyedumasi Stool; Nyame v. Kese @ Konto [1998-99] SCGLR 476,** this Court held,

"… this principle of law has been applied by this court in several cases, such as Brown v. Ntiri (Williams Claimant) {2005-2006} SCGLR 247, and Dahabieh v. SA Turqui & Bros {2001-2002} SCGLR 498, where the court stated at page 507 of the report that: " it is well settled under the rule of estoppel that if a court of competent jurisdiction has tried and disposed of a case, the parties themselves and their privies cannot, thereafter, bring an action on the same claim or issue. The rule covers matters actually dealt with in the previous litigation as well as those matters which

properly belonged to that litigation and could have been brought up for determination but were not raised."

In **James Dawda v. Executive Secretary Lands Commission & Ors SC. Suit No. J4/23/2021. Dated 26 Jan 2022**, the Supreme Court referring to **In Re: Sekyedumasi Stool; Nyame v. Kese @ Konto** supra stated the types of estoppel per rem judicatem as follows:

"Furthermore the plea of res judicata encompasses two types of estoppels; cause of action estoppel, and issue estoppel in the wider sense. Cause of action estoppel should be properly confined to cases where the cause of action and the parties (or their privies) are the same in both current and previous proceedings. In contrast, issue estoppel arises where a defence is not available because the cause of action are not the same in both proceedings. Instead, it operates where issues whether factual or legal, have either already been determined in previous proceedings between the parties (issues estoppel in the strict sense); or where issues should have been litigated in the previous proceedings but owing to negligence, inadvertence or even accident they were not brought before the court(issue estoppel in the wider sense)."

The first issues for determination in the **Emmanuel Kwartey Quartey-Papafio** case was;

"A declaration that the plaintiff is not a member of the Nii Larbi Mensah Family a.k.a. Nii Sempe Mensah Family of Ablekuma and therefore lacks capacity to litigate over the family's property and alienate any part or parcel thereof". After hearing evidence on both sides, the Court held at page 48 volume 3 as follows; "

1. *It is here declared that the plaintiff based on the evidence on record is not a member of Nii Larbie Mensah/Nii Sempe Mensah Family and therefore lacks capacity to initiate any action in respect of Ablekuma Lands."*
2. *A further declaration that 2nd defendant is the lawful and competent authority to initiate action and make grants of Ablekuma lands to anybody.*

3. *The court further orders that the plaintiff, his agents, assigns, servants etc are restrained from laying any claim to all that piece or parcel of land at Ablekuma in the Greater Accra Region."*

The decision of the court was evidently supported by the evidence. That decision has not been overturned.

The 1st and 2nd Plaintiffs in this case tried to set that judgment aside in a motion for Interlocutory Injunction filed on 23rd December 2015 (**Exhibit W)**. In the supporting affidavit the Plaintiffs in that case stated,

"that this instant application for injunction is as well as to set aside the judgment obtained wrongly against the Plaintiff/Applicants who are the rightful owners of the land in dispute."

It can reasonably be inferred that since the current plaintiff are alleging to be from the family that are the rightful owners of the Ablekuma lands and they are by that affidavit alleging that the Plaintiffs therein are the rightful owners of the Ablekuma lands, then they are privies or assigns of the Plaintiffs in that case. They do not recognise the Defendants who won in that case as the rightful owners of Ablekuma lands. Also, the subject matter in this suit is the same as the subject matter in that case. This is the reason why they sought to set that judgment aside. The current Plaintiffs argue in their statement of case that,

"in the Emmanuel Kwartey Quartey-Papafio (substituted by Ishmeal Walter Allotey) vrs Lands Commission & Nii Larbi Mensah IV (a.k.a. Adjin Tettey) head of Nii Larbi Mensah Family judgment, we found out that in choosing who to make the defendants at the High Court of that trial, all those important people who needed to be parties to that suit were left out."

They further stated,

"Hence, this suit initially cannot constitute res judicata as claimed by the defendants/appellants/appellants. In dealing with a case about the people of Brong Ahafo, and one chooses the people of Nzema as defendants, they cannot in any way be the effective defendants for the trial. …the applicants chose the ***wrongful people as defendants*** *when they knew the rightful people they could have litigated against."*

Even if what the Plaintiffs are alleging is the truth, for their predecessors to litigate with the "wrong defendants" on ownership of Ablekuma Lands and still lose to the "wrong defendants" makes their current position unturnable. The judgment which declared the then Plaintiffs as lacking capacity is not only binding on those Plaintiffs in that case but also the plaintiffs in this case as their privies in respect of the same subject matter (according to them, Amamole land is part of Ablekuma lands). They cannot subvert the judgment by relitigating it in another court and getting themselves declared as owners of Ablekuma Lands. Hence, they are estopped both by cause of action estoppel and issue estoppel.

Probative Value of the Statutory Declaration and the Judgment of James Town Tribunal

We will begin by summarizing the judgment in the case of **T.I. Attoh alias Tetteh Tsuru etc vs. Pordieh & Ors. (The James Town Tribunal case).**

The Plaintiff in that case sued for himself and on behalf of Nee Tettey Okpe of Okotsosisi, James Town, Accra and Amamole village. The Defendants were Pordieh, Adu of (Nsakini), Kwao Amadi, Akaibi-tse Okeo, Amadi, Okoefio (of Odumase), Ayitey and Osedru (of Amanfro). The Plaintiffs sued the Defendant for declaration of title to the Amamole village or land which is **lying and situated in the midst of the villages of**

Ayawaso, Asofa and Odumase. The Plaintiff in that case lost because Nee Tettey Okpe of Okotsosisi, the person through whom the Plaintiffs claimed the property, was only connected to the Defendants in that case through marriage. After deliberation the court held that the land belonged to Nee Arday, Awontah and Akaibi and their Descendants. The judgment did not mention either Nii Larbi We family or Sempe stool. The judgment did not state that the said owners hailed from Ablekuma. The judgment also did not describe Amamole as part of Ablekuma.

The trial High Court in this case stated making reference to judgment of the James Town Tribunal that, *"I take this opportunity to re-echo what the James Town Tribunal said in 1938 in its judgment that* ***the Defendants who are the Plaintiffs in this present case*** *are not to drive away children and descendants of Maanaa from the land but that they should make one in confirmation of the Gbese Tribunal's Judgment to peacefully enjoy the tenement of the land without quarrels."*

To hold that the Defendants in the **T.I. Attoh alias Tetteh Tsuru etc vs. Pordieh & Ors. (the James Town Tribunal case)** are the Plaintiffs in this case is difficult to comprehend. In the Statutory Declaration which formed the bases of the Plaintiffs' case, and the decision of the courts below, certain families are stated therein as the ones on whose behalf the declarant made the statutory declaration. As to the owners of Amamole Lands, the James Town Tribunal case states, *"Concillors find that the owners of the land were, Nee Arday, Awontah and Akaibi and their descendants…"* The case does not also state that Amamole is part of Ablekuma lands. It just describes Amamole land. The names in the Statutory Declaration, are also different. They are, *"Naa Nyakua Family, Naa Manum Family, Naa Botwe Family and Naa Badua Family."* It adds that those families are descendants of Sempe Mensah, the elder brother of Naa Dode Akaibi. The duty of the Plaintiffs in this case was therefore to establish their relationship with the families named

in the James Town Tribunal judgment as the owners of Amamole land or the relationship between the names in Statutory Declaration and the James Town Tribunal judgment and how the Plaintiffs relate to those families to enable them to assume the character of the Defendants at the James Town Tribunal.

The burden of proof and the burden of adducing evidence was on the Plaintiff. Sections 10(1) and 11(1) of the Evidence Act, 1975 (NRCD 323) provides as follows:

Section 10(1): *"the burden of persuasion means obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court."*

Section 11(1): *"the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party."*

The standard of proof required to discharge the burden of persuasion is proof on a preponderance of probabilities. Section 12(2) of NRCD 323 defines "preponderance of probabilities" as, *"that degree of certainty and belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence."*

Section 14 of NRCD 323 provides that *"except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting."*

The burden of persuasion and burden of producing evidence rested on the Plaintiffs to establish this relationship between them and the Defendants in the James Town Tribunal to earn the benefits of that case which they failed to do. The Plaintiffs in this case cannot therefore be said to be the Defendants in that case neither can we say categorically that the subject matters are the same.

The Effect of the Statutory Declaration.

Relying on the case of **Gregory v Tandoh IV and Hanson (2010) SCGLR 971**, the Court of Appeal stated that:

"Flowing from the above decision of the Supreme Court, it means that Statutory Declarations are to be considered as serious, solemn and sacred documents which should be treated seriously hence the creation of a criminal offence for those who willingly and knowingly make false declaration. … Therefore, the learned trial judge did not err when he based his judgment on the said Statutory Declaration."

The **Gregory v Tandoh** case and the case of **Opanin Kwaku Duah v Peter Kofi Okyere SC, Suit No. J4/41/2021,** dated 18th January 2023 can be distinguished from this case. In both those cases, the statutory declarations were against the interest of the declarants and the court was of the opinion that the declarants should be bound by it once the declaration was made voluntarily. In this current case, the declarant declared himself and his family as the owner of Ablekuma lands which makes is self-serving. **In Opanin Kwaku Duah v Peter Kofi Okyere** supra**,** this Court speaking through M. Owusu JSC stated:

"Indeed, the legal position is that, a statutory declaration is a self-serving document of facts recited therein and it will be rendered of no probative value in the face of a challenge to the facts it recites. It cannot therefore, in the face of a challenge to ownership of a land claim a pedestal of sanctity to conferring ownership."

Although the Statutory Declaration conforms to the Statutory Declaration Act, 1971 (Act 389) under the circumstance, it could be described as self-serving. The registration of it does not change its nature nor does it raise it to a pedestal of sanctity. Its content only speaks to the facts contained in it and does not operate as a better title to land merely because it is registered.

The Defendants in this case challenged the contents of that Statutory Declaration as to whether the declarant and the Plaintiffs are the owners of Ablekuma lands and whether Amamole land is part of Ablekuma lands. The plaintiffs therefore had to establish these by adducing evidence to avoid a ruling on the matter against them which they woefully failed to do.

DW2 testified that Amamole and Ablekuma do not share boundaries. The topo sheet of the villages of the area, prepared by the Survey and Mapping Division of the Lands Commission and tendered by the Defendants, (Exhibit 14) indeed supports the testimony of the witness. The only explanation would be that Ablekuma owned all the surrounding villages to be able to own Amamole, a land that does not share a direct boundary with Ablekuma. The 1st Plaintiff, Nii Ahinquarso testified as follows:

Q. and you want this court to believe that you own all these lands and yet you do not even know who alienates and gives away these lands?

A. my lord I have told this court that these people are all my people that whatever they have done, we have done it and that their descendants are over there, I have not been going over there to control them but when I find out that our lands are going away, I have got to maintain and get it back, that is all we have been…

From the above testimony, it is alleged that all the surrounding lands belong to Ablekuma. However, the Plaintiffs who are the owners of all those lands could not call "their own" people who are in charge of those lands to testify to this assertion. Besides, from exhibit 14, these neighboring communities seem to be independent of Ablekuma and have by that exhibit declared their boundaries as such which is against the interest of Ablekuma but the Plaintiffs from their evidence, have no problem with them. The Plaintiffs herein have not been able to disprove the independence of the surrounding

villages. Neither have they been able to establish that Amamole land is part of Ablekuma. On the balance of probabilities, the Plaintiffs failed to prove their case.

Conclusion

The Plaintiffs tried to subvert the existing judgment of the **Papafio** Case by relitigating in a different suit. With this current suit, they seek to be given the capacity to deal with Ablekuma land which in the **Papafio** case, they have been declared to lack the capacity to do so.

Furthermore, beyond the lack of capacity, the Plaintiffs did not adduce cogent evidence to establish that they are the owners of the Ablekuma land and also that the Amamole land is within Ablekuma land. He who alleges must prove. The Plaintiffs had the duty to prove their claim on a balance of probabilities and they failed to so.

The appeal therefore succeeds and is hereby allowed. The judgment of the Court of Appeal dated 21st May 2020, which affirmed the decision of High Court dated 31st May, 2017 is hereby set aside, together with its consequential orders.

PROF. N. A. KOTEY

(JUSTICE OF THE SUPREME COURT)

P. BAFFOE-BONNIE

(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)

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