CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON WEDNESDAY, 19TH OCTOBER, 2022

**SUIT NO. C1/1/10**

1. **CHRISTIANA BOATENG**
2. **SENYA HECTOR** — **PLAINTIFFS**

**VRS**

1. **ROBINSON OSAE OPPONG**
2. **HELENA HUDSO** — **DEFENDANTS**
3. **COL. SARFO**
4. **TEMA DEVELOPMENT CORPORATION**

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**JUDGMENT**

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By a writ of summons dated the 14th day of January, 2010 and subsequently amended on the 5th day of July, 2010, the plaintiff claimed against the defendants jointly and severally the following reliefs;

(1) A declaration that 2nd plaintiff is the lessee of AGR No. 94, Tema also known as plot No. TPD/T/AGR/74 Tema which measures 10.8 acres as contained in the site plan and documents given by TDC to the 2nd Plaintiff and that the 2nd Plaintiff sold 1 plot of the said plot measuring 70'x 100' to the 1st Plaintiff herein.

(2) General damages for trespass and unlawful damage.

(3) An order for ejection and recovery of possession by the plaintiffs from the defendants of the aforementioned plot, perpetual Injunction against the defendants, the assigns, privies, workmen etc. from dealing in anyway with the Plaintiffs quiet enjoyment of the land in dispute and cost.

The 1st defendant filed his statement of defence on the 19th day of January, 2010 and disputed the claims of the plaintiff. The second defendant, on the 14th day of March, 2019 per leave of the court, filed her statement of defence and disputed the claims of the plaintiffs. On the 8th day of April, 2010, the 3rd defendant also denied the claims of the plaintiffs in his statement of defence. The 4th defendant, in its statement of defence filed on the 15th day of July, 2010 did not only dispute the plaintiffs' claims, but counterclaimed for;

(a) A declaration that the grant to the late Gershong Kwabla Mensah expired without renewal
(b) A declaration that the allocation of the plot to the 1st defendant was proper and lawful
(c) An order that the plaintiffs vacate the plot within three months after the date of judgment.

**ISSUES SET DOWN FOR TRIAL**

At the close of pleadings, the Plaintiffs by an application for directions filed on the 7th day of May, 2010, set down nine issues for determination;

***(i) Whether or not the lease of the late Gershon Kwabla Mensah was ever terminated by TDC.***

***(ii) Whether TDC at all material times was aware of the presence of 2nd Plaintiff on the land in dispute and slept on their rights to terminate same.***

***(iii) Whether or not the Plaintiffs have exercised rights of possession on the land in dispute since the 1960's to date.***

***(iv) Whether the (3r) / 1st defendant was fraudulent in his acquisition of the land in dispute.***

***(v) Whether or not the 2nd defendant ever dealt with the land in dispute and sold same to the 1st defendant.***

***(vi) Whether or not the defendants trespassed on the plaintiffs' land.***

***(vii) Whether or not the 3rd defendant had any authority or permission from TDC to demolish the properties of the plaintiff or acted on the floric (frollick) of his own.***

***(viii) Whether or not plaintiffs are entitled to the reliefs claim.***

***(ix) Any other issues raised by the pleadings.***

The 1st defendant, on the 18th day of June, 2010, set down six additional issues for determination by the Court;

**(i) Whether or not the land in dispute forms part of lands released by the T.D.C to the Tema Traditional Council?**

**(ii) Whether or not 1st Defendant was allocated part of the land in controversy by the Tema Traditional Council?**

**(iii) Whether or not the 1st Defendant's grant by the Tema Traditional Council was regularized by the Tema Development Corporation?**

**(iv) Whether or not the 1st defendant's grant was granted a valid lease of the land in controversy by the Tema Development Corporation after the necessary payments made?**

**(v) Whether or not the area has been rezoned by the Tema Development Corporation and has ceased to be farmland?**

**(vi) Whether or not the 1st Defendant is a lessee of the Tema Development Corporation in respect of the land in controversy?**

Then on the 26th day of July, 2010, the 3rd and 4th defendant through their counsel filed these four additional issues for determination by the Court:

1. ***Whether or not the disputed plot formed part of the estate of the late Gershong Kwabla Mensah.***
2. ***Whether or not the 2nd Plaintiff had any interest in the disputed plot which he could dispose of to the 1st Plaintiff.***
3. ***Whether or not the 2nd defendant obtained the consent of the 4th Defendant to alienate the disputed plot to the 1st Plaintiff.***
4. ***Whether or not the 1st Plaintiff obtained the consent and permit of the 4th Defendant to put up the demolished wall.***

The total number of issues adopted by the Court for trial were nineteen (19).

**UNDISPUTED FACTS**

The facts of this case are pretty much not in dispute. It is each parties' legal interpretation of the facts that has resulted in this case. As established by the evidence,

the 2nd plaintiff is the son of Mr. Gershon Kwablah Mensah. Per EXHIBIT B series, the late Gershon Kwabla Mensah, on the 8th day of January, 1974, entered into an agreement with the then Tema Development Corporation for a sublease of a farm land measuring 10.3 acres at Tema at a place called Klagon. The tenancy commenced from the 1st day of June, 1973 and was for a period of ten years. The term was renewable.

The said lease was not renewed upon expiration in June, 1983. The said Gershon Kwabla Mensah passed on the 9th day of October, 1988. However, per EXHIBIT D series, the 4th defendant kept demanding the payment of annual rent from the 2nd plaintiff's late father and payment was also made till sometime in July, 1992. In 1996, the deceased father of the 2nd plaintiff applied for a building permit. Per EXHIBIT F, the same late father of the 2nd plaintiff applied for a renewal of his permit for the land in dispute on 15th day of June, 1993. The said letter was duly received by the 4th defendant on 9th July, 1993

Per Exhibit A, the 2nd plaintiff obtained letters of administration to administer the estate of his late father on the 17th day of March, 2005. Prior to obtaining the said letters of administration, the 2nd plaintiff sold a portion of the land; which is the subject matter of this dispute to the 1st plaintiff. 1st plaintiff sold polytanks on the land for sometime and later constructed a fence wall around the land.

The 4th defendant has since rezoned the area into residential plots and released a large portion of the land within that area to the chiefs of Klagon. The 4th defendant however, still regularizes any alienation of any portion of the land by the kalgon chiefs.

The 2nd defendant acquired disputed land from the Klagon chiefs and transferred her interest to the 1st defendant. 1st defendant per Exhibit 1 was granted a right of entry to

the disputed land by the 4th defendant on the 21st day of December, 2009. The 3rd defendant, then the head of task force of the 4th defendant, without notice to the 1st plaintiff, demolished a portion of the fence wall that she had constructed on the land on 6th January, 2010. It is these facts that have led the parties to this court.

The claim of the plaintiffs particularly, 2nd plaintiff is that even if his late father's lease was not renewed upon its expiry by effluxion of time in 1983, the said lease was never formally terminated by the 4th defendant and to the extent that the 4th defendant kept receiving rent from his late father, the 4th defendants had recognized them as owners of the land and so could not legally alienate any portion to anyone as it purports to do to the 1st defendant. Further that by virtue of their long possession of the land stemming from the time the late Gershon Kwabla acquired it in 1973 till date, the 4th defendant were estopped from claiming that they were not owners of the land. Plaintiffs also claim that the 1st defendant's acquisition of the land from the 4th defendant is fraudulent.

The defendants, particularly 4th defendant contends that, with the expiration of the lease, there was no need to formally terminate it and that is not its practice. That the continued stay of the 2nd plaintiff on the land was to be construed as creating a licensee relationship between them which the 4th defendant had a right to terminate at will. That the 2nd plaintiff had no capacity to alienate a portion of the land to the 1st plaintiff as he was not the owner of the said land.

The claim of the 1st defendant, is that he had legally acquired the disputed land by first obtaining an allocation from the chiefs of Klagon and later having same regularized by the 4th defendant. That as such, he has the legal right to the land.

The 3rd defendant per his evidence, insists that he acted with permission and upon the authority of the then chief executive officer of the 4th defendant in demolishing the 1st plaintiff's fenced wall. That both plaintiffs had acted illegally as the 2nd plaintiff had no capacity to alienate the land to the 1st plaintiff and 1st plaintiff had also constructed the said fence wall without the necessary permit from the 4th defendant.

The 2nd defendant says that she first acquired the land and transferred her interest to the 1st defendant without any notice of an adverse claim by the plaintiffs. That she has since then not stepped foot on the land and so she cannot be a trespasser. In resolving the nineteen issues, it appears that some issues overlap and so I would consider them together. Again, due to the passage of time and the frailty of the human mind, some of the Exhibits were made to bear the same identification numbers or lettering and so I have had to remark them.

**CONSIDERATION BY COURT**

This is a classic land case which calls the court to declare the rightful ownership of the disputed land as between the 1st and 2nd plaintiff and the 1st defendant. The learned Appau JSC, in delivering the decision of the Supreme Court held in ***Ebusuapanyin James Boye Ferguson (Substituted by Afua Amerley) v. I. K. Mbeah & 2 Others, Civil Appeal No. J4/61/2017, dated 11th July 2018, S.C. (Unreported)*** as follows: *"The standard of proof in civil cases, including land, is one on the preponderance of probabilities - {See* ***Sections 11 (4) and 12 of the Evidence Act, 1975, Act 323*** *and the decision of this Court in* ***Adwubeng v. Domfeh [1996-97] SCGLR 660 at p. 662****".*

The requirements of what would constitute cogent and credible evidence that would meet the test of a balance of probabilities is succinctly contained in the case of ***Emmanuel Osei Amoako v. Standford Edward Osei [2016] DLSC 2830.*** Here again, the

erudite Appau JSC speaking for the Supreme Court held: *"It is trite learning that a bare assertion by a party of his pleadings in the witness box without more is no proof. Proof in law has been authoritatively defined as the establishment of facts by proper legal means. As the celebrated Ollenu, J (as he then was) stated in his judgment in the case of* ***Khoury and Another v Richter****, which he delivered on 8th December 1958 (unreported), on the question of proof, which he repeated in the case of* ***Majolagbe v Larbi & Anor [1959] GLR 190 at 192****; "where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances or circumstances and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the court can be satisfied that what he avers is true …".* See also the cases of ***International Rom Ltd. v. Vodafone Ghana Ltd. & Another [2016] DLSC 2791.***

The plaintiffs having made a claim and the defendants not only denying same but 4th defendant making a counterclaim, both the plaintiffs and the 4th defendant bear the burden of leading cogent and or positive evidence in proving their respective claims in my mind. This is because it is a hallowed principle of law that the fact that a plaintiff is unable to prove his or her claim, does not mean that a defendant who has counterclaimed is automatically entitled to be declared successful in his counterclaim.

In the case of ***Op. Kwasi Asamoah v. Kwadwo Appea (2003-04) SC GLR 226, the apex Court held at page 246 as follows:*** "*The position with regards to proof of the defendant's case was that since they made a counterclaim, they assumed the same onus of proof as lay on the plaintiff*". The 4th defendant by its counterclaim, "assumed *the same onus of proof as lay on the plaintiff*". See the cases of ***Messrs Van Kirksey & Associates v. Adjeso & Others [2013-***

***2015] 1 GLR 24; In Re Will of Bremansu; Akonu – Baffoe & Others, Buaku v. Vandyke (Substituted by) Bremansu (2012) 2 SC GLR 1313 at holding 1****.*

As this is a claim and counterclaim for declaration of title, the parties must as enunciated in a plethora of cases including in the case of ***Mondial Veneer (Gh.) Limited v. Amuah Gyebi XV [2011] 1 SCGLR 466,:*** "*A person asserting title to land and on whom the burden of persuasion falls, must prove: 'The root of title, the mode of acquisition and various acts of possession exercised over the subject-matter of litigation*"**.** See also the case of ***Thomas Cobbinah Yaw Asiedu v. Isaac Kwofie [2018] DLCA 4916,*** per Agyemang J.A. and ***Yehans International Ltd. v. Martey Tsuru Family and 1 Other [2018] DLSC 2488.***

I would treat issues 1, 2, 3 and 15 together.

***(i) Whether or not the lease of the late Gershon Kwabla Mensah was ever terminated by TDC.***

***(ii) Whether TDC at all material times was aware of the presence of 2nd Plaintiff on the land in dispute and slept on their rights to terminate same.***

***(iii) Whether or not the Plaintiffs have exercised rights of possession on the land in dispute since the 1960's to date.***

***(iv) Whether or not the disputed plot formed part of the estate of the late Gershong Kwabla Mensah.***

In resolving these issues, I would first rely on the documentary evidence. It is legally known that the documentary evidence exists, the courts prefer same over inconsistent

oral testimony. Pwamang JSC held in the case of ***Nana Asiamah Aboagye v. Abusuapanyin Kwaku Apau Asiam [2018] DLSC 2486*** *"… the settled principle of the law of evidence is that where oral evidence conflicts with documentary evidence which is authentic, then the documentary evidence ought to be preferred over and above the oral evidence*". See also the cases of ***Nana Asiamah Aboagye v. Abusuapanyin Kwaku Apau Asiam [2018] DLSC 2486, per Pwamang JSC.***

From the combined effect of Exhibit B series, Exhibit 1 and Exhibit 4 series, the late Gershon Kwabla Mensah obtained a lease for a farm land from the 4th defendant in 1974 with a commencement date of 1973. Per EXHIBIT B series, the late Gershon Kwabla Mensah, on the 8th day of January, 1974, entered into an agreement with the then Tema Development Corporation for a sublease of a farm land measuring 10.3 acres. The land is described as situate along the Accra – Ada road and was identified as AGR/194/16, AGR/ 94/26 or AGR/94/18 per various correspondences between the lessee and the lessor.

According to the 2nd plaintiff in his evidence in chief on the 12th day of December, his father went into occupation and began to do crop and animal farming on the land. His late father also built a dwelling house on the land where they rested anytime they went to farm. He indicated further that after the death of his father in 1988, he still lived on the land in undisturbed possession with the rest of the family. He indicated that he had been on the land from 1972 till date.

These claims of 2nd plaintiff were not disputed under cross examination in anyway. If at all, both the 1st defendant and the 4th defendant, admitted the presence of the said dwelling house and the 2nd plaintiff on a portion of the land. Upon that evidence, I

hereby hold that the 2nd plaintiff and his family have been in possession of the land from 1972 till date.

Per clause 1 of the lease agreement, the tenancy commenced from the 1st day of June, 1973 and was for a period of ten years. The term was "renewable and determinable''. Per clause 3 of the said lease "the corporation (being the 4th defendant) hereby covenants with the Tenant as follows;

(*ii) that the corporation will on the written request of the Tenant served on the Corporation not less than six months and not more than twelve months before the expiration of the term hereby created and if there shall not at the time of service be any existing breach or non-observance of any of the convenants on the part of the Tenant hereinbefore contained and subject to the Corporation's programme of development at the expense of the Tenant grant to the Tenant a tenancy of the demised land for a further term of ……..years from the expiration of the term hereby determined and containing the like convenants and provises as are herein contained with the exception of the present covenants for renewal''.*

This clause clearly spelt out the grounds upon which the lease were to be renewed. Under cross examination by learned counsel for the 1st defendant on the 8th day of January, 2014, the 2nd plaintiff was asked;

*Q: so you agree that your father's title to the land had expired*

*A: Yes, it had*

*Q: And you agree that the title has not been renewed*

*A: Yes, but we are still on the land and continued paying rent to TDC meaning that they recognized us so far as they receive payment.*

Also under cross examination by counsel for the 3rd and 4th defendants on the 8th day of May, 2014 2nd Plaintiff was asked;

Q. *You must be aware that the land that was given to your father was for 10 years?*

*A. That was correct but with a clause for renewal.*

*Q. The land was given effective June, 1973 subject to TDC developing the area?*

*A. Yes with a clause for renewal.*

*Q. The lease expired in 1983. I am putting it to you.*

*A. We were not given any letter of expiration. If they say the lease has expired, why did they continue billing us till 1992 almost 10 years from the date you claim the lease expired.*

*Q: You keep referring to renewal clause, did you become aware of your father ever applying for the renewal of the lease?*

*A: I never heard him applying for renewal.* [Emphasis mine]

Again on the 20th day of May, 2014, still under cross examination by learned counsel for the 3rd and 4th defendants, the 2nd plaintiff was asked;

*Q: Have you ever written to TDC for renewal of your father's farmland lease?*

*A: I have never written for renewal.*

*On 2nd July, 2014, still under cross examination, 2nd plaintiff had answered;*

*Q: Did you apply for a renewal*

*A: We were not told that the lease had expired so we did not write for renewal.*

Then on the 22nd day of July, 2014, still under cross examination by counsel for the 3rd and 4th defendants, the 2nd plaintiff answered;

*Q: Are you the only son of your father?*

*A: I am not the only son*

*Q: How many siblings do you have?*

*A: We are seven*

*Q: Do you know whether any one of them applied to TDC for renewal of the expired lease?*

*A: None of them applied*

Clearly, from the answers of the 2nd plaintiff, the said lease was not renewed upon expiration in 1983. The 4th defendant's witness, in his evidence in chief to this court on the 22nd day of September, 2021, also indicated that it had not received any such application for renewal.

*Q: Did you say that was the term.*

*A: Yes my lord.*

*Q: Did you know whether such an application for renewal was made by the lessee then?*

*A: As far as our records are concerned there was no renewal application from the lessee in the person of G.K. Mensah.*

*Q: Was there an application for renewal made by the lessee then?*

*A: No my lord.*

As to whether or not the 4th defendant terminated the lease, the lease agreement made it amply clear that if the lessee so desired, he had to notify the 4th defendant through writing of his decision to renew the lease. In the absence of such a written request to renew, the agreement of the parties that the lease was for a period of ten years was sufficient to terminate the lease at the expiration of the said ten years. The 4th defendant cannot be expected to notify the lessee of such a termination when the terms of their

agreement are clear as to when the term would expire. By the effluxion of time, the lease became expired and thus by necessary implication terminated on the 1st day of June, 1983

The 2nd plaintiff however contends that notwithstanding the expiration of the lease by effluxion of time in 1993, the TDC still continued to claim rent from them till 1992. That the TDC by their actions still recognized them to be on the land.

Per EXHIBIT D series, the 4th defendant demanded for annual payment of ground rent from the 2nd plaintiff's late father and same was paid till 1992. The 4th defendant, under cross examination by learned counsel for the plaintiffs on the 10th day of November, 2021, answered;

"Q: This receipt I showed you dated_18th September, 1985 is in respect of ground rent for the period 1st June,1985 to 31st May 1986. That is the period in issue and so it is not arrears if the contract ended in 1983"?

A: My Lord, on the face of the document, that is correct."

"Q: And again, you see there is also a ground rent for the period 1st June,1988 to 31st May, 1989 dated 13th May 1988?

A: That is so my Lord."

Q: Now have a look at this receipt dated 27th July,1992 (still on Exhibit D series)?

A: Yes, My Lord, this is a receipt dated 27th July, 1992."

To the extent that the 4th defendant, kept making these demands on the 2nd plaintiff's father, coupled with the fact that per EXHIBIT F, the 4th defendant on the 9th day of July, 1993 acknowledged receipt of a letter dated 15th June, 1993 from Gershon Mensah, I hereby find that the 4th defendant was aware of the presence of the 2nd plaintiff on the land after the expiration of the lease. The issue is whether the 4th defendant's awareness of the presence of the plaintiffs on the land after the expiration of the lease and its continuous demand for and acceptance of rent constitutes a waiver of its rights to forfeiture of the lease.

In this regard, learned counsel for the plaintiffs argues in paragraph 10 and 11 of his well written submissions, that the action of the 4th defendant constitutes a forfeiture of their rights to terminate the lease.

According to learned counsel for the plaintiffs "In that situation, granted but not admitted that the lease of the late Gershon Kwablah Mensah had terminated by expiry, the 4th defendant had waived its right to forfeit the lease by its unequivocal act of issuing ground rent invoices and accepting payments for ground rent from the 2nd Plaintiff after the expiry/termination of the lease''.

Counsel refers the court to the book, ***GHANA LAND LAW AND CONVEYANCING, 2ND Edition by B J Da ROCHA & CHK LODOH, pages 69-74 @ 74*** where it is stated that "A lessor who accepts money as rent will not be allowed to deny that he has waived the right to forfeiture''.

The 4th defendant contends otherwise and argues that at best, this made the 2nd plaintiff a licensee on the land. In cross examining the 2nd plaintiff on the 8th day of May, 2014, learned counsel for the 3rd and 4th defendants had asked;

*Q. If the lease given to your father expired in 1983, TDC continued to bill you till 1992 you became a licensee of TDC without a lease. It means TDC could come for the land at anytime.*

*A. Yes, my lord, I believe this is a contract between my father and TDC but they continued to take ground rent meaning he is still recognised on the land.*

*Q. You have testified that your father died in 1988.*

*A. That is so.*

*Q. The lease had also expired?*

*A. That is what you told the court*

*Q. When your father died in 1988, did you inform TDC that your father had died?*

*A. No we did not inform TDC.*

In their brilliant address to the court, learned counsel for the 1st defendant and also for 3rd and 4th defendants had argued that the mere payment and acceptance of rent is not an indication of rent. In this, she referred the court to the Supreme Court decision in the case of ***Royal Investment Company v. Madam Ruth Quarcoopome & Anor (unreported) Civil Appeal NO J4/66/21*** where the Supreme Court speaking through Amegatcher JSC held that

> "*the mere acceptance of rents after expiration of the sublease could not in the circumstances of the case, justify an inference that the option of renewal was exercised by the 1st defendant and that a contractual tenancy had been created between the parties*."

I take note that the Supreme Court in its decision was emphatic about the "circumstances of the case''. ***Section 281 of the Land Act, 2020 ( Act 1036)*** defines a license as "a permission other than easement or profit given by a proprietor of land or of an interest in land which allows the person granted the permission to do certain acts in relation to the land which would otherwise be a trespass''.

In the circumstances of this case, the lease for Gershon Mensah had expired without renewal in 1983. The Lessor, being the 4th defendant continued to demand for and receive payments for ground rent in respect of the said lease. It continued to accept letters from the said Gershon Mensah albeit unknown to them that he had passed on.

The 4th defendant's continued demand and acceptance of the said ground rent was an indication to the whole world that it still considered the late Gershon Mensah as a tenant on its land. Baffoe Bonnie JSC in the case of ***Quist v. Danawi [2015] GHASC 123 (29 July 2015)*** held that:

> *"The right to forfeit a lease when it has terminated at common law is vested in the lessor alone. A lessor may decide to waive this right if he chooses. A waiver may be express or implied. A waiver will be implied where the lessor is aware of an act or omission of the lessee entitling the lessor to forfeit the lease, but he nonetheless does some unequivocal act which shows that he recognizes the continued existence of the lease: for example, where the lessor with full knowledge of the breach demands or sues for rent. Acceptance of money as rent is treated in law as conclusive evidence of waiver against a lessor and a lessor who accepts money as rent will not be allowed to deny that he has waived the right of forfeiture".*

The 4th defendant, per paragraph 4 of EXHIBIT 4, had indicated that the non payment of rent within twenty one (21) days whether formally demanded or not was a condition for the determination of the lease. Thus its continuous demand and acceptance of the rent after the expiration, is a strong indication that it had waived its right of forfeiture against the 2nd plaintiff after the termination of the lease.

As long as it still demanded and received rent from the 2nd plaintiff, without the renewal of the farmland lease or the creation of a different interest the 2nd plaintiff became a licensee coupled with an interest on the land. The 2nd plaintiff's late father could still exercise the very rights he had in the expired lease; which was to use same for livestock and poultry farming. ***See Land Law, Practice and Conveyancing in Ghana, P. 373. 3rd edition by Dennis Dominic Adjei (JA).***

Right from June, 1983 till July, 1992, the 4th defendant had by its actions, created a yearly license coupled with an interest in favour of the 2nd plaintiff's father. I thus hold that up to July, 1992, there existed a license coupled with an interest relationship between the 2nd plaintiff's father and the 4th defendant.

The 2nd plaintiff indicates that since 1995, it had not paid any rent to the 4th defendant. There is also no indication that the 4th defendant demanded for any rent. Thus from July, 1992 till date, the yearly relationship of a licensee coupled with an interest in the land ceased and the relationship became that of a mere licensee. This is because the 2nd plaintiff's continued stay on the land was clearly with the knowledge of the 4th defendant.

However, there was no payment of rent and the area as contended by the 4th defendant and admitted by the 2nd plaintiff had also been rezoned into residential plots. As the

lease was for a farmland and the land was no longer to be used for that purpose, the continuous stay of the plaintiffs on the land without the payment of rent or grant of a residential lease was subject to the interest of the 4th defendant.

There is no dispute that the 2nd plaintiff alienated the disputed land to the 1st plaintiff in 2002. At the time, letters of administration had not been obtained with regard to the estate of his deceased father. Per EXHIBIT A, letters of administration in respect of the estate of the late Gershon Tamakloe were obtained in 2005. The 2nd plaintiff insists that the disputed land forms part of the estate of his late father.

From the evidence they had been in possession of the land since 1972 till 2010 when this action commenced. They are still in possession. However, the authorities are clear that long possession although constituting 9/10th of ownership, is only good against the true owner.

I also take note that the possession of the land for all these years by the 2nd plaintiff had also not been challenged in any way until 2009. ***In the case of Kama Health Service Ltd v. Unilever Gh. Ltd, {2013-14} 2 SCGLR 881*, the Supreme Court speaking through Benin JSC held that ''possession that is unchallenged is no possession''.**

The 2nd plaintiff in this court has not denied that the land is for the 4th defendant. Indeed, from its evidence, it is calling upon this Court to conclude that the land is still under the control of the 4th defendant even though the 4th defendant contends that it has released the said land to the chiefs and people of Klagon.

From the evidence, the lessor of the land is the 4th defendant and the late father of the 2nd plaintiff clearly acknowledged them as lessees of the land when he entered into a

sublease agreement with them. That sublease was for the purposes of farming livestock and poultry and not residential purposes. Thus upon its expiration, the deceased father of the second plaintiff became a licensee with interest and later a bare licensee. The said parcel of land was not his personal property and so it cannot form part of his estate despite the long occupation by himself and his descendants.

I have considered the evidence of the 2nd plaintiff that it was officers of the 4th defendant who asked them to hold on sometime in 1995 when they went to pay rent. Under cross examination by learned counsel for the 3rd and 4th defendants on the 2nd day of July, 2014, he had answered;

*Q: You told the court that TDC never prompted you that the lease had expired*
*A: We paid upto 1995. We went there subsequently to pay and we were asked to hold on for the place to be converted to a residential area.*
*Q: When were you told this and who told you?*
*A: I cannot remember and where we normally pay the ground rent''.*

PW1; a police investigator had also testified about a visit to the offices of the 4th defendant in December 2009 where they (he, the plaintiffs and the 1st and 2nd defendant) were informed at the estate department that per the records of the 4th defendant, the disputed land was in the name of 2nd plaintiff's late father. Under cross examination by learned counsel for the 3rd and 4th defendants on the 13th day of April, 2017 however, he indicated that;

Q*: As a detective, did you ask for any name of the ''experts''*
*A: Since my approach to them was not formal, I decided not to go into detail to ask them any questions*

*Q: I am suggesting to you, Chief Inspector, that a lot of different people attend TDC offices even including imposters*
*A: It could be true*

*Q: if you had met a proper officer of TDC, he would have told you that the land in dispute was once given to Gershon Kwabena Mensah as a farmland but the lease on it had long expired*
*A: That is correct.*

I have considered this because if 2nd plaintiff had led sufficient evidence on a balance of probabilities that indeed it is the officers of the 4th defendant who had asked them to hold on with the payment of the ground rent from 1992 all the way to 2010 when they commenced this action, then subject to the plea of the 2nd plaintiff, I would have had to consider whether they could be afforded the protection of the equitable doctrine of estoppel license against the 4th defendant.

As it stands, the said doctrine was not specifically pleaded and aside the mere assertion by the 2nd plaintiff which I find does not constitute sufficient evidence, there is nothing on record to justify placing the 2nd defendant under that equitable doctrine.

The reverent Appau JSC has held in the case of ***Emmanuel Osei Amoako v. Standford Edward Osei (substituted by Bridget Osei Lartey); Civil App. No. J4/3/2016 dated 1st June 2016, S.C. (Unreported)*** as follows: *"Respondent, did not go beyond his rhetorical statements … Judgments must be based on established facts not mere rhetoric or narrations without any supporting evidence that can sustain the claim*".

What the evidence on record supports is that the 2nd plaintiff has been on the disputed land for a long period ; about thirty eight (38) years. prior to the issuance of this writ.

However, his long occupation particularly after 1992 till date was on the basis of a bare licensee and was subject to the interest of the 4th defendant.

In the case of ***Rebecca Caesar v. Tetteh Kwaofio (2006) 8 MLRG 116, at 132 Justice Owusu Ansah JA (as he then was) stated:*** 'The courts have consistently held that land might for generations be in the occupation of persons who were not owners but who might have rights of occupation as licensees or even customary tenants or under conditions known to customary laws, the reversion nevertheless being in the owners. And the owners were willing to allow such occupation, so long as the occupier did not make adverse claims to the land. Hence, mere occupation of the land, for long periods was not conclusive evidence of ownership.'

Upon these considerations, I hereby hold that the disputed land does not form part of the estate of the late Gershon Mensah.

I would now proceed to consider issues 16, 17 and 18 together;

1. ***Whether or not the 2nd Plaintiff had any interest in the disputed plot which he could dispose of to the 1st Plaintiff.***
2. ***Whether or not the 2nd defendant (plaintiff) obtained the consent of the 4th Defendant to alienate the disputed plot to the 1st Plaintiff.***
3. ***Whether or not the 1st Plaintiff obtained the consent and permit of the 4th Defendant to put up the demolished wall.***

As earlier indicated, the 2nd plaintiff was granted letters of administration to administer the estate of his late father in March, 2005. In his evidence and that of the 1st plaintiff, the 2nd plaintiff purported to alienate the disputed land to the 1st plaintiff in 2002 for a

valuable consideration of eight thousand Ghana cedis (Ghs 8,000). Their own evidence proves that at the time, the 2nd plaintiff had not obtained letters of administration and it took him a further three years after this alienation to obtain the said letter of administration.

The requirement that letters of administration be obtained in respect of the estate of a deceased is grounded in statute; particularly the ***Administration of Estates Act, (1961) Act 63 and the Intestate Succession Act, 1981 (PNDCL 111).*** It is only when a person has been made an administrator of the estate of a deceased that he acquires rights subject to law, to engage in acts with regard to the estate of the deceased. ***Section 1 of the Administration of Estates Act, 1961 (Act 63)*** provides that:

> "*(1) The movable and immovable property of a deceased person shall devolve on his personal representatives with effect from his death.*
>
> *(2) In the absence of an executor the estate shall, until a personal representative is appointed, vest as follows:—*
>
> *(a) if the entire estate devolves under customary law—in the successor;*
>
> *(b) in any other case—in the Chief Justice*."

Again, I have found supra that the 2nd plaintiffs' occupation of the land was on the basis of a licensee. To the extent that the 2nd plaintiff purported to alienate a portion of the 4th defendant's land to the 1st plaintiff at a time when he had no capacity and also when the said land did not form part of the estate of the deceased, his actions cannot be upheld in law. 2nd plaintiff's occupation of the land was as a licensee. A bare licensee has no interest in land which he himself can transfer to another. The principle of nemo dat quod non habet would operate ruthlessly against anyone who purports to acquire any right in land through a bare licensee.

The supreme court held in the case of ***Seidu Mohammed v. Sambaye Rangberee [2012] 2 SCGLR 1182*** "the principle of nemo dat quod non habet would operate ruthlessly and by it, an owner could only convey title owned by him at the material time of conveyance. Where the conveyor has no title, the purchaser buys nothing and cannot claim anything''.

On the issue of whether or not the 2nd plaintiff obtained the consent of the 4th defendant to alienate the disputed plot to the 1st plaintiff, under cross examination by learned counsel for the 3rd and 4th defendants on the 26th day of April, 2016, the 1st plaintiff had answered;

*A: Do you know whether the 2nd plaintiff obtained consent from TDC to sell the land to you?*
*A: Yes*
*Q: Did you see the consent?*
*A: I did not see it*

*Q: I am putting it to you that the 2nd plaintiff never sought any consent from TDC before selling the land to you*
*A: He has the authority to sell same to me*

Prior to this, on the 2nd day of July, 2014, under cross examination by learned counsel for the 3rd and 4th defendants, the 2nd plaintiff was asked;

*Q: You sold a portion of the land to the 1st plaintiff*
*A: Yes My Lord*
*Q: How much did you sell the land for*
*A: Ghs 8,000*

*Q: When was this*

*A: 2002*

*Q: And you did not seek the consent of TDC, I put it to you*

*A: I sold the land behind us to the 1st plaintiff as land guards were trespassing on our land.*

The 2nd plaintiff had evaded the question as to whether or not he sought the consent of the 4th defendant. His evasion speaks for itself. The 2nd plaintiff had under the belief that the expired lease gave him capacity, alienated the disputed land to the 1st plaintiff. The said lease provides in paragraph 2 (iv) and (vi) as part of the covenants of the tenant that the tenant covenants with the corporation:

"not to assign, underlet, mortgage or part with any possession of the demised premises or any part thereof without the prior written consent of the corporation such consent not to be unreasonably withheld''.

vi) not to carry on or permit or suffer to be carried on, in or upon the demised premises or any part thereof any trade or business whatsoever other than that of a poultry farmer''.

From the foregoing, even if the said lease was still in operation, the assignment of a portion of the land to the 1st plaintiff, to the extent that it was without the consent of the 4th defendant would have been voidable at the instance of the 4th defendant. Further to the extent that the assignment was for her to sell polytanks and not to rear livestock and poultry, the 4th defendant could per paragraph 4 of the lease agreement, determine the sublease with Gershon Mensah even before its operation on the basis of these breaches.

As to the issue of whether or not the 1st Plaintiff obtained the consent and permit of the 4th Defendant to put up the demolished wall, the 1st plaintiff under cross examination by learned counsel for the 3rd and 4th defendants on the 26th day of April, 2016 was asked;

*Q: You had previously told the Court that you built a wall around the land that you purchased*

*A: Yes*

*Q: Did you obtain a permit from TDC before you built the wall?*

*A: I knew when the 2nd plaintiff was putting up their house, they obtained permit and I knew it covers where I built. Later, I went to Col. Sarfo to apply for permit and he said apart from their permit, if I wanted to acquire my permit, it will delay and since people were stealing the polytank, I could go ahead with the fencing.*

Under further cross examination on the 14th day of June, 2016, the 1st plaintiff repeated the same answer. I find from her answers that she did not have a permit to construct her wall. If indeed she was under the belief that the 2nd plaintiff had a building permit which covered her, the question would be why did she go to the 4th defendant again for a permit to cover ''hers'' as she says?

4th defendant's witness in his evidence in chief admitted that a permit had been granted for a farmhouse which is temporal in nature to the late Gershon Mensah. The 1st plaintiff had built not only a fence wall but a structure which according to her, her workers lived in. A permit for a temporal structure cannot be construed to be the same as a permit for a permanent or residential structure. Accordingly, I find that the 1st plaintiff did not have a permit from the 4th defendant for the construction of her fence wall on the disputed land.

In no particular order, I would now address issues 9, and 13 together

***(i) Whether or not the land in dispute forms part of lands released by the T.D.C to the Tema Traditional Council?***

***(ii) Whether or not the area has been rezoned by the Tema Development Corporation and has ceased to be farmland?***

I would begin with the issue of the rezoning of the land and its release or otherwise by the 4th defendant to the Tema Traditional Council. The 4th defendant's witness tendered in evidence Exhibit 5. It is titled Tema Development Corporation, Klangon, community 19, Layout Tema Traditional Council. It is dated the 30th day of June, 2000. It has indications of the entire expired farmland area of the late Gershon Kwabena Mensah and that of the 1st defendant.

In his evidence in chief to this court on the 22nd day of September, 2021

*Q: Do you know the lands in respect of which this action was brought against your employer?*

*A: Yes my lord, it is located in Klagon.*

*Q: Tell the court what you know about it.*

*A: My lord, the land form part of the land within the T.D.C acquisition area. It was granted out as farmland to one G.K. Sablah (Gershon Kwabla) in 1973 for a lease term of ten (10) years for farming purposes. It was about ten (10) acres or so I think. My lord, there is also a policy that once a while, directions come from the ministry for release of lands to those traditional councils from which we acquired the general acquisition. It includes the Nungua, Kpone and Tema traditional council. Sometime past, there was a directive and so there was large tracts of land released to the Tema traditional council for allocation to their indigenous and housing projects of which this farm lands allocated to the lease at the time G.K. Sablah was part of the release and*

*also part to S.S.N.I.T where S.S.N.I.T currently has its housing project at Klagon together with other farmlands that were released to them.*

He had further testified that:

Q: *What is the status of the farmland currently?*

*A: My lord, it was effected by one of the release directives to the traditional council and so that whole stretch was released to the Tema Traditional Council for allocation.*

*Q: Do you have any evidence of what you have just told the court?*

*A: Yes my lord, we have a layout to that effect.*

*Q: Please take a look at this, tell the court what it is and what you want to do with it.*

*A: My lord this is the layout for part of Klagon where the land granted to G.K. Mensah happens to fall with this area and I would like to tender it in evidence.*

*Q: The 2nd plaintiff has claimed in this court that T.D.C promised to regularizes the document(s) on the land after the whole area was rezoned to residential lease and they had been waiting till date for that to happen. Do you have anything to say to this?*

*A: My Lord, I do not know of any promise personally or officially but the area has been rezoned into a residential and the procedure is that everyone goes to the Tema Traditional Council allocation because that whole area has been released to the Tema Traditional Council for allocation. That is the procedure.*

Learned counsel for the plaintiffs in cross examining the 4th defendant, did not challenge the claim of rezoning. On the 10th day of November, 2021, under cross examination by learned counsel for the plaintiffs, 4th defendant was asked;

A. *My Lord, I did indicate that the 2nd plaintiff, the lessee, is in occupation of a portion of the land currently as we speak but not on the whole ten (10) acres that was granted him initially because the area has been rezoned from Agricultural use to residential use.*

Q. *I suggest to you that rezoning it has not taken away from the plaintiff the said land and that you and all those you put there are trespassing.*

On the issue of rezoning, it is trite that where the evidence of a party on a material claim is not challenged under cross examination, the claim is deemed to be admitted and he need not call any further evidence. In the case of ***Vanguard Assurance Co. Ltd v. JM Addo & Sons Ltd [2016] 93 G.MJ. 160*** where the court held that "where a witness testified on oath on certain vital matters and the opposing side was silent in his cross examination of those matters, he would be taken to have admitted those matters''.

I thus find that the whole of the area as evidenced by EXHIBIT 5, a portion of which the disputed land is situated, has been rezoned into residential plots by the 4th defendant.

The plaintiffs through their counsel, however vehemently challenged the claim of the 4th defendant as to the release of the land to the Tema Traditional Council. The 4th defendant maintained that the land had indeed been released to the said traditional council. This is what transpired between counsel for the plaintiffs and 4th defendant;

Q. *In respect of the land in issue which you said you gave it back to the chiefs, I am suggesting to you that it is not true and you did not give anything to the chiefs.*

A. *My Lord, it is true and we can show evidence of parcels allocated within that enclave and you would find allocation letters emanating from the Tema traditional council in respect of each of the parcels there.*

Q. *Was this transaction of T.D.C. giving it back to the chiefs a directive from EOCO, the sector ministry or the board of T.D.C.?*

A. *My Lord, in most cases, these releases come from EOCO.*

Q. *You standing in that box, have you seen the particular letter releasing that to them?*

*A. My Lord, I personally have not seen these release letters before.*

*Q. You see I am suggesting to you that no release letter at all exist in respect of these lands.*

*A. My Lord, I have not seen personally but as scheduled officer, this is what we are told and when it happens, the allocations emanate from the traditional councils and we process these allocations.*

*Q. You are a senior officer at T.D.C. for over fifteen years, have you ever seen any release letter?*

*A. My Lord, personally I have not but interestingly we have these things and it happens and we have been processing documents to that effect. Some of these things are dealt with at the management level. We are at the operational level and so we just execute what we have been directed to do.*

Although there is no documentary proof, on the basis that evidence is weighed and not counted, I find 4th defendant's witness's evidence on this to be credible. He gave a good account of himself under cross examination by answering questions directly without any form of prevarication. He had also stuck to what he knew personally in his evidence. As there is no contrary evidence of the non existence of such a release, I find on a balance of probabilities, that the 4th defendant has established in my mind its case that the land in question, forms part of a vast stretch of land referred to as Klagon lands or community 19 and which falls within the Accra/Ada road has been released to the Tema Traditional Council.

Now to issues 10, 11, 12 and 13

***(iii) Whether or not 1st Defendant was allocated part of the land in controversy by the Tema Traditional Council?***

***(iv) Whether or not the 1st Defendant's grant by the Tema Traditional Council was regularized by the Tema Development Corporation?***

*(v) Whether or not the 1st defendant's was granted a valid lease of the land in controversy by the Tema Development Corporation after the necessary payments made?*

*(vi) Whether or not the 1st Defendant is a lessee of the Tema Development Corporation in respect of the land in controversy?*

The 1st defendant's claim is that he has acquired a lease of the disputed land from the 4th defendant. That he first acquired an allocation of the land from the Tema Traditional Council and later went to the 4th defendant, for the said allocation to be regularized. In proof of his acquisition of the land, he tendered in evidence Exhibit '1' as confirmation of allocation. Exhibit '2', 2A, 2B, 2C, and 2D as letters to TDC and an offer letter from TDC dated 21st December 2009 as Exhibit 4. He also tendered in evidence a site plan as EXHIBIT 4A.

The documentary evidence bears out the claim of the 1st defendant. Exhibit 1 is on the letter head of the Tema Traditional Council. It is dated the 6th day of June, 2008 and is headed ''Confirmation of Allocation''. It bears the passport sized picture of a man. Its effect is that a piece of land measuring 70*100 and identified as plot number KLG 7, situate at Klagon has been allocated to Robinson and Ernest Osae- Oppong.

EXHIBIT 2 is an application for residential plot no RP/KLNG/A1/110. It is dated the 9th of December, 2009 and is on the letter head of the 4th defendant herein. It is addressed to Mr. Robinson and Ernestina Osae-Oppong. The letter refers to an application dated 15th September, 2008 and informs the addressees that the said land which lies at Klangon and measures 0.16 acres has been reserved for them. The letter is signed by the Director of Estates for the Managing Director.

The said Robinson and Ernestina Osae- Oppong per EXHIBIT 2A, accepted the offer on the 10th day of December, 2009. On the same day, per TDC official receipts, they also paid the land management fee and ground rent.

Then per EXHIBIT 4, on the 21st day of December, 2009, the 4th defendant, proposed to enter into a lease agreement with the same Robinson and Ernestina Osae-Oppong for a term of sixty (60) years with an option to renew for a further ten years. The last of the exhibits is a right of entry letter dated the 21st day of December, 2009. It indicated that the 4th defendant had granted Robinson and Ernestina Osae- Oppong the right to enter the land from the 1st day of January, 2010.

The documentary evidence of the 1st defendant supports his claim that he first obtained an allocation from the Tema Traditional Council and later regularized it from the 4th defendant.

The 4th defendant in his evidence in chief testified that;

*Q: The plaintiff claim in this court is that the 1st defendant has encroached upon the land once upon the time granted to Mr. G.K. Mensah 1st defendant name is Mr. Osea Oppong. Do you know him coming from the estate department?*

*A: Yes, My Lord, I know 1st defendant. He was a T.D.C lessee and it is not true that he has encroached on that plot. My lord, by the regularization narration I gave you, he had an allocation from the Tema traditional council (T.T.C) in respect of his plot that was submitted to T.D.C and T.D.C went through the due process and perfected his title in respect of a parcel of land and so it is not an encroachment as far as T.D.C records are concerned.*

*Q: You have just told the court that your employer knows 1st defendant.*

*A: Yes My Lord.*

*Q: Now the document that you have told the court were processed for 1st defendant, can you look at these exhibits that is exhibit 2 and 2A tell the court if these are the document(s).*

*By Court: Exhibit(s) or document shown to witness.*

*A: Yes, My Lord, they are all document(s) in respect of the allocation and processing at T.D.C. exhibit 1 of 1st defendant is that allocation or confirmation of allocation from the Tema Traditional Council exhibit 2 is the proposal letter T.D.C. sent to the 1st defendant after which payment was made and the payment are 2B, 2C and 2D. An acceptance letter from the 1st defendant after having paid the proposal is exhibit 2A and after the acceptance T.D.C issued the offer letter which is Exhibit 4 with an attached site plan and the right of entry is exhibit 4.*

Under cross examination by learned counsel for the plaintiffs, he had answered;

*Q. Now you see, your allocations and your regularization in respect of this disputed land, who was it allocated to from your records?*

*A. That is the part being claimed by the plaintiff.*

*Q. That is plot number, RP/ILLNE/A1/10.*

*A. Yes My Lord, we allocated it to Mr. and Mrs. Robinson Ernestina Osae Oppong.*

Both the 2nd plaintiff and the 1st defendant, claim the 4th defendant as their grantor. The 4th defendant, testified positively favour of the 1st defendant. I am bound by the principle of law as stated by the Supreme Court in the case of ***Benyak Co. Ltd v. Paytell Ltd, [2013-2014] 2 SCGLR 976*** held that "*[W]here rival parties claim property as having been granted to each by the same grantor, the evidence of the grantor in favour of one of the parties should incline a court to believe the case of the party in whose favour the grantor gave evidence unless destroyed by the other party*."

One of the long held and accepted principles in land law is that a person *in possession is entitled to judgment against the whole world* ***except the true owner***. See the Supreme Court decision in the case of ***Osei (substituted by Gilard) v. Korang [2013-2014] 1 SCGLR 221***." The emphasis is here is "except the true owner''.

As the true owner is the 4th defendant and I have established that the 2nd plaintiffs' long occupation was a bare license, it stands to reason that the true owner had a right of re entry unto the land subject to reasonable notice to the 2nd plaintiff. The 4th defendant had exercised this right by granting a portion of the land to the 1st defendant. As the 2nd plaintiff was not in physical occupation of that portion of the land and had himself granted same illegally to the 1st plaintiff, the 4th defendant's right of re entry would not require any such reasonable notice to the 2nd plaintiff.

On these issues, I hereby resolve the issues in favour of the 1st defendant.

***(i) Whether the 1st defendant was fraudulent in his acquisition of the land in dispute.***

The plaintiffs in their statement of claim alleged fraud against all the defendants. Their averment is that the defendants have manipulated the TDC system to secure their names on the plot which was initially not the case when the parties and the police went to the office of the TDC.

Dordzie J.A. (As she then was) recently explained it brilliantly in the case of ***Abukari Umar & Mohammed Hafiz v. National Health Insurance Authority (NHIA) [2018] DLCA 4408*** as follows: *"Fraud is a crime, and statute clearly defines the degree of proof of same in both civil and criminal matters. Section 13 (1) of the Evidence Act, 1975 NRCD 323 provides 'In a civil or criminal action, the burden of persuasion as to the commission by a party*

*of a crime which is directly in issue requires proof beyond reasonable doubt".* See also the cases of ***Fenuku v. John Teye [2001-2002] SCGLR at page 985***.

Thus the burden of proof on the plaintiffs as regards the claim of fraud is proof beyond reasonable doubt. The material evidence here is that of PW1. He indicated that sometime in December, 2009, he had visited the offices of the 4th defendant with the plaintiffs and the 1st and 2nd defendants to ascertain the ownership of the land. That they were informed that per 4th defendants, records, the father of the 2nd plaintiff had a lease covering the land. That the 1st defendants site plan was found to be in respect of a land at Zenu.

I have already reproduced portions of PW1's cross examination where he indicates that he did not ask for the names of the officers who gave them this information. The plaintiffs also could not provide any evidence of the informants names. Their contention is that since then, the 1st defendant has by means of fraud, secured his name unto the 4th defendant's system.

The defendants deny such fraud and the 4th defendants witnesses indicated that it is not possible due to the fact that various departments at its outfit are involved in the processing of documents and so one cannot easily manipulate the system.

The plaintiffs did not lead any further evidence in support of this claim. If at all, their claim remains an assertion and that is not sufficient in proof of their claim. Fraud is known legally to vitiate everything. Thus on the authority and holding of the case of ***Kangberee v. Mohammed (2012) 51 G.M.J 173 at 198***, that 'it is trite learning that for anyone to succeed with a serious allegation like fraud which has the tendency to vitiate acts done regularly, the particulars, which must be pleaded, must also be proven'.

Accordingly, I hereby find that the plaintiffs have failed to prove fraud against the defendants in 1st defendant's acquisition of the land.

On the issue of fraud, the evidence on record rather points its fingers at the 2nd plaintiff. In this court, he admitted that he had not informed the 4th defendant about the demise of his father. He had continued to carry on dealing with the 4th defendant by way of paying rent as if he was his late father.

In, EXHIBIT F, Gershon Mensah wrote to the 4th defendants on the 15th of June, 1993 for a renewal of the permit to occupy plot number AGR/94.

Per EXHIBIT A, the very same Gershon Tamakloe had passed on to eternity on the 9th day of October, 1988. Clearly, a dead man cannot write and sign a letter almost five years after his passing. Yet, it is being urged upon this Court that the late Gershon Mensah did so. The letter could also not have been deemed to have been written by his personal representatives since letters of administration covering his estate was only granted in 2005. As the 2nd plaintiff tendered this in evidence and for all intents and purposes had held himself out as his late father and even alienated a portion of the land to the 1st plaintiff in that capacity, I can reasonably infer that he wrote this letter.

He sought to rely on this document as evidence against the 4th defendants to prove that he sought a renewal of the lease in 1993 and it was the 4th defendant through its officers that asked him to hold on. It is of no evidential value to this court. Edward Wiredu JSC in the case of ***Okofo Estate Ltd. v. Modern Signs Ltd. (1996-97) SC GLR 224 at page 254*** held: *"… a forged document or a document obtained by fraud passes no right. Applying the*

*principle of the poisoned tree, all other documents which flow from this and derive their validity from same are void.*

***Whether or not the 2nd defendant ever dealt with the land in dispute and sold same to the 1st defendant.***

I find on this issue that plaintiffs led sufficient evidence as to involvement of 2nd defendant in this matter. I accordingly resolve the issue in favour of the plaintiffs.

The claim of the plaintiffs is that it was 2nd defendant who first came unto the land and later sent the 1st defendant to the land as her contractor. In her statement of defence filed on the 14th day of March, 2019, particularly paragraphs 6, 7 and 8, she avers that she acquired the land in dispute from the Klagon Chiefs and she is an innocent purchaser for value. That she transferred her interest to the 1st defendant before she was made aware of the plaintiffs alleged interest in the land. That at the time the plaintiffs reported her to the community 19 police, she had already transferred her interest to the 1st defendant.

Then in her evidence in chief on the 24th day of September, 2019 , she testified that ''

*Q: How did you get in to contact with 1st Defendant?*

*A: I went to the wife's shop to buy something and the wife informed me that she has information that market plots were being portioned at Klagon. I told her I was apportioned one but I was not interested in it but if she is interested she should see the Chief. Later I realized he had been allocated that portion of land because it was close to a gas station and the wife told me she will inform the husband. when she informed the husband the husband came to me to confirm*

*if I was the one interested in the land and I told him I was not interested so I did not follow up.*

Under cross examination by learned counsel for the plaintiffs on the 10th day of March, 2021, she had answered;

*Q: You transferred your alleged interest in the disputed land to the 1st defendant. Is that correct.*

*A: I am not the one who gave the land to him.*

The 1st defendant in his statement of defence indicated that the 2nd defendant assisted him to acquire the land. On the 14th day of June, 2017, under cross examination by learned counsel for the plaintiffs, 1st defendant has answered;

*Q: Did the second defendant, Helena Hudson in any way assist you in getting this land?*

*A: She only told me about the vacant land. She did not assist me.*

*Q: When you stated in Paragraph 14 of your statement of defence that the 2nd defendant assisted you in getting the land, you were not being truthful.*

*A: I am being truthful.*

The 2nd defendant's averments in her own statement of defence is in sharp contrast to her evidence before this court. She made a classic departure from her pleadings in a way that leads me to only one conclusion, she is not a witness to be believed by this Court. I also do not believe the evidence of the 1st defendant.

In this court, PW1 had testified in his testimony on the 28th day of March, 2017 said that "I was personally detailed to accompany both parties to T.D.C to present their documents with the attached letter from the District Commander. The instructions were carried out. I went with the 1st Defendant and 2nd Defendant and plaintiffs to T.D.C.''

Learned counsel for the 1st defendant had cross examined PW1. However, he had not challenged the claim that 1st defendant was in the presence of the 2nd defendant and the plaintiffs when the visit was made to the 4th defendant. That constitutes an admission of the evidence and is in stark contrast to the claim of the 1st defendant that the 2nd defendant only told him about the land.

I find on this issue that plaintiffs led sufficient evidence as to involvement of 2nd defendant in this matter. I accordingly resolve the issue in favour of the plaintiffs.

***(ii) Whether or not the defendants trespassed on the plaintiffs' land.***

I will deal with this issue briefly. It is a legal known that in a claim for trespass, a party must establish his title to the land. In the case of ***NKYI v. Kuma (1959) GLR* 281 at 284**, the Court held that 'where in an action for trespass a defendant ……. pleads ownership of the land (i.e that he has a better title to possession of the land than the plaintiff has) the plaintiff's title is put in issue; and the plaintiff cannot succeed unless he proves a right to possession which is superior to that of the defendant. Consequently, in an action for trespass, if it is proved that the plaintiff has no title at all to the land, and that the defendant's entry is upon permission of the true owner, the plaintiff's action must fail.'

***(iii) Whether or not the 3rd defendant had any authority or permission from TDC to demolish the properties of the plaintiff or acted on the floric (frollick) of his own.***

The evidence in this Court is that the 3rd defendant; then the head of task force at the 4th defendant, demolished the wall of the 1st plaintiff. Neither 3rd nor 4th defendant deny this. They both admit that same was done albeit not on the scale that the 1st plaintiff wants this court to believe.

The evidence of the 3rd defendant is that he did so upon the authority of the 4th defendant. The 4th defendant admits that it so authorized the 3rd defendant to carry out the said demolishing. 3rd defendant indicates that he did so without notice to the 1st plaintiff.

From the evidence, the 1st defendant wrote to the 4th defendant on the 2nd January, 2010 to request for a demolition. According to the 3rd defendant, he carried out this demolishing of one part of what he calls "a dwarf wall'' on the 6th of January, 2010. I take judicial notice that 4th Defendant is the custodian of a large parcel of state acquired land in Tema and its environs, known as the TDC Acquisition Area. The 4th defendant manages these public lands which have been entrusted to it by the Government of Ghana.

It is thus bound by the provisions of the ***Land Act (Act 1036) on Public Lands.*** **Section 236 (5) of Act 1036** provides that *"where a person unlawfully occupies or encroaches on or interferes with a public land, the appropriate agency or a duly authorized agent of the appropriate agency may, in writing serve a notice on the person personally or by affixing a notice to a part of the land affected, requiring that person to vacate the land within a period of not less than twenty one days from the date of the notice''*.

Per ***Section 6*** *of the same Act*, where the person involved refuses or fails to so vacate the land, the appropriate agency or its duly authorized officer may amongst others "confiscate or *demolish or remove any structure or obstacle on the land''.*

A person, particularly a public agency cannot act outside the law in its dealings with the general public. 3rd defendant readily admitted that he did not give any form of notice to the 1st plaintiff. 4th defendant under cross examination indicated that per its modus operandi, a person who is encroaching on any of their lands must be given notice to quit first either by a letter being sent to them or a writing on the wall.

*Q: By TDC operations, when you want to demolish a structure, can you tell the court the procedure you go by until you pull the structure down?*

*A: My Lord, notice is given either by way of writing it on the structure that the structure should be demolished within a period of time or it is communicated formally.*

The 3rd defendant indicates that that was not the practice when he was head of the task force. Even if that was not the practice, it remains that it is the law of the land and to the extent that it their practice fell contrary to the law, they are bound by the law rather than their practice.

In the circumstances of this case, no such notice was given to the 1st plaintiff. Indeed, the time span between the 1st defendant requesting for a demolishing and the 3rd defendant carrying out the demolishing is all of four days. As the 4th defendant has admitted authorizing the 3rd defendant to carry out this unlawful demolition, it is vicariously liable for the actions of the 3rd defendant.

As counsel for the 3rd and 4th defendants indicates in her well written address to the court, this provision was culled from the now repealed ***Public Lands (Protection) Act, 1974 (NRCD 240)*** The demolition was carried out in 2010 at a time when that Law was still in force.

The 3rd defendant had the permission and authority of the 4th defendant to carry out the demolishing of the 1st plaintiff's wall. However, to the extent that the said demolishing was without a minimum notice of 21 days to the 1st plaintiff, it was unlawful. Thus the said permission and authority is null and void and of no legal effect.

The fact that the 1st plaintiff had no permit to construct the wall does not absolve the 3rd and 4th defendant of liability for their actions. This is because the law prescribing that notice is served clearly indicates that such notice be served on a person who is unlawfully occupying, encroaching or interfering with a public land. Indeed, ***Section 236 of Act 1036*** is headed "Unlawful Occupation or Sale of public land''.

On the final issue as to whether or not the plaintiffs are entitled to their claim, although the writ was filed in 2010, the Supreme Court, a decade after the issuance of the writ has deprecated the formulation of issues in such a manner, describing it as ''lazy work''. See the case of ***Dalex Finance and Leasing v. Ebenezer Amanor & 2 Others, Civil Appeal No j4/2/2020***.

My resolution of all the other issues is an indication that save for general damages for unlawful damage the plaintiffs' claims fail and they are not entitled to their reliefs as endorsed per their writ of summons. Accordingly, general damages of seven thousand Ghana cedis each is awarded against the 1st and 3rd defendants and ten thousand Ghana cedis against the 4th defendant. The 4th defendant is to pay for the 3rd defendant.

The 4th defendants, succeeds on its counterclaim (a) and (b). In its third claim, the 4rd defendant had sought for "an order that the plaintiffs vacate the plot within three months after the date of judgment''. I hereby order the 1st plaintiff to vacate the plot within three months after the date of judgment. For the 2nd plaintiff, the 4th defendant under cross examination by learned counsel for the plaintiffs indicated its preparedness to regularize his title.

*Q. And all this time you have been aware that he has been on the land. Not so?*

*A. My Lord, part of the land which they are on, when the applicants approaches the Tema Traditional Council for allocation letter just as we did for all the people with the enclave, we would accordingly process the documents on the portion they are currently occupying.*

*Q. Your practice in T.D.C as far as redesigning or rezoning farm lands is concerned, you give the person a portion of the plot as residential plot. Is that not true.*

*A. The whole statement is not true. The practice is that the detailing of the portion the farmer would have been physically occupying at the time of the re-zoning of the whole area is what is earmarked for the farmer for the new use.*

Per its own practice, the portion of the land which the 2nd plaintiff reduced into occupation personally would be earmarked for his new use after rezoning. Subject to the 2nd plaintiff in his personal capacity obtaining the necessary allocation from the Tema Traditional Council, the 4th defendant is to regularize his title to the portion of the land it currently occupies within six months from the date of judgment.

**COST**

Although this case has been in court for more than twelve years, from the record of proceedings, the delay in trial has been due to a change in judges and the adoption of proceedings; about six (6) judges have handled this case. The delay has also been due to unnecessary adjournments at the instance of the parties, particularly the defendants. Accordingly, I would not award any costs in favour of the defendants. Each party is to bear their own cost in suit.

(SGD)

**H/H BERTHA ANIAGYEI (MS)**
**(CIRCUIT COURT JUDGE)**

MOHAMMED ATTAH WITH SUSANNA TETTEY FOR THE PLAINTIFFS

EDWARD METTLE NUNOO FOR THE 1ST DEFENDANT

CELESTINE AKU YANNEY FOR THE 2ND DEFENDANT

BRENDALYN AIKINS FOR THE 3RD AND 4TH DEFENDANTS**.**