

**IN THE CIRCUIT COURT "A", TEMA, HELD ON THURSDAY, THE 29TH
DAY OF DECEMBER, 2022, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE**

SUIT NO. C1/7/18

AYOREKO JOSEPH AGESIKA ---- PLAINTIFF

VRS.

ALBERT SARQUAH ---- 1ST DEFENDANT

ZERTHA AHIMA ---- 2ND DEFENDANT

PARTIES

ABSENT

PETER HAMMOND REPRESENTING DEFENDANTS PRESENT

**SOLOMON KOFI ADDO, ESQ. HOLDING THE BRIEF OF RICHARD
AKPOKAVIE, ESQ. FOR THE PLAINTIFF PRESENT**

KWABENA KUNADU-YIADOM, ESQ. FOR THE DEFENDANTS

PRESENT

JUDGMENT

FACTS

The Plaintiff originally caused a writ of summons with an accompanying statement of claim to issue against the 1st defendant on 17th April, 2018. Per an order of the court dated 3rd June, 2019, the 2nd defendant was joined to the suit. Per an amended writ of summons and statement of claim filed on 13th June, 2019, pursuant to the Order for Joinder, the plaintiff claims against the defendants the following reliefs;

1. A declaration of title to all that piece or parcel of land situate, lying and being at Dawhenya in the Dangme West, Accra and more or less

bounded on the North East by Lessor's land measuring 101.3 feet more or less on the South East by the Lessor's land measuring 81.2 feet more or less on the South West by the Lessor's land measuring 103.1 feet by Lessor's land inclusively more or less on the North West by Lessor's land measuring 80.6 feet covering an approximate area of 0.19 acres or 0.8 hectares which land is more particularly and edged with pink colour on Survey Plan *No. Z47386*".

2. Recovery of possession and ejection of the Defendants.
3. Perpetual injunction restraining the defendants, their servants, workmen etc. from entering the said land till final determination of this suit.
4. General/special damages for unlawful entry and trespass to his land
5. Cost of footing (property) destroyed and costs.

The defendants filed an amended statement of defence and counterclaim on 25th September, 2020 and counterclaimed against the plaintiff for the following reliefs;

- a. A declaration that the Defendants are the owners of a piece and parcel of land at Dawhenya in the Dangme West District bounded on the North-East by Lessor's land measuring 99.9 feet on the South-East by proposed Road measuring 80.6 feet on the South-West by Lessor's land measuring 99.9 feet on the North-West by Lessor's land measuring 80.1 feet containing an approximate area of 0.181 acre or 0.073 hectare being a grant from the Head of Osu Wem Family and Dzasetse of Prampram Traditional Area represented by Numo Narh Mensah and his principal elders by virtue of vesting assent indexed as AR 1932/2004.
- b. Recovery of possession.
- c. Damages for trespass.

- d. An order for perpetual injunction restraining the plaintiff, his workers labourers, assigns, privies howsoever described until the final determination of the suit.
- e. Costs.

THE CASE OF THE PLAINTIFF

The plaintiff's case as gleaned from his amended statement of claim and the reply and defence to the counterclaim is that he is the bonafide owner of the land in dispute with a duly registered title. According to the plaintiff, he acquired the land through sale from the Head of Family of Osu Wem, one Abraham Nortey of Prampram who derives his title from a vesting Assent dated 11th February, 2000, and indexed as No. *AR/93B/2004*. The plaintiff further states that on 20th May, 2013, the said Abraham Nortey, acting as the Lawful Head and representative of the Osu Wem family executed an indenture with a site plan which was witnessed by one Nelson Martey for the head of family.

According to the plaintiff, in the course of processing his indenture at the Lands Registry, it was discovered that the same land sold to him was registered in the name of Edward Mensah Darpoh. Consequently, he approached the said Edward Mensah Darpoh to release the plot of land to him and on 19th December, 2015, they signed a Memorandum of Understanding registered as No. *LVDGAST84/2016*, releasing the land in dispute to the plaintiff. Thereafter, he registered the said indenture at the Land Valuation Board with No. *LVB/4195B/2014*, and also at the Land Title Registry and was issued with Land Title Certificate No. *DT 13845* dated 8th June, 2017. The vendors also issued a Right of Entry to him and thereafter, he obtained a building permit from Ningo-Prampram District Assembly to commence his building project.

The plaintiff further says that he has been in occupation and possession of the land to date despite activities of some encroachers claiming ownership of the land but they were stopped by the police. According to him, he constructed a foundation on the land which the defendants who are claiming ownership of the land trespassed on and destroyed the footing on the land. Consequently, he reported the matter to the police and investigations disclosed that it was the defendants who destroyed the foundation. Based on that, he caused his lawyers to write to the defendants to desist from interfering with his peaceful occupation and possession of the land but the defendants failed to heed to the warning. The plaintiff states that the cost of the damage caused to his footing is Twenty-Two Thousand One Hundred and Eighty Ghana Cedis (GHC22,180) and the plaintiff went further to particularise items he claims to have purchased for the construction of the footing.

THE CASE OF THE DEFENDANTS

The defendants deny the claim of the plaintiff and maintain in their defence that they have a superior title to the disputed land which is a grant from the head of the Osu Wem Family and Dzasetse of Prampram Traditional Area represented by Numo Narh Mensah and his principal elders who derived their root of title from a vesting assent *indexed as AR 1932/2004*. In further denial, the defendants state that the plaintiff did not deposit building materials on the land for any construction works and that the plaintiff perpetrated fraud on them by willfully claiming falsely to have purchased materials for construction when the police had warned the plaintiff not to encroach on the land or deposit building materials on same. The defendants therefore contend that the plaintiff is not entitled to his claim.

At the application for directions stage, the court set down the following issues for determination.

LEGAL ISSUES

1. Whether the plaintiff is the owner of the land in dispute.
2. Whether the defendants are the owners of the land in dispute.
3. Whether the defendants have trespassed on Plaintiff's land.
4. Whether the Plaintiff is entitled to his claim.
5. Any other issue arising out of the pleadings.

BURDEN OF PROOF

The principle of law in civil cases is that he who asserts must prove. It is trite learning that the standard of proof in all civil cases is proof by preponderance of probabilities. See **sections 11(4) and 12 of the Evidence Act, 1973(NRCD 323)**. The Supreme Court in the case **Mondial Veneer (GH) Ltd v. Amuah Gyebu XV [2011] 1 SCGLR 466** per Wood CJ (as she then was) held at page 475 as follows;

"In land litigation, even where living witnesses who were directly involved in the transaction under reference are produced in court as witnesses, the law requires the person asserting title, and on whom the burden of persuasion falls... to prove the root of title, mode of acquisition and various acts of possession exercised over the subject-matter of litigation. It is only where the party has succeeded in establishing these facts on a balance of probabilities that the party will be entitled to the claim."

Additionally, where the identity of the land is in issue, a plaintiff cannot succeed without proving positively the identity and limits of the land which he claims. See the case **Nortey (No.2) v. African Institute of Journalism and Communication & Others (N0. 2) [2013-2014] 1 SCGLR 704 @ 713. SC**. Also, a party whose title is derivative is required to lead cogent and admissible

evidence to prove that his predecessor in title had a valid title since any defect in the title of the predecessor in title affects that of the grantee. See the case **Awuku v. Tetteh** [2011] 1 SCGLR 366.

Thus, it necessary for the plaintiff to prove his root of title, mode of acquisition and acts of ownership exercised over the land in dispute and more importantly, the identity and limits of the land to which the plaintiff is claiming ownership where the identity is in issue on a preponderance of probabilities. Also, where the title is derivative, the plaintiff must prove that his predecessor in title had a valid title.

The same burden is cast on a defendant who counterclaims since a counterclaim is considered a fresh action and a defendant who counterclaims in an action for declaration of title to land, recovery of possession and injunction will not win merely because the plaintiff's action has failed but must introduce sufficient evidence for a favourable verdict on the counterclaim. In the case of **Sasu Bamfo v. Sintim** (2012) 1 SCGLR 136 at 155, speaking through Owusu J.S.C said;

"A counterclaim is a different action in which the defendant, as counterclaimant, is the plaintiff and the plaintiff in the action becomes a defendant. In the instant case, where both parties were seeking declaration of title, recovery of possession and perpetual injunction in respect of the disputed land each of them bore the burden of proof and persuasion to prove conclusively, on the balance of probabilities that he was entitled to the reliefs claimed. Thus, section 12(1) of the Evidence Act, 1975 (NRCD 323) enjoins the defendant in its capacity as a plaintiff in the counterclaim to introduce sufficient evidence to avoid a ruling on the issue against him."

A plaintiff and a defendant/ counterclaimant are therefore enjoined, in an action for declaration of title to land to win on the strength of their respective cases and not merely rely on the weaknesses in the opponent's case. However, having made a case, a party is entitled to draw on the defects or weaknesses in the opponent's case to further strengthen his case. See the case of **Ricketts v. Addo and Ricketts v. Borbor (Consolidated)** [1975] 2GLR 158 at page 166.

ANALYSIS

I shall proceed to consolidate the first two issues set down by the court bordering on ownership of the plaintiff and the defendant to the land in dispute for ease of discussion.

To prove his title to the land in dispute, the plaintiff testified and called one witness in support of his case. The plaintiff testified that sometime between the year 2011 to 2012, he informed his witness, PW1 that he was interested in acquiring a plot of land. Based on that, one Emmanuel Quarcopome, who he described as the agent of Abraham Nortey and Nelson Martey both of the Osu Wem family of Prampram took him to the disputed land. According to the testimony of the plaintiff, prior to the sale, he agreed with his grantors for him to clear the land to observe if there would be any adverse claimant. Consequently, he cleared the bushes on the disputed land on two occasions but no one claimed ownership of the disputed land. Being satisfied that the land was free from all encumbrances, he agreed to purchase the land in dispute. As consideration for the land, he purchased a Grand Cherokee car valued at Four Thousand United States Dollars, cleared and registered it at a cost of Ten Thousand Ghana Cedis and handed over the documents to the car

to the agent of his grantors. Thereafter, he took possession of the land and deposited a trip of sand and two trips of chippings on the land.

According to the plaintiff, after paying for the land with the car, Abraham Nortey, Head of Osu Wem family at the time of the transaction and Nelson Martey signed an indenture dated 24th May, 2013, which traces their root of title to a vesting assent indexed as No. *AR/93B/2004* dated 11th February, 2000. He tendered a copy of the indenture admitted and marked as **Exhibit "A"**. The plaintiff also testified that he was issued with a Right of Entry admitted and marked as **Exhibit "B"**, to enable him commence his building project. The plaintiff further testified that he exercised acts of possession over the land by constructing a footing at a cost of Twenty-Two Thousand One Hundred and Eighty Ghana Cedis (GH¢22,180). In support, the plaintiff tendered in evidence **Exhibit "C"**, as proof of expenses he incurred in constructing the footing on the land.

Additionally, the plaintiff testified that he started the registration process and received acknowledgement of first registration dated 4th March 2014 from the Lands Commission. On 18th June, 2014, he also received multiple requests from the Lands Commission Accra, informing him that the land in dispute had a prior lodgment in the name of one Edmund Mensah Darpoh. In support, he tendered in evidence **Exhibit "D"**, which is a Multiple Request for Survey and Preparation Plan dated 18th June, 2014. According to him, when he received the multiple request notice, he approached the said Edmund Mensah Darpoh and on 19th December, 2015, they signed a Memorandum of Understanding registered as No. *LVDGAST84/2016*, admitted and marked as **Exhibit" F"** for the release of the land in dispute for plaintiff's registration to proceed. Thereafter, the notice of publication was made in the weekly spectator on 11th February, 2017, but the defendants never objected to his

registration. Consequently, on 8th June 2017, Land Title Certificate number *TD. 13848* was issued to him, admitted and marked as **Exhibit "H."**

The plaintiff further testified that he has at all times been in occupation and possession of the land in dispute and was issued with a building permit on 19th August 2016, which he tendered as **Exhibit "J"**. He also tendered in evidence receipt of ground rent admitted and marked as **Exhibit "K"**. The plaintiff further testified that after completing his footing, the defendants destroyed it and claimed ownership of the land and erected pillars on the land. According to him, he had never met the defendants until they reported the matter at the Dawhenya Police Station and at the Prampram Division. At the Prampram Divisional Police Headquarters of the Police, Nelson Martey and the principal elders of the family were invited and the said Nelson Martey acknowledged having received monies from him and the 2nd defendant in respect of the same land but to resolve the matter, he promised to relocate the defendants. Based on that, he continued working on the land but the defendants continued their acts of unlawful trespass.

The plaintiff 's witness (PW1), Dennis Abaniaba also testified that he introduced the plaintiff to the agent of Abraham Nortey, and Nelson Martey called Emmanuel Quarcopome when plaintiff wanted to buy land as he had previously bought land from the said agent in 2011. PW1 testified that he cleared the land in dispute and supplied building materials to the plaintiff. He tendered in evidence **Exhibit M**, receipt of building materials supplied and labour dated 28th June 2013. According to him, he was supervising the construction of the footing when one Sydney Acquaye and his colleagues started harassing them claiming that the plaintiff was not the owner of the land in dispute.

The first defendant testified on his behalf and on behalf of the 2nd defendant who is his wife. According to him, they acquired the land in dispute located at Dawhenya which is stamped as *LVB 115577/08* from Numo Narh Mensah, head of Osu-Wem Family and Dzasetse of Prampram Traditional Area with the consent and concurrence of his principal members. In support, he tendered in evidence **Exhibit "1"**, a copy of the lease agreement made between Numo Narh Mensah, head of Osu-Wem Family and Dzasetse of Prampram Traditional Area of the one part and the defendants herein of the other part.

The 1st defendant further testified that their grantor derived his root of title from a vesting assent made by the customary successors of Nuerthey Anumle on behalf of the Osu Wem Family indexed as *AR. 1932/2004* dated the 11th day of February 2000. The said vesting assent is confirmed by a search report dated 17th April, 2015, tendered in evidence and admitted and marked as **Exhibit "2"**. The search report addressed to the defendants dated 17th April, 2015 shows that the land is not a state land and affected by a vesting assent dated 11th February, 2000, by Numo Narh Mensah and the site falls within Prampram Land. As consideration for the land, they paid an amount of Thirty-Three Million Cedis between 2007 and 2008. The 1st defendant tendered stamped receipts issued by the Osu Wem family, admitted and marked as **Exhibit "3"** series for one plot of land evidencing this fact.

The first defendant further testified that when they acquired the land in dispute, they secured it by depositing a trip of saw dust and a trip of quarry stones valued at GHC1,000 and GHC1600 respectively on the land and began to dig the footing. In support, he tendered in evidence **Exhibit 4 series**, showing the works on the land. Again, they applied for a building permit

which was approved by the Ningo Prampram District Assembly on the 9th day of May 2018, valid until 8th May 2023 to construct a storey building on the land. The building permit was admitted and marked as **Exhibit "5"**.

Additionally, before they applied for a building permit, they requested the Land Registration Division of the Lands Commission, Tema for Survey and Preparation of Parcel of Land. The response to the request which is dated 24th April, 2018, requested them to contact the Director, Survey and Mapping Division since the land had been affected by a multiple request by two claimants namely Edward Mensah Darpoh and the defendants herein. A copy of the said letter was admitted and marked as **Exhibit "6"**.

On 30th April, 2008, they applied for first registration and they were given a Yellow card with *ref. 001789/2008* and a copy of the yellow card was admitted and marked as **Exhibit "7"**.

The 1st defendant further testified that the plaintiff has never been in occupation or possession of the land and has never warned the defendants who had been on the land since 2005. According to the first defendant, when they got to know of the activities of the Plaintiff in connection with the land, a report was made to the Dawhenya police who warned the plaintiff not to encroach on the land and not to put any materials on same and to justify any purchase of items for construction on the land. A copy of the report is attached as **Exhibit "9"** series.

The 1st defendant maintains that their acquisition, occupation and possession of the land in dispute predates the Plaintiff's procurement of Land certificate *No. TD 13848* dated 8th June, 2017. The 1st defendant further states that it was the successor of the late Numo Narh Mensah one Abraham Nortey, a relative,

who knowingly made the unlawful grant to the Plaintiff. He witnessed the execution of the title deeds when he knew the plaintiff had no land at Dawhenya. The 1st defendant states that they have a superior title to the land in dispute and urge on the court to find for them.

The defendants' witness Sydney Acquaye testified that he has a friend who lives in the United Kingdom and in 2005/06, his friend bought a piece of land at Dawhenya and that led two of his sisters the 2nd defendant and one Linda Parry also to buy land at Dawhenya through Isaac Narh of Skyview in Tema. They all bought fourth (4) plots, two for Michael Parry and one plot each for the two sisters. The witness recounted how he ward off a number of encroachers. Specifically, in respect of the land in dispute, he testified that he met plaintiff who had cleared the 2nd defendant's land in their absence and was bringing building materials and he told him that the land belonged to the 2nd defendant. Later, the plaintiff brought workers to dig trenches purported to be the foundation. He reported the matter to the police and they stopped the plaintiff from digging trenches. The defendants' witness also recounted several attempts made at resolving the issue at the police station, which all proved futile.

From the evidence led by the plaintiff and his witness and the defence put up by the defendants and their witness, the identity of the land being claimed by the parties is not in issue. The parties are *id idem* that they are contesting over the same parcel of land. Indeed, the parties all claim their root of title from the same grantor i.e., the Osu Wem family of Prampram. However, the plaintiff states that one Abraham Nortey was the head of family at the time of his acquisition whereas the defendants claim that at the time of their acquisition, Numo Narh Mensah was the lawful head of the Osu Wem family. The plaintiff maintains that he is the owner of the land in dispute because his

grantors executed an indenture in his favour and he has also registered his interest in the land in dispute and obtained Land Title certificate which gives him a better title than that of the defendants. The defendants also state that they have a superior title to the disputed land having acquired same eight years prior to the acquisition by the plaintiff.

It is noteworthy that the same Nelson Martey who witnessed the defendants' indenture in the year 2005 and deposed to the oath of proof as shown in **Exhibit "1"**, is the same person who witnessed the execution of the plaintiff's indenture and deposed to the oath of proof on 20th November, 2014, as shown in **Exhibit "A"**. Indeed, from the evidence in-chief of the plaintiff and his answers during cross-examination, when they met at the police station over the issue and the said Nelson Martey appeared, he confirmed having sold the land to the 2nd defendant eight (8) years prior to the sale of the same land to him but promised to relocate the defendants since the plaintiff was in the process of registering his title to the disputed land.

Learned Counsel for the Plaintiff in his written address contends that the plaintiff followed the process of registration of a valid land document as enunciated in the case of **General Emmanuel A. Erskine and Rosemund E. Erskine v. Victoria Okpoti and Mallam Musa** [2018] DLSC 189, to contend that the plaintiff's lease documents was subjected to the rigors of the laid down procedure and no issues as to alterations or modification of signatures or in essence fraud were raised on receipt. The plaintiff therefore relies heavily on the Land Title Certificate issued to him to say that the defendants never objected to his registration. The issue then is, is the mere production of a land title certificate conclusive proof of ownership? In the case of **Botchway v. Okine** [1987-88] 2 GLR 1, CA. per Osei-Hwere JA

“It ought to be emphasized that the registration does not prevent the court from ascertaining who has valid title to a piece of land, and it must be also be borne in mind that registration will not confer any legal right or title on any party who took his grant from a person who had no title to convey... There is nothing in Act 1962 which states that the validity of any deed of conveyance or any instrument should not be questioned or challenged in any court of law after it has been registered.”

In the instant case, in the year 2013 when the plaintiff purported to purchase the land in dispute, the Osu Wem family had already divested itself of title in the land in dispute having sold it to the defendants in the year 2005. It is trite learning that a person cannot give what he does not have. Consequently, at the time of the purported sale, the Osu Wem family did not have any title in the land in dispute to pass to the plaintiff. In the case of **Tetteh v. Hayford** [2012] 1 SCGLR 417, the Supreme Court held in its holding 4 that:

“On an application of the nemo dat quod non habet maxim, the Asere stool having divested itself of its interest in the land in favour of the original defendant long ago in 1974, had nothing with regard to the divested land to convey gain; and so any purported sale of the already divested land, subsequently made to the plaintiff, is null and void.”

Also, in the case of **Benyak Co. Ltd v. Paytell Ltd** [2013-2014] 2 SCGLR 976, the Supreme Court held in its holding 3 that:

“.... In law, the first plaintiff witness had no title to pass to the plaintiff as he has already made a valid grant to the third defendant. There was always the requirement of law that the party claiming title must prove his root of title and that his grantor has a valid title to pass. A subsisting valid grant made by the first plaintiff witness created an encumbrance on the land even if it was initially a customary grant, for a conveyance of land made in accordance with customary law was effective as from the date it was made. A deed subsequently executed by the grantor to the grantee could

add but not take from the effect of the grant; and where there was an omission to execute the deed of conveyance, that omission could not affect the grantee's title."

Additionally, Learned Counsel for the defendant raised issues about the authenticity of the indenture issued to the plaintiff due to cancellations in the name of the grantor and unapproved site plan attached to **Exhibit "A"**. A cursory look at **Exhibit "A"**, the lease agreement tendered by the Plaintiff shows that Abraham Nuer Nortey, who is described as the head of Osu Wem family of Prampram Traditional Area of the Dangme West District, leased the land in dispute to the plaintiff herein with the consent and concurrence of the principal members of the family. The site plan attached to the indenture is not approved by the Director of Survey. Again, on **Exhibit "A"**, there are cancellations in the name of the grantor which originally read "*Head of Osu Ablade Wem family*". In the Nortey v. GIJ case (supra), the Supreme Court held that a site plan which was not signed by the Director of Surveys or his representative had no probative value even if received without an objection since it is contrary to regulation 3(1) of the Survey (Supervision of Approval of Plans) Regulations, 1989 (L.I 1444), which makes it mandatory for plans of any parcel of land attached to any instrument for the registration of such instrument to be approved by the Director of Surveys or any official surveyor authorized in that behalf.

The Supreme Court further held that a document or writing needed at the trial must be relevant to the issue in the trial and such a document cannot be relevant unless it is genuine or authentic. When the authenticity of an exhibit is challenged, it is incumbent on a plaintiff to lead further evidence to prove the authenticity of the document by testimony of a witness with knowledge about the document among others. The explanation given by the plaintiff on the cancellation of the word "*Ablade*" to read "*Osu Wem family*", he stated

that when he enquired, he was informed that that is the reason they signed against the cancellations in **Exhibit 'A'** to authenticate it. The plaintiff did not lead any further evidence as to the genuineness of **Exhibit "A"** as to whether the said Abraham Nuer Nortey was the head of the Osu Ablade Wem family or the Osu Wem family.

Again, the plaintiff admitted under cross-examination by Counsel for the defendants that that he did not conduct a search to ascertain who the true owners of the land were and it was when he was processing his documents at the Lands Commission that he realised that someone had an interest in the land in dispute. Based on that, he contacted the adverse claimant, one Edmund Mensah Darpoh, to resolve the issue of the multiple requests with him based on which **Exhibit "F"**, the Memorandum of Understanding was made. A careful reading of the Memorandum of understanding, **Exhibit "F"**, dated 19th December, 2015, reveals that the said Edmund Mensah Darpoh states that his family had sued the Osu Wem Family, Lands Commission and Regional Lands Officer in the High Court Tema and that the suit was still pending. He acknowledges that he had received "*drink money*" from the plaintiff which was not refundable to acknowledge his interest in the land but the amount received did not constitute payment for the land. It was also a term that in the event of the grantor winning the suit, the plaintiff will atone tenancy and pay the full cost of the land.

The testimony of the plaintiff under cross-examination that both the Osu Wem family and Edmund Mensah Darpoh are his grantors strains credulity since **Exhibit "F"** is explicit that it does not amount to a lease. This conduct of the plaintiff in acknowledging the said Mensah Darpoh as his grantor amounts to denying the title of the Osu Wem family that he claims to derive his title from. Moreso, the plaintiff has not pleaded and tendered any

judgment of a competent court declaring title of the disputed land in favour of Edmund Mensah Darpoh which **Exhibit "F"** is contingent upon and if a judgment has been obtained, whether he has a valid lease from Edmund Mensah Darpoh based on which the Land Title Certificate was issued.

The plaintiff also relies on his possession on the land in dispute to claim that he has a better title to the land in dispute. However, the evidence on record shows that the plaintiff's entry upon the land in dispute has not been without let or hindrance since the plaintiff testified that when he went onto the land, some encroachers disturbed his occupation. The plaintiff also admits that DW1 seriously challenged his occupation of the land. The **Exhibit "9"** tendered by the defendants show that it is DW1 and the mother of the 2nd defendant who reported the plaintiff to the police for trespass when they observed his presence on the land. Thus, the plaintiff has not been in undisturbed possession of the land.

The plaintiff also relies on payment of ground rent **Exhibit "K"**, as proof of ownership. It has been held that payment of ground rent may be evidence of ownership but not a conclusive proof of ownership. See the case of **Tonado Enterprises & Others v. Chuo Sen Lin** (2007 – 2008) 1 SCGLR 135, SC.

In the circumstances of this case, can the plaintiff be said to be a bonafide purchaser for value without notice? It is trite learning that any person desirous of acquiring property ought to properly investigate the root of title of his vendor. In this case, there is no proof of any prudent search conducted by the plaintiff. The plaintiff admitted under intense cross-examination that he never conducted any search to ascertain the true owner (s) of the disputed land. The principles of equity deem such a purchaser to have notice of all that

a prudent purchaser would have discovered if he had investigated the title. In the case of **Osumanu v. Osumanu** [1995-96] I GLR 672 at 680 the Court of Appeal (per Benin JA) held that:

“Any intending purchaser is put on his own enquiry to make such investigations as to title as would enable him to rely on the plea of bona fide purchaser for value without notice. If he failed to make such enquiries, he acted at his own peril if subsequent events disclosed that there was a valid challenge to the title he acquired”

If the plaintiff had indeed gone onto the land, as he would want the court to believe, and made enquiries from other boundary owners, he would have discovered that the land was encumbered since from the evidence, the land abutting the land in dispute are for relatives of the defendants herein. The plaintiff’s evidence that he went onto the land to weed on two occasions to observe if the real owner would come forward is not sufficient means of investigation of title by a prudent purchaser of land. The contention of the plaintiff that the defendant never objected to his registration process though it was published in the Spectator Newspaper is also untenable since that per se cannot validate a void grant especially in a country where most people with customary grants do not read newspapers. In the case of **Amuzu v. Oklikah** [1998-99] SCGLR 141 the Supreme Court held in its holding 1 that:

“the Land Registry Act, 1962(Act 122), did not abolish the equitable doctrines of notice and fraud; neither did it confer on a registered instrument a state-guaranteed title. Consequently, a later instrument could only obtain priority over an earlier one by registration under section 24(1) of Act 122 if it was obtained without notice and fraud of the earlier unregistered instrument.”

The defendants on the other hand have established by the evidence on record that they acquired the land in dispute in the year 2005 from the Osu Wem family. The root of title of the defendants’ grantor is evidenced by **Exhibit**

"2," the search report which shows that the land in dispute is affected by the vesting assent in favour of the defendants' grantor. The defendants commenced registration process and obtained a yellow card but the process stalled due to the multiple request issue yet to be resolved. The defendants were able to describe their boundary owners and led evidence on the various attempts made to ward off encroachers on the land. The same Nelson Martey who witnessed the execution of the indenture for the defendants in 2005 and the oath of proof is the same person who witnessed that of the plaintiff in 2014. Therefore, as between the plaintiff and the defendants, the defendants have proved to have a better title to the land in dispute. Thus, at the time the plaintiff obtained his grant, the land in dispute was encumbered which the issuing authority should not have granted the land title certificate to the plaintiff particularly in the light of the unapproved site plan and having regard to the fact that **Exhibit "F"** is not a valid lease. In the case of **Brown v. Quashigah** [2003-2004]. SCGLR 930, the Supreme Court held in its holding 5 that:

"Under section 122(1) of the Land Title Registration Law, 1986(PNDCL 152), a court might, in its discretion, order cancellation of a land certificate issued pursuant to the Law on grounds of fraud or mistake materially affecting the interest of the proprietor. Any by fraud was meant dishonesty. However, under section 122(2) of PNDCL 152, the register "shall not be rectified...unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which rectification is sought or had himself caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default."

Section 122(1) of the Repealed Land Title Registration Law, 1986(PNDCL 152), the law in force at the time the suit was commenced, which is in pari materia with **section 195** of the Land Act, 2020 (Act 1036) gives the court discretion to rectify the register by canceling Land Title Certificate issued in

error. I therefore hold that the plaintiff is not the owner of the land in dispute. I accordingly, dismiss the claim of the plaintiff for title to the land in dispute and declare the defendants as the owners of the disputed land. I accordingly order for the cancellation of the Land Certificate *No TD.13848*.

ISSUE 3: Whether or not the defendants have trespassed on the plaintiff's land.

In the case of **Odonkor and others Vs. Amartei [1992] 1 GLR 577**, at page 587, the Supreme Court per Hayfron-Benjamin JSC held that:

“Trespass to land was committed by injury to or interference with one's possession. Accordingly, the cardinal principle in an action for trespass to land was that the plaintiff had to establish that he was in exclusive possession of the land at the time of the trespass and that the trespass was without justification”.

The plaintiff contends that he was in possession of the land and had constructed a footing for a foundation on it when the defendants entered on the land and destroyed same. The court having held that the plaintiff's interest in the land has been defeated by the superior title of the defendants, they cannot be held to have trespassed on their own land. The various actions taken by the defendants to protect their interests in the property in dispute cannot be a basis for the plaintiff to maintain an action in trespass against the defendants. It is rather the plaintiff who has trespassed on the land of the defendants having obtained same from a person who had no title at the time the land was sold to him.

ISSUE 4: Whether or not the Plaintiff is entitled to his reliefs

From the discussion on the issue of ownership above, it is evident that the plaintiff is not entitled to his claim since at the time his grantor purported to alienate the property in dispute, the grantor had divested himself of any title or interest in the disputed land in favour of the defendants eight years before the grant to the plaintiff. The plaintiff therefore obtained nothing by virtue of "*nemo dat quot non habet*" maxim. I therefore hold that the plaintiff is not entitled to his reliefs.

CONCLUSION

In conclusion, I hold that the plaintiff failed to prove his case on a balance of probabilities that he holds a valid title to the land in dispute and any interest the plaintiff held is defeated by the superior title of the defendants. Accordingly, I hold that the plaintiff is not the owner of the land in dispute. I therefore dismiss the claim of the plaintiff and grant the counterclaim of the defendants. I accordingly enter judgment for the defendants in the following terms;

1. I hereby declare the defendants as the owners of all that piece and parcel of land at Dawhenya in the Dangme West District bounded on the North-East by Lessor's land measuring 99.9 feet on the South-East by proposed Road measuring 80.6 feet on the South-West by Lessor's land measuring 99.9 feet on the North-West by Lessor's land measuring 80.1 feet containing an approximate area of 0.181 acre or 0.073 hectare being a grant from the Head of Osu Wem Family and Dzasetse of Prampram Traditional Area represented by Numo Narh Mensah and his principal elders by virtue of vesting assent indexed as *AR 1932/2004*.

2. I hereby order for the rectification of the land register by cancelling the plaintiff's Land Certificate *No TD.13848*.
3. Recovery of possession of the land in dispute from the plaintiff.
4. I hereby award an amount of GHC5,000 as general damages for trespass.
5. An order for perpetual injunction restraining the plaintiff, his workers, labourers, assigns, privies howsoever described from interfering with the defendants' enjoyment of the land in dispute.
6. Costs of GHC10,000.

(SGD)

H/H AGNES OPOKU-BARNIEH

(CIRCUIT COURT JUDGE)