

IN THE CIRCUIT COURT '1' HELD AT TAKORADI, WESTERN REGION ON THE 5TH
DAY OF JULY, 2023 BEFORE HIS HONOUR MICHAEL K. AMPADU, CIRCUIT COURT
JUDGE

SUIT NO. C1/2/2012

YAKUBU AGBENYO

.....

PLAINTIFF

VRS.

1. IBRAHIM ADDO
2. ISSAKA ADDO
3. ABDULAI AGLAGO
4. ARNABAS BAIDOO
5. THOMAS GAANEY
6. JOSEPH ANKRA
7. KOFI AGBENYEFIA & Co.
8. ISSAKA AMEWEVI
9. ISSAH AMPOMAH
10. AKOSUA KUKREMAN
11. SULLA (YAW LOSSO)
12. OSAHENE BUSUMAKORA III

.....

DEFENDANTS

JUDGEMENT

PLAINTIFF: PRESENT

DEFENDANTS: PRESENT

COUNSEL: LAWYER SAMUEL ADINKRA FOR PLAINTIFF

LAWYER PHILIP NKRUMAH FOR DEFENDANTS

On the 5th day of September, 2011 the Plaintiff filed this writ against the Defendants for the following reliefs:

- a. Declaration of title to the parcel of land.

- b. Recovery of possession of the land as described in paragraph 5 of the statement of claim.
- c. An order for Defendants to render accounts of earnings of cocoa from 1992 to 2011.
- d. Perpetual injunction restraining the Defendants, their agents, assigns, privies and anyone else claiming through them from having anything to do with the land in dispute.

In his statement of claim, the Plaintiff who alleged he brought the action on his behalf and on behalf of his nine (9) other siblings, stated that on 17/01/1980, his father Alhaji Adbulai Wutsah, obtained a lease made between Nana Busumahura II, the then chief of the Takoradi Division of the Ahanta Traditional Area and his father for a large track of farm land at Tumantu near Assakae in the Western Region with a total land area of Five Hundred and Seventy-Three (573) acres particularly described in the schedule of the lease and site plans which was registered at the Deeds Registry as Deed No. 399 with boundaries as follows;

ALL THAT PIECE OR PARCEL of LAND SITUATE and LYING at Tumantu ... which piece or parcel of land is more particularly on the plan attached hereto therein shewn edged pink. That whiles his father was alive, he entered into an agreement with the Defendants who are all Tenant farmers on the said land on share-cropping basis also known as Abunu.

Plaintiff claimed that by the said agreement, the Defendants were to cultivate cocoa on the land and the amount from the sale of proceeds from the cocoa shared equally between the tenants and his father on each crop season. Each of the Defendants cultivated part of the land and planted cocoa. Plaintiff stated that whiles his father was alive, the Defendants paid him his share of the proceeds from the sale of cocoa at the end of every season as per the Abunu agreement between the parties.

It is the further statement of the Plaintiff that after the death of his father Alhaji Abdulai Wutsah Agbenyo on 08/07/97, the Defendants have either refused or failed to give the share of their father to the children and that even though the Defendants agreed at a meeting to give the children their share, the Defendants later failed to sign an agreement to the promise they made to the children.

According to the claim, the Plaintiff and Siblings later heard that the Defendants said they owe allegiance to Nana Busumakura III, the 12th Defendant who was joined to this suit by leave granted by this Court on the 7th day of February 2012. When the Defendants continued their non-payment to the children, they (children) caused their lawyer to write to the Defendants inviting them for a meeting but the Defendants either failed or refused to accept the letters when it was delivered to them.

The Plaintiff claimed that the Defendants harvest cocoa from their various farms every crop season and sell to a purchasing clerk at Obra Ye Bona near Mpohor and have their details with them. Plaintiff said by the conduct of the Defendants, they are making adverse claim that the land does not belong to Plaintiff and unless they are restrained by the Court, they will continue to do so and pray per their reliefs on the writ of summons.

The Defendants denied the Plaintiff's claims and the 7th Defendant stated that the land on which he farms belongs to his father per an assignment made to his father by the Plaintiff's father.

As said elsewhere, the 12th Defendant was joined to this suit because he is the stool occupier and the land in dispute is a stool land and he believes the Plaintiff and his Siblings have forfeited their lease by breach of the lease convent.

In the amended statement of defence filed on 05/03/18, the Defendants, stated that they are Tenant farmers on different pieces of the land and admitted having been granted the land

by the deceased Alhaji Agbenyo but stated that the Agreement was for “Abusa” tenancy which agreement was to be documented upon the maturity of the farms at different times but that the documentation of the Abusa tenancy was not done before the death of their grantor.

The Defendants stated that soon after the death of their grantor, the stool of Dominase and Manso started laying claim to the lands as belonging to their Wasa Stools and so the Stool of Takoradi challenged the said Wasa Stools leading to a case pending presently in the High Court, Sekondi and that as a result of the above litigation, the Stool of Takoradi called the Tenant farmers in the area, including the Defendants, and armed with plans and ancient judgements, directed the Defendants to attorn tenancy to the Stool of Takoradi or be ejected from the land and the Defendants having regard to all the circumstances, kowtowed to the demand of the Stool of Takoradi awaiting the resolution of the dispute as to title.

The 7th Defendant on the other hand stated in defense that his late father Emmanuel Komla Agbenyefia took an assignment of twenty-five (25) acres farm land from the Plaintiff’s father and that the assignment was reduced into writing and executed on 27th April 1983 and registered at the Lands Commission, Sekondi as LVB 3092/15 and SD1 1042/84 after the payment of valuable consideration.

The defense of Osahene Katakya Busumukura III who joined the suit as 12th Defendant and was represented by an attorney, Evans Danso, pleaded non-est factum to the lease agreement executed between the Plaintiff’s father and his predecessor Nana Busumukura II stating that by the date of the said lease, the lessor was old, infirm, senile and functionally blind and therefore could not have executed that lease.

The 12th Defendant further stated that Plaintiff, by his own showing, breached fundamental terms of his purported lease by parting with possession thereof without the concern of the lessor and by failing or refusing to pay rent there for. 12th Defendant then therefore counter claimed for the following:

- a. A declaration that the purported lease dated the 17th day of January 1980 is not the deed of Nana Busumukura II.
- b. Further or in the alternative an order forfeiting the said lease for fundamental breach.

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

- (a) Whether or not the Plaintiff's father's land had a valid lease with the Stool of Takoradi.
- (b) Whether or not the farms of the Defendants lie within Plaintiff's land.
- (c) Whether or not the tenancy agreement between the plaintiff's father and the Defendants was on Abunu or Abusa basis.
- (d) Whether or not the Defendants can attorn tenancy to the Stool of Takoradi.

The Court sees the following as additional issues to be determined:

- (i) Whether or not the 7th Defendant took lease or assignment from the Plaintiff's father.
- (ii) Whether or not the 12th Defendant is entitled to have the Plaintiff's lease forfeited for grounds of fundamental breach.

In his evidence in chief to the Court, the Plaintiff alleged that his father gave the land to the Defendant Tenants on Abusa bases. He also attached the lease granted his father by the predecessor of the 12th Defendant in 1980 which was admitted but not marked but filed 22/06/18.

Plaintiff alleged that his father was sharing the food crops from the farms with the Defendants on 'Abusa' basis prior to their cultivation of cocoa. The agreement to share on 'Abusa' basis was tendered but not marked but it was also filed on 11/06/2017.

According to him, the agreement was abided by until the death of his father when the 3rd Defendant had a misunderstanding with one of his siblings called Iddrisu Agbenyo who was permanently staying on the farm and that the conduct of the 3rd Defendant instigated the remaining farmers to also become reluctant to share the produce from their farms.

Plaintiff contended that since 1992, the Defendants have failed to pay any share to them and they have also denied the Plaintiff's title to the land.

Plaintiff further averred that there is no dispute relating to the land neither is there any case pending in the High Court, Sekondi or any Court about the Plaintiff's ownership to the land, the subject matter of this dispute.

According to the Plaintiff, the Defendants cannot atone tenancy to the Stool of Takoradi while the lease agreement made between Nana Busumakurah II and Alhaji Abdulai Wutsah Agbenyo dated 17/01/1980 still subsists. That the Defendants deny the Plaintiff's title to the land and for that reason cannot continue to stay on the land in dispute. After his evidence in chief, the Plaintiff did not call any witness.

The evidence of the Defendants, except 7th Defendant, which was given by the 1st Defendant on his behalf and on behalf of the others is that sometime in January, 1990, himself and his brother who is the 2nd Defendant and one Kweku Gyan took a grant of land from the Plaintiff's late father, Alhaji Abdulai Wutsah Agbenyo at Der-es Salam for farming purposes and that they took ten (10) acres each and the lease was reduced into writing and he referred to the copy attached to the Plaintiff's witness statement. He alleged that later,

other tenants including the other Defendants also joined them by taking various grants from the Plaintiff's father. 1st Defendant contended that they were sharing the proceeds with the Plaintiff's father without any problem till he died. He alleged that after the death of the Plaintiff's father, they continued to share the food crops and the proceeds of cocoa until sometime in 1994 when they occurred a problem with one of the Plaintiff's siblings called Iddrisu who stayed with them on the farm.

According to the defendants, the said Iddrisu started harvesting food crops belonging to the farmers without their consent and after he persisted on the said behaviour, they reported him to the Plaintiff and other siblings but no action was taken by them so the farmers decided to stop him and reported the matter to Nana Yaw Nketsiah but the Plaintiff refused to attend his call. According to 1st Defendant, it was at this meeting which the Plaintiff failed to attend where the 12th Defendant informed them that, there was a litigation between him (12th Defendant) and the people of Wassa over the ownership of the land and so he (12th Defendant) needed the support of all those working on the land to support him in the litigation.

The 1st Defendant contended that when the 12th Defendant asked for their support, they informed the Plaintiff about it but he did not do anything and they being afraid that they will be ejected from the land as a result of the litigation acceded to the demands of 12th Defendant only for the Plaintiff to drive them away from the farms.

1st Defendant added that they have at all times expressed their preparedness to abide by the terms of the agreement with the Plaintiff and they have made the Plaintiff aware of their position to share the proceeds in accordance to the agreement.

He said it is not true that they denied or are denying the title of the Plaintiff to the land.

The evidence of 7th Defendant is that on 27/04/83, his late father took an assignment of a parcel of land from the Plaintiff's late father comprising a land size of twenty-five (25) acres and the assignment was registered with the Lands Commission Secretariat, Sekondi as document number LVB/WR 309215 and SDI 1042/84 as he tendered a copy which was admitted as exhibit '1'.

It was his further evidence that his late father paid valuable consideration for the said land and he tendered a copy of the receipt which was marked and admitted as exhibit '2' and continued that the Plaintiff's late father wrote various letters indicating the transfer of his interest in the parcel of land to his late father. He tendered exhibit '3' and '4' as copies of such letters and concluded that it is not true that his late father took the land on 'Abunu' tenant basis and prayed that the Plaintiff is not entitled to his claims against him.

The 12th Defendant who testified per an attorney alleged that the Stool of Takoradi's attention was drawn to a lease document purported to be signed by Nana Busumakura II on 17/1/1980 which documents he said was produced by the Plaintiff. He alleged that the land which forms the subject matter of the said lease forms part of the Stool land of Takoradiman.

According to 12th Defendant, at the time the said document was alleged to have been signed by the said Nana Busumakura II, he was advanced in age, and as a result of his medical condition, he was infirm and senile, was blind and could therefore not have read and signed the Lease Agreement. He contends that the lease agreement dated 17/01/1980 is not the document of Nana Busumakura II and that even if it is held to be valid, the Plaintiff has forfeited their interest by breaching the provision of the lease by failing to pay the rent reserved under the lease.

12th Defendant attached exhibit '2' which is a search he allegedly conducted at the office of the Administrator of Stool Lands to show that the Plaintiff has been in arrears of payment since 1989 and has also failed to pay any rent. He further stated that the Plaintiff has assigned his interest in the said land and granted leases to several other persons without the knowledge and consent of the Takoradi Stool.

It was the further contention of the 12th Defendant that the Plaintiff failed to support the 12th Defendant in litigation with Wassa and Dominase who were claiming ownership of this land and so contended as follows that:

- a. Declaration that the purported lease dated 17/01/1980 is not the deed of Nana Busumakura II.
- b. Further or in the alternative, an order forfeiting the said lease for fundamental breach.

In the case of **Gihoc Refrigeration & Household Products Ltd. Vrs. Hanna Assi (2005-2006) SCGLR 458**, it was held that:

"Since the enactment of NCRD 323, therefore, except otherwise specified by statute, the standard of proof (the burden of persuasion) in all civil matters is by preponderance of the probabilities based on a determination of whether or not the party with the burden of producing evidence on the issue has, on all the evidence, satisfied the judge of the probable existence of the fact in issue. Hence by virtue of the provisions of NCRD 323, in all civil cases, judgement might be given in favour of a party on the preponderance of the probabilities rather than on an archaic principle which might not accord with reason or common sense".

In was also held in the case of **Nortey (No. 2) vrs. African Institute of Journalism and Communication & Others (No. 2) [2013-2014] 1SCGLR**

703 that:

“Without any doubt, a Defendant who files a counterclaim assumes the same burden as a Plaintiff in the substantive action if he/she is to succeed. This is because a counter claim is a distinct and separate action on its own which must also be proved according to the same standard of proof prescribed by Sections 11 and 14 of NRCD 323, the Evidence Act (1975)”.

In resolving the issues, Court will determine issue (a):

- (a) Whether or not the Plaintiff’s father’s land had a valid lease with the Stool of Takoradi; and
- (e) Whether or not the Defendants can attorn tenancy to the Stool of Takoradi together since they are interrelated.

The Plaintiff tendered an indenture dated 17th January, 1980 which is a lease agreement made between his father Alhaji Abdulai Wutsah and Nana Busumakura II of Takoradi Division in Ahanta District of the Western Region. The document was filed on 22/06/2017 and for some unknown reasons, it was not marked. The land area covers a total area of five hundred and seventy-three (573) acres and was leased for a term of fifty (50) years.

This is the document the 12th Defendant denies is the deed of the then Nana Busumakura II. The 12th Defendant’s denial was based on the allegation that even though the land in dispute forms part of the Takoradi lands, Nana Busumakura II at the time of the signing of the lease was infirm and senile. He contended also that Nana was an illiterate and blind at the time and so could not have signed the said lease at the time.

A careful scrutiny of the lease agreement shows that it was signed by Nana Butumakura II together with his Ebusuapanyin who also signed same. Other members of the clan who attested by Thumbprinting were the Queen mother, a Linguist and one Elder. The Plaintiff states that this lease to his father was validly done but the 12th Defendant thought otherwise. It is legally expected that the party who alleges has the onus of prove of that allegation. If the lease was not the deed of Nana Busumakura II, the 12th Defendant should have proved that to the Court. If none of Nana's witnesses are alive at the time of the pendency of this suit, there should be somebody who could have been called to come and speak to this lease which the 12th Defendant alleged is invalid and not the deed of Nana Busumakura II. Also, if there is anything invalid about this deed, it is surprising that Nana Busumakura III, the 12th Defendant when he took over as the overlord of Takoradiman, has not written any letter or called any meeting with the Plaintiff and his siblings to complain about the invalidity of this lease which covers a magnificent land area of 573 acres but decided to wait to raise this issue in this suit.

It is a popular holding in the case of **Mojolagbe vs. Larbi (1959) GLR 190** where a party makes an averment in his pleadings which is capable of proof in a positive way and the averment is denied, that averment cannot be sufficiently proved by just mounting the witness box and reciting the averment on authority without adducing some corroborative evidence.

It was held also in the case of **Quao vs. Squire (1978) 1GLR 250** per Taylor J. that:

*"The onus of proof rested on the one who pleaded
non est factum to establish it".*

The 12th Defendant did not establish or prove his allegation of non est factum made before this Court. The Court therefore rejects the 12th Defendant's allegation that the Lease

Agreement before Nana Busumakura II and that of the Plaintiff's father was not the Deed of Nana Busumakura II. Since the Deed is Nana's Deed and there has been no re-entry, the Defendants cannot attorn tenancy to the 12th Defendant.

Issues (b) and (c) which are:

- (b) Whether or not the farms of the Defendants lie within the Plaintiff's land; and
- (c) Whether or not the tenancy agreement between the Plaintiff's father and the Defendants was on 'Abunu' or 'Abusa' basis will also be determined together.

On the issue of whether or not the farms of the Defendants lie within the Plaintiff's land: the evidence of the 1st Defendant who testified for all the Defendants except the 7th Defendant stated that, "sometime in January, 1990 myself and my brother who is the 2nd Defendant then known as Yaw Badu and Kweku Gyan respectively took a tract of land from the Plaintiff's late father Alhaji Abdulai Wutsah Agbenyo at Dar-est-salam for farming purposes ... Later on, the other Defendants were also given portions of the land by the landlord (Plaintiff's father) on the same terms but those were not reduced into writing. All of us took charge of our various portions and cultivated the land and maintained the farms ourselves".

Prior to the above testimony, the Defendants in their joint defence have stated at paragraph 4 of their defence that "The Defendants admit having been granted pieces of land by the deceased Alhaji Agbenyo but agreement was for an Ebusa tenancy to be documented upon maturity of the farms at different times".

It was stated in the case of **Kusi & Kusi vrs. Bonsu (2010) SCGLR 60 at 78-79 per Wood CJ** that:

"It is an elementary principle of law that in civil litigation, where no issue was joined as between parties on a specific question, issue or fact, no duty was cast on the

party asserting it to lead evidence in proof of that fact or issue ...” See also Or. 11 r 13(1) of C.I. 47.

It is clear from the evidence given by the Defendants and the statement in their defence that they admit taking all the land in which their farms are located from the Plaintiff's father. There is no issue joined by the parties on this fact and so the Court finds that the lands on which all the Defendants have their farms lie within the Plaintiff's land.

The next issue to be determined is whether or not tenancy agreement between the Plaintiff's father and the Defendants was on 'Abusa' or 'Abunu' basis.

On the above issue, the Defendants relied on the agreement between the Plaintiff's father and them which was tendered as exhibit and filed on 22/06/2017 which was also not marked for some unexplained reasons, and stated that the terms of that agreement stipulated that if the farmers were to maintain farms until maturity of the cocoa, the farm will be divided into three (3) (Abusa) with the farmers being entitled to two-thirds ($\frac{2}{3}$) whilst the landlord would be entitled to one-third ($\frac{1}{3}$) but if the landlord was to maintain the farm, then the landlord would be entitled to two-thirds whilst the farmer would be entitled to one-third. This actually was what the land tenancy agreement between the Plaintiff's father and the Defendants dated 01/01/1990 stated at paragraph 3. Even though the Defendants alleged that the said agreement was not signed before the death of the Plaintiff's father, that is not the case on the face of the agreement. The Plaintiff's father signed it with his witnesses and the 2nd Defendant Yaw Badu, as he then was, also signed.

In their evidence, the Defendants stated that they took care of their respective farms sharing the food crops with the Plaintiff's father without any problems until his death.

In their defence also, the Defendants stated at paragraph 4 that they took land from the Plaintiff's father but the agreement was for Abusa tenancy which was to be documented upon maturity of the farms.

The Plaintiff in his statement of claim contended at paragraph 7 that "while the said Alhaji Abdulai Wutsah was alive, he entered into agreement with the Defendants on share cropping basis also known as Abunu.

In paragraph 9 of his witness statement however, the Plaintiff stated that "during the lifetime of my father, he was sharing the food crops from the farms with the farmers on Abusa Basis. This was before the cultivation of cocoa by the farmers. The Plaintiff is here seen to be saying in his statement of claim that the agreement between his father and the Defendants was on Abunu basis in his statement of claim but on Abusa basis in his evidence to the Court.

In the case of **Adom vrs. Marfo (2012) 38M.L.R.G. 68**, it was held that:

"A change in the version of an appellant between the statement of claim and the evidence is fundamental in nature as not to be seen as a variation but a conflict in his case that has the effect of disentitling him to relief on the ground that he had departed substantially from his case and accordingly his case should not have been given a favourable consideration by the learned trial Judge".

Apart from the above inconsistency, the Plaintiff could also not prove his allegation that the agreement for the crop sharing was on Abunu as he alleged. He could also not prove that they supplied the inputs to the Defendants for the farming purposes to merit the

sharing on Abusa where two parts of the three whole will go to him (Plaintiff) and one part to the Defendants as the alternative arrangement on the agreement.

The Court therefore accepts the Defendants version that the share crop agreement between the Defendants and the Plaintiff's father was on Abusa basis and not on Abunu basis with 2/3 going to the Defendants.

The next issue for determination is the first additional issue of whether or not the 7th Defendant's father took a lease from the Plaintiff's father.

The 7th Defendant testified for himself and gave a different defence from the other Defendants. His evidence was that he is not a tenant on the land he occupies even though the land he occupies form part of the larger parcel of land covered by the Plaintiff's father's lease.

According to him, on 27th April, 1983 his late father took an assignment of a parcel of land from the Plaintiff's father. He alleged that the said assignment was twenty-five (25) acres and was registered with the Lands Commission Secretariat, Sekondi as Document Number LVB/WR/3092/15 and SDI 1048/84 which copy he tendered in evidence as exhibit '1'. The Plaintiff denied that his father gave any assignment to the 7th Defendant's father.

In cross-examination of him by the Defendant's Counsel on 21/05/18, the Plaintiff answered this way;

Q: In respect of the 7th Defendant's father, your father gave him an assignment of 25 acres of land because they were colleagues in the Army?

A: Never true, my father did not.

Q: And your father executed a document dated 22/04/1983 and

registered at Lands Commission?

A: Not true. 7th Defendant's father and others went to make a blank indenture, he was an illiterate and he did not read it. Later when he got to know that was what was happening, he stopped it. He did not sign the rest of the documents. He even took them back. I even have a copy.

From the above, the Plaintiff alleges that his father did not assign any land to the 7th Defendant's father and that indenture was fake and not even signed by his father. On the contrary, the Deed of Assignment allegedly made by the Plaintiff's father to the 7th Defendant's father which is exhibit '1', is seen as signed by the Plaintiff's father in the presence of a witness. The schedules on the assignment indicate that the total assigned land is 25.0 acres and it covered the unexpired term of the Assignor on his original lease granted by the predecessor of the 12th Defendant. Again, the schedule states that the assignment was done after prior consent has been obtained from the head lessor.

The Plaintiff did not challenge that the signature on the assignment was not that of his father. He stated that his father did not sign while in fact, his father signed.

It is also clear from the records that the signature on the assignment of the Plaintiff's father is the same signature on the headlease executed between the Plaintiff's father and his grantor, the Takoradi Manhene on 17/01/1990. Again, the signature on the assignment is also the same as the signature on exhibit '2' which is the receipt given to the 7th Defendant's father by the Plaintiff's father after he paid the consideration of Ten Thousand Cedis (¢10,000.00) to him. It is also the same signature on the letter the Plaintiff's father wrote indicating his consent in the transfer of those 25 acres to the 7th Defendant's father dated 26/04/1983. The Plaintiff, based on the above evidence on record, cannot convince this Court that his father did not sign the assignment or did not assign the said parcel of land

to the 7th Defendant's father. The legal effect of a signature was stated in the case of **Inusah vrs. D.H.L Worldwide Express (1992)1GLR 267** that:

"The general rule was that when a document containing contractual terms was signed, then in the absence of fraud or misrepresentation, a party of full age and understanding was bound to the contract to which he appended his signature".

The Plaintiff could not prove any fraud in this assignment and the Court therefore accepts the fact that the Plaintiff's father assigned 25 acres plots out of his lands to the 7th Defendant's father and so the 7th Defendant is not entitled to the terms as given to the other Defendants.

The last issue is whether or not the 12th Defendant is entitled to have the Plaintiff's lease forfeited for a fundamental breach of terms.

In his defence, the 12th Defendant stated that "the Plaintiff by his own showing breached fundamental terms of his purported lease by parting with possession thereof without the consent of the lessor and by failing or refusing to pay rent there for". It is for this reason that he counterclaimed for a declaration that the purported lease dated 17/01/1980 is not the deed of Nana Busumakura II or in the alternative, an order for forfeiting the said lease for fundamental breach.

In his evidence in chief, the 12th Defendant alleged that Plaintiff has breached the terms of the lease by his failure or refusal to pay the Rent reserved under the said lease and he tendered exhibit '2' which is a search report from the Administrator of the Stool Lands indicating that Plaintiff was in arrears from 1989.

It has been decided earlier that the allegation that the Deed between the Plaintiff's father and Nana Busumakura II which resulted in the head lease is the Deed of Nana Busumakura II so any prayer for forfeiture based on that cannot be considered. There is no proof that there is any breach.

The next is the issue of the non-payment of rent to the Administrator of Stool Lands. As usual, paragraph 2(a) and (b) of the Lease Agreement entreats the lessor to pay all rents and taxes to the appropriate institutions at the specified times which is usually yearly.

Paragraph 4(a) provides that the Lessor can re-enter after a written notice to the lessee to pay the unpaid rent that has been neglected thence, "the demise shall absolutely determine".

The above provisions make it clear that when the lessee fails to pay the requisite rents or taxes, the lessor can re-enter after a notice to pay has been refused.

In the instant case, there is no evidence on record that the failure to pay any rent to the Stool Lands has been brought to the notice of the Plaintiff. The 12th Defendant did not tender any such notice addressed to the Plaintiff for such a non-payment despite the evidence from the Stool Lands that payment is in arrears from 1989. The Plaintiff cannot have the lease forfeited without any notice of this non-payment of rent having being brought to his notice. It is clear that the Plaintiff is hearing this notice only here in this Court.

The Court therefore rules that the lease cannot be forfeited without notice of the breach to the Plaintiff for him to attempt to remedy the breach.

Section 57(c) of Lands Act 2020, Act 1036 which is the same as the provisions in the Conveyancing Decree, 1973 (NRCD 175) now repealed requires a lessor who intends to re-enter or forfeit any lease under a provision in a lease for a breach of a covenant condition or agreement in the lease to;

- (i) Specify the particular breach
- (ii) Require the lessee to remedy the breach complained of if the breach is capable of remedy ... and the 12th Defendant has not done any of the above and the Law Provisions specify that if the above are not done, the right of re-entry or forfeiture is not enforceable by a Court action.

If the 12th Defendant believes that the Plaintiff has breached a fundamental condition of the lease, the 12th Defendant should follow the right procedure to have the lease forfeited.

Having said the above, the Court hereby dismisses the counterclaim of the 12th Defendant. The Court also rules that the 7th Defendant's father had a valid assignment as between him and the Plaintiff's father so the 7th Defendant cannot be subject to the terms given to the other Defendants.

Having said the above, the Court hereby grants the Plaintiff's claim (a) and declare title to all that parcel of land described in paragraph 5 of the statement of claim in favour of the Plaintiff.

On the claim (b) which is recovery of possession, the Court orders that since the Defendants except 7th Defendant agreed throughout the proceedings that they are ready to do the bidding of the Plaintiff, the Court orders the parties to meet and their differences sorted out especially where the Court has ruled that the contract between Plaintiff and the Defendants was 'Abusa' basis and not 'Abunu'.

- It is seen on record that a Receiver Manager was appointed by this Court on the 18th day of December, 2013. The parties and their respective Counsel should meet and see how much has been collected and how it will be shared in accordance with the decided terms.
- The Defendants alleged that they paid something to the 12th Defendant when he called upon them to do so. This payment they did in their volition since they knew that their grantor is the Plaintiff's father and not the 12th Defendant.
- The Defendants are therefore ordered to render accounts or earnings of cocoa to the Plaintiff from 1992 to 2011. Relief 'C' is also granted but parties may negotiate on it.
- Relief (d) which is for perpetual injunction against the Defendants is refused since they have agreed, as said earlier, that they are ready to go by the terms of the Plaintiff's Agreement.
- Cost of Four Hundred Ghana Cedis (GH¢400,00) is awarded against each of the Defendants except the 7th Defendant in favour of the Plaintiff.

(SGD)

H/H MICHAEL K. AMPADU

CIRCUIT COURT JUDGE