CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON WEDNESDAY, 22ND FEBRUARY, 2023

SUIT NO. C1/15/14

GRACE COKER ANNAN	**-**	**PLAINTIFF**
VRS		
1. **ATTOH HIOB**	}	**DEFENDANTS**
2. **DIANA AKOSUA**		

JUDGMENT

Per her writ of summons and attached statement of claim dated the 14th day of May, 2014, the plaintiff claims against the defendants is for;

i) Declaration of title to all that piece or parcel of land situate, lying and being at Gbetsile, Tema in the Greater Accra Region, containing an approximate area of 0.19 acre or 0.08 hectare, more particularly described in a schedule contained in the statement of claim

ii) Recovery of possession

iii) Damages for trespass

iv) Perpetual injunction restraining the 1st and 2nd defendants by themselves, their agents, assigns, privies, workmen, servants and however described from interfering, dealing with or having anything to do in any manner whatsoever with the land, subject matter of this suit.

Per her statement of claim, plaintiff and her husband acquired a parcel of land in August 2003. That they took possession of the said land and commenced construction of

a one bedroom structure on the land in 2006. That they put a caretaker in occupation of the said property.

Further that by a lease dated 20th day of December, 2011, the said land was demised to the plaintiff for a term of ninety nine (99) years commencing from 20th day of December, 2011. That in 2009, the 2nd defendant trespassed unto her land and removed the corner pillars she had erected. That she confronted the 2nd defendant who admitted to removing the pillars and promised to replace same.

Plaintiff further averred that she and her family moved to live in the property and in 2011, the 1st defendant also trespassed unto her land, pulled down the wooden fence and destroyed cement blocks that she had on the land.

She further averred that having been in lawful possession of the land all this while, the defendant is estopped by his own conduct from challenging her title to the land.
The 1st defendant averred that he also acquired his land from the same family as the plaintiff. He denied trespassing unto part of the plaintiff's land. That the size of the plaintiff's land is lesser than what she is claiming. That the plaintiff by her own averment erected corner pillars with her husband without a surveyor demarcating same after buying the land.

Further that he and his wife acquired over a half plot of land in 2005. That after payment, the surveyor of their vendors affixed corner pillars for them. That they thereafter took occupation and built a 4 bedroom house on the land.

That the plaintiff's attorney came to them one day to claim that they had trespassed unto their land. That the matter was reported to the assembly woman and after three

visits to the site which culminated in three measurements, it was found that the plaintiff's land had not been encroached on by the 1st defendant.

That the plaintiff instituted an action in this very court but withdrew same in April, 2014 after the court ordered them to submit their site plans for a composite plan to be prepared. That the plaintiff and her attorney engage in conduct which constitutes a nuisance as they chant, play the maracas and shout as a mode of worship which disturbs the peace of the area.

1st defendant prayed for;

1. An order to restrain plaintiff attorney from disturbing the peace of his neighbours
2. Title to a plot of land lying and being at Gbetsile and contained in approximate acre of 0.10 acre (0.04 hectare) measuring 64ft on the North East, 64.6ft on the South East, 68.5 ft by a proposed road on the South West and 66.1ft which piece of land is more particularly delineated on a site plan
3. Perpetual injunction restraining the plaintiff and her attorney by themselves, agents, assigns, privies, workmen, servants and howsoever described from interfering, dealing with or having anything to do in any manner whatsoever of defendant's land

The 2nd defendant in her statement of defence contended that together with her husband, she acquired her land in 2004. Her vendors are the same as that of plaintiff and the 1st defendant.

That when the plaintiff claimed that they had trespassed unto her land, their vendor came in and measurements were taken at the site. The matter was resolved and in the

company of their vendor, the assembly woman and some others, the plaintiff agreed to let the issue go in order to promote good neighbourliness.

That 2nd defendant then decided to construct her fence wall to forestall any future litigation. That there is no trespass unto the plaintiff's land and even if there was, the plaintiff is estopped from claiming same having been part of a meeting at which she agreed that the boundaries of the parties be kept.

The plaintiff filed a reply and statement of defence to counterclaim and denied the claims of the plaintiff.

At the application for directions stage, by an order of the Court dated the 11th day of March, 2015, these issues were set down for trial;

1. Whether or not the plaintiff is the bonafide purchaser and/or owner of the land without notice of any encumbrance whatsoever, the land having been regularly and lawfully conveyed to him by Emmanuel Amankwah, head and lawful representative of the Sanshie family of Gbetsile.
2. Whether or not the 1st and 2nd defendants trespassed unto plaintiff's land and caused damage to her property.
3. Whether or not the plaintiff having been in undisturbed possession, 1st and 2nd defendants are estopped from challenging her title to the disputed land.
4. Whether or not the 2nd defendant purchased the land in issue from Akweteh Amankwa, the son of the late chief of Gbetsile
5. Whether or not the dispute between the 2nd defendant and the plaintiff was resolved at the meeting organized by the plaintiff
6. Any other issues arising out of the pleadings.

THE EVIDENCE OF COURT WITNESS

C.W.1 is an officer from the Lands Commission, Accra, Survey and Mapping Division. He tendered in evidence EXHIBIT C1, a composite plan prepared upon the orders of the Court. His findings were that the 1st and 2nd defendants have each encroached on the plaintiff's land to the East and to the North by 10 feet each.

THE EVIDENCE OF PLAINTIFF ATTORNEY

In his evidence in chief, plaintiff attorney tendered in evidence EXHIBIT A as the power of attorney donated to him by the plaintiff.

His evidence is that in 2003, he and plaintiff approached Mr. Emmanuel Amankwa, head and lawful representative of the Sanshie family of Gbetsile, Tema and acquired the land in dispute for valuable consideration of Ghs 700. That an indenture was executed on the 20th of December, 2011 between them. He tendered same in evidence as EXHIBIT B. He also tendered in evidence the receipt of payment as EXHIBIT C.

That the plaintiff built a wooden fence and erected corner pillars around the land soon after acquisition. Plaintiff also presented her documents to the Land Title Registry for first registration of the land and was presented with a yellow card on 8th May, 2013. He tendered same in evidence as EXHIBIT D.

That sometime in 2009, the 2nd defendant trespassed unto plaintiff's land and destroyed her corner pillars. That when she was confronted, she admitted to same and promised to replace them but has failed to do so till date. That 2nd defendant has since gone ahead to construct a fence wall on the portions of plaintiff's land.

That sometime in 2011, the 1st defendant trespassed unto plaintiff's plot, destroyed her wooden fence and cement blocks that plaintiff had placed on the land. That plaintiff immediately reported the 1st defendant's conduct to the police. Upon advise of the

police, the matter was referred to the Assemblywoman for resolution but the 1st defendant did not show up.

THE CASE OF THE 1ST DEFENDANT

According to the 1st defendant, he and his wife acquired their land in 2005 for valuable consideration from Mr. Akwetey Annan. It measured 65*75 feet. They were issued with a receipt. In, 2012, they executed a lease agreement with their vendor. He tendered the receipt and lease in evidence as EXHIBIT 1 series. That he and his wife built a house on the land.

That at the time of acquiring their land, plaintiff had already acquired her land which was a half of his and had built a single room on her land. That 2nd defendant and her husband were also in occupation of their land before he and his wife acquired theirs. After he built his house, plaintiff and her husband moved to live in their single room and later built a 2 bedroom house.

That plaintiff and her husband did not have a bathroom when they moved into their single room and he had to give them some of his blocks to construct a temporary bathroom. That the said temporary bathroom partly encroached unto his land and so he informed the plaintiff and her husband who told him that they would move it when he is ready to construct his fence wall.

However, when they were about to construct their fence wall, the plaintiff and her husband refused to move the temporary bathroom. They invited their grantor into the matter and upon measuring the land, told plaintiff and her husband that they had encroached into his land. They then agreed and he constructed his fence wall.

That plaintiff and her husband thereafter started quarrelling with him and his wife and the 2nd defendant and her husband. That the plaintiffs did not build a fence wall around their land. It was only the front part of their land that they erected this fence wall and the youth in the area came to destroy same because it encroached into the street.

He denied destroying plaintiff's cement blocks and said it was some of the cement blocks used to construct the temporary bathroom that got damaged when they were being removed. That the plaintiff and her husband fought with the mason who was constructing his fence wall and the matter ended up at the police station. The Assembly woman of the area and their vendors settled the matter, resolved the boundary issue and asked the plaintiff not to disturb him in the construction of his fence wall.

That the elders of the land said all of them have exceeded their boundaries and so they must maintain whatever they had.

THE CASE OF 1ST DEFENDANT'S WITNESS

According to DW1, all the parties acquired their land from the same vendor by name Akwetey Amankwa. He was present when the parties acquired their lands and served as a witness to the receipts issued to the defendants. That he was present when the land was demarcated to all the parties.

That the plaintiff bought half a plot of land, and so did the 1st and 2nd defendant. That it was one plot that was shared for the plaintiff and the 1st defendant.

Further that at the time, a plot of land was 100*80 feet but there were excesses on the ground. The place was not well demarcated and since they used man power to do the demarcations, there were some overlaps. That even if plaintiff had some excesses, his

plot cannot be one plot. That plaintiffs only constructed a wooden fence in front of their house many years after 1st and 2nd defendants had built their house. That he did not know who destroyed the fence wall.

Further that the boundary issues between the parties is not a strange one in the area and so the vendors instructed that each party should keep to where they are because they all encroached unto the excess land.

THE CASE OF THE 2ND DEFENDANT

According to the 2nd defendant, she acquired two plots of land from Mr. Akwetey Amankwa in January, 2004. She tendered in evidence two receipts evidencing the said purchase as EXHIBIT 2 and 2A. That she was later issued with an indenture which she tendered in evidence as EXHIBIT 3.

She continued that the plaintiff attorney and plaintiff acquired their land eight (8) months after theirs. Further that she built on her land and constructed a fence wall. That the plaintiff attorney and 1st defendant had a dispute over their boundary. The matter was resolved by their vendor, the assemblywoman and some others.

That in resolving the dispute, the plaintiff attorney claimed that she had also trespassed unto their land. Their lands were measured and the matter was resolved. She denied ever destroying plaintiff's pillars or trespassing unto their land.

CONSIDERATION BY THE COURT

Prior to considering the merits of the case per the evidence on record, I must state that issues one, three and four have become moot per the pleadings and evidence on record. In the case of ***Mrs. Vicentia Mensah v. Numo Adjei Kwanko II [2017] DLSC 5600,*** Anin

Yeboah JSC (as he then was) held: *"It must, however, be made clear that a court of law is not bound to consider every conceivable issue arising from the pleadings and the evidence if in its opinion few of the issues could legally dispose of the case in accordance with the law"*.

The said issues are;

1. Whether or not the plaintiff is the bonafide purchaser and/or owner of the land without notice of any encumbrance whatsoever, the land having been regularly and lawfully conveyed to him by Emmanuel Amankwah, head and lawful representative of the Sanshie family of Gbetsile.
2. Whether or not the 2nd defendant purchased the land in issue from Akweteh Amankwa, the son of the late chief of Gbetsile
3. Whether or not the plaintiff having been in undisturbed possession, 1st and 2nd defendants are estopped from challenging her title to the disputed land.

Georgina Wood C.J. (as she then was) held in the case of ***Fatal v. Wolley [2013-2014] 2 SCGLR 1070*** as follows: *"It is sound learning that courts are not tied down to only issues identified and agreed upon by the parties at pre-trial. Thus, if in the course of the hearing, an agreed issue is clearly found to be irrelevant, moot or even not germane to the action under trial, there is no duty cast on the court to receive evidence and adjudicate on it, the converse is equally true. If a crucial issue is left out, but it emanates at trial from either the pleadings or the evidence, the court cannot refuse to address it on ground that it is not included in the agreed issues*." See the cases of ***In Re Asamoah (Deceased); Agyeiwaa & Ors. v. Manu [2013-2014] 2 SCGLR 906***.

Applying the ratio decidendi in the Supreme Court's decisions to this case, I find issues one, three and four to be moot and irrelevant. This is because all the parties in this action have averred in their pleadings that their grantor is the Sanshie family of Gbetsile. That they each acquired the land from the

family is not in dispute at all. They have a common vendor and no one is challenging the right of the said vendor to alienate land to the parties.

Indeed, they all testified that in the course of this dispute, their common vendor had to come unto the land to determine their boundaries. There is also no dispute that each of them legally acquired the land by paying valuable consideration to their vendor. Indeed, there is no dispute as to the order by which they each acquired the land from the said vendor. The 2nd defendant had acquired her interest first, followed by the plaintiff and then the 1st defendant.

The main issue which has led them to this court is the extent of each other's boundaries and not the capacity of each other's grantor or the validity of each other's acquisition. This is an issue of how much land each party acquired and the boundaries of the said land. On that basis, I find that issues one, three four are moot. I would accordingly not waste precious judicial time in addressing what is not in issue.

On the relevant issues, I would first consider;

1. ***Whether or not the 1st and 2nd defendants trespassed unto plaintiff's land and caused damage to her property.***

The claim of the plaintiff is that both the 1st and 2nd defendants have trespassed unto her land. The defendants deny trespassing unto the plaintiff's land. By denying her claim of trespass, the plaintiff had put her title in issue and she must prove it in order to be successful on her claim.

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.'*

The plaintiffs having made a claim and the defendant not only denying same but making the 1st defendant making a counterclaim, both sides bear the burden of leading cogent, material and relevant 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 defendant by his 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.***

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.***

As this is a claim and counterclaim for declaration of title, the parties must as enunciated in a plethora of cases including **i**n the case of ***Yehans International Ltd. v. Martey Tsuru Family and 1 Other [2018] DLSC 2488*** by Adinyira JSC "*It is settled that a*

person claiming title has to prove: i) his root of title, ii) mode of acquisition and iii) various acts of possession exercised over the land … This can be proved by either traditional evidence or by overt acts of ownership in respect of the land in dispute. See also the case of ***Thomas Cobbinah Yaw Asiedu v. Isaac Kwofie [2018] DLCA 4916,*** per Agyemang J.A. See also the decisions in ***Mondial Veneer (Gh.) Limited v. Amuah Gyebi XV [2011] 1 SCGLR 466 and Thomas Cobbinah Yaw Asiedu v. Isaac Kwofie [2018] DLCA 4916.***

On issue one, as already indicated, there is no dispute about the validity of each parties acquisition in terms of their root of title and their vendor. The parties all have a common vendor. This is an issue of boundaries.

The plaintiff attorney, per EXHIBIT B which is a lease between the plaintiff and their vendors, acquired all that piece or parcel of land measuring 0.19 acre or 0.08 hectare. Per the receipt of purchase dated the 24th day of August, 2004 i.e EXHIBIT C, the said land measured 110*75 feet.

The 1st defendant's claim is that his land measured 65*75 feet. Per EXHIBIT 1A which is the indenture, his land measures 0.10 acre or 0.04 hectares. Per his receipt of purchase; EXHIBIT 1; the land measures 65*75 feet.

Per 2nd defendant's EXHIBIT 2, which is the receipt of purchase dated the 29th day of January, 2004, she and her husband acquired a piece of land measuring 80*100 feet. Per EXHIBIT 3, which is their lease agreement, their land measures 0.30 acre or 0.12 hectare.

Although the 1st defendant claimed in his evidence in chief that the plaintiff's land measured a half of his, from his own documentary evidence, particularly his indenture,

that cannot be true. His land which measures o.10 acre or 0.04 hectares cannot be more than the plaintiff's land which measures 0.19 acre or 0.08 hectares. These delineations are contained in the very lease granted to each of them by their common vendor. Per their respective leases, it would appear that the size of the 1st defendants land is rather half of the plaintiffs' land and not the other way round.

Again, although the 2nd defendant in paragraph 7 of her evidence in chief said she and her husband bought two plots, under cross examination by learned counsel for the plaintiff at page 115 of the record of proceedings, she answered that they bought one and a half plots. That she knew this based on the representation by her vendors although same was not supported by the receipt of purchase.

To further muddy the waters, DW1 who in his testified that he was present when all these persons acquired their lands and also present when their land were demarcated for them, testified in paragraph 4 of his evidence in chief that each of the parties acquired a half plot of land. That it was one plot of land that was shared for the plaintiff and the 1st defendant. Indeed, plaintiff admits that DW1 was present when the land was being measured for he and his wife.

His testimony is in direct contrast to the evidence of 1st defendant whom he testified for as 1st defendant was claiming that his land far exceeded that of the plaintiff by a half. DW1 claimed to have been present when all the lands were demarcated to each of the parties.

The issue of boundaries led the court to order for a composite plan. Same was prepared and tendered in evidence as EXHIBIT C1. The surveyor testified and was cross examined by both lawyers.

Under cross examination by learned counsel for the plaintiff at page 46 and 47 of the record of proceedings, he had answered;

Q: So based on the work, has any of the parties encroached into plaintiff's land and by how much?

A: If you use the site plan of the plaintiff you will realize that the ground work for both 2nd and 1st defendant has encroached at 10 feet each.

Q: So both defendant have encroached plaintiff's land.

A: Yes, my Lord.

C.W. 1 maintained his claim under vigorous cross examination by learned counsel for the defendant when he answered at page 65 of the record of proceedings that;

Q: Show us the indication on the measurement indicating on this composite plan of the encroachment area.

A: My lord, I believe I have stated it before that is the 1st defendant's ground work has shifted about 10 feet south and the 2nd defendant's also has a shift of 10 feet north.

Q: I put it to you that what you stated earlier is that the site plan and not the ground work has shifted.

A: Yes, my lord. My lord both the site plan and the groundwork all shifted but it is the site plan that shifted the 10 feet for both the 1st and 2nd defendants.

I have no basis to dispute the findings in EXHIBIT C1. It was prepared by the Lands Commission and the witness who appeared in Court gave a good account of himself. Indeed, this was the third report being ordered by the Court for the superimposition of the parties site plans on the ground. CW1 was consistent in his evidence under cross

examination and did not shift the goal post at any time. He stood by his findings under rigorous cross examination.

Composite plans prepared by surveyors, if credible, must not be overlooked in ascertaining the identity of land claimed. The apex Court per Ansah JSC emphasized the special role surveys, maps among others play in the determination of land suits in the case of ***Nii Kofi La Family v. Attorney General (J4/37/2014) [2015] GHASC 10 (28 May 2015)*** when it held as follows: "*Thus in actions for declaration of title to lands, charts, maps, surveys, and plans play pivotal roles in determining issues at stake for they are presumed to be authentic".*

Also, in the consolidated suits of ***Nene Narh Matti & 2 Others v. Osei Godwin Teye and Samuel Lamm Oyortey & 2 Others v. Osei Godwin Teye, Civil Appeal No. J4/13/2017, dated 22nd November, 2017 (Unreported),*** Dotse JSC held: *"It must be noted that, since Exhibit "CE1", is the composite Plan, it is a very important document whose bearing on the case must be really incisive. This is because it is the Survey Plan which positions the lands as shown to the Court appointed surveyor by the parties during the survey as well as the superimpositioning of any site plans or land documents that they have in relation to court judgments as well as any overt acts of ownership and of trespass, shown to the surveyor during the survey if at all".*

It is a legal known that the evidence of an expert witnesses is only prima facie evidence. According to Brobbey JSC in his book "Practice and Procedure in the Trial Courts and Tribunals of Ghana, 2nd ed at page 103" "*an equally important point to note is that expert evidence is only a prima facie evidence and it should not be taken as a substitute for what the court has to decide''* Although the composite site plan is not binding on me, it serves as

useful guide and I must propound reasons if I am to rejects same. See the case of ***Kuagbenu v. Spencer (J4/58/2013) GHASC 10 (3rd June, 2015)***.

The expert witness gave a good account of himself to the court and I have no cause to doubt his credibility or the authenticity of his evidence. He did not appear biased or prejudiced against any of the parties and testified in an objective manner as expected of a court witness. I have no reason to reject the findings in the composite plan or reduce its probative value.

EXHIBIT C 1 constitutes prima facie evidence and as same was not discredited under cross examination by any of the parties, I would accept the evidence for what it is; prima facie evidence of identity of the parties land per their respective site plans and prima facie evidence of the fact that the defendants have both encroached on the plaintiff's land by 10 feet to the North and to the East.

Upon these considerations and in reliance on the law, I find EXHIBIT C1 to be an authentic document which after superimposition of the parties respective site plans on the land, shows that the 1st and 2nd defendants have indeed encroached unto the plaintiff's land by 10 feet each.

That is in tandem with the claim of the plaintiff. According to plaintiff attorney under cross examination by learned counsel for the defendants at page 86 of the record of proceedings;

Q: *Plaintiff claims the 1st defendant and the 2nd defendant have encroached unto her land. Kindly tell the court how much they have both encroached.*

A: Both of them have encroached by 10 each on both sides.

Q: Can you tell the court what exactly 10 is?

A: 10 feet.

I hereby find that the 1st defendant has trespassed on plaintiff's land by 10 feet to the east and the 2nd defendant has also trespassed on plaintiff's land by 10 feet to the North.

On the claim of damages, according to the plaintiff, the 1st defendant caused damage to her wooden fence wall and also damaged her cement blocks whilst the 2nd defendant caused damage to her corner pillars. The 1st defendant admits that damage was caused to the wooden fence of the plaintiff which he says was only at the frontage of plaintiff's property but says it is the youth in the area who caused the said damage because it encroached into the street.

The 1st defendant's witness in his evidence in chief said he did not know who caused the said damage to the plaintiff's wooden fence wall although he admits that same was damaged. The plaintiff attorney under cross examination by learned counsel for the defendants at page 83 and 84 of the record of proceedings insisted that it is the 1st defendant who led the youth of the area to destroy the fence wall.

Q: *And that the youth of the neighbourhood pulled your fence down because they said the fence was in a road or a pathway or an access route.*

A: It is the 1st defendant who led the group to damage my fence wall and not the youth of the town.

The 1st defendant at page 102,103 and 104 of the record of proceedings, under cross examination by learned counsel for the plaintiff, had this to say about the damaged fence wall of plaintiff;

Q: *In your paragraph 13, you say that it was certain youth in the area who destroyed the wooden fence of the plaintiff. Is that so?*

A: My lord, it was because of his encroachment into the road that is why the youth destroyed it. It was not me.

Q: Were you present when this youth were destroying that fence wall?

A: No please.

Q: So then, I am suggesting to you that you are not being truthful to this court.

A: I am being truthful.

Q: Between your property and the plaintiff's property, is there a major road between your properties?

A: No my lord. There is a road in front of our property.

Q: The contention between you and plaintiff is not on that road. It is between your properties.

A: That is so my lord.

Q: So the said youth that you were talking about who you are claiming had destroyed her wooden fence, that could not be the case because the wooden fence was nowhere near the road.

A: He did not construct any wooden fence in between us.

Q: So again, I am putting it to you that you are not being truthful to this court.

A: I am being truthful to the court.

Q: *You told this court in paragraph 13 of your witness statement that it is not true that … is that correct?*

A: Yes please.

Q: Now the wooden fence, was it on just one side of the boundary?

A: Please, there was no wooden fence wall on the land.

Clearly, the 1st defendant was being economical with the truth. This is because aside from the fact that he was contradicting himself as to the existence of a fence wall or otherwise on plaintiff's land, his other answers raised more questions. Since he was not present when the plaintiff's fence wall was destroyed as he says, how did he know that it was the youth who destroyed the said fence wall? How did he also know their reason for the said destruction?

His own witness who from the evidence is quite close to the family of their grantor knew nothing about who had destroyed the plaintiff's wooden fence wall. The youth of the town could not have acted on their own volition except there is evidence that that is the practice in the town. There is no such evidence before this court.

I believe the evidence of the plaintiff attorney that it is the 1st defendant who led the youth to destroy the plaintiff's wooden fence wall. As that destruction was unlawful, I find that the plaintiff is entitled to her claim for damages.

With regard to the damage by the 2nd defendant, plaintiff's case which her attorney insisted on under cross examination at page 91 of the record of proceedings is this;

Q: *Now the three parties that is the plaintiff and the two defendants, can you tell the court who fenced his or her property first?*

A: *2nd defendant was the first to erect her fence. When she was about to erect the fence, she told me that if she takes it from Attoh Hiob's land, she would have to erect her fence wall into my land and I refused. The 2nd defendant told me that she is from Larteh and I am from Senya and we are both Guans and so I should permit her. I still refused and I place someone there to ensure that she does not trespass. That was when I was going away. It was a friend that I asked to ensure that 2nd defendant does not erect the wall through my*

land. When I returned however, I realized that my pillar had been removed and the fence had been erected. I asked about it and the 2nd defendant did not give me any response hence this court action. 2nd defendant's husband is here in court and he can attest to this.

Q: By your own assertion, the wall or encroachment would have affected the 1st defendant too because of the nature of the land.

A: The side I am referring to, the 2nd defendant would take it from the 1st defendant's land and the same fence would have to take a turn and another turn rather than come into my land. 2nd defendant said she did not want that and that the wall should come straight here the encroachment into my land.

Although the 2nd defendant denied the claim of the plaintiff, I found the plaintiff attorney to be a credible witness. He testified of events, circumstances and facts from which I could infer the existence of his claims. I thus find that the 2nd defendant caused damage to the plaintiff's corner pillars. Plaintiff is thus entitled to her claim for general damages.

The principle in awarding damages is to as much as possible, place the party back in the position she was in prior to the damage. The supreme court in the case of **Royal Dutch Airlines v. Farmex Ltd [1989 -90] 2 GLR 623** held that … the principle adopted by the courts was restitutio in integrum, ie if the plaintiff has suffered damage not too remote he must, as far as money could do it, be restored to the position he would have been in had that particular damage not occurred. What was required to put the plaintiffs in the position they would have been in was sufficient money to compensate them for what they had lost''.

I hereby award general damages of fifteen thousand Ghana cedis (Ghs15,000)against the 1st defendant and general damages of three thousand Ghana cedis (Ghs 3,000)

against the 2nd defendant in favour of the plaintiff. Due to the current high inflation rates in the country per the monthly inflation figures put out by the Ghana Statistical Service, the defendants are to pay the amount to the plaintiff within 45 days failure of which the amount would attract interest at the current commercial bank interest rate from the date of judgment till the date of final payment.

2. ***Whether or not the dispute between the 2nd defendant and the plaintiff was resolved at the meeting organized by the plaintiff***

On this issue, ***Section 26 of NRCD 323 provides that***

"except as otherwise provided by law, including a rule of equity, when a party has, by his own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest''.

Although the formulation of the issue does not indicate estoppel, the only reasonable conclusion that can be reached if I resolve the issue in the affirmative would be to hold whether or not it serves as estoppel against the plaintiff.

The undisputed facts are that the plaintiff and 1st defendant ended up at the police station over the construction of the 1st defendants wall. The matter was eventually to be settled by their vendors, the Assembly woman and others. The plaintiff claims that the resolution went in her favour and so do the defendants. Whereas the 1st defendant says that he was asked to continue the construction of his wall, the plaintiff says it is the

opposite. The 2nd defendant also says that it was resolved that the plaintiff's claim of her trespass was not a major issue. The plaintiff denies this.

The plaintiff says he proceeded to Court with this action when the 1st defendant disregarded the directive of their vendor and continued to build the fence wall. None of the parties testified as to the time lines of these events prior to this court action.

Most importantly, there is no evidence of any specific resolution which all parties assented to which would serve as estoppel against them. Each party sings a different tale of the resolution and DW1 who appeared to testify for the 1st defendant could not be of much help to this court.

Although he testified that the resolution led to the chief asking each party to stay within their present boundaries as everyone had taken more of their land, his earlier evidence that each party acquired a half plot of land which clearly is disputed by the composite plan and the parties themselves means that I cannot attach much weight to his evidence.

I find accordingly that there was no amicable resolution of the dispute as to each party's boundaries by their vendor and others.

The final issue is the omnibus one. In considering this, although the 1st defendant averred that the plaintiff attorney by his mode of worship made a lot of noise and was causing a nuisance to him and other neighbours and thus sought for the court to restrain him, 1st defendant did not lead any material evidence on this claim. Indeed, he did not even testify on same in his evidence before this court. That is taken to mean that he has abandoned his claim.

In the case of ***Ofori Agyekum v. Madam Akua Bio (Dec'd) substituted by Agartha Amoah, Civil Appeal No. J4/59/2014, dated 13th April, 2016, (Unreported), Benin JSC*** speaking for the apex Court explained the principle better when he held: *"…Where no evidence is adduced on a fact that has been pleaded, it is treated as having been abandoned by the pleader, the court does not call it into question in its judgment. The court's only duty is to consider the evidence the party has profferred in determining whether or not he has met the right standard of proof*"**.**

Accordingly, I find that he has failed to prove his claim and same is dismissed.

Finally, I am mindful of the admonition of Benin JSC that "in arriving at whether or not a party has proven its case on a balance of probabilities, the court must as stated "examine every piece of evidence and evaluate same, taking into account who has been more consistent, pointing out contradictions and inconsistencies in the two versions and arrive at an overall assessment of the competing stories''. See the case of ***Ofori Agyekum vrs Madam Akua Bio (Dec'd) substituted by Agartha Amoah [2016] 98 G.M.J Vol. 1 37.***
After a careful consideration of the evidence adduced, I find that on a balance of probabilities, the plaintiff is entitled to her reliefs. Plaintiff is hereby declared as the owner by a lease of all that piece or parcel of land situate, lying and being at Gbetsile, Tema in the Greater Accra Region, containing an approximate area of 0.19 acre or 0.08 hectare with the boundaries as contained in EXHIBIT C1.

She is entitled to recovery of possession. The 1st and 2nd defendants are perpetually restrained by themselves, their agents, assigns, privies, workmen, servants and however so described from interfering, dealing with or having anything to do in any manner whatsoever with the land with the plaintiff's land.

The 1st defendant's counterclaim is dismissed in limine.

Counsel for the plaintiff prayed the court to award costs of thirty thousand Ghana cedis each (Ghs 30,000) against the defendants. 1st defendant made a counter offer of five thousand Ghana cedis (Ghs 5,000) and 2nd defendant made a counter offer of four thousand Ghana cedis (Ghs 4,000).

In awarding costs, I take into account the fact that this case has been in court since 2014 and has gone through six (6) judges in this Court. Various adjournments have been taken primarily on account of the defendants counsel. However, the parties or their representatives have always endeavoured to be present in Court. Thus the personal cost by way of travelling to and from this Court would appear to be the same as they all live in the same area.

They are also quite old; particularly the plaintiff attorney and the 2nd defendant. 2nd defendant has been quite ill during these proceedings and so awarding excessive costs may not be equitable. However, the plaintiff must receive some reasonable costs for her troubles including filing and legal fees throughout the almost nine (9) year lifespan of this case.

Accordingly, costs including legal costs of ten thousand Ghana cedis (Ghs 10,000) is awarded against each of the defendants in favour of the plaintiff.

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

EMMANUEL DARKWA FOR THE PLAINTIFF PRESENT

RICHARD AKPOKAVIE FOR THE DEFENDANTS