CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON WEDNESDAY, 31ST MAY, 2023

SUIT NO. C11/79/21

SIMON TAMAKLOE	**-**	**PLAINTIFF**
VRS		
REBECCA DZIWORNU	**-**	**1ST DEFENDANT**
TDC DEVELOPMENT COMPANY	**-**	**2ND DEFENDANT**

JUDGMENT

Per the reliefs endorsed on his Writ of Summons and Statement of Claim, the Plaintiff seeks the following reliefs from this Court;

a) A declaration that Plaintiff is the new owner of all that residential property known as H/NO.MKT/A 51, COMMUNITY 4, TEMA
b) An order of specific performance directed at the 2nd Defendant to change the name/title to all that residential property known as H/NO. A 52, COMMUNITY 4, TEMA into the name of the Plaintiff
c) Any equitable or legal relief that the Honourable Court deems fit
d) Legal and Solicitor's costs.

UNDISPUTED FACTS

The facts grounding this action are not challenged by all sides. The 1st Defendant herein took out an action on 6th February, 2012 against the Plaintiff herein at the High Court, Land Division, Tema. The title of the suit is ***Rebecca Dziwornu and Anor v. Simon Tamakloe (Suit No. E1/60/2012)***. The Defendant therein now Plaintiff mounted a counterclaim.

Judgment in the said suit was delivered by the venerable High Court Judge on the 29th day of May, 2018 in favour of the Defendant. The judgment ordered the Plaintiff to execute all necessary documents required for the transfer of title/ change of ownership to the Defendant at the offices of the 2nd Defendant herein.

The Plaintiff filed a notice of appeal but has failed to prosecute the appeal. The Defendant filed an entry of judgment, which has been duly served on the Plaintiff. She has refused to comply. Attempts by the Defendant to have the 2nd Defendant herein change ownership into his name per the court order has also failed.

At the application for directions stage, these issues were set down for trial;

1. Whether or not the Honourable Court has jurisdiction to determine the matter since the substantive reliefs have already been determined by the High Court Tema Land Division in suit number E1/60/21 entitled Rebecca Dziwornu and Anor vrs Simon Tamakloe.

2. Whether or not the principle of res judicata can be upheld in this matter hence abuse of court process

3. Whether or not the 2nd Defendant is under a legal obligation to amend its records with the name of the Plaintiff as new owners of House No. MKT/A51, Community 4, Tema.

THE CASE OF THE PLAINTIFF

Plaintiff in proof of his claim tendered in evidence exhibit A and B as the Writ of Summons and Statement of Claim of the Defendant which she issued at the High Court in 2012. He further tendered in evidence EXHIBIT C as a copy of his Statement of Defence and Counterclaim in the said suit. He also tendered in evidence a certified true copy of the judgment of the Court in the said suit as EXHIBIT D.

His evidence is that per EXHIBIT D, the High Court dismissed the claims of the Plaintiff and upheld his counterclaim. The court ordered the 1st Defendant herein to execute all necessary documentation at the offices of the 2nd Defendant in order to transfer ownership of the property into his name.

Plaintiff says that all attempts to have the 1st Defendant comply with the orders of the court has failed and 1st Defendant is bent on ensuring that he does not enjoy the fruits of his labour. He says that he visited the property in September, 2021 and realized that 1st Defendant has rented same out to tenants and is enjoying the proceeds.

He demanded that the 1st Defendant and the tenants yield vacant possession to him but 1st Defendant's son by name Adams Fiagbor attempted to attack him and he had to run for his life. He caused his lawyer to write to the 2nd Defendant formally requesting for a change of ownership. He tendered in evidence EXHIBIT E, as a copy of the said letter.

The 2nd Defendant in its response to the letter indicated that it can only effect a change of ownership by receiving a deed of assignment or other transfer initiated by the 1st Defendant or an order of a court of competent jurisdiction. It is based on this that he has instituted the instant action for this Honourable court to make direct orders to the 2nd Defendant for the necessary amendments to be made in accordance with EXHIBIT D.

THE CASE OF THE 1ST DEFENDANT

According to 1st Defendant, the Plaintiff cannot seek to enforce the judgment of a High Court in a lower court. She claims that the size of the land is 0.12 acres and the adjoining six-bedroom house which the Plaintiff is laying claim to is not part of the property in dispute, and that same is distinct and separate from House No. MKT/A/51.

THE EVIDENCE OF DW1

DW1 in her testimony said she is the daughter of the 1st Defendant. She says that the Plaintiff is seeking to attach a six-bedroom property that is distinct and separate from the land for which judgment was entered for him against her mother. She says that it is she and her siblings who built the said six-bedroom house and the Plaintiff's action is a means to waste time.

THE CASE OF THE 2ND DEFENDANT

According to 2nd Defendant, its records currently show the 1st Defendant as the owner of the land and no steps have been taken by her to change ownership, that it became aware of the judgment of the court in August 2020. The 2nd Defendant says the judgment ordered the 1st Defendant to execute all necessary documents at its offices in favour of the Plaintiff .

The 2nd Defendant says further that although counsel for Plaintiff wrote to its outfit on the 6th of August, 2020 requesting it to unilaterally transfer ownership of the house into Plaintiff's name, a change of ownership can only be effected through a court order directed at its good self to so do, or by an assignment or transfer of the property initiated and duly completed by the lessee.

The 2nd Defendant contends that since the request was by the Plaintiff and did not fall under any of the means by which it could effect a transfer, it was unable to grant the request of Plaintiff. Finally, the 2nd Defendant says that there is no contract between itself and Plaintiff to warrant an order for specific performance against it.

CONSIDERATION BY COURT

The Plaintiff having asserted, bears the legal burden of proof on a preponderance of probabilities. See ***sections 10 and 11 of the Evidence Act, 1975 (Act 323).***

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.*** 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 for declaration of title, the Plaintiff must prove the following, as enunciated in a plethora of cases including 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.***

1. **Whether or not the Honourable Court has jurisdiction to determine the matter since the substantive reliefs have already been determined by the High Court Tema Land Division in suit number E1/60/21 entitled Rebecca Dziwornu and Anor vrs Simon Tamakloe.**

On issue one, in order for the court to be able to determine the issues, it must first be clothed with jurisdiction. It is trite that jurisdiction is a creature of statute and unless otherwise expressly conferred on a court, a court cannot suo motu clothe itself with jurisdiction where statute has not conferred same on it.

See the case of ***Republic v. High Court, Accra: Exparte A.G (Delta Foods Interested parties) [1999-2000] 1GLR 255*** where Acquah JSC (as he then was) held, "for a court has no power to grant itself jurisdiction or authority where the statute creating it did not vest it with that power''.

The Statute that created and vested the Circuit courts with power is the ***Courts Act, 1992, Act 459. In section 42 (1) (iii), Act 459*** provides that;

(1) The Civil Jurisdiction of the Circuit Court consists of

(a) An original jurisdiction in civil matters

(iii) in [causes and matters] involving the ownership, possession, occupation of or title to land

In the case of the ***Republic v. The Registrar Circuit Court. Agona Swedru; Exparte Mohammed Mustapha (Paul Gayina and 2 others –Interested Parties) DLCA 8667 (Delivered by the Court of Appeal on 17th May, 2012), the Court of Appeal, per Dennis Adjei JA*** held that the jurisdiction of the circuit court is *only limited* (emphasis mine) in cases of personal actions in tort of contract, recovery of liquidated claim or money, probate actions or L/A. Aside that, its jurisdiction, as provided for under section 42 of the court's act is at large.

The Circuit Court has concurrent jurisdiction with the High Court in causes or matters pertaining to the ownership, possession, occupation or title to land except matters involving stool land boundaries. **See *Land Law, Practice and Conveyancing in Ghana, 3rd ed. Page 209 by Dennis D. Adjei.***

Based on the above, as the first relief of the Plaintiff is for declaration of title, this court is clothed by statute to deal with the merits of the case. However, the issue is whether this Court has jurisdiction to determine the matter *since the substantive reliefs have already been determined by the High Court Tema Land Division in suit number E1/60/21 entitled Rebecca Dziwornu and Anor vrs Simon Tamakloe.) emphasis mine.*

In order to determine this, I must look to the judgment of the court in suit number E1/60/21. As already indicated, there is no challenge to the fact that the Plaintiff and Defendant herein have been before the High Court in a writ issued by the 1st Defendant herein and counterclaimed by the Plaintiff herein. The court after six years delivered judgment in the matter on the 29th day of May, 2018. The 2nd Defendant was not party to that suit. The said judgment was tendered in evidence by both sides and admitted and marked as EXHIBIT D.

In the said judgment, at page 2, the court referred to the reliefs sought by the parties. For the Plaintiff now 1st Defendant, she sought these reliefs against the Defendant now Plaintiff;

a. Damages for wrongful arrest
b. Damages for false imprisonment
c. An order to compel the Defendant to render account to all rent received from the Plaintiff's property with H/No. MKT A51, Community 4, Tema.

d. An order to restrain the Defendant and his agents and assigns from entering Plaintiff s' H/No. MKT A51, Community 4, Tema.

For the Plaintiff, then Defendant, he counterclaimed against the Plaintiffs therein for the following reliefs;

1. A Declaration that there is a binding and enforceable verbal contract between the Plaintiff and the Defendant for the sale of H/No. MKT A51, Community 4, Tema to the Defendant.
2. An order of specific performance of the contract made between the first Plaintiff and the Defendant for the sale of H/No. MKT A51, Community 4, Tema to the Defendant.
3. An order directed at the first Plaintiff to execute and file all necessary documentation at the offices of the Tema Development Corporation reflecting the change of name to the Defendant.
4. An order directed at the Plaintiffs to account to the Defendant for all rents collected from sitting tenants in the property from 2007 to date.
5. General damages against the first Plaintiff for breach of contract.
6. An order of perpetual injunction restraining the Plaintiffs, their servants, agents, privies, assigns, workmen or any person(s) claiming through them from interfering with Defendant's control, management and enjoyment of the property.
7. Legal and Solicitor's costs.

EXHIBIT A and B were tendered in evidence as the Writ of Summons and Statement of Claim of the 1st Defendant as Plaintiff therein and EXHIBIT C was tendered in evidence as the Defendant therein's Statement of Defence and Counterclaim. It is their

very claims that are repeated in the judgment of the veritable High Court Judge, Justice Alexander Osei-Tutu.

The court at page 19 of EXHIBIT D decreed and declared the following;

"The court therefore decrees and declares as follows:

a. That the entire claim of the Plaintiff is dismissed in limine.
b. That there is a binding and enforceable verbal contract between the Plaintiff and the Defendant for the sale of H/No. MKT A51, Community 4, Tema to the Defendant.
c. That specific performance of the contract made between the first Plaintiff and the Defendant for the sale of H/No. MKT A51, Community 4, Tema is ordered in favour of the Defendant.
d. That the first Plaintiff executes and file all necessary documentation at the office of the Tema Development Corporation reflecting the change of name to the Defendant within 14 days.
e. That the Plaintiffs render accounts to the Defendant for all rents collected from sitting tenants in the property from 2007 to date.
f. That Plaintiffs, their servants, agents, privies, assigns, workmen or any person(s) claiming through them are hereby restrained perpetually from interfering with the Defendant's control, management and enjoyment of the property.
g. That the first Plaintiff pays general damages of GH¢10,000.00 to the Defendant.
h. That all rents deposited into this Court be given to the Defendant.
i. That the GH¢6,000.00 paid into this Court by the Defendant be given to the first Plaintiff.

I award costs of GH¢5,000.00 against the Plaintiffs in favour of the Defendant."

Technically speaking, the Plaintiff herein did not seek for declaration of title in that case. However, the courts have long moved from points of technicality to focus on substance. In that vein, the decree (b) by the court that "there is a binding and enforceable verbal contract between the Plaintiff and the Defendant for the sale of House NO. MKT A 51, Community, 4, Tema to the Defendant'' coupled with reliefs (c) and (d) would be deemed as constituting more than sufficient declaration of title of the said property in the Plaintiff.

A reliance on the said judgment would lead any reasonable person to arrive at a conclusion that the court declared ownership of the said house in the Defendant. In the case of ***Agya Boakye Atonsah Prempeh v. Eric Ofei Kwarpong & Others [2018] DLCA 4436,*** Mariama JA decided: "*With respect to the Defendant relying on a judgment, what better proof can one offer than a judgment? A judgment is a documentary proof par excellence…*"

The Plaintiff in his testimony, particularly under cross-examination made it manifestly clear that his main purpose for being in this court is not for declaration of title as he considers that moot but rather for the court to make an order directed at the 2nd Defendant to change ownership of the property from the 1st Defendant's name into his name based on EXHIBIT D.

At page 22 of the record of proceedings, under cross-examination by learned counsel for the 1st Defendant, this is what transpired;

Q: The case between you and 1st Defendant ended with a judgment. Is that the case?

A: Yes, my Lord

Q: Is there anything wrong with the judgment why you have come back to the court?

A: Yes my Lord. I brought her here because the court ordered that she should transfer the document concerning the property into my name but she refused.

Then at page 25 of the record of proceedings, still under cross-examination by learned counsel for the 1st Defendant, he answered;

Q: *I therefore suggest to you that you were not satisfied and if you were, you would not find your way to this court*

A: I am satisfied but because they have not changed the name on the property, that is why I am here.

Q: So you came to this court for just change of ownership.

A: Yes please

Further at page 27 of the record of proceedings, he answered;

Q: *I suggest to you that when a party refuses to obey a court order, you do not go lower than that court for your orders.*

A: Please that is why I am here. This court can order for the change of name.

Q: I suggest to you that it is the High Court where you went to for the decision which you must go for a party refusing to obey a court order to be punished.

A: My Lord, I came here because I want the property to be transferred into my name and not because I want the 1st Defendant to be punished.

Q: And the fact that you have exhibited the judgment to your evidence in chief is to tell the court that you have a certain decision which must be obeyed. Is that not the case?

A: No my Lord. I am here for change of ownership.

The reason for the Plaintiff bringing this action is clearly for an order to compel the 2nd Defendant to change ownership in the property. That is contained in his Evidence- in-Chief and also in his answer under cross-examination at page 25 of the record of proceedings by learned counsel for the 1st Defendant .

Q: Why did you include TDC this time?

A: When I asked T.D.C to transfer the property into my name, they refused and that is why I added them.

According to Plaintiff, this has become necessary because he caused his lawyer to write to 2nd Defendant to change ownership of the said property based on EXHIBIT D but 2nd Defendant refused on the basis that it was not in accordance with its processes.

2nd Defendant admitted to this in its Evidence-in-Chief and also under cross-examination. At page 46-47 of the record of proceedings under cross-examination by counsel for the Plaintiff, the representative of 2nd Defendant answered,

Q: Now when the said judgment was handed over to you, it also came with instructions that per the said judgment, Simon Tamakloe was the new owner.

A: Yes my Lord.

Q: And there was a further request from the said Simon Tamakloe that based on the judgment, you should amend your records to effect his name as the new owner.

A: Yes my Lord

Q: However, you declined his request. Is that not so?

A: Not entirely so my Lord.

Q: can you please tell this court your reaction on response to his request?

A: My Lord, in our transfer process, we would need the lessee to come over to process the transfer into the new person's name and that is what we are waiting for now.

Q: So in the face of the unavailability or unwillingness of the lessee to come over to your office to facilitate the change of ownership, in the face of the judgment, what would you want to do.

A: My Lord, a court order would be responded to and the transfer would be done.

Still under cross-examination, but this time from learned counsel for the 1st Defendant, the representative of 2nd Defendant had insisted at page 48 of the record of proceedings that;

Q: And as a TDC employee, since you do not understand the judgment, there is nothing you can do?

A: I disagree my Lord.

Q: Tell this court, what you can do under this judgment.

A: My Lord, the lessee is supposed to avail herself for a transfer to be done into the new owner. In the absence of that we would need a court order to see to the transfer.

From the evidence, the 2nd Defendant would not change ownership of the property into Plaintiff's name even though the High Court had in all material sense, declared ownership of the property in the Plaintiff because the High Court had not made an express order for 2nd Defendant to effect the said transfer.

The only means by which the Plaintiff can have that done is for the 1st Defendant to go to the offices of 2nd Defendant and instruct them by the appropriate processes to effect the change. The 1st Defendant is unwilling to do this and has shown by her demeanour in this court, that she is as rude as she is recalcitrant. She was rude to the court throughout her cross-examination and not even a warning by her own counsel could make her desist from her attitude. By her actions, it appears that not even a conviction for contempt of court would get her to go to the offices of TDC to effect the change.

On this basis, I hereby find that the action of the Plaintiff in calling upon this court materially to order the 2nd Defendant to effect the transfer of ownership based on EXHIBIT D is well and proper and same lies within the court's jurisdiction.

2. **Whether or not the principle of res judicata can be upheld in this matter hence abuse of court process**

The plea of *res judicata* is a well-established part of our law and it is usually expressed to be based on a final judgment. In the case of ***In re Sekyedumase Stool: Nyame v Kese alias Konto [1998-99]SCGLR 476 at pg 478, Acquah JSC*** as he then was, delivering the judgment of the court said:*" the plea of res judicata is never a technical plea. It is part of our received law by which a final judgment rendered by a judicial tribunal of* ***competent jurisdiction on the merits is conclusive as to the rights of the*** *parties and their privies and, as to them constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action"*

The 2nd Defendant was not a party to the suit culminating in EXHIBIT D. It is neither a privy of the Plaintiff nor the 1st Defendant. None of the issues dealt with in that case

involved or revolved around the 2nd Defendant. That being so, no order was directed at them and they are not bound by the orders of the Court.

The Plaintiff now seeks an order directed at the 2nd Defendant to carry out an action which the 1st Defendant was ordered by EXHIBIT D to carry out and which she has blatantly and by sheer disregard of the High Court judgment, refused to do.

The 1st Defendant's claim is that she has appealed against the judgment of the court. She tendered in evidence EXHIBIT 1 as proof of same. EXHIBIT 1 is a notice of appeal dated the 12th day of June, 2018 which was filed at the Court of Appeal. The appeal is against the whole judgment.

It is elementary that an appeal does not operate as a stay of execution. The case of the Plaintiff is that since filing EXHIBIT 1, the 1st Defendant has gone to sleep and not taken any step to prosecute her appeal. 1st Defendant herself refused to answer any questions under cross-examination. Her witness who is her daughter and who says she accompanied 1st Defendant regularly to court in the initial case, testified and under cross-examination, answered at page 41 and 42 of the record of proceedings that;

Q: Now earlier on under cross-examination, you stated that you do not have any problem with the judgment that was given by the land court. Is that not so?

A: Exactly so my lord.

Q: Can you in your lay man's language, tell us what the judgment said for which you do not have any problem?

A: We were asked to transfer the ownership of MKT/A/51 to the Plaintiff .

Q: And to date your mother has failed and or refused to do that, is that not so?

A: My Lord, please my mother has not refused but the problem is after the judgment, she went for an appeal and it is still pending.

Q: If you know, has your mother been able to secure any order of that court stopping the enforcement of the judgment obtained against the Plaintiff .

A: As I am talking to you now, my Lord, no.

Q: I put it to you that since June 2018 when your mother filed the appeal, she has not taken any steps to vindicate her rights if she so has under the said appeal.

A: My Lord, please with the appeal, I do not know much about it.

From the answers of DW1, I can safely infer that since 1st Defendant filed the notice of appeal, she has not taken any fresh step and without a court order staying the execution of the said judgment, has refused to comply with the said judgment.

From the evidence on record, 1st Defendant has not only refused to cause the transfer of documents into Plaintiff 's name, but together with DW1 and her other children, has proceeded to return to the said house even after the court bailiffs executed the judgment of the court and granted vacant possession to the Plaintiff . At page 42 under cross-examination by learned counsel for the Plaintiff, DW1 answered;

Q: Now you would recall some years back that the Plaintiff with officers of the court and the police came to the house and took all of you out including yourself and gave same to him. Is that not so?

A: Yes my Lord.

Q: And you can confirm to this court as you stand here that you have found your way back to the house and that is where you are living now. Is that not so?

A: Yes, we are living in the house adjacent to the one under contention.

Q: Now when the court officers came to the house, they recovered from you and your mother the whole house including the adjacent one. Is that not so?

A: Yes my Lord.

Q: And as at now, you are back there.

A: Yes my Lord. This is to prove the fact that a part of the land is not part of MKT/A/51.

Based upon my holding in issue one and my finding herein, the principle of res judicata would not apply against the Plaintiff in this matter.

From the evidence, the principle of res judicata would rather apply to prevent the 1st Defendant and her agents, assigns, heirs and all those who claim through her from mounting a different claim which they could have mounted in the course of the trial before the High Court.

Ampiah JSC in ***In Re Kwabeng Stool, Karikari v. Ababio II [2001-2002] SC GLR 575 at page 580*** stated the principle thus:

"The doctrine or principle of estoppel is founded on the maxim **interest reipublicae ut sit finis litium**, meaning it concerns the state that lawsuits be not protracted". Also, no man ought to be twice vexed if it be found to the Court that it be for one and the same cause' (nemo dabet bis vexan si constat veriae quod sit pro una et aedem causa). If an action is brought and the merits of the question are determined between the parties and a final judgment is obtained by either, the parties are precluded, and cannot canvass the same question again in another action, although, perhaps, some objection or argument might have been urged upon the first trial which would have led to a different judgment …."

See also the dictum of Ansah JSC in the case of ***Agbeshie v. Amorkor [2009] SC GLR 594.***

1st Defendant and her witness mounted a claim that the judgment was in respect of a property belonging to their mother and not on all the property situated on plot number MKT/A/51 Community 4, Tema. According to the 1st Defendant and her witness, a six-bedroom house located on that property was not part of the land for which judgment was entered for the Plaintiff as same belongs to DW1 and her siblings.

At page 39-41 of the record of proceedings, DW1 had answered under cross-examination by learned counsel for the Plaintiff;

Q: Now the said house is sitting on land acquired by your mother from the 2nd Defendant, TDC.

A: Yes. The house under litigation is duly acquired by my mother and we the children had to build and we have no problem with the case or the judgment. The only problem as at now is that the Plaintiff is claiming a portion of the land which is an extension of the said land and that building is not part of the land and building under litigation. That building was acquired and built by my sibling and I after my mother acquired her land. And it is clearly shown at TDC.

Q: Can you please tell this court who acquired the portion of the land on which you say your siblings and your good self constructed the house?

A: After my mother acquired the land, there was a portion left and so we the children applied and acquired the land, we even helped our mother to build on her portion. That land is adjacent to that of my mother's.

Q: Do you have any document from TDC, to show to this court in support of your story that your siblings and your good self acquired the portion of land which you built a six bedroom house?

A: We started the processing but it has still not gone through yet but we have everything and it has been approved.

Q: Do you have a copy of the application your siblings and your good self wrote to TDC for a release of the said land to show to this court?

A: Yes my Lord but I do not have it here.

Q: If you are given an opportunity by this court, can you produce the said letter on the next adjourned date.

A: Yes. Because it was an additional land, you would realize that it was my mother who applied for it, because it was an additional land, she had to apply because she had the land already.

Q: Now I put it to you that your siblings and your good self do not have any interest in house number MKT/A/51, community 4, Tema.

A: Please, we have and it is clearly shown that the building is not part of house number MKT/A/51.

Q: Now do you know anybody by name George Fiagbor?

A: Yes please

Q: And you know as a fact that George Fiagbor, went to court with your mother against the Plaintiff herein?

A: Yes my Lord.

Q: And you also know as a fact that in that case, your brother who I believe is one of the siblings you talked about, never laid claim to the six bedroom house you are now trying to lay claim as an afterthought in this court.

A: I am not aware of that.

Q: In your paragraph 3 of your evidence in chief, you stated that you accompanied your mother to court on several occasions.

A: Yes, my lord

Q: So you know everything regarding that case when it was ongoing at the land court Tema?

A: Please it is true but it is not regularly – not always.

Aside the fact that DW1 by her act of shifting the goal post at will as to the land being in she and her siblings name and same being in her mother's name, I generally found her to be untruthful. She was denying the obvious; her own paragraph 2 and 3 of her Evidence-in-chief in which she had made it amply clear that she was very much in the know about the proceedings in the High Court Case.

From her own answers, the 2nd Plaintiff in the High Court case was her brother; one of the siblings who supposedly own the six bedroom house. She herself was also in the know. Yet, none of them had taken any steps to set out the claim that the property was distinct from their mother's property. That issue could have been raised at the trial for the court to determine same. It was not raised then and per the principle of res judicatam, it cannot be raised now.

In the case of ***Dahabieh v. S.A. Turqui & Bros [2001-2002]SC GLR 498***, holding (2) of headnotes at page 355:

> "(2) it is well-settled under the rule of estoppel that if a Court of competent jurisdiction has tried and disposed of a case, the parties themselves and their privies cannot bring an action on the same claim or issue. The rule covers matters actually dealt with in the previous litigation and matters that could have been brought up for determination but were not raised''.

Estoppel would operate against a party who has lost where he seeks to dispute the rem judicatam. ***In the case of Adjei III v. Adjedu II [1961] GLR 178,*** *the judicial* committee of the privy council held that "where a judgment has been given in a dispute between two

parties on a question of ownership, the party in whose favour the judgment was given is entitled to stand on his judgment''.

The Plaintiff is entitled to stand on his judgment against the 1st Defendant and her privies which in this instance include her six children. Particularly so as the vendor of the 1st Defendant, the 2nd Defendant insists that it is only one piece of land and there is no distinction.

2nd Defendant representative held on to this position under cross-examination by learned counsel for the Plaintiff and 1st Defendant. He answered at page 45 of the record of proceedings;

Q: Now do you know of any plot per your records known as MKT/A/51 community 4 Tema.

A: Yes, my Lord

Q: Now the said plot of land, aside of this plot, did it encompass any other plot under the same number?

A: No my lord.

Then at pages 49 and 50, he answered;

Q: So there is the old and the new land as far as 1st Defendant is concerned.

A: No my Lord

Q: I suggest to you that there is an old and a new portion belonging to the 1st Defendant.

A: My Lord, an additional land was granted to 1st Defendant

Q: And the specific performance of the land the judge referred to was to the old land or old site plan?

A: My Lord, the property number is 4 MKT A, 51 which is the land given to Rebecca Dziwornu

Q: I suggest to you that the specific performance is in reference to the old site plan which at all times, she transacted the business with the Plaintiff.

A: My Lord, our records have the property as 4 MKT A, 51 and that is what belongs to Dziwornu.

Q: So the site plan available to Plaintiff for the transaction is the size of the land in the old.

A: I am not aware of that.

Q: It is this clarity or want of clarity that is the reason why TDC cannot and would not seemingly do a transfer.

A: My Lord, our directive is on property number 4 MKT A 51 and we are ready to go by the instructions if the lessee as ground or if we accept an order from the court.

3. **Whether or not the 2nd Defendant is under a legal obligation to amend its records with the name of the Plaintiff as new owners of House No. MKT/A51, Community 4, Tema.**

The Plaintiffs admit that the 2nd Defendant was not party to his transaction with the 1st Defendant which culminated in the judgment of the High Court. It admits that 2nd Defendant was not even aware of the said transaction. Yet it seeks specific performance against the 2nd Defendant.

The doctrine of specific performance in land matters is premised on section 36 (2) of the Land Act, 2019, Act 1036. It provides for the application of the rules of equity in some instances of transfers of interest in land.

Specific performance applies in cases where a person has made a complete, substantial or partial performance of the terms of a contract of sale of land and the other party is refusing to dispose of the land. In such instances, where the land is ascertainable, specific performance would be ordered by the court where damages would not be sufficient to compensate the party who has performed his side of the contract by making payment. See page *196 of Land Law, practice and Conveyance (Supra)*.

As the 2nd Defendants were not parties or even privy to the verbal agreement between the Plaintiff and the 1st Defendant, the equitable remedy of specific performance cannot be awarded against the 2nd Defendant. I accordingly proceed to dismiss the claim for specific performance against the 2nd Defendant.

The Plaintiff however in its relief (c) prays for "any equitable or legal relief that the Honourable Court deems fit''. After a careful and exhaustive consideration of the evidence on record, I find that the 1st Defendant has made it abundantly clear to this court by her impertinent behavior that she would not walk to the offices of the 2nd Defendant to carry out the orders of the High Court.

Although the remedy of contempt is likely to lay against the 1st Defendant at the High Court for disobeying the judgment of the High Court specifically the decree to execute and file all necessary documentation at the offices of the 2nd Defendant into the name of the Plaintiff herein within fourteen days, the Plaintiff herein has indicated that his intention is not to have a Court punish the 1st Defendant but to have title transferred into his name by the 2nd Defendant .

The 2nd Defendant on its part stands ready and willing to abide by an order of a court directing it to transfer ownership of the property into the name of the Plaintiff.

Consequently, 2nd Defendant is hereby ordered to amend its records with regard to House no MKT/A/51, Community 4 Tema from the name of the 1st Defendant into the name of the Plaintiff. It is to do so within 30 days from the date of judgment.

This is an action that would have been needless had the 1st Defendant complied with the orders of the High Court and/or pursued her appeal. It appears she simply filed a notice of appeal to serve as a fetter on the enjoyment of the judgment obtained by the Plaintiff. It appears that she is willing and ready to do all she can to prevent the Plaintiff from enjoying the fruits of his labour including moving back into the said property with all her children even after a court execution had given vacant possession to Plaintiff.

It also includes making spurious claims that there are two distinct properties and the judgment covers only one of them when the evidence on record contradicts this. I find that the Plaintiff is entitled to full costs of this action against the 1st Defendant.

Accordingly, costs of ten thousand Ghana cedis (GH¢10,000) is hereby awarded against the 1st Defendant in favour of the Plaintiff.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

EDWARD METTLE NUNOO FOR THE PLAINTIFF

PRINCE KWAKU HODO FOR THE 1ST DEFENDANT

OPOKUWARE BOATENG FOR THE 2ND DEFENDANT