IN THE DISTRICT COURT HELD AT TAKORADI MARKET CIRCLE HELD
ON MONDAY THE 7H DAY OF NOVEMBER 2022
BEFORE HER WORSHIP CATHERINE OBIRI ADDO

SUIT NO. A1/22/18

THE TRUSTEES. PLAINTIFF
APOSTOLIC FREEDOM HOUSE CHAPEL INT
TAKORADI

VRS

1. MR ADOM. DEFENDANTS.
2. SAIED
3. ISA
4. KWESI BRONYA
5. AMINO
6. ACKON
7. NANA
8. IBRAHIM

ALL OF KOKOMPE
TAKORADI

JUDGMENT

This suit emanated from a writ of summons filed by the plaintiffs herein on the 1st day of June 2018 under the name "The Trustees Living flame Baptist Church International against the defendants herein for the following reliefs:

a. A declaration of title to all that piece and parcel of land lying at Kokompe, Takoradi and bounded by the main Kokompe road, plot nos. 19 and 20 and a proposed lane ana variously occupied by the defendants.
b. Recovery of possession of the land for use by the plaintiff
c. Perpetual injunction restraining the defendants, their workmen, agents, privies etc from interfering with the plaintiff's land.

Subsequently, the plaintiff on the amended the title of the suit pursuant to leave granted by the court on the 1st day of June 2018, where the name of the plaintiff was amended to "The Trustees Apostolic Freedom House Chapel International".

On the 9th day of July 2018, the plaintiff herein opened his case by giving viva voke evidence however the suit was adjourned for continuation of the plaintiff's evidence. Subsequently the case was started de novo and pleading order on the 29th day of November 2018. Parties proceeded to file their witness statements per the order of court after the close of pleadings.

PLAINTIFF EVIDENCE AT TRIAL

Plaintiff alleged he is the head of Trustees and give the evidence on his behalf and on behalf of the rest of the trustees of the church.

Plaintiff avers he was in need of a bigger land as the church grew in membership. He and some elders of the church approached the Anona Family of Apremdo who at the time had put up portions of their land for sale upon a hint to them by one Maame Efua. He approached the Anona Family of Apremdo to negotiate for the purchase of he disputed land under the then head of family Nana Gyan Kwofie a.k.a Mr Mensah. They agreed on a total purchase price of GH¢20,000.00 which he paid in full although he was not issued with a receipt. A lease was prepared in their favour by the Anona Family and same in evidence as exhibit A.

They took possession of the disputed land by erecting pillars on same. They aver, at the time the land was vacant, a rubbish dump and weedy. They tendered in exhibit B in proof of same. Later he hired bull dozers to level the land.

Plaintiff avers soon after thy finished with the structural works of the building on the disputed land, A task force comprising the Military, the Police, and the Navy in the company of the chief executive of Shama Ahanta East Assembly in the person of Mr Kwesi Nkrumah and demanded they stop work on the disputed land

and demanded building permit of same which he produced accordingly. According to the plaintiff, the task force came in the company of Ghana Water Company who laid claims over the ownership of the disputed land. They tendered as Exhibit C, photos of their wooden structure on the disputed land then. Plaintiff indicated, they brought an action against Ghana Water Company at the circuit court Takoradi and it came to light in the course of proceeding that the disputed land is a state land. Their grantor's the Anona Family abandoned the litigation. When he produced exhibit A for plotting, same was not plotted.

Around the same time, he was informed by one O'gray that the disputed land belongs to the Ghana Garages Association. He in the company of some of the trustees of the church went to see the executives of the garages Association and negotiated with them to buy the disputed land. They agreed on GH¢30,000.00 and he paid GH¢25,000.00 upon the understanding that, the garages association execute an assignment in the plaintiff favour after that the outstanding balance of GH¢5,000.00 would be paid to them receipts were issued to them and same in evidence as exhibit D.

Around the same time, one Farouk Barouke laid adverse claim to the disputed land and same was bought to the attention of the garages association who apologise they were trying to obtain portions of the land and assign same to the plaintiffs.

According to the plaintiffs, they again had the hint that the disputed land still belongs to the stated and as such they have trespass on same. They approached lands commission and was given a temporal licence for 3years they tendered the said licence in evidence as exhibit E.

Subsequent upon their attainment of a licence from the lands commission, they demanded a refund of the monies paid to the garages Association by letters which are in evidence as exhibits F, G and H respectively. But the association failed to

refund the GH¢25,000.00 paid to them. The garages Association rather wrote a protest letter to the land commission which said letter is in evidence as exhibit J and a reply by the lands commission in evidence as exhibit K.

Plaintiff avers, before the 3 years licence from the lands commission expired, they obtained a permanent lease from the lands commission tendered in evidence as exhibit P in April 2018.

According to the plaintiffs, sometime in 2006, the 5th defendant placed a container on portions of the disputed land. He was promptly confronted on same by the plaintiffs and demanded same be removed but 5th defendant promised anytime the land was needed he will remove same. They therefore permitted the 5th defendant to keep the container on the land. However, 5th defendant changed his behaviour and started renting portions of the disputed land to others including the rest of the defendants herein. Plaintiff avers the nature of work of the defendants is a complete nuisance to the church. The place has been taken by the defendants as such church members are unable to park their cars. On one occasion, damaged vehicles, and forklift were used to block the entrance of the church. The works of the welders emit smoke which is hazardous and harmful. Exhibits Q and R tendered to that effect. They therefore need their land from the defendants to enable them construct a wall to prevent further encroachment.

To corroborate their case, plaintiff called pw1 in the person of Rev Mrs Wosonyewana Yeboah. She avers the plaintiff church started operating in 2004 at Kwesimintsim. The place of worship was too small they decided to relocate. They were informed by one Mama Afua that the Anona Family of Apremdo would be able to give them a piece of land. They went to see the Anona Family of Apremdo and they were brought to the disputed land. After negotiation, they paid an amount of GH¢ 20,000.00 to the family she however not sure whether a receipt was issued in respect of same. The moment they took possession of the land and started

developing same, they were constructed by confronted by the military, navy, the chief executive of Shama Ahanta Metropolitan Assembly and the Ghana water company limited all of whom laid adverse claim to the land. They brought this to the attention of their grantors the Anona family of Apremdo who in tend sued the Ghana Water Company and SEAMA at the circuit court Takoradi. In the course of the proceedings, it came to light that the disputed land is a state land. Their grantors then abandoned the case.

According to pw1, they were later on informed by their daughter's husband that the disputed land belongs to the Ghana Garages Association. As desperate as they were since they had already started worshipping on the disputed land in 2006, without any investigations, of the claim. By the Garages Association, negotiated on the cost of the disputed land in the sum of GH¢30,000.00. They paid GH¢25,000.00 and the balance of GH¢5,000.00 was to be paid upon receipt of lease or assignment covering the land. And obtained receipts for the monies paid which she can identify same once seen.

While awaiting assignment from the Garages Association, they were approached by the officials from the lands commission that the disputed land belongs to the state. They proceeded to the lands commission, who issued them with a 3years temporal licence. They subsequently informed the garages association about the latest development and demanded a refund of their money but they refused and indicated they were in the process pf acquiring the land and to give them their assignment.

The Garages Association petitioned the lands commission in respect of the land granted to the plaintiff the lands commission replied the said Association letter and warned them to refund the plaintiff's money to them and not to sell lands at Kokompe Again.

Pw1 avers the plaintiffs were initially called Living Flame Baptist church international and that explains why some documents of theirs bears the said name. The name of the church has been changed to apostolic Freedom Chapel international.

Before the expiration of the 3years temporal licence granted to them by the land commission they put in an application for a permanent lease and same was obtained in April 2018. However sometime in 2006, plaintiff discovered one of the defendants by name Amino thus 5th defendant herein, placed a container on portions of the disputed land. He was confronted to move his container but he promise to remove it anytime the land is needed by the plaintiff.

Later 5th defendant brought the rest of the defendants to the disputed land. The defendants have blocked the access to the church by damage cars and forklift. The defendants park damaged cars haphazardly on the disputed land as such thy do not have a place to park their own cars.

According to pw1, plaintiff has decided to construct a wall around the church to protect themselves and the smells emitted from the works of the defendant when working.

Pw2 in the person of George Ayerekwa also known as Kwame George avers, he is a Deacon in the plaintiff church. Before the church was establish as Kokompe its present location, the whole place as weedy and unkept as well as vacant and people used to dump rubbish there, they were informed by the head pastor the disputed land belongs to the church as such he should keep an eye on same.

During the construction of the church, materials used to be kept at his shop. In the course of the construction of the church, a team of police, Navy, city Guards and personnel from Ghana Water Company including a Mayor of SAEMA one Mr Philip Kwesi Nkrumah came to the site to stop the workers which scene attracted a lot of spectators who hooted at them and covered by Sky power Tv at the time.

The head pastor provided temporal lease or licence wand permit to construct temporal structure. Upon completion of the church, a gate was erected in respect of some but defendants especially 5th defendant regularly brought containers to church site for sale and many a time he broke the gate and when asked to construct same, he refuses. The last time he broke same, the church failed to repair same up till date.

During Sundays, the defendants block access to the church which makes it difficult for them to park their cars. The situation is worse in rainy seasons they get the church dirty as they have to walk through stagnant waters. Pw2 avers there are containers, cars, body works all around the church making it clumsy and inconvenient.

Pw2 avers, sometime ago he was in church when someone threw a stone against the glass windows breaking it. The morning after the incident one mechanic named Joe approached him for him to apologise to the head pastor on his behalf as he was the person who threw the stone at the windows breaking it. But same has been replaced by the said Joe.

Pw2 avers he has been threatened severally by the defendants. On one occasion after church, he was called to a corner by the defendants' who threatened to kill him if he fails to quit attending the church. And 2nd defendant threatened to kill the head pastor. They reported same to the police.

DEFENDANTS EVIDENCE AT TRIAL.

5th defendant in the person of Aminu Iddrisu speaking on behalf of himself and on behalf of the rest of the defendants avers, in 1972, as a result of the beautification exercise carried out in Takoradi, the artisans were moved into their present location at Kokompe by the Government. According to the defendants, the disputed land is where they gather their scraps and have containers on same and they have been on the disputed land since 2000. Sometime in 2004, the plaintiff

representative came unto portion of the disputed land and gave an indication to erect a structure for his church. Since the defendants were the immediate settlers on the land in dispute, the cautioned the plaintiff representative against his intention which made him abandoned his plan.

Plaintiff representative again appeared on another portion of the disputed land and was again confronted by the defendants.

A meeting was scheduled between the defendants and the executives at GHAPOHA senior club house where the executives admitted they took money from the plaintiffs and issued them temporal squatters' receipt. According to defendants, the land granted to the plaintiff by the alleged executives were closer to where the defendants carry their business. And for a long time, they lived on the disputed land without any interference from the plaintiff. The plaintiff initially built a wooden structure on the disputed land and started holding church services. Later they started laying blocks within the wooden structure and masons and workers who brought their tools were kept in his container

They were therefore surprised when in 2018 plaintiff issues summons against them claiming ownership of the entire land and requesting the artisans to leave the land. According to defendants, the land alleged to be covered by the plaintiff indenture, does not cover the portion occupied by the defendants and the issue before the court is purely a boundary dispute with which appointment of a surveyor would determine the real question in issue.

Defendants further avers, although all lands of the Kokompe lands were released to the original owners, the portion claimed by the plaintiff is not what was granted to him. According the 5th defendant, he personally acquired portion of the land in dispute. He tendered exhibit 1 the site plan in respect of same in evidence. According to the 5th defendant, it is his acquired land together with other portions occupied by the defendants, that forms portions of their operations and they have

not trespassed on the plaintiff land as alleged by him. Plaintiff is therefore estopped from claiming their respective areas of operation by virtue of their long stay on the disputed land defendants further avers, plaintiff is not entitled to his claim.

The defendant called two witnesses to corroborate their case.

Dw1 in the person of Joe Aryetey avers he is the regional chairman of the Ghana national association of garages Kokompe branch. According to him, he is aware the plaintiff's chapel exist on their work premises at Kokompe and defendants are the members of the Association of Garages.

According to him, defendants are part of mechanics who have their fitting shops at various parts of Takoradi however the Sekondi Takoradi metropolitan Assembly STMA in quest to beautify the city, relocated them to Kokompe on a government land in 1972. According to him, in 1992, another batch of fitters which includes the defendants herein were also relocated to portions of the Kokompe lands. He further indicated in 1994, the then metropolitan Chief Executive LT. COL KAKU KORSAH set up a committee to review the development at Kokompe and their report, reinforces the position that the land at Kokompe was government land to the artisans for relocation and beautification purposes they tendered the said report in evidence as exhibit GA1. According to him, it is only members of the association of garages who are able to access and own lands at Kokompe. He avers the disputed land does not belon g to the plaintiff's but part of a bigger lands given to the association of garages by government and therefore the defendants are entitled to be on portion they have already occupied by virtue of their membership with the association.

Dw2 in the person of Robert Ekow Dadson, who avers he works at the physical planning department of the STMA as an assistant chief technical officer avers, the site plan of the plaintiff cannot be traced in their local plan. According to him,

based on their records, the plaintiff site plan with plot no. 18 does not conform to current scheme per dixcove hill Etuakrom fitters and other artisans site extension scheme. He tendered a copy of the local plan in evidence as exhibit RD1. According to him, based on this anomaly, the plaintiffs' site plan cannot be accurate as each site plan must necessarily conform to the planning scheme of the area in issue.

It must be noted that the court appointed a surveyor to survey the lands in dispute with the survey report in evidence as exhibit CW1.

After the close of the plaintiff case, both parties were asked to file their respect addresses which were compiled by both counsels.

ISSUES FOR DETERMINATION

1. WHETHER OR NOT THE PLAIANTIFF HAVE A VALID TITLE TO THE LAND IN DISPUSTE IF YES?
2. WHETHER OR NOT THE DEFENDANTS HAVE TRESSPASSED UNTO THE PLAIANTIFF LAND. IF YES
3. WHETHER OR NOT THE PLAIANTIFF IS ENTILED TO RECOVER POSSESSION OF SAME.

APLLICATION OF THE LAW AND EVALUATION OF THE EVOIDENCE.

The plaintiff bears the burden of persuasion under section 14 of the evidence Act 1975 NRCD 323 and was required to lead credible and sufficient evidence to establish his case on the preponderance of probability as provided under section 12 of NRCD 323.

The position of the law is that, in an action for declaration of title, the burden of proof is always put on the plaintiff to satisfy the court on the balance of probabilities. This being an action for declaration of title, the plaintiffs were required to lead credible and positive evidence to prove the identity of the land he claims, root of his title, mode of acquisition and various acts of possession

exercised over the land in dispute. Thus, in the case of MUNDAIL VENEER GH LTD V AMUAH GYEBU XV (2011) 1SCGLR 466@ 475 Georgina wood JSC said as follows:

"in land litigation, even where witnesses who were directly in volved in transaction under reference are produced in court as witnesses, the law requires the person asserting title and on whom the burden of persuasion falls, as in this instant case, to prove his root of title, mode of acquisition, and various acts of possession exercised over the subject matter land".

In this case the identity of the land is not in dispute. That been said the principle that comes to mind is that expounded in the case of FORI V AYIREBI (1966) GLR. The contention that, a party must prove the identity of a land in land disputes with certainty to enable the court decree title does not mean mathematical identity or precision. See the case of JASS C LTD & ANOTHER V APPAU & ANOTHER. I must say the description of the land as depicted in Exhibit P, appears to be sufficient enough to absolve the plaintiff from the evidential duty of showing positively the dimensions, and indeed the identity of his land especially when he claims to be entitled to declaration of title and an injunction against the defendants.

Also, in the case of CHANTEL V KOI (2011) 29 GMJ 20 CA, per Brown J.A, the court of appeal had this to say:

There are essential steps of proof which h are sine qua non to his success they are

a. Establishing am impeccable root of his grantor over a defined and identifiable area of land
b. Proving on a balance of probability that the area he claims falls within the area.

I will proceed to determine the issues starting from the first issue.

WHETHER OR NOT THE PLAIANTIFF HAVE A VALID TITLE TO THE LAND IN DISPUSTE?

In the case of AWUKU V TETTEH (2011) 1SCGLR 366 holding 1 the court held:

"In an action for declaration of title to land, the onus was heavily bon the plaintiff to prove his case. He must indeed show clear title. He could not rely on the weakness of the defendants' case……."

On proof of the plaintiff root of title and mode of acquisition, the plaintiff evidence is that they acquired the land the subject matter of the suit from the lands commission in April 2018. According to them before a formal lease was executed on their behalf in 2018, they were given a temporal license by the lands commission to occupy the disputed land the said license is in evidence as exhibit E. before the expiration of the 3years, temporal license they applied to the lands commission for a permanent lease to be executed on their behalf which same is in evidence as exhibit P.

According to the plaintiff, before they approached the lands commission for a licence and subsequently a lease, they had erected some wooden structure on the land as they initially thought the land belongs to the Anona family of Apremdo and they purchased same in the cost of GH¢20,000.00 afterwards they erected some pillars in respect of same. When they had the hint that the land belongs to the garages Association, they proceeded to the garages association and negotiated for cost of the land in the sum of GH¢30,000.00 upon which they paid GH¢5,000.00 leaving outstanding balance of GHC 5,000.00 to paid later by the plaintiff upon the production of documents pertaining to the land in respect of same.

From the evidence of the plaintiff suggest that they traced their root of title from the lands commission.

The exhibit P, shows an indenture properly executed by the lands commission in favour of the plaintiff dated the 13th day of April 2018.

The plaintiff in proof of its root of title called pw1 and PW2 to corroborate its case. Pw1 and pw2 avers, they legally acquired the land through the lands commission in

April 2018 before the expiration of the 3years temporal license granted to them by the lands commission.

It must be noted that the defendants never challenged the title of the plaintiff that they acquired their title from the lands commission.

In the case of SAMUEL ADRAH V ECG……

Base on the above position of the law, the court finds that the plaintiff has been able to establish a prima facie case that they were granted the land by the lands commission their grantors as such they have clear title in respect of same.

In the case of THE REGISTERED TRUSTEES OF THE CATHOLIC CHUURCH, ACXHIMOTA ACCRA V BUILDAF & 2 OTHERS (2015) DLSC 3234, per Benin JSC decided "that is the law that only the owner of land can give away title to a third person".

It is simple logic that if the plaintiff grantor's title has been found reliable, the plaintiff can rely on it. In other words, the plaintiff title has foundation to rest. In view of the above, the court finds that the plaintiff acquired good title from the lands commission.

The onus therefore shifts on the defendants to rebut the plaintiff evidence.

The defendant on the other hand traced their root of title from the Garages association of Kokompe. According to them in 1972 as a result of beautification exercise all the artisans were relocated to the Kokompe lands by the STMA. It should be noted that, the defendants never tendered in documents which grants them title to the disputed land. All that they said was that, they were relocated to Kokompe lands but they however failed to tender any document to buttress their assertion. The defendant to corroborate this called regional chairman to testify as DW1. DW1 tendered as chairman of the Garages association Exhibit GA1 titled report on Kokompe review committee. A cursory look at the said Exhibit GA1 were just minutes of meetings and not a document pertaining to ownership of the said land. During the cross

examination of the DW1 by counsel for plaintiff the relevant portion this is what transpired:

Q: take a look at Exhibit GA1, your own exhibit is dated 1994 is that correct?

A: yes.

Q: in 1994 you had not been elected into office

A: yes, I was given the document by the present executives.

Q: and it's just a minute of meetings with okay what is exhibit GA1?

A: it is a document signifying the present executives had meeting with the S.T.M.A on the Kokompe land

Q: and there is no site plan attached to exhibit GA1

A: yes

As admitted by Dw1 supra, the said Exhibit GA1 were just minutes of the meeting which was allegedly held and does not in any way confer title of Komkompe lands on them. Is it the case of the defendants that all Kokompe lands belongs to the Garages Association?

The court finds that even though the defendants were relocated to the land, there is no evidence that the land has been granted to them. In exhibit GA1, the practice of the Garages association in allocating plots to artisans and proceeding to the lands commission to process their document confirms that, the defendants as well as the garages association recognise that the lands commission have oversight responsibility or a body holding the land in trust for the state. This corroborates the plaintiff evidence that the land belongs to the state. In addition, the defendants as well as the garages association has not been able to proof to the court any specific land granted to them. Per exhibit GA1 just merely stating you were given Kokompe NO.1 and Kokompe

NO. 2 is not sufficient. What constitute Kokompe No.1 and 2. They failed to proof the boundaries of the land allegedly granted to them. Although 4th, 5th, and 7th defendants claim through the same site plan, and they tendered in evidence the said site plan as Exhibit 1, they failed to proof any allocation note granted to them or a lease granted to them, the site plan alone will not be sufficient. The court finds that, the said Exhibit 1 was merely self-serving document. The rest of the defendants, did not tendered any document pertaining to the land in which they operate.

It must be highlighted that the garages association who claims to have derived their title to ko0ko0mpe lands from the STMA as according to them it was the STMA who relocated them to Kokompe, failed to tender any document from STMA granting them title to the lands. Indeed, the called as DW2 an official from STMA to corroborate their case but the said DW2 in his evidence never said anything about granting the lands at Kokompe to the Garages association they rather sought to state that the plaintiff site plan is incorrect however they failed to tendered any document or document proving grant of lands to them.

Per the evidence and evaluation explained supra, the court finds that, the plaintiff has been able to establish that they have a superior title to the land in dispute that is plot no. 18 situated at Kokompe.

In respect of possession and occupation of the land, there is no dispute that the plaintiff has a church building on the disputed land where he carries on his church services. According to the plaintiff, they were in possession of the land before the 5th defendant came to meet them on same somewhere 2006. They aver, they granted the 5th defendant a place to place his container with the understanding that anytime they needed same he will vacate on same. However, the 5th defendant with time allowed the rest of the defendants on the disputed property thereby causing nuisance on the subject matter land and blocking his access to the church premises.

It must be noted that the defendants never challenged the possession of the plaintiff on the subject matter land except to say that according to the 5th defendant, he was in possession of the land before the plaintiffs came to the land and according to the 5th defendant he came into occupation of the said land since 2000 and it was not until 2004 that the plaintiffs came unto portion of the land in dispute and gave an indication to erect a church, at the time of the construction of the plaintiff church, the plaintiff used to keep some of the building materials in his container which was already on the land before the plaintiffs came to occupy same.

The defendants sought to put across that plaintiff occupation of the subject matter land prior to its acquisition of same from the commission is illegal. This assertion of the defendants is irrelevant as to whether they were on the land illegally or not, the crux of the matter is that they were in possession of the subject matter land.

The law is that although possession may be nine tenth's the law no matter how long it is, it usually cannot ripen into ownership. It is clear that in other to prove their title to the disputed land on the balance of probabilities needed to prove more than possession. They have to prove their right of title and mode of acquisition.

In the case of GILLARD V KORANG (2013-2014) 1SCGLR 221 at 234 the court held that:

"Now in law, possession is nine-tenths of the law and a plaintiff in possession has a good title against the whole world except one with a better title it is the law that possession is prima facie evidence of the right of ownership and it being good against the whole world except the true owner he cannot be ousted of it. See SUMMEY V YOHUNO (1962) 1GLR 160 SC and BARKO V MUSTAPHA (1964) GLR 78 SC"

See also LARTEY V HAUSA (1961) GLR 773 where Ollenu J (as he then was) held that possession cannot ripen into ownership no matter how long it has been held or had.

Further section 48(2) of the Evidence Act, 1975 (NRCD 323) treats ownership or possession, of properties as a rebuttable presumption and provides:

"a person who exercise acts of ownership over property is presumed to be the owner of it"

The court finds that the plaintiff proved a better title, than that of the defendants and in this respect possession does not arise.

This will lead me to my second issue:

WHETHER OR NOT THE DEFENDANTS HAVE TRESSPASSED UNTO THE PLAIANTIFF LAND.

According to the plaintiff, the 5th defendant who was given a place by the plaintiffs to place his container on the disputed land started renting out portions of the disputed land to others including the rest of the defendants herein. According to plaintiff several times, the defendants park vehicles on the subject matter land obstructing the way to the church and all the remaining space has been taken over by the defendants as such church member are unable to park their cars. This was corroborated by pw2 who indicated that presently there are containers, car for body works etc all around the church making it clumsy and inconvenient. According to pw2, sometimes when going to church the defendants will block the entrance to the church.

According to the 5th defendant, he personally acquired portion of the disputed land. He tendered the site plan in evidence as exhibit 1. According to him, it is that piece of land he acquired together with areas occupied by the other defendants that forms their area of operation as such they have not trespassed unto the plaintiff's land as alleged. the plaintiff is therefore estopped from claiming their area of operation.

The court ordered for a survey plan of the disputed land with a further order for parties to file survey instructions which afforded the parties the opportunity to surrender their respective site plans and to have the land in dispute surveyed. This

would show whether the respective land document will fall on the land on the ground which would indicate whether the plaintiff or the defendants' lands are indeed one and the same land or whether they are different lands or whether either of them has trespassed on the other.

Per the composite plan before the court tendered in evidence as exhibit CW1, plaintiff land per site plan shown in yellow line, plaintiff land as shown on ground shown in cyan line. Plaintiff church building on ground shown in Magenta. Land per site plan of d4, d5, d7 and d8, shown in blue line, land per d4, d5, d7 and d8 on ground shown in green line. Land for d1, d2, d6 on ground shown in black line.

Per the composite report tendered in evidence by the surveyor, the land of the plaintiff on ground is far bigger that the land per the site plan of the plaintiff. This means that the plaintiff is seeking to recover a bigger portion than what he was actually granted by its grantor.

A cursory look of the composite report reveals that, land as shown on sit plan of d4, d5 and d7 marked green trespass on the land per the site plan of the plaintiff marked yellow. This shows that d4, d5, and d7 has trespassed unto the land of the plaintiff and therefore they need to move away from the portion of the land that trespass on the plaintiff land, marked in yellow line. D4, d5, d7 land per site plan as tendered in evidence by them and submitted for the survey is marked in blue line. A cursory look shows that, the blue line per the site plan of the defendants enters a bit into the land of the plaintiff marked yellow. That tiny bit can be deemed as insignificant. The d4, d5, and d7 are therefore to move out of the plaintiff land to occupy their portion of the land as marked in blue line. The other defendants failed to submit any site plan for the survey that notwithstanding, they showed their land on the ground. The land as shown on the ground by the other defendants are marked in black line. Again, a cursory look of the composite report shows that, the others defendants land as shown

on the ground portion of it has trespassed on the plaintiff land as shown in the yellow line.

Looking at the position of the plaintiff building on the report marked magenta, the court finds that the entrance to the church has been blocked by the other defendants' land as marked black. Therefore, from the composite report's portions of defendant's land, have trespassed on the plaintiff land per site plan marked yellow line.

I am mindful of the fact that a surveyor's work is essentially the work of an expert whose evidence is not binding on the court and the court may accept or reject same by assigning reasons for it.

Per the above report, the court finds that, the evidence of the expert surveyor cannot be glossed over. According to Niels Bohr, "an expert is a man who has made all the mistakes which can be made in a narrow field".

The law is that although the evidence of a court expert is only of persuasive effect and not binding, there must be very good reasons by the court to reject it. In the case of TETTEH V HAYFORD (2012) 44 GMJ 11, Dotse JSC held at page 17 thus:

"It is generally understood that a court is not bound by the evidence given by an expert such as a surveyor in this case. But the law is equally clear that a trial court must give good reasons why an expert evidence is to be rejected".

Similarly in the case of **MFUM FARMS AND FEEDMILL LTD V MADAMA AGNES GYAMFUA (2019) 129 GMJ 88 at 109-110. Dotse JSC** on whether a court is bound by evidence relating to an expert opinion stated:

"We are not unaware of the legal position stated in good number of respected judicial decisions that a court is not bound by the evidence relating to an expert's opinion such as the surveyor given in this case."

In the circumstance of this case for example, there is no reason to reject the evidence of the surveyor and the court hereby finds that the defendants have indeed trespassed on the plaintiff land.

The plaintiff has been able to prove his case on the balance of probabilities as required by law to do.

This will lead me to my last issue

WHETHER OR NOT THE PLAINTIFF IS ENTILED TO RECOVER POSSESSION OF SAME.

As has been found supra that the defendants have trespassed on portions of the plaintiff land, per the composite report tendered in evidence as Exhibit CW1, the court hereby declare title to plot number 18 situated at Kokompe and same delineated on the plaintiff site plan attached to the indenture marked exhibit P and same marked on the composite report in the yellow line. In addition, the court order that the plaintiff is to recover possession of the subject matter land thus plot no 18 situate and lying at Kokompe as delineated on the plaintiff site plan which is part of Exhibit p and same, marked on the composite report as yellow line.

The defendants are ordered by the court to move away from the plaintiff land as delineated on the plaintiffs' site plan.

The defendants, their agents, assigns, privies and all those claiming from them are hereby injuncted from having anything to do with the plaintiff land delineated on the plaintiff site plan.

In the recent case of KEN KWAME ASAMOAH V SIC SUIT NO. J4/55/2021 I hereby summarise my orders as follows:

1. Title to plot number 18 situate and lying at Kokompe as delineated in plaintiff site plan declared in favour of the plaintiff.

2. Plaintiff is to recover possession of his land as delineated on plaintiff site plan and same marked yellow on the composite report.
3. Defendants are ordered to vacate from portions of the plaintiff land they have trespassed on forthwith
4. The defendants, their agents, assigns, privies and all those claiming through them are injuncted from having anything to do with the subject matter land.
5. Cost of GHC1000 awarded against each of the defendants.

SGD

H/W CATHERINE OBIRI ADDO ESQ

REPRESENTATION

PLAINTIFF REPRESENTED BY ENOCK ALLAH MENSAH ESQ

DEFENDANT REPRESENTED BY GODWIN ACQUAH ESQ.