

IN THE DISTRICT COURT HELD AT OSINO ON FRIDAY THE 15th DECEMBER
2023 BEFORE HIS WORSHIP AYAGIBA SALIFU BUGRI, DISTRICT
MAGISTRATE

CASE NO... A1/06/23

JOHNNY OSEI ANINI PLAINTIFF
OF DWENASE

VS

1. JOHN HENRY KWABENA TENKORANG
2. NATHANIEL TANDOR PER HIS

LAWFUL ATTORNEY: **DEFENDANTS**

BERNARD AMPAW

- ### 3. BRIGHT OFORI OF ALL OF OSINO

JUDGEMENT

Reliefs Sought;

1. Declaration of title, recovery of possession and ownership to all that piece of land close to PRI-NADAM guest house at Osino bounded with the properties of Duncan Amoah, Late Kwadwo Kesse, Patrick Osei Tutu and Main Accra-Kumasi road.
2. An order of perpetual injunction against the defendants, their agents, assigns, workmen etc from having anything to do on this disputed land
3. Costs

Brief Facts

Plaintiff is a Manager at Mumuadu Rural Bank. D1 is a famer, D2 is a miner residing in Osino, and D3 a business man. According to plaintiff, he bought two plots of land from D1 who is the head of family of Bretuo family of Osino on 15/12/2023. The cost of the two plots of land is GHC40,000.

The land is situated close to PRINADAM guest house in Osino and bounded with properties of Duncan Amoah, Late Kwadwo Kesse, Patrick Osei Tutu and main Accra to Kumasi road.

Plaintiff says he planted maize on the land and also in the process of preparing land documents when he was notified by a third party that a grader had entered the land, graded it and destroyed his maize. Investigations later revealed that D2 was responsible even though he did not meet him at the scene at the time of the destruction. On 2nd August 2022, plaintiff went unto his land and realized that D2 was working on the land without his consent or authority. Plaintiff says he decided to take the instant action, since it is possible that D1 has resold the land to a third party. Plaintiff adduced evidence of receipt of purchase and payment from D1 (Exhibit A).

Opening his defense, D1 admitted that he sold the land under dispute to plaintiff through PW1. In other words, PW1 introduced plaintiff to him as someone who was interested in purchasing part of the family land. D1 averred that he sold the land to plaintiff at the cost plaintiff has told the court even though he does not recall the exact date. D1 says he does not know D2 and D3 in respect of the land. D2 says he's a farmer residing in Akim Sekyere and hardly visits the land in dispute but does so at least once in a month. D1 admits that he is the head of family (Abusuapanin) of the family that owns the land in dispute and has not sold land to D2 or D3 respectively.

According to D2's attorney, he knows D1 in respect of the instant land dispute that ended up at the Police station during an initial misunderstanding in respect of the land in question. He also knows D3 through D2.

D2's attorney says on 17/04/2019, D2 told him he wanted to purchase a piece of land situate and lying by the roadside. After discussing D2's request with his father, he directed him to the land allocation committee under the leadership of Osino chief. The committee directed D2 to a family that had such land. D2 met two elderly women, one called Hannah Agyekum who acknowledged ownership of the land and dispatched two young men to wit Yaw Asiedu and Clifford to take him unto the land.

After negotiations with the committee to acquire three plots of land at GHC15000 for two and GHC11000 for one of the plots respectively, GHC41000 was paid to the committee and receipts obtained to that effect. D2's Attorney further prepared a site plan and indenture for signatories and was instructed to commence work on the land even though the chief had traveled and not available to sign the documents.

However, somewhere in November 2019, when the attorney went unto the land to commence work, he was prevented from doing so by PW1. PW1 told him his sisters and nephews had no right to sell land in the stead of the Head of family. Upon reporting the incident to the land allocation committee, PW1 was invited to the Palace but he declined the invitation. The attorney says he was instructed to continue the construction by the committee but PW1 invited the Police to arrest him. PW1 was advised to settle the misunderstanding with his sisters but he refused to do so.

D2 lost interest in the land and decided to sell it to D3. PW1 however negotiated to pay GHC4000 for one of the plots which he resold to a woman. D3 later informed the attorney that he had concluded the purchase of the two remaining plots with D2. The

attorney said acting on behalf of D2, he led D3 to the land and plaintiff appeared, claiming the land. D2 says he advised plaintiff to recover his money.

D3 says he is a business man residing in Anyinam, and knows plaintiff. D3 says he met plaintiff somewhere in 2022 when he paid for the services of a grader to clear the land under dispute. D3 says he knows D2's lawful attorney through D2, but does not know D1. D3 says on 09/06/22, D2 who is his business partner informed him that he had 3 building plots of land for sale. After inspecting the land documents, going unto the land and having satisfied himself of the validity and authenticity of the sale, he paid GHC80,000 to D2 after negotiations. Thus when plaintiff claimed ownership of the land, D3 asked him to produce documents but plaintiff said he had receipts to prove his acquisition. D3 says he saw one Prince Asare's name on one of plaintiff's receipts. When he enquired from the said Prince about the sale, Prince said the land under dispute is a family land that he sold to D2. D3 says he ignored plaintiff and continued to clear the land until it was completed. Due to hitches to his business, he was unable to wall the land as he intended to but occasionally sent labor to clear it until plaintiff served him with court summons.

ISSUES FOR DETERMINATION

Whether or not the sale of family land by a member(s) of the family without the consent of the Head of family is null and void, voidable

Whether or not a sale of family land by the head of family alone or with one principal member of the family is valid, void or voidable.

It is trite in Ghana that land is owned by the family, stool or skin depending on the traditional jurisdiction.

It is also trite, that the one indispensable person in the alienation of family land under customary land acquisition is the head of family, and head of a stool or skin in respect of stool or skin land.

It is also trite that customary law is part of the laws of Ghana as long as it does not infringe on any provisions of the national constitution i.e. repugnant to fundamental human rights of the individual, unconscionable in its application, not in conformity to the rules and principles of natural justice and the rule of law.

Thus, beyond statutory conveyance of land, any customary conveyance must follow the customary process applicable in that jurisdiction in order to make the grant or conveyance a valid one. Even though proof of customary conveyance of land does not require the vendor and purchaser to produce documents and receipts or any form of writing, the most essential feature for a valid customary land conveyance is publicity. By that, there must be witnesses to the grant and ceremony of severance or guaha from the vendor to the purchaser, who are mostly adjoining landowners, witnesses of both the vendor/grantor and purchaser/grantee. Nothing however precludes the purchaser or grantee to formalize the customary conveyance by registering the land or obtaining deeds of conveyance as per common law land conveyance.

In the instant case, it is evident on the face of the evidences adduced that, the instant land under dispute was sold somewhere in 2019. It is also evident that the land is family land hence the land allocation committee directed D2 to the family that owns the land.

I have doubts to the credibility of the testimony of DW3 that all lands in the Akyem area are stool lands and only held by tenant farmers who are subjects of the stool. The witness made reference to a court judgement to substantiate his testimony, but failed to provide evidence of that judgement to prove his claim.

The witness added that land is held by women in this jurisdiction. Thus the sale made to D2 by the two elderly women If the land belonged to the stool as DW3 testified to, the committee will not direct D2 to the family that sold the land. By the conduct of the committee, it implies that land is owned by families in this jurisdiction. However, the chief ratifies the sale by signing the deed of conveyance but does not keep the proceeds of the sale. The proceeds of the sale are handed over to the family.

It is also evident that the sale was made by two elderly women to wit Hannah Agyekum and Gloria Asiedu, who are members of the family that owns the land.

Even though DW4 acknowledged that the sale was made by his mother and he witnessed the sale, he admits during cross examination that the land is family land and not the self acquired property of his mother. Additionally, DW4 failed to answer whether or not his mother is the head of family to enable her acquire the right to sell family land. DW4s answer to the question was that, in their family it is the women who sell land which I find strange, preposterous and evasive.

Moreover, the fact that D1 is the head of family has not been contested or denied by any of the parties especially DW4 who is a son of one of the said elderly women. Even though the head of family does not reside in Osino where the disputed land is situated, it does not relinquish or diminish his authority as head of family. The head of family is the head of family no matter his location, except where he appoints someone to act in his stead which is very rare and not the case in the instant case.

In the instant case it is apparent from the head of family i.e. D1's testimony that he did not ratify the sale made by his sisters to D2 in 2019, hence the matter ended up at the Police station. Indeed, any disposition of family land without the consent of the head of

family by a majority or minority of the principal members of the family has been held by the courts to be void ab initio and of no effect.

In *Agbloee v Sappor*, the court held that such alienation is void ab initio and of no effect, and that it was impossible for family land to be alienated without the consent of the head of family.

Ollenu J in *Allotey V Abrahams*

Even in the case of *Akiwumi v Sappor*, it was held that even though the family had no overall head of family because it had six different branches with respective head of family, alienation must be approved by all six branches. Alienation by a majority is void. Thus even if that is the case in the instant suit, the alienation is void so long as Hannah and Gloria Asiedu did not seek the consent of other members of the family if it is the case that D1 is the head of family of another branch of the family.

Per “Alienation of family land in Ghana [1964] Vol 1. No. 1 UGLJ 23-41, Woodman G.R. writes among others that;

“Since the head is appointed to administer the family property so long as he holds the position, it would appear unreasonable for the other members to be able to sell the property in opposition to his wishes. Moreover, the head is the person who is best able to produce evidence of title for the future protection of a purchaser. He will be the repository of family tradition, which may be relevant to the title if the land has belonged to the family for a long period: he will normally have the custody of any documents referring to the land”.

As D2 stated in his evidence, the land allocation committee directed him to the family that owns the land and not necessarily the two elderly women. If he met the two elderly women and they presented themselves as having the right to dispose off family land,

there was no way that D2 could have known their capacity except through due diligence, which D2 did not do. In my opinion, D2 did not explore the principle of caveat emptor to satisfy himself that the consent of the head of family was sought or necessary to validate his purchase. Moreover, it is hardly the case in most Ghanaian customs that women sell land. Thus, the fact that the two women arrogated to themselves the authority to sell family land was enough grounds to raise red flags for D2 to enquire further. Additionally, granted a woman is the head of family, she will appoint a male member of the family to usher the vendee/purchaser i.e. D2 to the land and not her biological son in my opinion.

Granted the mode of inheritance within the jurisdiction is matrilineal as DW1 testified, the inheritance is limited to the self acquired property of the elderly women. In that case they can deal with their own self acquired property anyhow they deem fit. However, that authority does not extend to family property which belong to those present and yet unborn. Consequently, any sale or disposition of family land or property by these elderly women who are also sisters of the head of family without the consent of the head of family is null and void ab initio and of no effect. As far as the instant case is concerned, the two acted without authority. It is not as if they had some power or authority that they have exercised ultra vires. Indeed, it is the head of family who has the authority to alienate family land and could exercise his powers ultra vires by acting without the concurrence of the principal members of the family, but alone. In principle the two elderly women sold what they did not have. Granted the two are farming or used to farm on family land, it does not mean that they can alienate same to a third party without the consent of the head of family.

The fact that D2 acquired the land in dispute in 2019 through the land allocation committee and documents to the sale prepared and signed does not make the sale a

valid one as long as the consent of the head of family is absent. The sale of the same piece of land by the head of family even though at a later date is valid on the face of the law pertaining to customary land alienation aforementioned.

It is well established law that the head of family is the embodiment or soul of the family. He is the only person who can sue and be sued in respect of family land or property. He takes decisions for and on behalf of the family and can only be removed by appointment of another in his stead or by death. It is also well established that no member of the family can sue the head of family, since such an action is an action of the family against itself.

DW1 is a member of the land allocation committee and in his testimony he says that all lands are vested in the Akyem Abuakwa stool and that the various communities within the jurisdiction are holding the lands in trust on behalf of Okyehene. During cross examination of DW1, plaintiff enquired why compensation was paid to the family if the stool owns the land. DW1's response was; "compensation is paid to the occupiers of the land who are subjects for their stewardship or for keeping the land for the stool".

According to DW1 the land in dispute is outskirts land hence the stool had to consult the tenant farmer who happens to be a woman. Additionally, in Akim Abuakwa, land tenancy resides in women because of the matrilineal inheritance/lineage, and no Abusuapanin can sell land without first consulting the elderly woman in the family. Asked if he was implying that the elderly woman could sell family land without the consent of the head of family, DW1 said the women in the instant case acted on behalf of the family.

This is in sharp contrast to the testimony of DW2, also a member of the land allocation committee. According to DW2, after the sale of the land, he was tasked to send the

proceeds of the sale to Gloria Asiedu, one of the other elderly woman that D2's attorney met following the land allocation committee's direction. Thus per DW2's testimony it was the proceeds of the sale that was sent to the family, which cannot be described as compensation in the opinion of this court.

Granted all lands within the jurisdiction are vested in the stool, and granted land tenancy resides in women, it does not automatically ascribe to them the title of head of family. The head of family is the 'abusuapanin' and nothing else. It could be a man or a woman but one must be rightly accorded that title by the members of the family. To the extent that none of the two women is the abusuapanin of the family, none had the right to sell family land without the consent of the head of family. To the extent that the head of family D1 did not ratify the sale, DW1 cannot say that they acted on behalf of the family. The consent of the head of family must be express or implied, however the evidence does not suggest so.

Under customary land alienation the proceeds of the sale of family property, will normally be paid to the head of the family, who will be expected to act according to the wishes of the family, using them to pay family debts, to buy land in replacement, or perhaps distributing them to members.

The above cannot be said of the instant suit per the evidences adduced. In my opinion, had D1 received payment or any part of it with knowledge that it is proceeds of the sale of the family land in dispute, it would have implied that D1 has waived his rights over any objection or the voidability of the sale. D1 by that conduct would have ratified the sale by the two elderly women. However, that is not the case in the instant suit.

On the other hand, even though it is not in evidence that the head of family sold the land in dispute to the plaintiff with the concurrence of the principal members of the family, the courts have mostly held that such a sale is not void but voidable.

It was held in *Awortchie v. Esshon* that a family meeting must be called for the purpose of discussing the alienation. This is meant to ensure and also to prove that everyone who had a right to be consulted had in fact been consulted, and do desuade the minds of vociferous and inquisitive members that the head and principal members, or some of them, were wasting the property for their own benefit. There is no evidence of such in the instant case either in the case of the two elderly women or D1, even though it is well established that it is the head of family who can call for a meeting of the principal members of the family in respect of alienation of family property.

It's been held that where the head of the family consents to alienation of family property, he may be joined in the attempted alienation by (i) all the other principal members,

(ii) A majority of them, (iii) a minority of them/or (iv) none of them.

(i) The head and all the principal members consent

The general rule is that in this case there is a valid alienation, even if junior members of the family oppose it. *Sarbah* impliedly took this view.

"The head of a family cannot, without the consent of or notice to all the principal members of the family or the greater part thereof, alienate any part of the family immovable possessions, and if such consent is secured, the alienation must be for the benefit of the family, either to discharge a family obligation, or the proceeds of such alienations must be added to the family fund."

In *Awortchie v. Esshon*, it was held that the family could set aside the sale after any lapse of time. This amounts to holding it void, not voidable.

In *Bayaidee v. Mensah*, the better-known case. It was held:

“Now, although it may be, and we believe it is the law, that the concurrence of the members of the family ought to be given in order to constitute an unimpeachable sale of family land, the sale is not in itself void, but is capable of being opened up at the instance of the family, provided they avail themselves of their right timeously and under circumstances in which, upon the rescinding of the bargain, the purchaser can be fully restored to the position in which he stood before the sale.”

In that case the court held that the family had acted too late to reopen the transaction.

The weight of authority seems to favor this view that the transaction is voidable.

In opposition is the opinion of Mr. Justice Ollennu expressed in *Akiwumi v. Sappor*, it was held that such alienations are void ab initio. The authority cited in support is *Agblo v. Sappor*.

In *Appiah v. Dansea* a successor acting alone had attempted to alienate absolutely the family land. It was held that the alienation was valid for the life of the successor. A grant had been made by the Ministry of Agriculture to the purchaser in respect of the land, and it was held that this was not recoverable by the family, it not having been proved that the money accrued after the successor's death.

The court relied upon *Behum v. Marshall*, where the successor had made a grant to the children of the deceased male. In *Boham v. Marshall* the court said:

“By native law, the person, the person succeeding to property could not dispose of it beyond his lifetime, unless with the consent of the families.”

In *Gaisiwa v. Akriba* it was held:

“I am satisfied of the existence of the native custom of the head of a family being entitled to sell family land without the concurrence of members of the family, when the head of the family has asked the members of the family to contribute to the expenses of litigation in defense of the family land and they have refused to contribute.”

In the instant case PW1 testified to certain duties which the head (D1) of family had to perform on behalf of the family as part of his obligations, hence the sale to plaintiff.

In the instant suit, the evidence suggests that PW1 who has testified as witness for the plaintiff, is the only member who knows about the sale of the land in dispute by the head of family to plaintiff, and is also aware of the sale by the two elderly women whom he referred to as his sisters to D2. It is also apparent that PW1 informed D1 about the sale by their sisters. The status of PW1 in the family is not in evidence i.e. whether or not PW1 is a principal member of the family is not in evidence. However, the fact that PW1 is a member of the family has not been disputed.

Whereas PW1 testified as a witness to the sale of the land in dispute to D1, none of the two elderly women testified as witnesses for D2. The testimony of the two women would have revealed their locus and any reasons why they think they have a right or authority to alienate family land without the consent of D1.

As already indicated, a sale by a majority, minority of the principal members of the family without the consent of the head of family is void ab initio.

Per a 1967 University of Ghana Journal "UNLAWFUL DISPOSITION OF FAMILY LAND VOID OR VOIDABLE [1967] VOL. IV NO.2 UGLJ 111-121", Written by Kom Enoch; He reiterates the legal impact of the disposition of family land by the head of family without the concurrence of members of the family, and disposition by a member or members of the family without the consent of the head of family.

He states among other things thatThere can be three kinds of unlawful disposition or dealings with family land:

(i) a member of a family disposing of his allotment of family land absolutely, without the knowledge and consent of his family, as a beneficial owner;

(ii) a family head disposing of family land qua family head without the knowledge and concurrence of the family council of elders or the proper family sanctioning authority; and

(iii) a disposition by family members without the knowledge and consent or participation of the family head who is still in office.

In some cases, the courts have held the disposition void; in others voidable, and in others still simply that the family is not bound by the disposition, which may mean that either the disposition is void ab initio or voidable and has been set aside and, therefore, the family is not bound.

1. Unlawful Disposition by a Member of his Allotment

(a) The basic idea behind family land-holding is that it should be enjoyed by members of the family in succession, a "settlement" if you so choose to call it.

Hence Sarbah wrote:

"the Customary Law says they who are born or they who are still in the womb required means of support, wherefore the family land and possessions must not be wasted or squandered"; and a Chief of Ijebu-Ode was reported in West African Lands Committee's Report as saying:

"I conceive that land belongs to a vast family of which many are dead, few are living, and countless members are yet unborn."

*The title of family land is vested, not in the family head, but in the family as a corporation aggregate and a member's right of occupation, user and enjoyment is only that of a possessory licensee. The courts have, therefore, held that a family member has no transmissible, alienable and attachable interest in family land allocated to him. If therefore, a member, be he a family head or not, purports to dispose of his allotment without the knowledge and consent of the family qua a beneficial owner, the principle of *nemo dat quod non habet* should apply and such a disposition is void, not voidable. Moreover, a member being possessory licensee cannot dispose of a greater interest than he himself had in family land.*

(b) In Taylor v. Williams (supra) it was held that a devise by a member of his allotment without knowledge and consent of the family was null and void.

In most Ghanaian traditional jurisdictions land belongs to a stool, family or the village community and scarcely to the individual. Hence where a person sells as a beneficial owner and not in a representative capacity his title must be thoroughly investigated.

If a purchaser finds that his vendor is a member selling family property in his possession, it is incumbent for the purchaser to do due diligence.

In the words of Dr. Coker:

"There is, however, a duty on a prospective purchaser of family land to consult with and obtain the consent thereto of the principal members of the family". If he fails to do this, the disposition in the eyes of customary law is unlawful.

Sir Donald Kingdon C.J., speaking of unlawful disposition of family land by a member, said:

"Under native customary tenure an individual cannot alienate the land he occupies.

Consequently, the rights of his descendants are safeguarded and cannot be realized by him. But once the tenure becomes fee simple, the rights of generations yet unborn can be sold and the proceeds squandered by the present generation. This alone should, in my opinion, make the court slow to implement, in the exercise of its equitable jurisdiction, the actions of persons who have selfishly sold or purported to sell the fee simple of land previously held under native customary tenure. The equities are not all on one side."

It is submitted that the rights of generations yet unborn can only be protected if an unlawful disposition of family land by a member is declared null and void. If it is voidable the intervention of jus tertii will make the disposition valid notwithstanding that the family was not guilty of laches or acquiescence.

As Ollennu J. pointed out in Ohimen v. Adjei:

"It would be chaotic if any member could compromise the portion of the family land by an act which, while benefiting him personally, was detrimental to the interest of the family as a whole."

Dr. Coker, it is submitted, was also expressing the same idea when he wrote:

"It is an essential characteristic of a family property that it should exist for the benefit not of any individual or member, but of the family as a whole."

2. Unlawful Disposition by the Family Head Qua Family Head

(1) The main purpose of consent is to make a disposition valid and effective in customary law, in other words to vest the purchaser, lessee, licensee, mortgagee or pledgee with a legal title. To hold, therefore, that a disposition is valid until set aside by the family (i.e. voidable at the instance of the family) is to ignore the essence and purpose of the consent. Jackson J. (as he then was), criticizing the decision in which the courts held that dispositions of family land made without the concurrence of the members of the family are not void but voidable, said:

"In my judgment, with great respect, these decisions go perilously near to the wind to destroy one of the factors which goes to the very roots of the validity of a sales by customary law which Sarbah has described as being necessary for the constitution of a valid sale. Sarbah in his Fanti Customary Law wrote:

"The head of the family cannot without the consent of all the principal members of the family . . . alienate the immovable ancestral or family property. Neither the head of the family acting alone . . . can make any valid alienation or give title to any family property whatsoever."

Dr. Meek wrote that a "lineage can only dispose of its lands with the general consent of its members. Without this consent alienation is invalid.

(2) It is submitted that a "family" is a corporation aggregate —a perpetual succession of people and a legal entity —a bearer of rights and duties under customary law in which the title to family land is vested. The family head stands in the same judiciary relationship to the family as a managing director of a limited liability company. Romer J. in Re City Equitable Fire Insurance Co. said:

"It has sometimes been said that directors are trustees. If this means no more than that directors in performance of their duties stand in a fiduciary relationship to the company, the statement is true enough."

In fact, it is in this respect that a family head is usually (and ought to be) referred to as a trustee. That being the case, any disposition by the family head in that capacity without the knowledge and consent of the family or family council, as the case may be, is ultra vires, and ultra vires transactions are void and not voidable.

On principle an unlawful disposition ought to be void, and not voidable. If it is held void, a bona fide purchaser can sue the family head for (a) recovery of his purchase-money for failure of consideration and (b) breach of warranty of authority; and the family will get back its land, a solution that will be acceptable to the family and the bona fide purchaser.

3. Unlawful Disposition by Members Excluding their Family Head.

Whether a disposition by members of the family without the concurrence of the family head is void or voidable was considered in the case of Asafoatse Agblo II v. Sappor where a strong West African Court of Appeal (Harragin C.J., Verity C.J. and Lucie-Smith C.J.) held:

"We, with great respect, entirely agree . . . that the head of the family may be considered to be in an analogous position to a trustee from which it follows that it is quite impossible for land to be legally transferred and legal title given without his consent."

These decisions are in accord with the customary law, for principal or leading matters, elders of the family, or the council of the family have no locus standi vis-a-vis the outside world. The family head is the external relations officer of the family and he is, therefore, the proper person to enter into any transaction on behalf of the family. Moreover, in the whole family he is the only person having the power of sale or any other disposition of family property. Any disposition

done without his knowledge and consent is void for the vendors have no locus standi and for lack of power of disposition. The part played by principal or leading members, elders or family council in any disposition is the grant of consent and nothing more. While the family head is still in office, no family business can be done over his head or behind his back.

The principle of "nemo dat quod non habet," however, is known to customary law.

After evaluating and analyzing the evidences adduced I have made the following findings of fact:

That land was sold to D2 by Gloria Asiedu and Hannah Agyekum

That the two mentioned above are members of the Bretuo Family of Osino

That the land in dispute is the family land of the Bretuo family

That D1 is the head of family of the Bretuo family

That 3 plots of land were sold without the consent of the family

That 2 plots of land were sold by the head of family without the concurrence of other members of the family except PW1

Upon determining that the land in dispute was sold without the consent of the head of family, the sale to D2 and D2's resale to D3 are void and of no effect. Similarly, all documents and exhibits by way of receipts and indentures are null and void as far as D2 and D3 are concerned. The principle of nemo dat quod non habet is applicable in this sense as the two elderly women cannot sell or grant that which they do not have or possess. Thus in principle D2 had no title and could not transfer any to D3.

On the other hand, it is established that any sale of family land by the head of family cannot be reversed even after his death assuming the family disagrees with the sale. Such an action will only open the flood gates to multiplicity of suits.

It is a well-settled principle of customary law that junior members of a family cannot call upon the head of the family for an account. Their remedy is to depose him and appoint another in his stead if they think he is not applying the resources from the sale of family property in the best interest of the family but for his selfish interest.

In *Hansen v Ankrah*, all members of the majority attached weight to the policy of maintaining the authority of the head of family on account of the many socially important functions of the head as representative of the family. Thus *Sowah JSC* argued:

“The core of Ghanaian society is the family and . . . the head symbolizes the hopes and aspirations of that family . . . It is irreverent and improper for a member to bring him to court while he occupies the office . . . The head of family must of course have the capacity to handle the routine orders and disorders of the daily life of the family.”

Of Course in the case of *Kwan v Nyeini*, it was held that a member of the family can sue the head of family to preserve family property. That is, to prevent the dissipation of family property by the head of family.

Customary law with regard to the alienation of family land quite naturally has as its basis the interest of the family and not the interest of strangers who may wish to acquire family land.

Consequently, reliefs sought by plaintiff are accordingly granted.

Costs of GHC2000 awarded to plaintiff.

**HIS WORSHIP
AYAGIBA SALIFU BUGRI,
MAGISTRATE**