

IN THE DISTRICT COURT
AGONA SWEDRU - A.D. 2023
BEFORE HIS HONOUR ISAAC APEATU

Civil Suit No A1/21/2020

19th April, 2023

SAMUEL OBENG

.....

Plaintiff

VERSUS

KOBINA BAFFOUR AMOASA

OPANYIN KWESI ANDAM

.....

Defendants

JUDGMENT

This is an action for declaration of title to land. The identity of the land in dispute is not in doubt. It is said to be at Agona Kwaman Ahenbrom. It is also not in doubt that the land belonged to the Twidan No.1 family of Agona Kwaman. The Plaintiff claims that his predecessor whose name was given as Opanyin Kweku Nyame Yeadom acquired the land through an unconditional gift from the then chief of Agona Kwaman to build on. That the said Opanyin Nyame Yeadom put up three houses on the land and was in possession of same until his death. That after his death, his successors continued with possession of the building. That because of the frail nature of the building, he pulled it

down to construct a new structure on the land. However, quite recently, the Defendants purporting to claim ownership of the land have wrongfully trespassed onto it despite persistent objections by him. Unable to stop the Defendants' unlawful claim to the land, the Plaintiff filed a writ of summons on the 4th day of May, 2020 against the Defendants for the following reliefs:

- a. Declaration of title and recovery of possession of all that piece or parcel of land situate and lying at Agona Kwaman and on which stood Opanyin Nyame Yeadom house built for his Aboradze/Assini family and which is bounded by the road leading to Anafo J.H.S School, Maame Egyiraka's house (wife of Opanyin Nyame Yeadom), Maame Efua Oyisiwaa' house and Opanyin Nyame Yeadom's house built for his children and measuring about half of a plot.
- b. Perpetual Injunction restraining the Defendant, his grantees, assigns, privies and all persons claiming through him from having anything to do with the disputed land.
- c. General damages for trespass.
- d. Costs.
- e. Any other relief the Honourable Court may deem fit.

The Plaintiff filed alongside the writ, a statement of claim outlining the facts upon which his claims were based. Even though the Statement was filed without the express order of the court, due to the nature of the claim being one for declaration of title, I deemed it prudent to endorse it in accordance with Order 18 of the District Court rules, 2009 (C.I. 59). In the Eighteen-paragraphed Statement of claim, the Plaintiff averred to the effect that he is the accredited head or Ebusuapanyin of the Aboradze/Assini Family of Asante Akyem Webiri and also the customary successor of the late Opanyin Kweku Nyame Yeadom of Agona Kwaman and he brings the present action in both capacities. That the Defendant is a resident of Agona Kwaman and a brother of the Odikro of the

town. That his family's oral history [which] passed on to him has it that in the early 19th Century, his ancestor and predecessor in title commonly referred to by all and sundry as Opanyin Kweku Nyame Yeadom migrated from Asante Akyem Webiri to Agona Kwaman in search of a place to farm and make a living. That when his ancestor finally settled at Agona Kwaman in the year 1835 or thereabout, he acquired a large tract of land for farming purposes and the said farms are still standing and being maintained by agents of the Plaintiff. That due to the industry and diligence with which Opanyin Nyame Yeadom carried out his trade as a farmer, he was gifted a large tract of land along the main road leading to Anafo by the then Chief of the town and his principal elders, who are all dead, to build thereon. That the gift was unconditional and was made in the year 1840s or thereabout and in accordance with the customary practices known at the time. That Opanyin Nyame Yeadom was placed in possession of the land so gifted by his grantors and he constructed three houses on the said land without any let or hindrance. That Opanyin Nyame Yeadom gave one of the houses to one of his many wives known as Obapanyin Maame Egyiraka, the other house for his children and the disputed house for his family which is no more but the other two houses are still there and being occupied. He described the disputed area as all that parcel of land lying at Agona Kwaman and bounded by the road leading to Anafo J.H.S School, Maame Egyiraka's house (wife of Opanyin Nyame Yeadom), Maame Efua Oyisiwaa's house and Opanyin Nyame Yeadom's house built for his children and measuring about half of a plot.

The Plaintiff averred further that the disputed area was until recently being occupied by the house Opanyin Nyame Yeadom built for his family. That Opanyin Nyame Yeadom lived in the said house with members of his Aboradze/Assini family until his death. That after his death, his successive customary successors such as Nana Yamo, Akwasi Donkor, Yaw Abuah and others lived in the said house. That the said house comprised

of 6 rooms and a big veranda and was famously known as the Tailors hub since Opanyin Nyame Yeadom and his successors permitted tailors in the town to ply their trade from a portion of the veranda and the other portion was used for purchasing and storing cocoa beans.

The Plaintiff averred that when he was appointed as the customary successor and head of family, he realized that the house Opanyin Nyame Yeadom built for the family needed urgent repairs and facelift to bring it to the status that will match the prestige the family has attained. That the Chief of the town recently had cause to complain to the Plaintiff that his family house was not befitting of their long family history tracing back to Opanyin Nyame Yeadom and his status in the town and the fact that the house was posing a danger. That he (Plaintiff) then caused the building to be pulled down to make way for the construction of a new family house and remnant of the old family house is still lying on the land in dispute. That the Defendant upon realizing that the land has become vacant has purportedly granted same to a company whose name and address is unknown to him (Plaintiff) to erect a mast thereon.

It is the further case of the Plaintiff that the Defendant does not have any interest in the land in dispute to purport to grant same to anyone and that if there exist any such interest, that interest is statute barred. That all attempts to halt the acts of trespass by the Defendant and his agents, assigns, privies have proven futile and until the Honourable Court intervenes, Plaintiff will be deprived of his ancestral property.

Upon service of the processes on the Defendants, they filed a joint statement of defence in response to the statement filed by the Plaintiff on the 3rd September, 2020. In their Twenty-seven paragraphed defence, the Defendants averred to the effect that 1st Defendant used to be the acting Head of family. However, the 2nd Defendant is now the

recognized Head of family of the Twidan No.1 Royal Family of Agona Kwaman. Defendants admitted that Opanyin Kweku Nyame Yeadom migrated from Asante Akyem Webiri to Agona Kwaman in search of a place to farm and make a living. They however averred that Opanyin Kwaku Nyame Yeadom was never a member of Twidan No.1 Royal family of Agona Kwaman. Defendants denied the claim that Opanyin Nyame Yeadom acquired a large tract of land for farming purposes and the said farms are still standing and being maintained by agents of the Plaintiff. They maintained that nowhere did the said Opanyin Kwaku Nyame Yeadom acquire any tract of land belonging to the Twidan No.1 Royal family of Agona Kwaman. Defendants further denied that Opanyin Nyame Yeadom was gifted a large tract of land along the main road leading to Anafo by the then Chief of the town and his principal elders to build on. Defendants in response to the averment by the Plaintiff that Opanyin Nyame Yeadom built three houses on the land stated that the buildings are located on different portions of the family land which lands were not gifted to Opanyin Nyame Yeadom. That the land in dispute does not affect two houses given to the wife and children. However, when any of the buildings [fall into] ruin, the Twidan No.1 Family shall repossess same. Defendants averred that the said Opanyin Kwaku Nyame Yeadom was permitted by predecessors of Defendants to build on the disputed land and anytime any of the houses fell into ruin, the Twidan No.1 Royal family of Agona Kwaman shall recover vacant possession of same.

Defendants maintained that their Twidan Royal family owns all that tract of land inclusive of the disputed land situate and lying at Anafo or Ahenbrom, a suburb of Agona Kwaman. Defendants averred that the large tract of land situate and lying at Anafo/Ahenbrom in Agona Kwaman also hosts the chief's palace. Defendants averred that every individual who possesses portions of the Anafo/Ahenbrom land did so by grant for valuable consideration or by way of permission from the Royal family. That

individuals permitted to build on portions of Anafo land pay annual homage to Defendants' Royal Stool and so was Opanyin Nyame Yeadom and his immediate predecessors in title. Defendants admitted that Opanyin Nyame Yeadom and his successors stayed on the disputed land. They however claimed that each of the customary successors paid homage to the Twidan No.1 Royal stool acknowledging the title of the Twidan family as well as appreciating the permission granted to them to be on the land of the Defendants' family. Defendants claimed that the dilapidated house of Opanyin Yeadom was brought down about ten years ago. That after the demolishing of the house, the unoccupied land was used to host social gatherings, and each celebrant sought permission from the Twidan No.1 Royal family of Agona Kwaman for hold their gathering. Defendants denied the assertion that the Plaintiff caused the demolishing of the old house to make way for the construction of a new family house. They insisted that no planned development could be done without the consent and authority of the Twidan No.1 Royal family who are the allodial owners of the disputed land. That the Plaintiffs have not sought their consent and authority.

Defendants averred that a supposed caretaker of the dilapidated house named as Atta, was summoned to the chief's palace when their (Defendants') family had reliable information that Plaintiff had granted the disputed land to Atta's sister to develop same into rented premises. Defendants averred that at that meeting, it was realized that the sister who lives abroad was to construct a building on the disputed land on sharing basis between the Plaintiff, the caretaker and the sister. That at that meeting, Plaintiff was cautioned through the caretaker to give vacant possession of the disputed land. Defendants admitted that they have granted the land to a company and justified it on the ground that as allodial owners of the disputed land, they have the right to grant the disputed land to any individual after re-possession of the vacant land. Defendants denied that they have no interest in the land in dispute claiming that Plaintiff's ancestor

was only permitted by their (Defendants') family to build on the disputed land. That as allodial owners, they deem it as their right to re-possess the vacant land. Defendants claimed that the Plaintiff's reliefs are unsustainable and therefore prayed the court to dismiss same.

In a reply to the Statement of Defence filed on the 10th day of September, 2020, the Plaintiff joined issue with the Defendants on the Defence and averred in response to Defendants' assertion that Nana Nyame Yeadom was not a member of the Aboradze No.1 family that he had never stated that he was such a member. He claimed that Opanyin Nyame Yeadom acquired the land. He however denied Defendants' assertion that the disputed land is different from the lands on which stands buildings which were given to Opanyin Nyame Yeadom's wife and children, maintaining that the buildings are in close proximity to each other. Plaintiff denied the Defendants' assertion that their family owns all lands at Anaafo or Ahenbrom. The Plaintiff denied Defendants' assertions that since the building fell into ruins and the land became bare, persons who hold events there seek permission from them and their family. He insisted rather that celebrants seek permission from him and his agents. The Plaintiff averred in response to Defendants' assertion that they hold the allodial title to the land that the Defendants cannot hold themselves out as allodial owners since their predecessors had divested themselves of any interest or whatsoever in the land in dispute. He claimed that any purported interest of the defendants is statute barred and caught by laches and acquiescence.

At the close of the exchange of written statements, the issues which the Court tabled for determination in this matter are:

1. Whether or not the land originally belonged to the Twidan No.1 family.

2. Whether or not Opanyin Nyame Yeadom acquired the land in dispute through a gift from the Chief of Agona Kwaman.
3. Whether or not Opanyin Nyame Yeadom went into possession of the land by building on it.
4. Whether or not Opanyin Nyame Yeadom paid any toll or royalty for his possession and occupation of the land in dispute.
5. Whether or not the building on the disputed land has fallen into ruins leaving the land bare.
6. Whether or not the Defendants can repossess the land.
7. Whether or not the Defendants have trespassed onto the land.
8. Whether or not the Defendants are estopped by laches and acquiescence from claiming the land.
9. Whether or not the Plaintiff is entitled to judgment on his claims.

Having stated the cases as presented by the parties in their statements, I shall determine the question of the burden of proof. In other words, which of the parties does the burden lie to prove their case? Because this case is one for declaration of title to land, the Plaintiff who filed it has the onerous burden to discharge. It has been held in the case of **Abbey and others v Antwi V [2010] SCGLR 17** at page 19 that:

“In an action for declaration of title to land, the Plaintiff must prove on the preponderance of probabilities acquisition either by purchase or traditional evidence, or clear and positive acts of unchallenged and sustained possession or substantial user of the disputed land. See **Odoi v Hammond [1971] 1 GLR 375 at 382, CA; Akoto II v Kanage (1984-86) 2 GLR 365 at 371, CA**”

This principle has further been codified in the Evidence Act, 1975 (NRCD 323) which states among others that the onus of producing evidence of a particular fact in civil

cases is on the party against whom a finding of fact would be made in the absence of further proof: see Section 17(a) and (b) of NRCD 323. Section 17(a) and (b) of NRCD 323 therefore reads:

17. Allocation of burden of producing evidence

Except as otherwise provided by law,

- (a) the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof;
- (b) the burden of producing evidence of a particular fact is initially on the party with the burden of persuasion as to that fact.

It is also a basic principle of law that matters that are capable of proof must be proved by producing sufficient evidence so that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under sections 10 (1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323).

The burden of producing evidence has been defined in Section 11 (1) of the NRCD 323 as follows;

“11 (1) For the purpose of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party”.

This burden to produce evidence is thus not static but could shift from party to party at various stages of the trial depending on the issue asserted. This provision on the shifting of the burden of proof is contained in Section 14 of NRCD 323 thus:

“14 Except as otherwise provided by law, unless it is shifted, a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting”.

This position of the law on the shifting nature of the burden has received confirmed in the case of **In Re Ashalley Botwe Lands, Adjetey Agbosu and others v Kotey and others [2003-2004] SCGLR 420 at page 425** where the Supreme Court per Brobbey JSC held that under the provisions of the Evidence Decree, 1975 (NRCD 323), the burden of producing evidence in any given case was not fixed but shifted from party to party at various stages of the trial depending on the issues asserted and/or denied. And unless the burden shifts, the Plaintiff bears the burden of proof on all matters raised by the Claim and the standard of proof is on the balance or preponderance of probabilities.

It is also settled law that when the burden of proof is cast upon a plaintiff he must prove his case and win on the strength of the case presented and not on the weakness of the defendant's case. This principle was first established by the case of **Kodilinye v Odu (1935) 2 WACA 336** but has been commented on and shaped in succeeding cases. In the case of **Asare v Appau II [1984-86] 1 GLR 599, CA**, it was stated that:

“...the common run of land suits in the courts had, as the plaintiff, a person who claimed title to land, suing as the defendant, a person in possession of the land. Such a defendant needed not, and usually did not, seek any relief in the proceedings, being content with things as they were. In that event, the plaintiff must rely on the strength of his own case, i.e. prove his title and not rely on the weakness of his opponent's, i.e. lack of title in the defendant, so that if the plaintiff failed to prove that he was entitled to have a declaration made of his title to the land, the action ought to be dismissed, leaving the defendant in possession of the land.” See **Banga v Djanie [1989-90] 1 GLR 510, CA**

However, where a Plaintiff was able to lead cogent evidence to establish title to the land without any further evidence, that piece of evidence raises a rebuttable presumption in his favour which ought to be dislodged by superior evidence. And that onus to dislodge

the presumption is on the party against whom a ruling will be made if no evidence is led. In this case, that onus to dislodge the presumption will be on the Defendants.

Having established in clear terms the obligations of proof, I wish to run through highlights of the evidence led by both parties in proof of their respective claims. As procedure demanded, the Plaintiff bore the burden to lead evidence to prove the grounds upon which their claims were grounded to have judgment entered on the reliefs claimed on the Writ of Summons. Plaintiff led evidence on his own behalf in proof of the averments he had made. He then called three other witnesses in support of his case. The nub of the evidence led by the Plaintiff and those of his witnesses is that his family's oral history as was passed on to him has it that in the early 19th Century, his ancestor and predecessor in-title commonly referred to by all and sundry as Opanyin Kweku Nyame Yeadom migrated from Asante Akyem Webiri to Agona Kwaman in search of a place to farm and make a living. That when his ancestor finally settled at Agona Kwaman in the year 1835 or thereabout, he acquired a large tract of land for farming purposes and the said farms are still standing and being maintained his agents. That due to the industry and diligence with which Opanyin Nyame Yeadom carried out his trade as a farmer, he was gifted a large tract of land along the main road leading to Anafo by the then Chief of the town and his principal elders, who are all dead, to build thereon. That the gift was unconditional and was made in the year 1840s or thereabout and in accordance with the customary practices known at the time by presenting 'aseda' in the nature of drinks and in the presence of independent witnesses whose names he is not privy to.

It is the further case of the Plaintiff that Opanyin Nyame Yeadom was placed in possession of the land so gifted by his grantors and he constructed three separate houses abutting each other on the said land without any let or hindrance. That Opanyin

Nyame Yeadom gave one of the houses to one of his many wives known as Obaapanyin Maame Egyiraka. That the other house was given to his children and the disputed house for his family. That the house given to the family is no more. However, the other two houses are still there and being occupied. He attached marked as Exhibit A, a picture showing the stretch of land containing the disputed area (in the middle), the house for the children and the house of Obaapanyin Maame Egyiraka.

It is the case of the Plaintiff that Obaapanyin Maame Egyiraka's house (built by Opanyin Nyame Yeadom), was about four years ago, demolished and reconstructed because it had fallen into ruins. That there was no objection from any quarters including the Defendants and their successors in title. He attached marked as exhibits B and B1, the reconstructed house of Obaapanyin Maame Egyiraka. Plaintiff stated further that the house built by Opanyin Nyame Yeadom for his children which abuts the disputed area has fallen into ruins. He attached a picture showing the said house which was marked as exhibit C. Plaintiff described the land in dispute as all that parcel of land lying at Agona Kwaman and bounded by the road leading to Anafo J.H.S School, Maame Egyiraka's house (wife of Opanyin Nyame Yeadom), Maame Efua Oyisiwaa's house and Opanyin Nyame Yeadom's house built for his children and measuring about half of a plot. He again attached marked as exhibit D, a picture showing the disputed area.

It is the further case of the Plaintiff that the disputed area was until recently being occupied by the house Opanyin Nyame Yeadom built for his family. That Opanyin Nyame Yeadom lived in the said house with members of his Aboradze/Assini family until his death and after his death, his successive customary successors such as Nana Yamoah, Akwasi Donkor, Yaw Abuah and others lived in the said house. That the said house comprised of 6 rooms and a big veranda and was famously known as the Tailors

hub since Opanyin Nyame Yeadom and his successors permitted tailors in the town to ply their trade from a portion of the veranda and the other portion was used for purchasing and storing cocoa beans. That when he was appointed as the customary successor and head of family, he realized that the house Opanyin Nyame Yeadom built for the family needed urgent repairs and facelift to bring it to the status that will match the prestige the family has attained. He claimed that the Chief of the town recently had cause to complain to him that their family house was not befitting of their long family history tracing back to Opanyin Nyame Yeadom and his status in the town and the fact that the house was posing a danger.

So, he caused the building to be pulled down to make way for the construction of a new family house. That remnants of the old family house are still lying on the land in dispute. That the Defendants upon realizing that that the land has become vacant, has purportedly granted same to a company whose name and address is unknown to him to erect a mast thereon.

The Plaintiff maintained that the assertion by Defendants that they hold the allodial title to all lands within Ahenbrom and that they are entitled to any building which falls into ruins was a palpable falsehood. He claimed that recently, the house of one Nana Gyasee which is also within the Anafo suburb fell into ruins and his family demolished and reconstructed a new [one] without any let or hindrance. He attached marked as exhibit E, the house of Nana Gyasee within Anafo. It is Plaintiff's case that the Defendants do not have any interest in the land in dispute to purport to grant same to anyone and that if there exist any such interest, that interest is statute barred.

After the Plaintiff and his witnesses had closed their case, the Defendants were called to open their case. 1st Defendant gave evidence on his own behalf and on behalf of the 2nd Defendant who he claimed is the head of family of the Twidan No.1 Royal Family of

Agona Kwaman. Afterwards, they called three other witness who testified in support of their case. The nub of the Defendants' case is to the effect that their family does not know the Plaintiff as an accredited head of family as Aboradze/Assin family, as the Plaintiff claims since the said family had not introduced the Plaintiff to Oman Kwaman as customary and tradition demands. It is the case of the Defendants that the said Opanyin Kwaku Nyame Yeadom, though was said to have migrated from Akyem to Agona Kwaman, was never a member of the Twidan No.1 Royal family of Agona Kwaman. That when Opanyin Kwaku Nyame Yeadom migrated to Agona Kwaman, nowhere did he acquire any large tract of land belonging to the Twidan No.1 Royal family of Agona Kwaman. That the story of a gift of a land to Opanyin Kwaku Nyame Yeadom by his predecessors, the chief and his elders, as stated by the Plaintiff, is never the case.

It is the case of the Defendants that the buildings allegedly put up by Opanyin Kwaku Nyame Yeadom were put up on separate portion[s] of the family land and that the disputed portion is distinct from the two houses which now stand. That the two houses given to the wives as claimed by the Plaintiff are not on the disputed land. That when any of the building[s] run into ruin, (sic) the Twidan No.1 family shall re-possess the vacant land. That his Twidan No.1 Royal family owes (sic) all that tract of land inclusive of the disputed land situate and lying at Anafo also called Ahenbrom a suburb of Agona Kwaman. That the suburb also host the chief's palace, a structure inhabited by Nana Kow Yeboah, the chief of Agona Kwaman. That these individuals or groups who built on his family land pay annual homage to the family stool and so was Opanyin Kwaku Nyame Yeadom and his immediate predecessors in title. That the Plaintiff had not introduced himself to his family. As a result, he had not performed as the others who lived and stayed at Agona Kwaman. That each of these customary successors paid homage to my family stool acknowledging the title of Twidan No. 1 Royal family as

well as appreciating the permission granted to their family man to build on the land. That the name 'tailor house', came about because, one of the customary successors used the veranda in front of the house for his tailoring business.

It is the further case of the Defendants that the dilapidated house of Opanyin Kwaku Yeadom was brought down about ten (10) years ago. That no planned development can be done without the consent and authority of the Twidan No.1 Royal family who are the allodial owners of the disputed land which consent and authority has not been sought. That a supposed caretaker of the dilapidated house, one Attar, was summoned to the palace when his family had a reliable information that the disputed land had been granted to a sister of the caretaker to build a house on sharing basis between herself and Plaintiff. That Plaintiff was also invited and was ordered to give vacant possession of the disputed land. That as allodial owners, his family has the right to grant the disputed land to any individual after re-possession of the vacant land. That Plaintiff's ancestor was only permitted by his family to build on the disputed land and after the repossession, the management of same had been done by his family. That the reliefs sought by the Plaintiff are not sustainable and same must be dismissed.

Having dispensed with the above introductory yet cogent parts of this judgment, I shall determine the issues relevant to bringing some quietus to this case. The issues will however be determined in no particular order. As I stated by way of introduction to the judgment, the identity of the land in dispute is not in doubt. It is located within the town of Agona Kwaman in the Ahenbrom suburb. It is the Plaintiffs case that his predecessor whose name he gave as Opanyin Kweku Nyame Yeadom acquired the land through an unconditional gift from the then chief of Agona Kwaman. The purpose of the gift was to build on. That the said Opanyin Nyame Yeadom put up three houses on the land. That after construction of the houses, he apportioned one to his children, one

to his wife whose name was given as Maame Egyiraka's house. He then gave the other one to his family i.e. the Aboradze/Assini family. It is the land on which the building apportioned to the family stood which is the subject of this dispute. According to the Plaintiff, Opanyin Nyame Yeadom was in possession of the buildings until his death. That after his death, his predecessors continued with possession of the buildings. That because the building he gave to his family was old and failing, the Plaintiff pulled it down with intent to construct a new structure on the land. So, the land became bare, with no building on it. However, the Defendants purporting to repossess the land claimed ownership of it.

Defendants on the other hand, denied the title of the Plaintiffs to this disputed land. As I stated above, it is the case of the Defendants that Opanyin Kwaku Nyame Yeadom was firstly not a member of the Twidan No.1 Royal family of Agona Kwaman. They also claimed that when Opanyin Kwaku Nyame Yeadom migrated to Agona Kwaman, he did not acquire any large tracts of land belonging to the Twidan No.1 Royal family of Agona Kwaman. They also denied the claim by the Plaintiff that there was a gift of the land to Opanyin Nyame Yeadom. That the buildings allegedly put up by Opanyin Kwaku Nyame Yeadom were put up on separate portion[s] of the family land and that the disputed portion is distinct from the two houses which now stand. That the two houses given to the wives as claimed by the Plaintiff are not on the disputed land. That when any of the buildings fall into ruin, the Twidan No.1 family shall re-possess the vacant land. That the Twidan No.1 Royal family owns all that tract of land inclusive of the disputed land situate and lying at Anafo also called Ahenbrom a suburb of Agona Kwaman. They also claimed to have pulled down the dilapidated building on the land about ten (10) years ago rendering the land bare.

It is not in doubt that the land originally belonged to the Twidan No. 1 family of Agona Kwaman. The claim by the defendants that they owned the land was admitted by the Plaintiff under cross examination. Plaintiff admitted that all three houses built by Opanyin Nyame Yeadom were put upon the Defendants' land. So it is accepted as a fact that the land on which all three buildings stood belonged to the Twidan No.1 family. It is also accepted as a fact that Opanyin Nyame Yeadom constructed three separate houses on the land which has been admitted to have originally belonged to the defendants. Of these three houses, he gifted one to his wife, children and to his family. As stated above, it is the land on which the building he gave to his family stood which is in dispute. It is this land which is the subject of the dispute. This judgment therefore does not and cannot be stretched to affect the other lands on which the buildings as shown in Exhibits B and B1.

Both Plaintiff and Defendants have proposed various traditional theories regarding the source of their title to the disputed land. According to the Plaintiff, his ancestor acquired the land around the 1840s. From the narrative, the alleged events affecting the disputed land date back to a very long time ago. None of the living presently had been born by then. It is also apparent that none of the people who could have given testimony of the events are alive. They have certainly died over the years. Therefore, whether or not Opanyin Nyame Yeadom acquired the land by way of a gift from the chief of Agona Kwaman or that he was only permitted to build a house on it to dwell in, takes the character of traditional evidence. As I stated above, 1840 is a long way back and clearly, none of the parties in this case had been born to have witnessed when, how and why the said events took place. The accepted principle of law is that where matters are partly or wholly traditional, and evidence is led in proof of them, it is the general principle that such evidence should be evaluated by recourse to undisputed facts of rights, ownership, occupation or possession of recent memory exercised over the

disputed subject matter. Thus, the veracity of one history or the other can be ascertained only by means of testing it against facts in recent memory as established by the evidence. This principle of law was established in the celebrated case of **Adjeibi-Kojo v Bonsie (1957) 3 WALR 257, PC**. In that case, the court laid down the principle in the following terms:

“The most satisfactory method of testing the traditional history is by examining it in the light of such more recent facts as can be established by evidence in order to establish which of two conflicting statements of tradition is more probably correct.”

This principle of law has been followed in a line of cases such as: **Achoro v Akanfela [1996-97] SCGLR 209; Adwubeng v Domfe [1996-97] SCGLR 66; In re Krobo Stool; Nyamekye v Opoku [2000] SCGLR 347; In re Kodie Stool; Adowaa v Osei [1998-99] SCGLR 23**. It has again been held that where, for example, a traditional history is fantastic, romantic or merely entertaining and has no reference to recent facts, it ought not to weigh upon any court.

To set up a basis upon which to examine their proffered traditional histories, the Plaintiff as well as the Defendants could show recent acts of possession or control over the land over a period of time as evidence or proof of ownership. This decision to examine the respective histories proffered by the parties is fortified on the long-held principle of law that the burden of proof in a case was not static but shifted from party to party at various stages of the trial depending on the obligation that is put on that party on an issue. As I stated by way of establishing whom the burden of proof lay in the case above, Section 14 of the Evidence Act, 1975 (NRCD 323) settles the debate by categorically stating that each party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting. The import of this section is that at every point in time during the trial of a

case, a Plaintiff or a Defendant may be required to lead evidence to establish a fact he/she asserts and which is essential to his/her case. So, it does not follow that a Plaintiff has the burden of proof at all times in a case. That burden may shift to a Defendant depending on what he/she asserts in defence of the claims.

Having made the above submission, I shall first examine the history of the land as given by the Plaintiff in light of more recent facts of possession or occupation exercised by them over the land to ascertain the veracity of their claims to it as against that of the Defendants. Before I set out to examine the histories in light of more recent acts of possession, it is important to evaluate a crucial assertion made by the plaintiff. If the assertion is proven, it has the effect of truncating any intended excursion into recent acts of possession of the land. As I stated above, the plaintiff asserted that his ancestor, Opanyin Nyame Yeadom acquired the land by way of a gift of it to him by the then chief of Agona Kwaman. The plaintiff gave the name of the chief who made the gift as Nana Atta Yeboah II under cross examination. The purpose of the gift of the land was according to the plaintiff, for building. The Defendants denied that any such gift was made to Opanyin Nyame Yeadom by any such chief. Having asserted that Opanyin Nyame Yeadom acquired the land in dispute by way of a gift, it behoved the Plaintiff to lead evidence to establish same. The law is that when a claimant to land asserts title by way of gift, that assertion must be strictly proved. So, in **Firi v Frimpong [1982-83] GLR 176**, the Court of Appeal held that a purported gift made in one's lifetime must be strictly proved: see also the case of **Larkai v. Amorkor (1933) 1 W.A.C.A. 323** which confirms the above principle of law. To my understanding, proof is strict when evidence is led to establish all the salient elements of the asserted gift. And from the tenor of the assertion by the Plaintiff, he appears to suggest that a customary gift was made to Opanyin Nyame Yeadom. What then are the requisites for a customary gift? It

has been held that for a customary gift to be established, the following conditions must be satisfied:

- a. The donor must be the owner of the property to be given and thus have the competence to transfer it.
- b. The donor must express a clear intention to make the gift. This is signified by the donor divesting himself of all rights of ownership of the property, the subject matter of the gift.
- c. Publicity must be given to the gift
- d. The subject matter of the gift must be delivered to the donee during the lifetime of the donor
- e. Acceptance of the gift during the lifetime of the donor by himself giving thank-offering — aseda, or by enjoying the gift.

See also **Boakye v Broni and Domfe (1958) 3 W.A.L.R.; Krakuwah v. Nayenna (1938) 4 W.A.C.A. 165**. In this case, I am afraid to say that the Plaintiff failed to establish a single requirement, as stated above, in proof of his assertion that a gift of the land had been made to his ancestor by the then chief of Agona Kwaman. There was nothing in the evidence to show that the land had been gifted to Opanyin Nyame Yeadom. Save mentioning it in his written statement of claim and having it repeated in evidence, he failed to establish by credible evidence, the assertions made. I concede however that this failure could primarily be attributed to the fact that according to him, the purported gift was made around the 1840s. As such, all the witnesses may have unfortunately died. However, it stood to be proved, once the assertion had been made. That assertion that the land in dispute had been gifted to Opanyin Nyame Yeadom is dismissed as unproven.

So, the trump card of the Plaintiff having failed, what other evidence did he lead to show more recent facts of possession or occupation exercised by him over the land? Did

he lead any evidence of recent facts of possession or occupation exercised by him and his family over the land which has the quality of proof of acquisition of the land by Opanyin Nyame Yeadom? It is important to underscore that after the alleged acquisition of the land by Opanyin Nyame Yeadom, he put up a building on it. That is not disputed by the Defendants. So, it is accepted as a fact that after the alleged acquisition of the land by Opanyin Nyame Yeadom, he put on the land a six bedroom house. After putting up the six bedroom building, he stayed in it. He possessed the building personally with members of his Aboradze/Assini family until his death. This fact is also not contested by the Defendants. It is not stated the length of time he possessed the building. However, it is instructive that he went into occupation of the property and that possession continued until his death.

Opanyin Nyame Yeadom's possession of the house did not abate upon his death. It is the further case of the Plaintiff that after his death, the successors in-title to Opanyin Nyame Yeadom also continued to possess the building. Mention was made of successors in-title like Nana Yamoah, Akwasi Donkor, and Yaw Abuah who successively lived in the house after the death of Opanyin Nyame Yeadom. This was not denied by the Defendants. Further to these persons who successively occupied the building, one of the witnesses called by the Defendants' by name Kojo Atsiako confirmed that before the building was pulled down, the last person who lived in it was one Opanyin Yaw Fosu. The witness confirmed that the said Opanyin Yaw Fosu was the head of Plaintiff's Aboradze/Assini family. So, the line of possession of the building on the land did not abate after the death of Opanyin Nyame Yeadom. And not less than four successive successors in-title occupied it before it was pulled down.

It is also in evidence that in exercise of their right to possession of the building, Opanyin Nyame Yeadom and his successors in-title permitted tailors in the town to ply their

trade on a veranda abutting the building. Hence, the veranda was popularly called 'tailors' hub'. This assertion was not entirely denied by the Defendants. They admitted that the veranda was called by the name referred to above. They however claimed that only one tailor i.e. a customary successor [who belongs to the Plaintiff's family], used the veranda for his tailoring business. The import however of the claim by the plaintiff is, I think, to show that Opanyin Nyame Yeadom and his successors in-title exercised outright possession over the land in which the building stood. I have, from the above, found that Opanyin Nyame Yeadom possessed and occupied the land during his lifetime and after his death, his family continued to possess the land.

Now, the Defendants claim that Opanyin Nyame Yeadom did not acquire the land by way of gift as the Plaintiff asserted. They maintained that Opanyin Nyame Yeadom was only permitted to put up a building on the land. One of the witnesses for the Defendants called Nana Opeiku Yeboah VI, the chief of Agona Kwaman, testified that the family granted permission to non-family members and by extension, Opanyin Nyame Yeadom, to build or eke out a living on portions of the family's Ahenbromu land. That Opanyin Nyame Yeadom was a licensee of the Twidan No.1 family. That he paid tribute to the family as well as two of his successors-in-title. I have set out below portions of the assertions made by the witness in order to put the discussions that follow in proper perspective. He stated in paragraphs 4, 5, 6 and 7 of the witness statement as follows:

4. I know the disputed land forms part of my family land and that all the land situate at Ahenbrom are my family land.
5. The family granted permission or license to non-family members to build or eke living on portion of the Ahenbrom land.

6. That any individual or non-family member who lived on the said land surrounds (sic) vacant possession when the building thereon runs into ruin.
(sic)
7. That the inhabitants of any portion of my family land will pay to my family 'Akofi' or tribute during festivals and that Opanyin Kweku Yemi Yeadom (sic) and his immediate two customary successors in-title paid tribute to my family for being allowed to build on the disputed land.

From the testimony of the witness, the Twidan No.1 family granted Opanyin Nyame Yeadom a license to occupy the land. That he was a licensee of the family. If the Defendants say that Opanyin Nyame Yeadom was their licensee, then all the elements of a license must be seen in his occupation and user of the land. As I have already stated, once a party makes an assertion capable of proof, the burden of proof shifted to him/her to lead such credible and sufficient evidence capable of proving that assertion. So, whether or not the Defendants granted permission to Opanyin Nyame Yeadom to occupy the land is an assertion which ought to be proved by the Defendants. It is important to note that the Defendants' claim that their family permitted Opanyin Nyame Yeadom to stay on the land is very instructive in the context of a case for declaration of title. If successfully proved by evidence, it would in no small way be a boost in the case of the Defendants. This is because as was stated in the case of **Fori v Ayirebi [1966] GLR 627 at 647, SC**, there cannot be a more open, positive or effective exercise of acts of possession of land than by placing a purchaser, tenant or a licensee on it.

If proved, then Opanyin Nyame Yeadom would effectively have been a licensee on the land to the Defendants' Twidan No.1 family, thereby holding no proprietary interest in the land. A License, according to **section 281 of the Land Act, 2020 (Act 1036)**, means a

permission other than easement or profit given by a proprietor of land or of an interest in land which allows the person granted the permission to do certain acts in relation to the land which would otherwise be a trespass. It is a relationship which creates no proprietary interest in land. There are generally two types of such licenses; the bare or gratuitous and contractual licenses. In both types, the licensee has no proprietary interest in the land he/she occupies. And generally, at common law, since a license conferred no proprietary interest in land, it could always be revoked by the licensor at any time provided the licensee was given reasonable time within which to remove himself and his property after the license has been revoked. This is so whether the license was gratuitous or contractual.

Having stated the above rule of law, I observe however, that despite the witness for Defendants' insistence that the Twidan No.1 family granted a license to Opanyin Nyame Yeadom, they failed to lead sufficient evidence in proof of it. Save stating and having some of their witnesses repeat it in their evidence, there was nothing else done by the Defendants to lead concrete proof of this major critical assertion. From the evidence led in totality, I do not find that Opanyin Nyame Yeadom was a licensee on the land for the Twidan No.1 family. I say so because there are no incidences of a license shown or proved to have existed in his occupation and user of the land. It is admitted that Opanyin Nyame Yeadom built on the land. At least the Defendants claim that the license was for the purpose of building a residential accommodation. However, after building the house, Opanyin Nyame Yeadom did not perform any acts suggestive of a licensee. He permitted tailors to use his building without recourse to the Twidan No.1 family. He was in total control of the house he had put up. I think that the Defendants could have for instance, shown the persons who were present to witness the said grant of a license being made to Opanyin Nyame Yeadom and have them testify to that effect, if any are alive. They produced no such witnesses to the grant of a license.

Again one of the cardinal incidents of a license is the paying of toll or 'Agofe' as is known customarily. The Defendants could have shown that Opanyin Nyame Yeadom attorned tenancy for his occupancy of the land to the Twidan family during his lifetime and after his death, his successors continued to attorn tenancy. Nana Opeiku Yeboah stated in paragraph 7 of his witness statement as produced above that the inhabitants of any portion of his family land paid to his family 'Akofi' (as he put it) or tribute during festivals. That Opanyin Kweku Nyame Yeadom and two of his immediate customary successors in-title paid tribute to his family for being allowed to build on the disputed land. This suggestion that Opanyin Nyame Yeadom paid tribute to the Twidan No.1 family for his user of the land was denied by the Plaintiff. Yet, in the face of the denial, the Defendants failed to lead any evidence to prove that assertion. I think that the Defendants could have elaborated on the manner in which the royalty was exacted, the people to whom it was paid, which of the two successors paid the tribute, the nature of the tribute paid and if possible, the living witnesses to such payment. The evidence gathered in proof of this critical assertion was insufficient. Thus Defendants failed to prove that Opanyin Nyame Yeadom paid royalty or 'Agofe' to the Twidan family during his lifetime and that two of his immediate successors paid royalty to the Twidan family after his death. Indeed, the foregoing lay bare the fallacies in the Defendants' claims that Opanyin Nyame Yeadom was granted a license to build on the land. As I have found from the evidence, such claims are mere afterthoughts aimed at throwing dust into the eyes of the court.

Defendants further asserted that as a condition of the grant of the license, there was an agreement that any land within the Ahenbrom lands on which a building was constructed by non-member of the Twidan No.1 family including Opanyin Nyame

Yeadom, would, upon the building falling into ruins, revert to the Twidan No.1 family. Thus, the Twidan No.1 family has a right to reversion of the land upon the falling into ruins of any building put up on the Ahenbronmu lands. As such, when the building put up by Opanyin Nyame Yeadom fell into ruins, they repossessed the land and gave it to a caretaker to take care of it. The Plaintiff denied that there was any such agreement or condition for the grant to Opanyin Nyame Yeadom that should the building fall into ruins, the land would revert to the Twidan No.1 family.

It bears emphasizing that having proposed that there was such a condition in the grant of the land to Opanyin Nyame Yeadom, it was within the remit of the Defendants to prove same. That information was peculiarly within the knowledge of the Defendants. As such, it was expected of the Defendants to lead evidence in proof of same. The general rule is that if a negative averment is made by one party, in this case, the Plaintiff, which is peculiarly within the knowledge of the other, the party within whose knowledge it lies and who asserts the affirmative must prove the same. See the dicta of Bayley J in *R. V. Turner* (1816) 5 M & S 206 at 211 which was affirmed by Osei-Hwere J (as he then was) in the Ghanaian case of **Boakye v. Asamoah & Anor (1974) 1 GLR 38-46**. Here too, I find the Defendants failed in proof of the assertion. The Defendants led no evidence of proof of the said condition of repossession of the land upon the six bedroom building falling into ruins. I do not find any proof that Opanyin Nyame Yeadom was granted the land as a licensee. I also do not find any proof that there was a condition in the grant that should the building he put on the land fall into ruins, the land shall revert to the Twidan No.1 family. It is important to note that each case is determined based on the peculiar facts and circumstances of that case. So, the popular saying in the legal fraternity is that no two cases are the same. I infer from the evidence led by the Defendants an attempt to claim that all persons who occupied lands at Ahenbrom in Agona Kwaman paid Agofo to the Twidan family and also had a

condition in their grant (license) that should their buildings fall into ruins, the said Twidan No.1 family have the right to repossession. I see these as valid covenants in leases and tenancies which are enforceable against such contracting parties.

However, as I stated, each case should be determined on the facts of that case. So that the fact that other persons who built on the Ahenbrom lands covenanted with the Twidan No.1 family to limit their interests in the land to the lifetime of the buildings they put on the lands should not be over generalized to every occupier on the land. The fact also that other persons who built on the Ahenbrom lands were 'permitted' to do so is no ground to say that Opanyin Nyame Yeadom was also a licensee. There is freedom of contract and the conditions received by one person may be different from all other persons. In the end, it was the Defendants' to prove that Opanyin Nyame Yeadom was a licensee just like all others and that his interest subsisted so long as the building stood on the land. This they failed to do. Having failed in that endeavour, they cannot be heard to say that once all or most occupants of the lands at Ahenbrom were licensees, Opanyin Nyame Yeadom and his family are also, by generalization, licensees etc. I see the assertions made by the Defendants as bundle of afterthoughts packaged to throw dust into the eyes of the court. I hold that the Defendants failed to prove that Opanyin Nyame Yeadom was a licensee on the land. They also failed to prove that it was a condition of his possession of the land that should the building fall into ruins, the Twidan No.1 family would have a right of reversion.

The point above having been made, I wish to address one point which kept popping up in the Plaintiff and the Defendants' evidence. This point has to do with how the building on the land got removed from there. The circumstances under which the building was removed appears to be a mystery. While the Plaintiff at one breadth in his evidence appear to own up as the one who demolished the building to construct a new

family house befitting their family's status, the Defendants, in another breadth appear to say that they pulled down the house on the disputed land which they admit was put up by Opanyin Nyame Yeadom. In the witness statements as well as under cross-examination, some of the witnesses called by the Defendants emphasized and repeated this fact that when the building appeared weak, the chief of Agona Kwaman instructed that it be removed. That they then removed it about ten years ago. If it is accepted that the Defendants demolished the building, then consequences shall follow such act. It is the consequences hypothetically flowing from this claim that I wish to address. As I have already determined above, Defendants appear to suggest that there was a clause or condition that should any of the buildings on their supposed lands fall into ruins, the land shall revert to them. So, to the Defendants, when the building on the land fell into ruins, they repossessed the land on which the building stood. I have held above that there was no such agreement, clause or covenant with occupants of lands at Ahenbromu including Opanyin Nyame Yeadom that should any of the buildings fall into ruins, the land shall revert to the Defendants. There was no evidence led in proof of such a condition or covenant.

However, even if there was any such covenant or condition, I do not think that it was a clause in the supposed covenant that the Defendants were to force the occurrence of the event by which they would repossess the land. I think that if any such clause existed, it is expected that the building would naturally fall into ruins. The family with the reversionary right does not force the occurrence of the event by which their right to reversion would come into operation. It must happen naturally. Hence, it is probable that had the Defendants not pulled the building down, it would still have been on the land. The so called reversion of the Defendants would not have come into operation. Therefore, even if the court had found a condition or covenant to the effect that when the building fell into ruins, the land would have reverted to the Defendants, by their

alleged unilateral act of demolishing the building before it naturally fell into ruins, the building had not fallen into ruins yet. And the defendants would have been made to wait for however long (a reasonable period) it would have taken for the building to naturally fall into ruins. Be that as it may, I have held above that there was no such condition that should the buildings on the land fall into ruins, the land shall revert to the Defendants. As such, the above hypothetical situation does not arise at all.

From the discourse above, it cannot be gainsaid that the Plaintiff and his family are still in possession of the land in dispute. I have not found any condition that the land was to have reverted to the Defendants upon the removal of the building thereon. As such, the title acquired by Opanyin Nyame Yeadom subsists. Since Opanyin Nyame Yeadom and his family represented by the Plaintiff was in possession of the land prior to the demolishing of the building and continues to be in possession, the onus was on anyone who seeks to oust him and his family from the land to prove on balance that the land does not belong to them. Being in possession of the land, the law makes a presumption of ownership in their favour. **The Evidence Act, 1975 (NRCD 323)** states in section 48 (1) and (2) thus:

“48 (1) The things which a person possesses are presumed to be owned by him.

(2) A person who exercises acts of ownership over property is presumed to be the owner of it.”

The law puts the burden on the Defendants to prove the non-existence of the presumed fact of ownership. See section 20 of NRCD 323. I do not think that the Defendants have been able to lead any evidence to disprove the presumed fact of ownership. Even though Defendants claimed that Opanyin Nyame Yeadom was their licensee, there is no concrete proof of it. I have dismissed that assertion. They further alleged that there was a condition that upon the building falling into ruins, the Twidan No.1 family shall

repossess the land. That assertion was also bereft of proof and same has been dismissed. It is sufficiently clear that the sum-total of the Defendants' case and the evidence they led aimed at ousting Opanyin Nyame Yeadom from his possession of the land failed. It falls very far short of establishing that Opanyin Nyame Yeadom was a licensee or their claimed reversionary interest in the land upon the occurrence of the stated event. I think the facts of the case exposed the fallacies in the Defendants' claims. In the end, the court could not accept any of their assertions as stated above.

Now, what legal effect does the fact of possession of the land by Opanyin Nyame Yeadom and the Plaintiff's family have? It has long been established as a basic principle of law that possession is the original form in which ownership manifests itself. And apart from systems of public registration, it ultimately is the only means of proving ownership. In the case of **Akyea-Djamson v Duagbor [1989-90] 1 GLR 223 at 233**, the Supreme Court held that a person in possession has "nine-tenths of the law" in his favour in regard to ownership with the outstanding one-tenth reposed in any person aspiring to oust him, to make out his claim as to his entitlement to be declared an owner. See also the following cases which applied the principle: **Kusi & Kusi v Bonsu (2010) SCGLR 60**; **Hammond v Amuah & Another (1991) 1 GLR 89**; **Western Hardwood Enterprises Ltd. & Another v West African Enterprises Ltd. (1998-1999) SCGLR 105**; **Fori v Ayirebi & Others (1966) GLR 627 SC**; **Danielli Construction Ltd. v Mabey & Johnson Ltd. (2007-2008) 1 SCGLR 60**.

As I have found as a fact above, the said Opanyin Nyame Yeadom was in effective possession of the land. He paid no toll or royalty to the Defendants' family. He was thus not their licensee. There was no evidence that the Defendants 'permitted' Opanyin Nyame Yeadom to occupy the land. The nature of the said permission was not proven. Neither the Plaintiff nor any of his witnesses admitted to the alleged permission the

Defendants claim was given to Opanyin Nyame Yeadom to put up his building. If Opanyin Nyame Yeadom was not a licensee as asserted by the Defendants, then his long user and possession of the land coupled with acts, performed by himself and his successors in-title on the land, inconsistent with a licensee or a person with a 'permission' are sufficient to establish ownership of the land. As to the assertion that Opanyin Nyame Yeadom and two of his immediate successors in-title paid royalty to the Twidan No.1 family, I think that the Defendants failed woefully to convince me on that. There is no proof on record that he or any of his successors paid any form of royalty or toll to the Defendants' family. The Defendants again failed to demonstrate through the evidence that the land belongs to them by reversion. Having failed to disprove the presumption of ownership created in favour of Opanyin Nyame Yeadom and his successors including the Plaintiff, I hold that the fact of possession of the land by Opanyin Nyame Yeadom and his family including the Plaintiff meant that he is owner of it.

The last issue to be determined is that of damages. I shall briefly determine this issue of damages to cap this judgment. The Plaintiff claimed in his writ of summons for damages for trespass. It is trite law that when trespass to land was proved or admitted, damages flowed as a matter of legal consequence. See **Hassan v Kassardjian Construction Limited, Tamale (1964) GLR 370**. It has also been held that proof of title was not required in order to succeed on a claim for damages because the law did not require that a person in possession could not have the possessory remedy of damages unless he/she proved title. Thus, trespass was a wrong to possession and one of the known remedies for trespass was damages.

The law in respect of damages for trespass has been set out above. The question is, did the Defendants commit trespass capable of grounding damages in law? I have found in

the evidence undisputed evidence of acts of trespass committed by the Defendants. Firstly, the Defendants claimed to have pulled down the dilapidated building on the land about ten (10) years ago. The Plaintiff also claimed that the Defendants have entered onto the bare land and given it out to an unnamed company to erect a mast on it. The Defendants appeared to admit that they have granted the land to another person because as they put it, as allodial owners, they have the right to grant the disputed land to any individual after repossession of the vacant land. I have already established that there has not been any repossession of the land by the Twidan No.1 family. The purported right to repossess the land has not been proved. As such, any intrusion onto the land with the justification that the Twidan No.1 family has repossessed it is unlawful and trespassory. Moreover, the assertion that the Twidan No.1 family removed the building from the land amounts a confirmation that they have trespassed and intruded onto the possessory rights of the Plaintiff in the land. I find from the evidence that the Defendants did not have any legal capacity to have entered onto the land to either remove the building or to grant any portion of it to any individual. I find these acts sufficient trespass onto the Plaintiff's property. I find that the Defendants' entry onto the land could not have been made lawfully since they had divested their interest in the land to Opanyin Nyame Yeadom and his family. From the undisputed facts and evidence in this case, I hold that Defendants committed trespass against the Plaintiff by entering onto and purporting to grant the land which they had divested their interest in centuries ago to another person under the guise of repossession. Since their entry was unlawful and infringed Plaintiff's possessory rights to the land, the Plaintiff is entitled to damages for trespass. This damage is awarded to compensate for deprivation of the use of the land by the Plaintiff.

On the preponderance of probabilities, I make the following findings of fact from the evidence on record adduced by the parties:

1. That the land in dispute lying at Ahenbrom in Agona Kwaman originally belonged to the Twidan No.1 family of Agona Kwaman to which the Defendants belong.
2. That Opanyin Nyame Yeadom acquired the land from the Twidan No.1 family for the purpose the purpose of building a residential accommodation on it.
3. That after the grant, Opanyin Nyame Yeadom went into possession of the land and put up six bedroom house on it. That he occupied the house on the land with members of his Aboradze/Assini family until his death.
4. That after his death, the members of the Aboradze/Assini family including the successors in-title of Opanyin Nyame Yeadom continued to possess the house.
5. That there is no proof that Opanyin Nyame Yeadom was a licensee or was granted permission by the Defendants to put up a building on the land. There is also no proof that during the lifetime of Opanyin Nyame Yeadom, he paid tolls or royalty to the Twidan No.1 family for his occupation of the land. I also do not find any proof of a condition or covenant in the grant to him that should the building he builds on the land fall into ruins, the Twidan No.1 family shall repossess the land.
6. That the Defendants claim to have pulled down the building which amounts to trespass. However, that act of pulling down the building did not abate the possession of the Plaintiff and his family of the land.
7. That the fact of possession of the land by Opanyin Nyame Yeadom and his family including the Plaintiff meant that he is owner of it.

On the totality of the evidence on record, the Plaintiff led sufficient evidence to prove the claims as endorsed on the writ of summons against the Defendants. I find that the Plaintiff succeeded in proving his claims against the Defendants. Judgment is given in

favour of the Plaintiff as per the reliefs endorsed on his writ of summons. I hereby enter judgment in this case in the following terms:

1. I declare title to the disputed bare land at Ahenbrom in Agona Kwaman in the Plaintiff.
2. I further declare that the disputed land mentioned above is the property of Plaintiff's ancestor, Opanyin Kweku Nyame Yeadom.
3. Furthermore, I order perpetual injunction to restrain the Defendants, their servants, assigns, workers, family members, and any other persons who may have anything to do on the disputed land from trespassing onto the disputed land which title has now been declared vested in the Plaintiff. I further restrain them from interfering with the Plaintiff's quiet enjoyment of the land.
4. I further enter judgment for the Plaintiff on his claim for damages for trespass. Damages were, as a general rule, normally said to be at large. The quantification for award of damages was peculiarly within the province of the court. I have taken into account the trespass the Defendants committed onto the land. Since the Plaintiff also claims to have been the one who demolished the building, it cannot be attributed to the Defendants' act. The discussion above was made hypothetically. There being not aggravation of the trespass, I would award a reasonable sum of Five Thousand Ghana Cedis (GH¢5,000) as general damages against the Defendants.

This case started in 2020. It has taken a long time to reach conclusion. Taking into account the length of time this case has had to travel to completion, and the fact that the Plaintiff engaged the services of counsel throughout the trial, I assess cost at GH¢5,000 against the Defendants in favour of the Plaintiff.

HIS HONOUR ISAAC APEATU

DISTRICT MAGISTRATE