CORAM: HER WORSHIP (MRS.) ROSEMARY EDITH HAYFORD, SITTING AS DISTRICT MAGISTRATE, DISTRICT COURT "B", SEKONDI ON 8TH FEBRUARY, 2023

SUIT NUMBER A1/29/2021

SAMUEL GRAVES SAMPSON AND 2 ORS - PLAINTIFFS

V

REV. FRANK SARKODIE AND ANOTHER - DEFENDANTS

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TIME: 08.45 AM

PLAINTIFF REPRESENTED BY 1ST AND 3RD PLAINTIFFS

2ND PLAINTIFF ABSENT

DEFENDANTS PRESENT

JUDGMENT

The Plaintiffs, the trustees of the Church of Christ a religious body incorporated and registered under the laws of Ghana, applied and acquired from Lands Commission the disputed land. Plaintiffs say that the defendants without their consent have trespassed on the said land and used same as a place of worship. They have also commenced the act of erecting pillars ostensibly to construct a structure thereon. Despite repeated

efforts to stop them and give vacant possession, the defendants have neglected and or refused to give up possession hence the plaintiffs claim the following reliefs:

1. *A declaration of title to and recovery of possession of that piece of land at Ekuasi measuring 0.29 acres with boundaries as pillars GWCS WP 3/48/5, W211/07/5, W211/07/1, W211/07/2, W211/07/3 and W211/07/4.*

2. *Special and General Damages for trespass.*

3. *An Order for perpetual injunction*

In their Statement of Defence filed on 11/06/2021 defendants deny that the land in dispute is for the plaintiffs. They contend that the land their church occupies is different from what the Plaintiffs are claiming. It was during their application to the Lands commission to plot their land and to secure planning permission that the Plaintiffs requested the Shama Ahanta East Metropolitan Assembly (SAEMA) to reject the application. Subsequently, SAEMA tried to resolve the issue but the Plaintiffs refused to participate in the exercise and rather sued. Defendants say the Plaintiffs are not entitled to their claims. Defendants do not have any counterclaim.

Pursuant to the order of the court on the 5th of July, 2021, the parties filed their survey instructions in respect of the disputed land following which a composite plan was prepared by the Survey and Mapping Division of the Lands Commission. Same was tendered in evidence as **Exhibit "CW1"**. The court appointed surveyor was duly crossed examined on his evidence by both lawyers of the parties.

The Plaintiffs' evidence is in line with their pleadings. 1st Plaintiff testified on his own behalf as a trustee and on behalf of the other plaintiffs. Per an offer letter dated March 2017 tendered in court as **Exhibit "A"** following an application by the Plaintiffs to the

Lands Commission, the disputed land was leased to the Plaintiffs in the same year. Consequently, an indenture was executed between the Government of Ghana through the Lands Commission and the Plaintiff Church. The said indenture has since been plotted, stamped, and registered at both the lands Commission and the Deeds Registry as Document Number 16141 under serial number 489/2020. The same was tendered, admitted, and marked as **Exhibit "B"**. It is the case of the Plaintiff that they took effective possession of the land and erected corner pillars. However, Defendant has trespassed on the land with earth-moving plants and machinery and graded the disputed land destroying the pillars that have been erected by the Plaintiffs. The Defendants by themselves or their agents/workmen started erecting pillars on the land with the view of constructing structures thereon. Plaintiffs tendered pictures of those activities as **Exhibit "C series**". The plaintiffs say that they were served with a demand notice for ground rent for the period between 2017-2021 and the same has been paid for. They tendered **Exhibits "D" and "D1"** as evidence of same. It is the case of the Plaintiff that they have shown all documents evidencing their ownership of the disputed land to the Defendant but they have refused or neglected to give up vacant possession of the land to the Plaintiffs. They further aver that in view of the conduct of the defendants, they reported the matter to the police at Sekondi, who eventually advised the parties to resort to redress by the court after several attempts to settle the dispute failed.

Plaintiff subpoenaed their grantors, the Lands Commission represented by their Principal Geomatic Technician as PW1. He testified that the land in dispute per their records forms part of the large tract of land that the State (The Government of Ghana) acquired under the Public Land Ordinance of 1876 and again re-acquired under a certificate of title dated 2nd March 1909 for Ekuasi resettlement. PW1 tendered the said acquisition instrument and the composite plan and same was admitted as **Exhibit "F**

series". PW1 further testified that Ekuasi lands have been determined by the High Court as State land and not a stool or family land as the defendants want this court to believe as same had been compulsorily acquired by the government in 1909. A copy of the judgment to that effect was tendered and admitted as **Exhibit "E"**. The witness avers that the Plaintiff is their lessee after fulfilling all conditions leading to the grant of the disputed land to them.

THE CASE OF THE DEFENDANT

The Defendants represented by the 1st Defendant who is the General Overseer of the Christian High Commission church, Sekondi testified on behalf of the defendants. He avers that the church acquired their land situate at Ekuase which he claims is different from that being claimed by the Plaintiffs from the Akona Royal Stool family of Ekuase, Sekondi with the consent and concurrence of the principal members of the family. An indenture was executed between the parties in 2016. 1st Defendant tendered the said indenture which was relabeled as **Exhibit "1".** 1st Defendant further tendered the plan attached to the indenture as **Exhibit "2".** According to the 1st Defendant, they started developing the land without any challenge. However, it was when they made an application to the Lands Commission and the Shama Ahanta East Metropolitan Assembly (SAEMA) to plot the land and secure planning permission that Plaintiff requested SAEMA to reject the said application. The Assembly tried to resolve the issue without any success. It is the contention of the Defendants that their land is different from that of the Plaintiffs based on the statement of claim filed and the site plan submitted by the Plaintiffs. Therefore, the Plaintiffs are not entitled to their claims. The Defendants did not call any witnesses in support of their case.

At the end of the trial, the issues for determination are as follows:

1. **Whether or not the land the parties are claiming is the same land.**

2. **Whether or not the disputed land forms part of the land compulsorily acquired by the State.**

3. **Whether or not the disputed land belongs to Plaintiffs or defendants**

BURDEN OF PROOF

The standard burden and persuasion of proof in civil matters including land are captured under sections 11(4) and 12(1) of the Evidence Act 1975 (NRCD 323). The relevant provisions provide:

> *"11(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence….*
>
> *12(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities."*

In land matters, the person asserting title must prove his root of title strictly, among others. In the case of **Mondial Veneer (Gh) Ltd v Amuah Gyebu XV (2011) SCGLR 466 at page 468 (**holding 4), the Supreme Court held that:

> *"In land litigation, even where living witnesses involved in the transaction, had been produced in court as witnesses, the law would require the person asserting title and on who bore the burden of persuasion... to prove the root of title, mode of acquisition and various acts of possession exercised over the disputed land. It is only where the party had succeeded in establishing those facts, on the balance of probabilities, that the party would be entitled to the claim"*

In **Deliman Oil Company Ltd v HFC Bank Ghana Limited (2016) 92 G.M.J.** 1, the Court of Appeal, sitting in Tamale, in its judgment delivered by Ackah-Yensu JA at page 8 said the following:

> *"Title is the means by which a person establishes his right to land. A person's title indicates by what means he claims to be the owner of land. Title to land may take the form of possession or it may take the form of a document or a series of documents…"*

Now, are the parties talking about the same land even though both acquired their respective lands from different grantors? Whereas the Plaintiffs claim their church acquired the disputed land from the Government of Ghana through the Lands Commission, the Defendants also claim their church acquired their land from the Akona Royal Stool Family of Ekuase, Sekondi. By the order of the court, a composite plan was prepared by the Survey and Mapping Department of the Lands Commission pursuant to survey instructions filed by both parties. From the cross examination of the Court appointed surveyor by counsel for the Plaintiff, it appears the land is the same. On page 17 of the record of proceedings on the 6th of December 2021 below is what ensued.

Q. *From the composite plan as prepared by you, the Plaintiff's land as per the attached cadastral plan is much bigger in size than as shown on the ground, is that correct*

A. *That is correct*

Xxx

Q. *The shaded part in the survey report shows the point at which the Defendant's land enters into that of the Plaintiff, is that correct*

A. *I cannot tell whether the Defendant's land overlaps with that of the Plaintiff's neither can I also tell the Plaintiff's land overlaps that of the Defendants*

Q. This overlap can be said to be approximately 0.16 acres, is that correct

A. That is correct

The size of the Plaintiffs' land as shown on their site plan is 0.29 acres and that of the Defendants' is 0.28 acres. I find that the overlap between the two lands is 0.16 acres which is greater than where there is no overlap. Inferably, it can be said that it is the same land both parties are claiming. As to who is the rightful owner is yet to be determined infra.

The Plaintiffs in proving their case that the land in dispute was compulsorily acquired by the state and the same was leased to them by the Lands Commission tendered **Exhibits "F", "F1", "F2"**, and "**F3"** through PW1. These are the acquisition instrument, the Certificate of Title and the composite plan respectively. The certificate of title dated 2nd March 1909 mentions land in the west of Sekondi and clearly states that the area of land the subject matter of this suit was vested in the Colonial Secretary of Gold Coast Colony and his successors and **Exhibit F1** also shows that same was acquired for the purpose of the service of the Gold Coast Colony. **Exhibit "F2**" the site plan attached to **Exhibit "F"** also clearly shows the acquisition of land – land acquired at Ekuassi showing 110 acres and same was signed by the Registrar of Deed. Clearly from the above, it is not in doubt that the land in dispute was compulsorily acquired by the State and vested in the Colonial Secretary of Gold Coast Colony and his successors then. **Sir Dennis Adjei, JA** in his book "**Land Law, Practice and Conveyancing in Ghana", Second Edition,** stated at page 106 that "*Usually, an Act of Parliament may empower the State to acquire land or any other property and vest it in an authority. The President after acquiring the land shall vest it in the authority on whose behalf the land was acquired and the person who was the immediate owner of it shall have his interest determined subject to the*

payment of compensation. It would become the property of the authority after it has been vested with it". **Section 3** of the **State Property and Contract Act, 1960** provides:

> *"Whenever it is provided in any Act that the crown may or shall acquire property and then vest the property so acquired in an authority that power shall, on the coming into operation of this Act be exercisable by the President"*

In the instant case after the State acquired the Ekuasi/Ekuase Lands it was vested in the Colonial Secretary of Gold Coast Colony and his successors. Therefore, no vesting could have been possible without it first being compulsorily acquired.

Counsel for the Defendant in his address in one breath accepts that the land was vested in the Colonial Secretary but argues that the purpose for which it was vested was not used for and further that compensation was not paid therefore the land was not compulsorily acquired by the state. With all due respect to counsel for the defendant that is not the issue before this court. Whether or not compensation was paid and whether or not the purpose for which the land was acquired was not used are matters for discussion in another forum and are to be dealt with by the grantors of the defendants who might have an interest. Surprisingly enough the defendants did not even deem it necessary to either join their grantors or even call them as witnesses in the matter to defend the interest so conveyed to the defendants. In land matters failure to call one's grantor is fatal. In the supreme court case of **Tetteh v Hayford [2012] 1 SCGLR 417 at 430-431, Dotse JSC** stated that

> "*There is an obligation on the grantor, lessor or owner of land to ensure that any grant he purports to convey to any grantee or lessee is guaranteed and that he would stand by to defend the interest so conveyed to any grantee or lessee*."

The same principle was explained by **Ollennu J** (as he then was) in the case of **Bruce v Quarnor & Others [1959] GLR 292** at **294** as follows:

"*By native custom, grant of land implies an undertaking by the grantor to ensure good title to the grantee. It is therefore the responsibility of the grantor where the title of the grantee to the land is challenged, or where the grantee's possession is disturbed to litigate his (the grantor's) title to the land. In other words, to prove that the right, title or interest which he purported to grant was valid*".

In the instant case, the defendant claims that their grantor is the Ekuase stool of Sekondi yet their grantors failed to join to protect or defend the defendants' interest or the title when it is being challenged. Unlike the Plaintiff, they called their grantors, the Land Commission as a witness to help secure their interest.

It is noteworthy that the Ekuase stool lands, which Defendants claim belong to their grantors of which the disputed land forms part have been declared by the judgment delivered by Batu J on the 12th of July 2010 as government land. **Exhibit "E"** tendered by PW1 is the said judgment. In paragraph 2 of page 6 of the said judgment, his Lordship Batu stated as follows:

"*The main issue, in this case, is whether or not the Ekuase land is stool or government land. From the evidence, the land was compulsorily acquired since 1909. Whatever title or interests the plaintiffs had in the land were extinguished by the acquisition. That issue is resolved in favour of the defendants*."

It is important to note that the defendants in the said judgment were the grantors of the Plaintiffs herein and the land was declared in their favour. **Exhibit "E"**, the judgment as of today has not been set aside or appealed against. The Plaintiffs therein are descendants of the defendants' grantors herein. Therefore, **Exhibit "E"** is binding on all their assigns or dependents. The land having been compulsorily acquired by the state, any interest whatsoever that the grantors of the defendant had in the disputed land was extinguished, therefore they had nothing to have been leased to the Defendants. I so

find. In any case, the document (indenture) **Exhibit "1"** that the defendants tendered as giving them title to the disputed land does not conform to the requisite law. The document is not stamped or registered as mandated by law. **Section 19 of the Stamp Duty Act, 2005 (Act 689)** provides

> **"***19. Conveyance other than a sale*
>
> *(1) An instrument and a decree or an order of a court by which property is transferred to or vested in a person, other than through a sale shall be charged with duty as a conveyance on sale or transfer on sale of that property for a consideration equal to the value of that property***.'**

Section 281 of the **Land Act 2020, Act 1036** interprets conveyance as following

> *"Conveyance includes a document in writing* ***by which an interest in land is transferred,*** *an oral grant under customary law this duly recorded in accordance with this Act, a lease, disclaimer, release and any other assurance of property or of an interest in property by an instrument, except a will*"

Black's Law Dictionary, Deluxe Ninth Edition also defines Conveyance

> "***The voluntary transfer of a right or of property***"

Section 19 of Act 689 talks specifically about a decree or order **by which property is transferred or vested** in a person and same operates as conveyance. In respect of **Exhibit 1**, which is an indenture executed between Joseph Kommeh, Head of Akona Royal Stool Family of Ekuase and the 1st Defendant, it is an instrument that is transferring an interest in land to the 1st Defendant. This squarely falls within **section 19 of the Stamp Duty Act**, **Act 689** which stipulates that such a document shall be charged with duty as a conveyance. In effect, it must be stamped. The Supreme Court in the

case of **Woodhouse Limited v Airtel Ghana, Civil Appeal No. J4/08/2018 unreported, dated 12th December 2018** speaking through **BAFFOE-BONNIE, JSC** relying on the case of **Lizori Ltd v Mrs. Evely Boye**, Civil Appeal No J4/8/2012 dated 26th July 2013 where Bennin JSC, stated that:

> "***This provision is so clear and unambiguous and requires no interpretation. Either the document has been stamped and appropriate duty paid in accordance with the law in force at the time it was executed or it should not be admitted in evidence. There is no discretion to admit it in the first place and ask the party to pay the duty and penalty after judgment***."

Applying the above to the instant case, it is clear from **Exhibit 1** that the indenture is unstamped and the same ought not to have been admitted into evidence. **S. A. Brobbey** in his **book Practice & Procedure in the Trial Courts & Tribunals, 2nd Edition** stated on page 167 as follows

> "*The general rule is that if inadmissible evidence is received in the course of the trial (with or without objection), it is the duty of the court to reject it when giving judgment. If it is not so rejected, it would be rejected on appeal, since it is the duty of the court to arrive at its decision upon legal evidence only. See:* **Tormekpey v Ahiable [1975] 2 GLR 432, CA** which was applied in **Amoah v Arthur [1987-88] 2 GLR 87, CA.**

Being fortified with the above, I hereby accordingly reject Exhibit 1 as inadmissible.

CONCLUSION

Having critically examined and analyzed the facts and evidence, it is my considered view that the land in dispute is the same land both parties are laying claims to and that

the same is state land which the Plaintiffs validly acquired from Lands Commission, thus making them the owners.

The Plaintiffs are praying for Special damages. On their claim for special damages, the Plaintiffs by their pleadings did not specify any amount they have spent for which that is being claimed and no evidence whatsoever was led on that. The Plaintiffs did not put in any claim regarding any expenses made except the mere mention of a claim, in the circumstances I do not think the Plaintiffs are entitled to this claim.

For general damages for trespass, I would take into consideration the damage caused to the Plaintiffs' land by the defendants bringing earth-moving plants and machinery to grade the disputed land thereby destroying the pillars that had been erected by the Plaintiffs. I shall also consider the time the plaintiffs have used in prosecuting this matter and award them GH₵5,000.00 as general damages.

DECISION:

1. *The Plaintiffs are hereby declared the owners of all that piece of land at Ekuasi measuring 0.29 acres with boundaries as pillars GWCS WP 3/48/5, W211/07/5, W211/07/1, W211/07/2, W211/07/3 and W211/07/4.*

2. *The Plaintiffs are hereby ordered to recover possession from the Defendants all that piece of land described in decision 1 above*

3. *General Damages for trespass of GH₵5,000.00 is awarded in favour of the Plaintiffs against the Defendants*

4. *The Defendants, their agents, workmen, assigns etc. are hereby perpetually restrained from having anything to do with the disputed land.*

5. *Cost of GH₵3,000.00 is awarded in favour of the Plaintiffs against the Defendants*

(SGD)

H/W ROSEMARY EDITH HAYFORD (MRS.)

MAGISTRATE

COUNSEL

CYNTHIA COBBINAH FOR SAMUEL AGBOTTAH FOR THE PLAINTIFF

ISRAEL ACKAH FOR THE DEFENDANT