

**IN THE DISTRICT COURT 2, TAMALE HELD ON THURSDAY 12<sup>TH</sup> OCTOBER, 2023  
BEFORE HIS WORSHIP D. ANNAN ESQ.**

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**SUIT NO. A1/10/23**

**BETWEEN**

**MOHAMMED AWAL IBRAHIM**

**-**

**PLAINTIFF**

**AND**

**SAYIBU IBRAHIM**

**-**

**DEFENDANT**

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**JUDGMENT**

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**INTRODUCTION**

1. This judgment relates to land.
  
2. The parties herein are of the same father, but different mothers. The plaintiff is the junior brother of the defendant. Thus, plaintiff is the 8<sup>th</sup> born while the defendant is the 1<sup>st</sup> born. Their father, Ibrahim Braimah, on passing on left behind 15 children and a widow. In this case, whereas the plaintiff is claiming that the land and property in question as belonging to the family, the defendant claims the land as his bonafide property.
  
3. On 16<sup>th</sup> March, 2023 the plaintiff took out a writ of summons against the defendant for the following reliefs:
  - a. Declaration that Plot No. 10, Extension Block C, Gbolo Kpalsi with building thereon is a family property having been acquired by plaintiff's late father, Ibrahim Braimah.

- b. An order directed at the defendant restraining same, his agents or representatives from harassing other family members in their quiet enjoyment of the said property.
  - c. Costs.
4. The defendant filed a defence and counterclaim through his counsel basically disputing the plaintiff's case. In his counterclaim, defendant seeks against the plaintiff as follows:
  - a. The defendant claims against the plaintiff, his privies, siblings and all other children of their father Ibrahim Braimah, a declaration of title to Plot No. 10, Gbolo Kpalsi, Extension Block C Residential Area as his bonafide property.
  - b. Punitive costs including legal fees.
5. The plaintiff, in his Reply, similarly disputed the counterclaim of the defendant. Parties were directed to file witness statements in support of their case. Below is the respective case of either party.

#### PLAINTIFF'S CASE

6. Plaintiff in his evidence stated that his late father in 1998 acquired and developed the property in dispute. Prior to that date, plaintiff explained that his late father was in a rented house at Nyanshegu. He explained that his father was a resourceful farmer: trading in yam, groundnut, rice, soya bean, maize, etc such that he was able to put up a 5bedroom and moved in with the family. He added, however, that one Fati Ibrahim (PW1), his late father's niece, contributed to the building of the 5bedrooms by providing doors, window frames and food for the workers. According to plaintiff, he and his siblings also added 5rooms to the said building during the life time of their

father and had since occupied the said rooms with their wives and children, without the consent or authority of the defendant.

7. Plaintiff argued that in 1998 when their father acquired the land, his father deliberately used the name of the defendant on the document. Copy of the allocation document was tendered and marked as Exhibit A. Plaintiff contended that defendant, at that time, had just completed Tamale Senior High School and was unemployed, such that defendant could not have acquired the said property on his own. He averred that his late father opened a file at the Lands Commission in the name of the defendant because the defendant is the most senior son. Copies of the statutory declaration and application for lease were tendered as Exhibits B and C, respectively. Plaintiff stated that the documents were released to the defendant to ensure that utilities were connected to the disputed house. Thereafter, his father retook the land documents and on his dying bed gave same to a cousin, Mohammed Abdul-Rahaman (PW2). Plaintiff contended that after the funeral rites of their father, defendant then took the documents, threw out Abdul-Rahaman and now claims that the said house belongs to him. According to plaintiff, it was the family member who even persuaded defendant to move from his rented place to occupy their late father's room, hence defendant cannot turn round and claim the said property. Plaintiff argued further that the claim of defendant is statute barred, since he and the other siblings have been living in the said property from 2006 till date, without any consent or authorization by the defendant. Also, defendant is estopped by the principles of laches and acquiescence. Hence, this present suit.

Plaintiff's witnesses

8. Plaintiff called two witnesses in support of his case, Fati Ibrahim (PW1) and Mohammed Abdul-Rahaman (PW2). They repeated the evidence of plaintiff. PW1

indicated that she was the one who contributed the doors, windows and food for the workers for the initial 5rooms. PW2 also indicated that although not a biological son of the late Ibrahim Braimah, he, Abdul-Latif and Abdul-Wahab were part of those who cleared the land for the building of the initial 5rooms. He added he was part of those who put up the extra 5rooms. He averred that defendant sacked him from the house and also took the land documents from him. He stated that the defendant and some of the other brothers are now putting up a structure on the same land to accommodate themselves and their immediate families. To them, defendant is not the bonafide owner of the disputed property.

#### DEFENDANT'S CASE

9. According to defendant, sometime in the late 1990's his mother supported him to buy Plot No. 58, Gbolo Kpalsi Extension Residential Area Block C from one Adam Ibrahim. Adam Ibrahim later testified on behalf of the defendant as DW1. Defendant averred that the chiefs who sold plot no. 58 to his vendor, DW1, inadvertently sold same to another person who constructed a 3bedroom on it. As a result, the chief replaced the said plot no. 58 with the plot in dispute to which DW1 subsequently gave same to defendant. Defendant averred that his father while alive was aware of all these and was even introduced to DW1. Defendant explained that at the time he acquired the plot, his father was in a rented 3bedroom house at Nyanshegu. He, defendant, was by then with his foster parents. He added that upon the death of the late Yaa-Naa Adani Yakubu and the ethnic disturbances that ensued thereafter, made the landlord of the rented house to evict his father. As a result, he gave the said plot to his father for them "to team up" to build and live on same. Defendant added further that his father then sought support from friends and extended family members to put up 5rooms and moved in.

10. Defendant contended that when his father was alive, his father emphasized that the land in dispute belongs to him (the defendant) in the presence of PW2 and one uncle, Alpha Osman Braimah. So upon the death of his father and subsequent sharing of the father's estate, the said Alpha Osman Braimah being the Head of Family repeated defendant's ownership to the land in dispute at a family meeting. However, the plaintiff will not agree and reported the matter to the Choggu Chief. But the issue was not resolved.

11. Defendant maintains that when he was allocated the land, he applied to the Lands Commission for a lease. He tendered in evidence Exhibits 1 and 2, copy of the allocation paper and the application to the Lands Commission for 99year lease, respectively.

Defendant's witness

12. According to Adam Ibrahim, DW1, he was in the business of buying and selling lands. He repeated the evidence of the defendant and added that he occasionally visited plot no. 58 and found a 3bedroom house being constructed by another person. So he led the defendant to the then secretary of the acting Gulkpe-Naa and the matter was resolved with the present plot issued to the defendant. DW1 averred that it was the defendant's father who disclosed to him that plot no. 58 was technically bought by his ex-wife (defendant's mother) for the defendant. He, therefore, maintains that the land in dispute is the bonafide property of the defendant, but not the parties' father or that it being a family property.

ISSUE FOR TRIAL

13. The issues borne out of the facts are:

- a. *Whether or not Plot No. 10, Extension Block C, Gbolo Kpalsi is a family property or the bonafide property of the defendant?*

b. *Whether or not the defendant's counterclaim is statute barred or estopped by conduct?*

## BURDEN OF PROOF

14. In civil cases, the general rule is that the party who in his pleadings or his writ raises issues essential to the success of his case assumes the onus of proof on the balance of probabilities. See the cases of **Faibi v State Hotels Corporation [1968] GLR 471** and **In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420**. The Evidence Act, 1975 (NRCD 323) uses the expression 'burden of persuasion' and in section 14 that expression has been defined as relating to, 'each fact the existence or non-existence of which is essential to the claim or defence he is asserting.' See also ss. 11(4) and 12(1) and (2) of NRCD 323.

15. With regards to what is required of the plaintiff in land cases, the law is that the he must succeed on the strength of his own case and not on the weakness of the defendant's case, see **Odametey v Clocuh [1989-90] 1 GLR 14, SC**. In **Kodilinye v Odu [1935] 2 WACA 336**, the court puts it simply that "in case of doubt, ...the party who asserts must lose."

16. Lastly, where there is a counterclaim, the counter claimant must also prove his case. The Supreme Court speaking through His Lordship Ansah JSC in the case **Osei v Korang [2013] 58 GMJ 1**, stated as follows:

"... each party bears [the] onus of proof as to which side has a claim of title against his/her adversary, for a counter claimant is as good as a plaintiff in respect of a property which should he assays to make his/her own."

## ANALYSIS OF THE ISSUE

17. I will start with issue a, thus *whether or not Plot No. 10, Extension Block C, Gbolo Kpalsi is a family property or the bonafide property of the defendant?*

18. For an action that relates to a family property, there are plethora of cases which support the legal position that any family member may bring an action, especially where the head of family will not make a move to save or protect it, see **Kwan v Nyieni [1959] GLR 67** and **Anane v Agyemang & 7 Ors. [2014] 75 GMJ at 37-38**. The law adds that 'anyone with an interest in an estate, such as a beneficiary, could take an action in respect of the estate where there was no formal grant of letters of administration ...provided the action taken was aimed at protecting the estate from being wasted.' See **In Re Appau (Dec'd) Appau v Ocansey [1993-94] 1 GLR 146** and **Adisa Boya v Mohammed Alias Mujeeb [2018] DLSC 4225**. In effect, the action of the plaintiff herein is in no way barred since he seeks, in his opinion, to protect the property of the family.

19. The question, however, is this, is the property in dispute for the family or the defendant? As earlier pointed out, he who asserts must prove. Now, with regard to proof of one's claim or allegation, the Supreme Court in the case **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamprey (No. 2) [2012] 2 SCGLR 845 at page 867** held as follows:

"...What this rule literally means is that if a person goes to court to make an allegation, *the onus is on him to lead evidence to prove that allegation*, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in court if the case is based on an allegation which he fails to prove or establish."

20. Let me also rehash what was stated in **Majolagbe v. Larbi [1959] GLR 190** regarding proof of an allegation. The learned judge, Ollenu J. (as he then was) stated at page 192 that, “where a party makes an averment capable of proof in some positive way...and his averment is denied, *he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true*”. See also the case of **Klah v. Phoenix Insurance Company Limited [2012] 2 SCGLR 1139**.
21. It is settled law that a person claiming title has to prove (i) his root of title, (ii) mode of acquisition, and (iii) various acts of possession over the disputed land, see **Yehans International Ltd. v Martey Tsuru Family & Anor. [2018] DLSC 2488**. The claimant/plaintiff, however, claiming as he does for a declaration of title cannot take advantage of the weakness of the defendants' case; he must rely on the strength of his own case. The onus lies on him to satisfy the court that he is entitled on the evidence adduced by him to the declaration he seeks as the weakness of the defendant's case will not help him, see **Osei v Korang (supra)**.
22. From the evidence, the plaintiff contends that the said land was purchased by his father. Yet, his father used the defendant's name on the document. His explanation was that (a) defendant is the first born and by custom his father had to use his name and (b) the father wanted the defendant to protect the said land, should anybody lay adverse claim to it. Defendant, on his part, claims that the said land was acquired through his mother. DW1 added that the plaintiff's father acknowledged to him that the land was purchased for the defendant. To him, the disputed land belongs to the defendant.

23. Below is what ensued when plaintiff was under cross-examination:

*“Q: Have a look at Exhibit A, the name on the document bears that of the defendant’s name, correct?”*

*A: Yes, my father was having so many plots and people were taking it so when he bought this plot, he decided to put defendant’s name on it with intention that if the name is changed, i.e. from my father to the defendant, the land will be secured.*

*...*

*Q: Apart from this plot, do you know your father had any plot elsewhere?”*

*A: No.”*

24. When PW1 was under cross-examination the following ensued:

*“Q: So you don’t know whether somebody gave him the land or he bought it?”*

*A: He informed me that he bought it.*

*Q: He did not tell you whom he bought the land from?”*

*A: He did not.*

*Q: He did not tell you the person in whose name the documents are?”*

*A: He informed me that he used plaintiff’s name.*

*...*

*Q: How long did it take for your uncle to put up the house?”*

A: *It was less than a month.*

Q: I am putting it to you that he hurriedly put up the house because he was facing an imminent ejection from where he was renting?

A: I do not know.

Q: *I am putting it to you that because of that everybody had a role put in his support?*

A: *He was financially handicapped so his friends supported him.*

Q: You also know that one key friend of his who supported him is called Adubees?

A: Yes.

Q: *I am putting it to you that you do not know the source to which your uncle acquired the plot.*

A: *I was informed by my uncle that he got the plot and that he needed me to support him and so I did."*

25. With that of PW2, this is what ensued:

*"Q: You also agree with me that in paragraph 10 of your witness statement, it took less than one year to furnish that house at Gbolo-Kpalsi?*

A: *We started putting up the building in 2005 and getting close to 2006, we were able to finish putting up the building.*

Q: *It was hurriedly put up because your uncle was facing a threat of eviction from his landlord in the rented house?*

A: *It was not a threat that caused my uncle to move. It was an issue he had for staying in a rented house.*

Q: *You again indicated in paragraph 16 of your witness statement that you gave the said land document to defendant, not so?*

A: *Yes. When my uncle died the defendant asked for it.*

Q: *You gave it to him because he is the owner of that plot and his name was on the document, if not you would have given it to the Head of Family after the demise of your uncles?*

A: *That was not the reason why I gave it to him.*

Q: *Do you know of any other property of your uncle before his demise?*

A: *No. It is only the house I know."*

26. When defendant was under cross-examination, this is what took place:

*"Q: It was your father who thumbprinted the document and the document was interpreted to him in Dagbani?*

A: *That is not true.*

Q: *I am putting it to you that Exhibit C was executed by your father in your name and was thumbprinted by him?*

A: *That is not true.*

...

Q: Your father went and developed 5 rooms on the land?

A: We put up 5 rooms.

Q: When your father did that he moved from his rented house to his newly built 5rooms?

A: That is so.

Q: Plaintiff and his other siblings also put up 5 rooms on the land in dispute and occupied it with their families till date?

A: It was built. After the first acquired 5 rooms, I consulted my father and informed him that he should involve the plaintiff to team up so that we get additional rooms, so that they can also come and stay in instead of staying at other rented places. I even contributed 2 packets of roofing sheets for the 5 rooms.

Q: What you have said is never true. It was plaintiff and his brothers who built it, you did not pay anything?

A: That is not true.

Q: *Your siblings put up the structure with the consent of your father.*

A: *I did not disagree. I already indicated that I consulted my father so I and my father were aware.*

...

Q: So what you are saying before this court is that the said plot was acquired through your personal income and savings and in another way the same plot was acquired with the aid of your mother?

A: Yes. That is my position. It was my mother who aided me in acquiring it."

27. Finally, when DW1 was under cross-examination, the following took place:

"Q: You also stated that you offered the said plot no. 58 to the defendant, not so?

A: Yes. I gave it to him.

...

Q: You stated further that you once visited the said plot no. 58 and there was a construction of 3bedroom on it, not so?

A: Yes.

Q: *You stated that you were annoyed with the defendant's father because there was a construction going on, on the plot 58, not so?*

A: *It was true I was annoyed with the father with a reason. That is, selling the plot to the defendant, I should continue taking care of the plot. That is why I saw the 3rooms on the site because the father told me to take care of it, because it is their mother who gave money to buy the plot.*

...

Q: *I am putting it to you that no plot no. 58 was transferred to any person by the defendant?*

A: *It was transferred to the one who built the 3rooms. Then I went to the secretary of the Gulkpegu Naa and told him that plot 58 was being built on and I asked whether he sold or was building. He told me he misplaced the allocation paper of plot no. 58, but the time he went to print the new allocation paper, he found the earlier missing one. Then he decided to sell because he did not want to hold a document without selling it. He told me he made a mistake for selling it to the one who built the 3rooms, so I should find a way to solve the problem because I brought the defendant. Then he gave me a quantity of plot numbers, then I went to select plot no. 10 for the defendant."*

28. DW1 spoke in English. I noted that he had difficulty with the English language but he maintained to speak English. His English was a bit babbling, but the point was clear that he was the vendor of the defendant.

29. In my opinion, I find that the defendant has satisfactorily discharged that onus on him, per **Yehans International Ltd. v Martey Tsuru Family & Anor (supra)**. He

demonstrated this by tendering in the documents of the disputed land, i.e. Exhibits 1 and 2, the allocation paper and the application for 99 year lease, which bear his name. Exhibits A and B are similar to Exhibits 1 and 2. He also called his vendor, DW1, to corroborate his evidence. The argument of the plaintiff is not preferred. First, plaintiff and his witnesses in their evidence-in-chief stated that the late Ibrahim Braimah was well to do, yet admitted that at the time their father put up the 5rooms he had financial difficulties and sought support from friends and family members. They were unable to tell the root of title of the said land. PW1 was not sure in whose name the allocation paper is. Lastly, counsel for plaintiff contended that Exhibit C, the statutory declaration was executed by the late Ibrahim Braimah in defendant's name. Yet the late Ibrahim Braimah's name was not on that document. How did he thumbprint it with the defendant's name on it? I wonder how that is possible? Although illiterate and was executing a document for defendant, it should have been done in his name but not that of the defendant. I declare therefore that the title as pleaded by the plaintiff is ineffective and cannot be relied upon.

30. Based on the above, I come to the conclusion that the disputed land is not a family property. And in no way does the plaintiff or the other family members building on the property change the nature of the property into a family one. The courts have maintained that individual properties do not change into a family property where family members are allowed to live thereon, or vice-versa, see the case of **Ofori Agyekum v Akua Bio [2016] DLSC 2858**. Similarly, an improvement to the family property does not convert it into a personal property or vice-versa, see **Amoyaw v Amoyaw & Anor. [1999-2000] 2 GLR 124, CA**.

31. In the famous case of **Adomako Anane v Nana Owusu Agyemang & 7 Ors. [2014] DLSC 4421** where parties had disputed over a land and properties thereon for

40years, the apex court bringing finality to the case held that the land remained a family one upon the death of the original owner and that the customary successor attempting to change the nature of it as his personal property will not suffice. In that case, counsel for the appellant argued that “Kwabena Amankwaa, the original family member who acquired the land died in 1941 and his lease expired in 1942. The interest of Kwabena Amankwaa inherited by Osei Hwedie expired on 30 June, 1942 and if anything at all, the family’s interest and character in the land terminated with the lease. Until 1 February, 1946 when the Asantehene gave Osei Hwidie (sic) a yearly tenancy, the property did not belong to Kwabena Amankwaa or his family or even to Osei Hwedie (sic). The interest Osei Hwedie (sic) acquired as a yearly tenant was by a written conveyance conferring the status of a yearly tenant on him and the Asantehene gave his lease in the capacity as a lessor who had re-entered and repossessed the land upon the expiry of a lease”. Counsel for Respondent replied that, “The issue which is of paramount interest is whether or not OSEI HWIRIE, whose name was initially only inserted into the records of the Lands Department because he was the ‘INHERITOR’ of the estate of KWABENA AMANKWA, can now claim that the property which he inherited as Customary Successor, has now become his own BONA FIDE property because instead of the yearly tenancy which he took upon the expiration of the initial lease, he has now taken a long Lease. To answer this question, the position of the Lessee at the time that he was being granted the long Lease is most important. OSEI HWIRIE, at the time of the long lease was Customary Successor of KWABENA AMANKWA. As Customary Successor, he was a fiduciary for the Family, for the law then was that upon the death INTESTATE, of an AKAN MAN, his personal property became family property. The period of Succession by OSEI HWIRIE, commenced from the early 1940’s and the then firm legal position was that ‘In Customary Law, as soon as a Successor is appointed to succeed a deceased member of a family, the self-acquired property left by the deceased person vests in the said

Customary Successor who holds same for and on behalf of the family.’ PLEASE see the case of **Dotwaah v Afriyie [1965] GLR 257**. My Lords, if it is admitted that OSEI HWIRIE until his death, remained the Customary Successor of the late KWABENA AMANKWA, then it is submitted that it was his duty to take ALL legitimate steps to guard or protect for the family the properties he was holding in trust for the family as a result of his being the Customary Successor. It was his duty as Customary Successor to ENHANCE if need be, the said properties. And I submit that taking a long Lease in order to redevelop the property into a more permanent sandcrete structure is an enhancement within the scope of his duties as Customary Successor.”

32. The Supreme Court unanimously speaking through Wood CJ (as she then was) held that:

“...We find the Appellants argument unsustainable.... ‘In our view, a customary successor so appointed by the family stands in a fiduciary relationship with the family. It is his duty not only to take over the Estate of the deceased but hold it in trust not only for himself as a beneficiary but the family members entitled to a share of the Estate. His duty further entails the protection of the family property and to enhance it if possible for the family. Thus as the custodian of the family property in his hands it is incumbent on him at all material times to act in good faith vis a vis the family and the family property.’ Under no circumstances should the customary successor set up an adverse interest to that of the family.”

33. From the above, the fact that the plaintiff and his other relatives have built on the disputed land does not change the nature of the land into a family property, even if it is over 40years. What the court looks at in some instances is to allow those who have built on the property to enjoy same for life, but they do not change the original nature or ownership of the land, see the case of **Amoyaw v Amoyaw & Anor (supra)**.

34. The above leads me to issue b, thus *whether or not the defendant's counterclaim is statute barred or estopped by conduct?* With this plea, the plaintiff averred at paragraphs 4 and 26 of his reply and witness statement, respectively, that, "Granted without [admitting] that the said property is defendant's property, his present claim of ownership over same is statute barred as other family members having been occupying same since 2006, without any authority and consent. Defendant is also estopped by the doctrine of laches and acquiescence." I must say that this point was not forcefully argued by counsel for the plaintiff during the trial. Nonetheless, I will write extensively on it for learning purposes.
35. As earlier pointed out, a counterclaim is as good as a claim to which the counter claimant becomes the plaintiff, **Osei v Korang (supra)**. Therefore, where there is a challenge to the counterclaim in that it is prohibited by law, then this court is enjoined to consider same.
36. Now, in law there is a distinction between the following legal terms raised by the plaintiff: (a) a case is statute barred (because of adverse possession/prior occupation) or (b) the defendant's is estopped by laches or acquiescence.
37. His Lordship Dotse JA (as he then was) in the case **Tsuru III v Obodai II & Ors. Suit no. H1/228/04 [2008] Court of Appeal decision, Unreported**, stated that, "The common law and equity evolved the principle of laches and acquiescence. It operates to protect the innocent or to sanction the non-vigilant or indolent party to a suit. However, since 1972 Ghana has passed or enacted a Limitation Decree, NRCD 54. The general effect of the principles of laches and acquiescence and the Limitation Decree is to limit the time within which action ought to be taken by a party to

vindicate or enforce his legal rights by civil action. *Whereas the court applying the principles of laches and acquiescence exercises discretion in the circumstance to fix or bar an action for undue delay, the Limitation Decree fixes a definite time bar.* Thus, s. 10 of the Limitation Decree, NRCD 54 provides, *'A person shall not bring an action to recover a land after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to a person through whom the first mentioned claims to that person.'*" Section 10 of NRCD deals with adverse possession.

38. In throwing more light on adverse possession and it amounting to a bar in a legal claim, the learned author and Justice of the High Court, K. A. Gyimah in his book, *A Concise Guide to the Study of Ghana Land Law* published this year, 2023, explained as follows:

"Adverse possession arises when a person, usually a trespasser, takes possession of another person's land and exercises rights that are inconsistent with the title of the rightful or paper owner for a continuous period of twelve years. At the end of the twelve years of such possession, the title of the rightful owner in the property is deemed to have extinguished. Adverse possession has its origins in the common law and it has been given statutory recognition in section 10 of the Limitation Act, 1972 (NRCD 54) which provides, inter alia, as follows:

'... (2) A right of action to recover land does not accrue unless the land is in the possession of a person in whose favour the period of limitation can run. ... (6) On the expiration of the period fixed by this Act for a person to bring an action to recover land, the title of that person to the land is extinguished. (7) For the purpose of this section 'adverse possession' means possession of a person in whose favour the period of limitation can run.'

Some earlier authorities asserted that a squatter on a piece of land could assert a right of adverse possession after being on the land for a continuous period of twelve years. In **Djin v. Musah Baako [2007-08] SCGLR 686** the Supreme Court speaking through Atuguba JSC stated the position of the law as follows:

‘The law as we understand it ... is that if a squatter takes possession of land belonging to another and remains in possession for 12 years to the exclusion of the owner, that represents adverse possession and accordingly at the end of 12 years the title of the owner is extinguished. That is the plain meaning of the statutory provisions, which I have quoted and no authority has been cited to us. The simple question is: did the squatter acquire and remain in exclusive possession?’

The Supreme Court has however recently clarified the position of the law with respect to squatters and has held that since per definition a squatter is a person who does not make any legal claim or title to land, a squatter is not a person *‘in whose favour the period of limitation can run’*. In the case of **Amidu Alhassan Amidu v Mutiu Alawiye & 6 others [2019] ELR 68180** Pwamang JSC, in giving the majority decision of the Supreme Court noted on this issue as follows:

‘The defendants in their statement of case submitted that squatters can acquire title to land after 12 years of occupation. That is an erroneous statement of the law. The legal definition of a squatter in **Black's Law Dictionary, 8<sup>th</sup> Edition, 2004** is, *‘A person who settles on property without any legal claim or title.’* The difference in law between a squatter and a trespasser is that whereas a trespasser enters onto a land and claims an interest in it that is inconsistent with the rights of the true owner, a squatter does not claim any interest in the land he is in occupation of. Therefore, possession by a squatter is not adverse to the title of the true owner so a squatter cannot

succeed on a defence of limitation...Similarly, possession of land by a licensee is not inconsistent with the rights of the true owner, so such possession is not adverse and cannot ground a defence of limitation. In the case of **GIHOC v Hanna Assi [2005-2006] SCGLR 458**, this Court rejected a defence of limitation put up by a licensee of a true owner for the reason that his possession was not adverse.'

*Thus for a claim of adverse possession to be successful, the person in possession must necessarily assert a claim of right which is inconsistent with the rights of the rightful owner. Thus any possession which is concurrent with the rights of the rightful owner cannot be the basis for adverse possession. It has therefore been held that a licensee who has been put on land by a licensor who is the owner of the land, cannot claim adverse possession against his licensor because his possession of the land is concurrent with the rights of the rightful owner. For possession to be held to be adverse to the rightful owner's rights over the land in question, the said possession must be open, visible and not clandestine. **Adjetey Adjei v Nmai Boi [2013-14] 2 SCGLR 1474**. In **Abbey v Antwi [2010] SCGLR 17** the Supreme Court noted on this issue as follows:*

*'A claim of an adverse possession could not be based on clandestine payments of tribute alone. They must be open, visible, unchallenged and apparent so as to give notice to the legal owner that someone might be asserting a claim...Acts amounting to establishing adverse possession are many and may be in the nature of fencing the property, posting signposts, planting crops, building or raising animals in a manner that a diligent owner could be expected to know about them. The list may be taller still.'*

Time starts running immediately a trespasser starts asserting rights which are inconsistent with the rights of the rightful owner. So far as such actions are open

and visible to the whole world, it does not matter if the paper or rightful owner is not aware of the presence of the adverse possessor. In **Abbey v. Antwi [supra]** the Supreme Court in dealing with issues of possession talked about the fact that so far as the acts of the trespasser are open and visible in a 'manner that a diligent owner could be expected to know about them', it will suffice."

39. Now, s. 26 of NRCD 323 deals estoppel by conduct. It stipulates:

"Except as otherwise provided by law, including a rule of equity, when a party has, by his own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest."

40. Estoppel by conduct is usually treated under two sub-headings namely, acquiescence and laches. To rely on the principle of acquiescence, the Supreme Court in the case of **Ernestina Frimpong v Mr. Biney & Anor. [2016] DLSC 2837**, His Lordship Pwamang JSC delivering the unanimous decision stated that,

"...a party is required to satisfy the following conditions; (i) the person who enters another's land must have done so in honest but erroneous belief that he has a right to do so, (ii) he should have spent money developing and improving upon the land, (iii) the entry should have been known to the actual owner who should have fraudulently encouraged his development of the land by remaining silent and not drawing his attention to the error, and (iv) it is otherwise unconscionable to allow the true owner to recover the land." See also **Nii Boi v. Adu [1964] GLR 410, SC** and **SSB Ltd v Agyakwa [1991] 2 GLR 192, CA.**

41. Laches is a term used where there has been long and unreasonable acquiescence or long and unreasonable neglect in asserting one's right. In **Boateng v Ntim [1961] GLR (Pt. II) 671 @ 674**, it was held that to establish acquiescence amounting to laches it must be proved, inter alia that:

“(a) the party pleading or relying upon it, bonafide believed that he had good title to the land when in fact he had none; (b) that the person sought to be estopped had knowledge of the error on the part of the person pleading the estoppel; and (c) that the party pleading it had fraudulently been led by the silence or active encouragement of the person sought to be estopped, to spend money or improve the property or in respect of the property.”

42. From the above, proof of acquiescence and laches appear to be similar. In the case **Wordie & Ors. v Awudu Bukari [1976] 2 GLR 317**, the court held that where the plea of laches and acquiescence succeeds, the pleader becomes entitled to remain in possession but title cannot be declared in him. In **Nii Stephen Maley Nai v East Dadekotopon Development Trust [2019] DLSC 6358** the Supreme Court however held that, “The plaintiff-family is also estopped by conduct, laches and acquiescence *from asserting any interest in the disputed land* having stood by as title to the land in dispute was litigated and settled in suit no. L/335/97 and watched on for several years as the defendant which is a product of the said suit, exercised over acts of ownership over the land, including the land in dispute.” [*Emphasis mine*]

43. Based on the above authorities, it is clear that a person must be a trespasser and for 12years exert a notorious act to rely on adverse possession. Unlike adverse possession, a person relying on the principle of laches or acquiescence must establish an unreasonable neglect in asserting one's right or that a person simply remained silent or inactive to his claim or encouraged the act.

44. In our instant case, plaintiff contends that granted the property in dispute belongs to the defendant, defendant's action is statute barred since the family members have built and lived on same since 2006, without any consent or authority of the defendant. Plaintiff added that defendant is also estopped by the doctrine of laches and acquiescence. From the evidence, the plaintiff admitted that they built on the property because their father allowed them. Defendant maintained that he allowed his father to build on the land and never disputed his other relatives when they also built on same. To this extent, there is an implied consent by the defendant to the plaintiff and the other family members to build on the land. It would appear that the plaintiff preferred their putting up buildings on the disputed land to make adverse claim to the disputed land in complete disregard to the effect that they were allowed by their father and for that matter the defendant.

45. In effect, I will not treat the plaintiff and his other relatives as trespassers or that their actions were in any way adverse. I will, however, allow them to live in their respective buildings on the said land for life, since their actions do not in any way change the nature of the bonafide property of the defendant, see the cases of **Ofori Agyekum v Akua Bio** and **Amoyaw v Amoyaw & Anor (supra)**.

#### CONCLUSION

46. In light of the above, I hereby enter judgment in favour of the defendant as follows:

- a. I declare title in favour of the defendant in respect of Plot No. 10, Gbolo Kpalsi Extension Block C, Residential Area, Tamale.
- b. The plaintiff, his privies, assigns, workmen or siblings and all other children of the late Ibrahim Braimah or any other representative are perpetually restrained from holding the above property as a family property.

- c. Plaintiff and the other relatives who have built on the said property shall, however, enjoy same for life, without more.
- d. Each party to bear his own costs.

**H/W D. ANNAN ESQ.**

**[MAGISTRATE]**

**DAJIAH J. IDDRISU ESQ. FOR THE PLAINTIFF**

**SALISU B. ISSUFI ESQ. FOR THE DEFENDANT**

Reference

1. ss. 11(4), 12(1) & (2) and 26 of NRCD 323
2. s. 10 of the Limitation Act, 1972 (NRCD 54)
3. *Faibi v State Hotels Corporation* [1968] GLR 471
4. *In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors.* [2003-2004] SCGLR 420
5. *Odametey v Clocuh* [1989-90] 1 GLR 14, SC
6. *Kodilinye v Odu* [1935] 2 WACA 336
7. *Osei v Korang* [2013] 58 GMJ 1
8. *Kwan v Nyieni* [1959] GLR 67
9. *Anane v Agyemang & 7 Ors.* [2014] 75 GMJ at 37-38
10. *In Re Appau (Dec'd) Appau v Ocansey* [1993-94] 1 GLR 146
11. *Adisa Boya v Mohammed Alias Mujeeb* [2018] DLSC 4225
12. *Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (No. 2)* [2012] 2 SCGLR 845 at page 867
13. *Majolagbe v. Larbi* [1959] GLR 190

14. *Klah v. Phoenix Insurance Company Limited* [2012] 2 SCGLR 1139
15. *Yehans International Ltd. v Martey Tsuru Family & Anor.* [2018] DLSC 2488
16. *Amoyaw v Amoyaw & Anor.* [1999-2000] 2 GLR 124, CA.
17. *Adomako Anane v Nana Owusu Agyemang & 7 Ors.* [2014] DLSC 4421
18. *Dotwaah v Afriyie* [1965] GLR 257
19. *Tsuru III v Obodai II & Ors. Suit no. H1/228/04* [2008] Court of Appeal decision, Unreported
20. *Djin v. Musah Baako* [2007-08] SCGLR 686
21. *Amidu Alhassan Amidu v Mutiu Alawiye & 6 others* [2019] ELR 68180
22. *GIHOC v Hanna Assi* [2005-2006] SCGLR 458
23. *Adjetey Adjei v Nmai Boi* [2013-14] 2 SCGLR 1474
24. *Abbey v Antwi* [2010] SCGLR 17
25. *Ernestina Frimpong v Mr. Biney & Anor.* [2016] DLSC 2837
26. *Nii Boi v. Adu* [1964] GLR 410, SC
27. *SSB Ltd v Agyakwa* [1991] 2 GLR 192, CA.
28. *Boateng v Ntim* [1961] GLR (Pt. II) 671 @ 674
29. *Wordie & Ors. v Awudu Bukari* [1976] 2 GLR 317
30. *Nii Stephen Maley Nai v East Dadekotopon Development Trust* [2019] DLSC 6358
31. *A Concise Guide to the Study of Ghana Land Law, 2023* by K. A. Gyimah J.
32. *Black's Law Dictionary, 8<sup>th</sup> Edition, 2004*