CORAM: HER HONOUR (MRS.) ROSEMARY EDITH HAYFORD, SITTING AS ADDITIONAL MAGISTRATE, DISTRICT COURT EJISU ON THE 30TH DAY OF JULY, 2024

SUIT NO. A1/17/2022

1. SOLOMON AMOANI
2. BEVELYN AMOANI — **PLAINTIFFS**

V

1. ABUSUAPANIN KWAKU BOATENG
2. JUSTICE KYEI BAFFOUR
3. MRS. BELINDA OPPONG
4. BOAFO AKWABOAH STOOL — **DEFENDANTS**

TIME: 8.40 AM

PLAINTIFFS - ABSENT REPRESENTED BY ADJEI BOAFO GYIMAH

DEFENDANTS -

1ST DEFENDANT ABSENT REPRESENTED BY 2ND DEFENDANT

2ND DEFENDANT PRESENT

3RD DEFENDANT ABSENT REPRESENTED BY KOFI ADADE BREFOR

4TH DEFENDANT ABSENT REPRESENTED BY 2ND DEFENDANT

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JUDGMENT

The Plaintiffs initially instituted this instant action against the 1st – 3rd Defendants at the registry of this court on the 11th of January, 2022. The writ of summons was amended and filed on the 11th of August, 2023 after the 4th defendant was joined to the suit pursuant to an order of the court dated the 25th of April, 2023 for the following reliefs:

1. *A declaration of title to all that piece of building Plot Number 7, lying and located at Nyinatase, Ejisu/Ashanti.*

2. *Recovery of possession of all that piece of building Plot Number 7, lying and located at Nyinatase, Ejisu/Ashanti from the 3rd Defendant which said plot the 1st and 2nd Defendants have sold to the 3rd Defendant.*

3. *An order for perpetual injunction restraining the Defendants, their agents, assigns, workmen and any other person(s) claiming through them from interfering with the Plaintiff's peaceful enjoyment of the said building plot.*

4. *Cost of the suit.*

The court differently constituted ordered the parties to file their pleadings. The Plaintiffs filed their Statement of Claim on the 11th of August, 2023. The Defendants also filed a joint amended Statement of Defence on the 12th October, 2023 and counterclaimed as follows:

a. *A declaration of title to all that piece of land numbered Plot 8 (which the Plaintiffs have labelled as Plot No. 7) lying and located at Nyinatasi, Ejisu/Ashanti as belonging to the Boafo Akwaboa Stool by virtue of being the traditional custodians of same.*

b. *A declaration that the piece of land numbered Plot 8 (which the Plaintiffs have labelled as Plot No. 7) does not form part of the 35 plots (8.81 acres) of land acquired by Mckeown Investment Company Limited.*

c. *Perpetual injunction restraining the Plaintiffs, their agents, assigns, workmen, or any other person(s) claiming through them from interfering with the Boafo Akwaboa Stool's customary right to use the land for a purpose in consonance with their custodial right as traditional owners of the disputed plot as well as their agents or persons appointed by the said stool.*

d. *Costs of litigation including legal fees.*

e. *Any further order(s) as the Honourable Court may deem fit.*

PLAINTIFFS' CASE

The Plaintiffs' case is that they are a couple and the owners of the land in dispute which is Plot Number 7, Nyinatase, Ejisu/Ashanti and that they acquired same from Mckeown Investment Company Limited.

The Plaintiffs averred that the land in dispute forms part of a large tract of land of about 8.81 acres which Mckeown Company Limited acquired from the Boafo-Akwaboah Stool of Nyinatase, the 4th Defendant. The Plaintiffs say that the Boafo-Akwaboah Stool gave Mckeown Company Limited documents covering the said land. The Company then divided their land into building plots of which the Company alienated Plot Number 7 to Plaintiffs. The Plaintiffs were then given an Allocation Note, Indenture, and a Site Plan by the Company.

It is the case of the Plaintiffs that they deposited trips of stones and sand on the disputed land and have been in peaceful possession of their land since its acquisition.

However, when the Plaintiffs went unto the land to work on it, they noticed the 3rd defendant had encroached on same and deposited sand on the land and started moulding blocks on same. Upon enquiries, the Plaintiffs were informed that the 1st and 2nd Defendants had sold their land to the 3rd Defendant.

Plaintiffs averred that the 1st and 2nd Defendants, being members of the Boafo-Akwaboah Stool of Nyinatase (the 4th Defendant) were fully aware that it was wrong for them to have sold the land in dispute to the 3rd Defendants since it had already been granted to them by the Stool.

The Plaintiffs further averred that despite informing the 3rd Defendant that the Plaintiffs are the owners of the land and that they should stop further trespassing on their land, the 3rd Defendant totally ignored the Plaintiffs and continued with their development of the land.

Plaintiffs stated it is only the Court that can compel the 3rd Defendant to stop further trespassing on their land and claim against the Defendants for the reliefs endorsed on their amended Writ of Summons.

THE DEFENDANTS' CASE

The Defendants on the other hand denied the allegations of Plaintiffs and all their averments in their Statement of Claim.

The Defendants' case is that they do not know the Plaintiffs, neither are the Plaintiffs clothed with the capacity to institute this instant action against them since the 1st Defendant does not know the Plaintiffs and has not dealt with them in relation to any land at Nyinatase, near Ejisu. Defendants added that Plaintiffs have no cause of action

against them but rather their cause of action should be against their grantor, Mckeown Investment Company Limited.

Defendants averred that the 1st and 2nd Defendants are part of the family of Nana Kofi Agye Boafo II, the Otumfuo Banmu Gyasehene who is also the occupant of the Boafo-Akwaboah Stool which said stool is the custodian of all lands at Nyinatase, including the land in dispute. It is the case of the Defendant that the Plaintiffs do not own any land at Nyinatase and that their assertion that the land in dispute which they say is Plot 7 is rather Plot 8 and same does not form part of the 8.81 acres of land the 4th Defendant sold to Mckeown Investment Company Limited.

It is further the case of the Defendants that the stool alienated the 8.81 acres of land which was equivalent to 35 plots to McKeown Investment Company for the construction of real estate for sale in 2011 and that the Company was not to resell the lands but to put up estates for sale and/or for rent.

The Defendants further averred that, after they demarcated the 8.81 acres (35 plots) to the Company, an audit conducted by the Stool on the land revealed that the Company had taken 11 plots in addition to the 35 plots granted to them. Defendants say that they have been able to recover 7 of the 11 plots which include the disputed land which the company did not have the right to have sold to the Plaintiffs. Hence, the Plaintiffs cause of action should rather be against their grantor, McKeown Investment Company Limited and not the Defendants. They aver that the Plaintiffs have acquired no legal or equitable interest in the land to be able to maintain an action against the Defendants and that the Plaintiffs sued them because the Company is now defunct.

Defendants averred that the Plaintiffs have never acquired any land from the Boafo-Akwaboah Stool and that it is the 3rd Defendant who had validly acquired the land in

dispute from the Stool. Therefore, the Plaintiffs are not entitled to their reliefs hence they counter-claimed for the reliefs stated thereon.

The 1st Plaintiff testified for himself and on behalf of the 2nd Plaintiff and tendered the following documents in support of the case:

1. Exhibit A - Declaration by the occupant of the 4th defendant stool transferring ownership of 8.81 acres of land to Mckeown Investment Company Ltd.

2. Exhibit B - Certificate of Allocation from the Boafo and Akwaboa Stool to Mckeown Investment Company Ltd.

3. Statutory Declaration and a site plan in the names of the Plaintiffs relabeled as Exhibit C

In respect of the Defendants, the 1st Defendant testified on their behalf save the 3rd Defendant. They tendered the following documents in respect of their case:

1. Exhibit 1 - Certificate of allocation together with a site plan in the name Kwabena Osei Brefo from Boafo and Akwaboa stool

2. Exhibit 2 - Statutory Declaration from the occupant of the 4th defendant stool in the name of Mckeown Investment Company Ltd.

3. Exhibit 3 - Payment Receipt dated 22nd September 2016 for an amount of GHc20,000 received from Mckeown Investment Company Ltd. By the 1st and 2nd Defendants.

4. Exhibit 4 - Plan of land in the name of Mckeown Estate

Kofi Adade Brefo filed a witness statement on behalf of the 3rd Defendant and tendered the following documents:

1. Exhibit 5 - Certificate of allocation in the name of Kwabena Osei Brefo from Boafo and Akwaboa Stool lands
2. Exhibit 5[1] - Plan of land in the name of Kwabena Osei Brefo
3. Exhibit 6 - Certificate of allocation in the name of Mr. Kofi Adade Brefo from Boafo and Akwaboa Stool lands
4. Exhibit 6[1] - Plan of land in the name of Kofi Adade Brefo
5. Exhibit 7 - Certificate of allocation in the name of Evans Brefo Boateng from Boafo and Akwaboa Stool lands
6. Exhibit 7[1] - Plan of land in the name of Kofi Evans Brefo Boateng
7. Exhibit 8 - Certificate of allocation in the name of Vida & Emmanuel & Samuel Brefo from Boafo and Akwaboa Stool lands
8. Exhibit 8[1] - Plan of land in the name of Vida & Emmanuel & Samuel Brefo

The following issues were determinable by the close of pleadings:

1. **Whether or not the Plaintiffs have a cause of action against the Defendants and if so whether they have the capacity to sue the Defendants.**
2. **Whether or not the McKeown Investment Company took 11 plots in excess of the 8.81 acres of land granted to them by the Boafo-Akwaboah Stool?**

3. **Whether or not the McKeown Investment Company Limited validly granted the land in dispute to the Plaintiffs?**

4. **Whether or not the 4th Defendant (Boafo-Akwaboah Stool) validly granted the land in dispute to the 3rd Defendant?**

BURDEN OF PROOF AND PERSUASION

The Plaintiffs per their claims against the Defendants were required to lead credible and sufficient evidence to conclusively prove that on the balance of probabilities, they are entitled to their claims as required by Sections 10, 11 (1) & (4), and 12 of the Evidence Act, 1975 (NRCD 323). **See: Mahama v. Electoral Commission and Another [2021] GHASC 12 (March 2021).**

In the case of **Ackah v. Pergah Transport Ltd. & Others [2010] SCGLR 728 @ 736**, the Supreme Court per Adinyira JSC explained how a party can successfully discharge the burden of proof as follows:

> **"It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things (often described as real evidenced) without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury. It is trite 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 the fact is more reasonable than its nonexistence. This is a requirement of the law**

on evidence under sections 10 (1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323)".

Therefore, a bare affirmation on oath or the repetition of averments by the Plaintiff and/or his witnesses in the witness box cannot be deemed as proof.

In this instant suit, the Defendants filed a counter-claim. They were therefore required to prove their counter-claim according to the standard of proof required by Sections 11 and 14 of NRCD 323 just like the Plaintiffs. In **Jass Company Limited v. Appau and Another [2009] SCGLR 265**, the Supreme Court per Dotse J.S.C. held that:

> **"Thus, whenever a defendant also files a counterclaim, then the same standard or burden of proof will be used in evaluating and assessing the case of the defendant just as it was used to evaluate and assess the case of the Plaintiff against the defendant. In the instant appeal, the defendants counterclaimed and this meant that they also assumed the position of Plaintiff in respect of their counterclaim."**

EVALUATION OF THE EVIDENCE AND DETERMINATION OF THE ISSUES

Before I start with the analysis of the issues, it must be noted from the facts of the case that the following issues are not in contention.

1. That the Boafo & Akwaboa Stool at Nyinataase were the original owners of all that piece of land called "Kotokuom Abotanso"
2. That Mckeown Investment Company Limited validly acquired 8.81 acres of land from the Boafo-Akwaboah Stool.
3. That McKeown Investment Company Limited sold the disputed land to the Plaintiffs.

4. That Boafo Akwaboah Stool also sold the disputed land to the 3rd Defendants

5. That the land claimed by the Plaintiffs is the same land claimed by the Defendants.

ISSUE ONE

Whether or not the Plaintiffs have a cause of action against the Defendants and if so, whether they have the capacity to sue the Defendants.

It is the case of the Defendants that they do not know the Plaintiffs and have never dealt with them. They aver that they are not the grantors of the Plaintiffs rather they are the grantors of Mckeown Investment Company Ltd, the Plaintiffs' assignor and that even if the Plaintiffs have any cause of action it would be against their grantors/assignors not them. The Plaintiffs think otherwise.

What then is Cause of Action?

The Supreme Court per **Adinyira JSC** (as she then was) in the case of **IN RE MENSAH (DECD); MENSAH & SEY V INTERCONTINENTAL BANK (GH) LTD [2010] SCGLR 118 at 128-129** defining what cause of action is quoting from the **Halsbury's Laws of England (4th ed), Vol 37, para 20 at page 27** stated as follows:

> *"cause of action*
>
> *…a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which the defendant would have a right to traverse. Cause of action has also been taken*

to mean that particular act of the defendant which gives the plaintiff his cause of complaint, or subject matter or grievance founding the action, not merely the technical cause of action."

From the definition above the following are to be noted

1. That the Boafo & Akwaboa Stool at Nyinataase were the original owners of all that piece of land called "Kotokuom Abotanso"

2. That Mckeown Investment Company Limited acquired 8.81 acres of land from the Boafo-Akwaboah Stool sometime in 2011, however, the document covering same was dated February 2016. The Plaintiffs tendered **Exhibits A**, a Statutory Declaration declared to by Nana Kofi Agyei Boafo, the occupant of the Boafo and Akwaboah Stool transferring all his interest, rights and title in the said 8.81 acres of land to Mckeown Investment Company Limited. It must be noted that the 1st Defendant also tendered a copy of the same document as **Exhibit 2**. Apart from that the 1st Defendant also issued a Certificate of Allocation in respect of the same land and size to Mckeown Investment Company Limited. Same was tendered as **Exhibit B**.

3. That McKeown Investment Company Limited sold the disputed plot of land Plot Number 7, main Road which falls within the parcel of land measuring approximately 8.81 acres of land granted to it by the Boafo and Akwaboah Stool to the Plaintiffs. The Company issued to the Plaintiffs a site plan and an indenture (statutory declaration) in respect of the Plot of land Plot number 7, main road. These documents were tendered without any objections from the defendants as **Exhibit C**. Whereas the Plaintiffs per their document claimed their plot of land is plot number 7, the defendants say in their pleadings that per their

site plan, the same plot is plot number 8 and in their evidence it was referred to as plot number 10 a total departure from their pleadings.

4. That Boafo Akwaboah Stool also sold the disputed land to the 3rd Defendant. They tendered as **Exhibit 1**, the allocation note and site plan issued to the 3rd Defendant

5. That the land claimed by the Plaintiffs is the same land claimed by the Defendants. From **Exhibit 1**, the site plan that was given to the 3rd Defendant by the 4th Defendant compared to the one given to the Plaintiffs by Mckeown, it is about the same land.

It is very significant to note that the 1st 2nd and 4th defendants do not dispute that they granted the land to Mckeown Investment Company Ltd, who is Plaintiff's grantor/assignor though they claim the plot number is different. The Plaintiff has also established he got land from Mckeown per Exhibit C. It is my view that plaintiffs have established a prima facie case to the disputed land. They have an interest in the disputed land.

During cross examination of the 1st Plaintiff on the 5th of March 2024, the following ensued:

Q. I am putting it to you that you do not have capacity to sue the Defendant in this matter?

A. I do, the document that I have indicates that the right of the land was transferred to Mckeown Investment and the company also transferred that right to me.

Q. Indeed you do not have the legal status to bring the suit because you are unknown to the Defendant and a stranger to the land sale transaction that went on between Mckeown Company Limited and the Defendants

A. *Based on my capacity to be here is based on my document that Boafo Akwaboah Stool land transferred their right to Mckeown and Mckeown too transferred their right based on the transaction between myself and Mckeown*

Xxx

Q. *Have you contacted Mckeown who sold the land to you to find out why land sold to you and already alienated by the stool is not available to your use*

A. *Yes I called Mckeown when I met people on the land, they said they had not given land to anybody*

Xxx

Q. *I am putting it to you that your cause of action is against Mckeown Company and not the Defendants*

A. *My action is against the trespasser since the stool has given its right of the land to Mckeown and subsequently to me. I believe I have the right of exercise*

Q. *I am finally putting it to you that not being a party to the agreement between Mckeown Investment Company Ltd and the 4th Defendant you have no right or capacity to sue the 4th Defendant and the rest?*

A. *I have the right as I have indicated previously Mckeown showed me evidence documentation of the land they have acquired from the stool and the stool has sworn an affidavit at the High Court granting Mckeown the right to the land. And in that affidavit the stool indicated that they will not grant that same piece of land to any body and since Mckeown transferred their right to me, I have the right to the disputed land*

Q. *Your cause of action is against Mckeown company Limited and none of the Defendants?*

A. *Since I am assumed new owner for the piece within the large parcel that was granted to Mckeown and I have documentation to that effect I have the right to protect that land through any legal framework"*

From the above, therefore the interest in the land that the Plaintiffs acquired from Mckeown Company Limited which also acquired same from the 4th defendants who have also sold same to the 3rd defendant is what the Plaintiffs are seeking to protect. The 1st and 2nd Defendants representing the 4th Defendant are alleged to have sold the disputed land to the 3rd Defendant. It is the act of the 1st, 2nd and 4th defendants having sold the disputed land to the 3rd defendant that has given the plaintiffs the cause to complain. It is therefore my humble view that the Plaintiffs definitely have a cause of action against the Defendants having sold the same land they sold to Mckwoen Investment Company Limited, their grantee to another person, the 3rd Defendant. To my mind, if the Plaintiffs have a cause of action against the defendants, it therefore implies that they have the capacity to institute this action against them too. For a person to be clothed with the capacity to sue and be sued, that person must have an interest in the subject matter of the suit. In **Kessekeke Akoto Dugbartey Sappor and 2 Others vs Solomon Dugbartey Sarpor and 4 Others [J4/46/2020]**, the Supreme Court per Prof. Mensa-Bonsu JSC in defining capacity provided that:

> **The Black's Law Dictionary defines capacity or standing as "A party's right to make a legal claim or seek judicial enforcement of a duty or right". Thus, one's ability to appear in court to make a claim, hinges on whether one is recognized in law as having sufficient interest in any matter to seek a hearing on a particular issue. The sufficient interest must remain throughout the life of the case, or one's legal ability to stay connected with a case making its way through the Courts would be lost.**

From the facts of the case, as I have already explained above, the interest that the Plaintiffs have is in Plot Number 7 which they purchased from Mckeown, who purchased same from the 1st 2nd and 4th defendants, who have also sold the same land to the 3rd Defendant. I therefore find that the Plaintiffs have a cause of action against the defendants and they also have the capacity to institute this action against the Defendants to protect their interest in the land in dispute.

ISSUE TWO

Whether or not the McKeown Investment Company took 11 plots in excess of the 8.81 acres of land granted to them by the Boafo-Akwaboah Stool?

Section 17 (2) of the **Evidence Act, 1975 (NRCD 323)** provides that "*Except as otherwise provided by law, the burden of producing evidence of a particular fact is initially on the party with the burden of persuasion as to that fact.*"

The 1st, 2nd and 4th Defendants admit that they sold 8.81 acres of land (35 Plots) to the Plaintiffs' grantor, McKeown Investment Company Limited. However, the Defendants claim that the Company unlawfully took 11 plots in addition to their 35 Plots of which the Stool retrieved or recovered 7 Plots. They say that the land in dispute forms part of the 7 Plots the Boafo-Akwaboah Stool, the 4th Defendant recovered from Mckeown. The Plaintiffs challenged them under cross examination. The Defendants, particularly the 1st, 2nd and 4th Defendants being the grantor of Mckeown Investment Company Limited, (now defunct), therefore bore the evidential burden to prove the following:

1. The boundaries of the 8.81 acres (35 plots) of land they sold to the Company.
2. That the Company took 11 more plots in addition to the 35 plots that were sold to them.

3. That the Boafo & Akwaboah stool recovered 7 out of the 11 plots they claim the company unlawfully took. They also had to prove how the 7plots were recovered.
4. That the Plaintiffs' plot forms part of the 7 plots that the Company recovered.

Their success to prove these will mean that Mckeown Investment Company Limited did not have capacity to sell the land in dispute to the Plaintiffs.

The Defendants in proving the above tendered a Statutory Declaration (Exhibit 2), a payment receipt (Exhibit 3) and a Site Plan (Exhibit 4).

Statutory Declaration (Exhibit 2) was made by Nana Kofi Agyei Boafo I, Occupant of the Boafo-Akwaboah Stool (4th Defendant) transferring 8.81 acres of land to McKweon Investment Company Limited. The contents of Exhibit 2 are very instructive thus I reproduce same below:

"*IN THE HIGH COURT OF JUDICATURE*

IN THE HIGH COURT OF JUSTICE

KUMASI/ASHANTI

STATUTORY DECLARATION BY NANA KOFI AGYEI BOAFO THE CHIEF OF BOAFO AND AKWABOAH STOOL AT NYINATAASE NEAR EJISU/ASHANTI TRANSFERRING OWNERSHIP OF A PARCEL OF LAND MEASURING APPROXIMATELY 8.81 ACRES TO MCKEOWN INVESTMENT COMPANY LIMITED

I, Nana Kofi Agyei Boafo – Chief of Boafo and Akwaboah stool of Nyinataase near Ejisu transferring ownership of land and do sincerely and solemnly declare as follows:

1. *That I am the declarant/deponent herein*

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2. *That I am the rightful owner of the parcel of land measuring approximately 8.81 acres Boafo and Akwaboah Stool and at a place called 'Kotokuom' Abotanso'*
3. *That the said parcel of the land measuring approximately 8.81 acres is my own property and it is free from all claims and encumbrances.*
4. *That I have never mortgaged nor transferred my interest, rights, title in the said land to anyone or financial institution for a loan or financial assistance*
5. *That by this declaration, I have transferred my interest, rights, title in the said land to MCKEOWN INVESTMENT COMPANY LIMITED*
6. *That the said land was transferred in 2011*
7. *That I therefore implore all authorities concerned to delete my name from any document pertain (sic) to the said land measuring 8.81 acres at a place called 'Kotokuom Abotanso' on Boafo and Akwaboah Stool land with the substitution therein, the name of the said MCKEOWN INVESTMENT COMPANY LIMITED as the new owner of the said land measuring 8.81 acres on Boafo and Akwaboah Stool Lands.*

And I making this solemn declaration conscientiously

Believing same to be true by virtue of statutory ***signed NANA KOFI***

Declared ACT 389 OF 1971 ***AGYEI BOAFO I***

Declared at Kumasi this 11th...)

……..…

Day of February 2016 after) ***Declarant Herein***

The contents hereof had been)

Explain in the twi language when)

He seemed perfectly to understand) ***Witness***

Same before signing:

……

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…… *(Abusuapanin Kwaku Boateng)*

Signed

REGISTRAR

COURT OF APPEAL

(CIVIL DIVISION)

KUMASI"

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It can be seen from the above that all the interest in the 8.81 acres of land was transferred from the Stool (4th Defendant) to Mckeown, the grantors of the Plaintiff.

The Statutory declaration (Exhibit 2) and the payment receipt (Exhibit 3) were to prove that the Boafo-Akwaboah Stool sold 8.81 acres of land to the Plaintiff's grantor, McKeown Investment Company Ltd. However, those documents do not state the boundaries of the land. The Defendants however tendered **Exhibit 4**, a copy of the plan of land at Nyantase. They say it shows the boundary of the total area taken over by Mckeown that is the 8.81 acres of land (35 plots) and the supposed 11 plots they claim Mckeown wrongfully took, marked in red. The alleged 7 plots they claim they recovered from Mckeown that includes the disputed land marked in blue. Interestingly, from **Exhibit 4** tendered by the defendants themselves, none of the plot numbers captured in the area marked blue being the land they claim they recovered from Mckeown and which included the disputed land bore the number of the disputed land. This is more evident even in the confusion of the Defendants as to the actual plot number of the land in dispute. They referred to it as plot number 8 in their amended Statement of Defence and counter-claim and in their reliefs. Then in their evidence, they

woefully departed from their pleadings and referred to it as plot number 10. **Exhibit 1**, a Certificate of Allocation was tendered in support of same bearing plot number 10.

Amazingly, neither plot number 8 nor 10 (whichever way they referred to the disputed land) forms part of the 7 plots Defendants claim they recovered from the Plaintiffs' grantor marked in blue within Exhibit 4, the plan of land. Rather, those plots numbered 8 or 10 all fall within the 8.81 acres granted to the Plaintiffs' grantor and marked red. Indeed, the plaintiffs' plot number 7 equally falls within the areas marked red and also within the 8.81 acres. From the foregoing, it is my considered view that the 1st 2nd and 4th Defendants failed to prove to the court that the Plaintiff's grantor took more than they had given it or that the Plaintiffs' plot falls within the alleged land they recovered. In fact, their own **Exhibit 4** supports the case of the plaintiffs and I so find.

DID THE 4TH DEFENDANT RE-ENTER THE LAND THEY GRANTED TO PLAINTIFF'S GRANTOR, MCKEOWN INVESTMENT COMPANY LTD?

One important question that ought to be answered is that if indeed the 4th Defendant recovered the alleged 7 plots as they claim how was that done? From **Exhibit B** tendered by Plaintiffs, that is the Certificate of Allocation issued to the Plaintiffs' grantor by the 4th Defendant, paragraph D stipulates as follows:

> *"D. That the Boafo and AKwaboa stool reserves the right to re-enter the plot(s) if the above mentioned conditions are not complied with."*

Section 57 of the **Land Act, 2020 (Act 1036)** stipulates the method a party must follow to re-enter a land where there is a breach. It provides as follows:

"Restriction on re-entry and forfeiture

57. (1) A right of re-entry or forfeiture under a provision in a lease for breach of a covenant, condition or agreement in the lease is not enforceable by court action or any other means, unless

(a) the lessor has served on the lessee a notice

(i) specifying the particular breach complained of,

(ii) requiring the lessee to remedy the breach, if the breach is capable of remedy, and

(iii) requiring the lessee to make reasonable compensation in money for the breach, except where the breach consists of non-payment of rent;

(b) the lessee has knowledge of the fact that the notice has been served, and

(c) the lessee fails, within a reasonable time after the service of the notice under paragraph (a) to remedy the breach, if that breach is capable of remedy, or to pay compensation, to the satisfaction of that lessor, for the breach or in the case of non-payment of rent to pay the rent and interest on the rent at the prevailing bank rate

(2) Where a notice is

(a) sent by registered mail addressed to a person at the last known address of the person or by electronic mail where that is the normal mode of communication between the parties, and

(b) posted on the land which is the subject of re-entry,

Then, for the purposes of subsection (1), that person shall be deemed, unless the contrary is proved, to have had knowledge of the fact that the notice had been served as from the time at which the mail would have been delivered in the ordinary course of post or the notice was posted on the land or in the case of electronic mail at the date the mail was sent"

In effect, in an action for re-entry of land, it is only valid if there is a breach of a covenant in the lease and the lessee has been notified thereof. Please see: **Western Hardwood Ltd. v West African Enterprises Ltd. [1998-99] SCGLR 105 at 122**

1st Defendant had this to say under cross examination at page 36 of the record of proceedings of 24//2024

"*Q. Did the Boafo and Akwaboah Stool use legal or other means to recover the said land which you alleged has been wrongfully taken over by the said Mckeown Company?*

A. That is so. We sat with Mckeown investment and had a discussion on that"

Clearly, the procedure above for any breach of a covenant was not followed by the Defendants. Before this court, there is no evidence that the 4th defendant applied any such procedure if any. There was no proper re-entry and therefore the 4th defendant could not have recovered the land as they want this court to believe. Even if the defendants properly recovered the lands from Mckeown, they failed to establish that the alleged recovered land included the disputed land.

It is further the case of the Defendants that after they demarcated the 8.81 acres of land to Mckeown, there was another document that was prepared for Mckeown. When the 1st Defendant was challenged under cross-examination that no such document existed, the 1st Defendant now says it was an oral agreement they had with Mckeown. Below is what happened on the 23rd of May 2024 at page 33 of the record of proceeding:

Q. Do you have any other document apart from this self-serving document?

A. No. When they came for the 8.81 acres we made another document.

Q. Did you attach that other document you just mentioned to your witness statement?

A. *No. At that time the company had collapsed so we invited them to the house and we made another agreement*

Q. *So that purported agreement is not part of your document before this Honourable Court?*

A. *There are some my witness statement*

Q. *Abusuapanin, can you point out those you attached to your witness statement to the Honourable court*

A. *That is so. I stated in paragraph 8 of my witness statement that I did not know the Plaintiffs in this suit until the matter came to court and also in paragraph 11 we also had a verbal agreement*

Q. *I suggest to you that answer you just gave is an afterthought*

A. *That is not correct*

But it is trite law that when it comes to land agreement it is neither oral nor verbal but must be in writing: See **Sections 35** and **36** of **Act 1036**. The response of 1st defendant is clearly an afterthought and no such agreement existed. It seems to me that the defendants rather seemed to take advantage of the situation that Mckeown Investment Company was in the process of winding up or defunct and took the law into their hands and wrongfully took over land they had already alienated to the company.

DID THE GRANTOR OF THE PLAINTIFF, MCKWEOWN BREACH ANY AGREEMENT?

It is further the case of the 1st 2nd and 4th Defendants that the grantor of the Plaintiff (Mckeown Investment) breached the agreement they had with them for the construction of real estate for sale and/or rent it. In both their amended Statement of

Defence and their evidence they strongly allege same. At paragraph 9 of their amended Statement of Defence, it was stated as follows:

"9. The defendants state in answer to paragraph 7 that Mckeown Investment Company Ltd were given documents which indicated that the tract of land they acquired was for the purpose of putting up real estate specifically to build houses for the sale and/or rent not for re-parceling for sale for the Boafo & Akwaboa Stool is well equipped to alienate its own lands and does not need Mckeown Investment Company Limited to do same on their behalf"

Also at paragraph 16 of the 1st Defendant's witness statement dated 29/11/23 below was what was stated

"Since the land granted to Mckeown Investment Company Limited was for the construction of real estate for sale and/or rent it did not have the capacity or authority to issue allocation note, site plan and indentures to its alleged grantees for the user purpose for which the thirty-five (35) plots (8.81 acres) of land was granted to Mckeown Investment Company Ltd. was not for it to re-parcel and sell same off but rather to build houses for sale and/or rent."

Exhibit A tendered by the Plaintiffs and **Exhibit 2** tendered by the 1st defendant is the document the defendants were referring to transferring the 4th defendant's interest in the approximately 8.81 acres to the Plaintiff's grantor, Mckeown. In fact it is this foundation document that established the relationship between the 4th Defendant and the Plaintiffs' grantor. I have reproduced same at pages 18 and 19 of this judgment. I have critically perused the said document and as can be seen, nowhere in the said document was the purpose for which the land was to be used stated. The evidence of the 1st Defendant therefore that the agreement was for Mckeown Investment Company

Limited to construct houses for sale/or rent has no bearing on the document they presented themselves.

It is trite law that where there is in existence a written document and oral evidence on the same transaction, the rule is that the court should consider both the oral and documentary evidence, but to lean favourably towards the documentary evidence especially where the documentary evidence is authentic while the oral evidence is conflicting. See: **Hayfron v Egyir [1984-86] GLR 682, CA**

From **Exhibits A** and **2** therefore, it is my considered view that the Plaintiffs' grantor Mckeown Investment Company Ltd. did not breach any such agreement. Consequently, they had the capacity or authority to have alienated same to the Plaintiff and to that extent the **alienation** and grant of the disputed land to the Plaintiffs was proper and valid and I so hold.

WHETHER OR NOT THE 4TH DEFENDANT (BOAFO-AKWABOAH STOOL) VALIDLY GRANTED THE LAND IN DISPUTE TO THE 3RD DEFENDANT?

From the discussions and analysis so far, the questions that follow are whether after the granting of the disputed land to the Mckeown Investment Company Ltd in 2011 and the subsequent document prepared in 2016, the stool acquired any more interest in the land? Also, could the stool again go ahead in March 2021 as presented by the 1st Defendant to grant the same land to the 3rd Defendant by executing another allocation in respect of the same land?

On the issue of whether Mckeown Investment Limited acquired any interest in the land after the 2011 grant to them, the learned author **Sir Dennis Dominic Adjei** in his book **Land Law, Practice and Conveyancing in Ghana, Second Edition 2017** states that *a deed of grant or assurance of property takes effect immediately after it has been executed by the vendor*

and passes on the property assured to the grantee even where the grantee does not sign the deed. At page 203 of the book **Justice Sir Dennis Adjei** states that;

> *"The common law position which is still the position in the country is that a deed of grant or assurance of property or contract of sale immediately transfers the interest of the grantor to the grantee at the time it is signed by the grantor…"*

His Lordship further states that:

> *"The three effects of a contract of sale are that the purchaser becomes the equitable owner of the property, the vendor becomes trustee or legal owner for the purchaser in respect of the demised property, and any risk that affects the property shall pass to the purchaser by virtue of the fact that he is the equitable owner". [Emphasis Mine].*

The authors of **Snell's Principle of Equity Robert Megarry & P.V. Baker, Snell's Principle of Equity 188 (2th ed., Sweet & Maxwell 1973** re-echoes the equitable ownership of a purchaser of a land even where registration of the title document has not been perfected. They state as follows:

> *"As soon as a specifically enforceable contract for sale of land is made, the purchaser becomes the owner of the land in equity, and the vendor becomes a constructive trustee of the land for the purchaser, subject in each case to their respective rights and duties under the contract".*

From the law therefore, it is my opinion that following the grant of the land to Mckeown Investment Company Limited in 2011, they acquired an equitable interest in that land and same is worthy of protection by the court.

On the question as to whether the Boafo & Akwaboah stool having granted the land to Mckeown in 2011, retained any interest that it could still in 2021 grant to the 3rd

Defendant. It is my opinion that the case infra provides us with an answer. In **Amua-Sekyi and Another v. Sasu and Another [1984-86] 2 GLR 479** the Court of Appeal firmly stated the position of the law to the effect that:

> "*An effective prior customary grant divests the grantor of any further interest in the subject matter of the grant. Consequently, he cannot make a valid legal grant of the same land. Such a second grant gains no priority even if earlier registered. Thus it was that Amefinu v. Odametey [1977] 2 G.L.R. 135, C.A. affirmed the well-known principle of nemo dat quod non habet as applied in the old case of Hochman v. Arkhurst (1920) F.C. '20-'21, 103, where at 105 the court had held that if the stool had sold earlier to the plaintiff then "a subsequent conveyance by the same stool of the same piece of land to another party, i.e., the Defendant, would clearly not avail the latter."*

The above principle was affirmed by the Supreme Court which has confirmed the *nemo dat quod non habet* principle in many other cases. One such case is **Seidu Mohammed v Saanbaye Kangberee (2012) 2 SCGLR 1182**, where the Supreme Court summed the principle up as follows:

> *"…The principle of nemo dat quod non habet would operate ruthlessly and by it, an owner could only convey title owned by him at the material time of conveyance."*

See also **Sasu and another v. Amua-Sekyi and Another [1987-88] 1 GLR 294** at pages 298 to 299.

To further answer the question whether the Boafo &Akwaboah Stool could grant the 3rd Defendant any interest in the land, I again refer to the case of **Brown v Quarshigah (2003-2004) SCGLR 930** where the Supreme Court stated the rule that an effective customary conveyance of land would divest the grantor of any further right, title or

interest in the land. Consequently, the apex court held that the customary law vendor could not make another valid grant of the same land.

In the case of **Saanbaye Basilde Kangberee vrs Alhaji Seidu Mohammed, Suit No. J4/44/2012, DATED 4TH July, 2012,SC**, it was held that;

> **"This principle of nemo dat quod non habet operates ruthlessly and by it an owner of land can only convey title that he owns at the material time of the conveyances and since by the evidence on record, Anna Benieh Yanney, had divested herself of title in the same parcel of land to Emmanuel Yaw Nkrumah, the Plaintiff's vendor on 12-12-1986, there was definitely no title left in her to convey to any other person, at the time the conveyance to Defendants vendors was effected. The conveyance to the Defendants vendors and subsequently to the Defendant herein are therefore null and void and of no effect."**

The 1st, 2nd and 4th Defendants had already sold the land in dispute to the Plaintiffs' grantor (Mckeown) before selling same to the 3rd Defendant. Therefore, they could not have transferred an interest in land they no longer had to the 3rd Defendant. The 4th Defendant divested itself of any further right, title or interest that it had in the land. Hence, the 3rd Defendant acquired no interest in the land in dispute from that sale. The sale of the disputed land to the 3rd defendant was invalid as same had already been sold to the grantor of the Plaintiffs who also sold to the Plaintiffs. The 3rd defendant in the circumstances has no interest in the disputed land and any sale to him is null and void and I so hold.

In conclusion, therefore, the 1st, 2nd Defendants and 4th Defendants did not validly grant the land in dispute to the 3rd Defendant.

From the foregoing, having analysed the facts and evidence on the balance of probabilities, the action of the Plaintiffs must succeed as they led sufficient evidence to establish their claim. The counterclaim of the defendants must fail. I accordingly enter judgment in favour of the Plaintiffs for all the reliefs claimed namely:

1. *A declaration of title to all that piece of building Plot Number 7, lying and located at Nyinatase, Ejisu/Ashanti.*

2. *Recovery of possession of all that piece of building Plot Number 7, lying and located at Nyinatase, Ejisu/Ashanti from the 3rd Defendant which said plot the 1st and 2nd Defendants have sold to the 3rd Defendant.*

3. *An order for perpetual injunction restraining the Defendants, their agents, assigns, workmen and any other person(s) claiming through them from interfering with the Plaintiff's peaceful enjoyment of the said building plot.*

4. Cost of GH₵5,000.00 is awarded in favour of the Plaintiffs against the defendants jointly.

H/H ROSEMARY EDITH HAYFORD (MRS)
(SITTING AS ADDITIONAL MAGISTRATE)

COUNSEL

ANN ANNANG WITH GRACE BAMFO ANNING FOR MICHAEL AKORSAH FOR THE PLAINTIFF - PRESENT

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NANA KOFI KUSI ASUMADU FOR KWABENA POKU MENSAH FOR THE DEFENDANTS – PRESENT