

IN THE DISTRICT COURT, NEW EDUBIASE
HELD ON THURSDAY 13TH MARCH, 2025
BEFORE HER WORSHIP ANASTACIA Y.A. KARIMU ESQ.

A2/59/2023

GEORGE BOADI

PLAINTIFF

VRS.

NANA YAW OWUSU SEKYERE

DEFENDANT

JUDGMENT

1. By an amended writ of summons filed on 22nd March, 2024 the plaintiff is seeking the following reliefs:
 - a. A declaration that the judgment the plaintiff obtained in suit number A1/5/2018 titled C.A. Agyapong v. Kwabena Boadi is the same property in dispute before this Honourable Court.
 - b. Title, ownership and possession of fourteen (14) acres of cocoa farm situated at Wawase in Afiaso which shares boundaries with Op. Yaw Sarfo, Okyei, Kofi Anow Wuo, Abena Emo, Abena Gyakai, Aberewaa Ataa, Cecilia, and Awo Yaa in favour of the plaintiff.
 - c. Account of sixty-nine (69) bags of cocoa beans harvested by the defendants in 2019, 2020, and 2021.
 - d. Interest on the said amount of money from 2019 to the date of final payment.
 - e. General damages for trespass.
 - f. Cost and legal cost.

2. The defendant denied liability and counterclaimed for:
 - a. A declaration that all that cocoa farmland situated at a place commonly known as Wawase measuring fourteen and a half (14.5) poles and shares boundaries with Abena Gyankari, Kwame Kyei also known as Okyei, Awo Yaa, Yaw Sarfo, Abena Amo, Ama Adade, Cecilia, Charles Anowuo and the late Kwame Krah whose farmland is now in the possession of the plaintiff herein belongs to the Aduana family of Adansi Afiaso
 - b. Damages for trespass
 - c. Recovery of possession of the portion of land in dispute trespassed unto
 - d. Perpetual injunction restraining the plaintiff, his agents, servants, workmen, employees, assigns and all other persons claiming through him from interfering with the defendant's family's ownership, possession, control and occupation of the land in dispute
 - e. Cost including solicitor's legal fees
 - f. Any other order or orders as the Honourable Court may deem fit.
3. The plaintiff's case is that in 2018, he obtained judgment in suit number A1/5/2018 against C.A. Agyapong in this court. The defendant is a direct nephew of C.A. Agyapong. The said judgment has neither been set aside nor appealed against. When the land the subject matter of this suit was litigated on by his uncle before the Fomena Traditional Council, he was adjudged the owner. The defendant harvested sixty-nine bags of cocoa beans from the disputed farmland for the year 2019, 2020 and 2021 cocoa season even though he has been adjudged owner of the land. Hence the present action to compel the defendant to account to him for the said bags. He tendered in evidence the following exhibits:
 - a. Exhibit A – a letter from the Fomena Division Council dated 16th April, 2004

- b. Exhibit B – the judgment of this court differently constituted dated 16th December, 2019 in respect of suit number A1/05/2018
 - c. Exhibit C – the record of proceedings of this court differently constituted dated 10th March, 2023
 - d. Exhibit D - record of proceedings from the High Court, Kumasi dated 16th February, 2004
4. He did not call any other witness.
5. The defendant's case is that the cocoa farm the subject matter of this suit is situated at a place known as "Wawase" in Adansi Afiaso and measures about fourteen and half (14.5) poles. The land shares boundaries with Abena Gyankari, Kwame Kyei also known as Okyei, Awo Yaa, Yaw Sarfo, Abena Amo, Ama Adade, Cecilia, Charles Anowuo and the late Kwame Krah, the father of the plaintiff herein whose farmland is now in the possession of the plaintiff.
6. According to the defendant his great-grandfather Nana Kwame Boadi acquired the land in its virgin state. During his lifetime Nana Kwame Boadi reduced the land into a cocoa farm and exercised exclusive ownership, control and possession of the farm without hindrance from any individual or entity. Upon his death in 1980, Nana Kwame Boadi was customarily succeeded by Nana Kofi Agyare also known as Nana Kofi Krah. The land became vested in him and devolved onto the Aduana Family and as such became the family property of the Aduana Family of Adansi-Afiaso to which Nana Kwame Boadi belonged. Nana Kofi Agyare maintained and took care of the farm for and on behalf of the Aduana family without any hindrance from any entity or individual until his demise in 2018. At some point in time when Nana Kofi

Agyare became old, he permitted his son Mohammed Acquah to maintain the farmland in dispute on his behalf and for the entire Aduana Family. Upon the demise of Nana Kofi Agyare, he was chosen to succeed him as the customary successor. All family properties including the land in dispute held by Nana Kofi Agyare in trust for the Aduana Family were entrusted to him to hold same for and on behalf of the Aduana Family. When he succeeded Nana Kofi Agyare, Mohammed Acquah, the son of Nana Kofi Agyare claimed that the farmland belonged to his late father. The defendant commenced an action at the Fomena District Court against Mohammed Acquah for a declaration, among others, that the farmland belongs to the Aduana family and is not the personal property of Nana Kofi Agyare. Mohammed Acquah admitted in his statement of defence and counterclaim that the farm belonged to the Aduana family but maintained that same had been given to him by his late father to cultivate on abunu basis. Pursuant to the said admission by Mohammed Acqua, judgment on admission was entered in favor of the Aduana family on 2nd March, 2020. From this date onwards, he has been exercising control and ownership over the land in dispute for and on behalf of the Aduana Family without hindrance from any individual or entity including the plaintiff herein. The plaintiff began to lay adverse claim to the land recently. He tendered into evidence the following documents:

- a. Exhibit 1 – the investigation cautioned statement of the plaintiff dated 13th January, 2023
- b. Exhibit 2 – Writ of summons issued by the defendant in suit number A1/2/20
- c. Exhibit 3 – the judgment of the District Court, Fomena in suit number A1/2/20 dated 2nd March, 2020

7. The defendant called two witnesses namely, Francis Appiah (DW1) and Dora Boadi @ Abena Amo (DW2). The third witness Kofi Nuamah Appiah passed on before his evidence could be taken.

8. According to DW1 he is a farmer resident at Afiaso. Before he became a farmer, he was a teacher until he stopped teaching in 1980. The plaintiff is his nephew by marriage. Kwame Krah, the plaintiff's father is his brother-in-law. In 1962 he was transferred to Afiaso to work as a teacher. Later, he married the late Abena Kuma, daughter of the late Kwame Boadi. By virtue of his marriage to the late Abena Kuma, he got to know the farmland the subject matter of this suit as well as the activities thereon from the time he moved to Afiaso in 1962 until now. The land is located at a place commonly known as Wawase and it shares boundaries with the farms of Abena Gyankari, Kwame Kyei also known as Okyei, Awo Yaa, Yaw Sarfo, Abena Amo, Ama Adade, Cecilia, Charles Anowuo, and the late Kwame Krah. The plaintiff is currently in possession of the land inherited by his father Kwame Krah from Kwame Boadi.

9. At the time he settled at Afiaso, the late Kwame Boadi was the one cultivating the land. In his old age, Kwame Boadi allowed his sons namely Yaw Boakye, Yaw Krah and Kwame Krah to maintain and take care of the farm for and on his behalf. He personally assisted in the cultivation of the cocoa farm in dispute since he supported the sons of the late Kwame Boadi to cultivate their farms while they helped him to cultivate his. This is a practice commonly known as "nnoboa." Upon his demise in 1980, Kwame Boadi was succeeded by Nana Kofi Krah. The farm devolved to the Aduana family and became the family property of the Aduana family to which Kwame Boadi belonged. Consequently, the land was vested in Nana Kofi Krah as the customary successor to hold in trust for and on behalf of the entire Aduana

family. By the time Nana Kofi Krah succeeded Kwame Boadi, his sons had stopped cultivating the farm in question since they had acquired their own lands. Nana Kofi Krah cultivated and maintained the farm for and on behalf of the Aduana family. When he became old, Nana Kofi Krah also permitted his son Mohammed Acquah to cultivate the farm on his behalf. Upon his demise, the defendant succeeded Nana Kofi Krah and hence the disputed farmland became vested in him to hold for and on behalf of the Aduana family as had been done by Nana Kofi Krah.

10. When Mohammed Acquah began to lay adverse claim to the farm, the defendant commenced an action at the District Court, Fomena on behalf of the Aduana family. Mohammed Acquah admitted that the farm belonged to the Aduana family. Consequently, judgment was entered in favour of the defendant. Recently, the plaintiff began laying claims to the farm that same belongs to him. The farm in question belongs to the Aduana, not the plaintiff.

11. In her evidence-in-chief, DW2 testified that the late Kwame Boadi was her grandfather. He acquired the land in dispute located at a place commonly called Wawase in its virgin state. During his lifetime, Kwame Boadi reduced the land into a cocoa farm and exercised exclusive ownership, control and possession of same without hindrance from any individual or entity. During his lifetime, Kwame Boadi gave portions of his land to his children namely Amoako, Kwame Krah, Yaw Krah, Yaw Boakye, Ama Adade, Ama Kuma and Abena Kuma. Ama Kuma is her mother. She was given a portion of her mother's land and has been cultivating same for about thirty years now. After giving portions of his land to his children, the late Kwame Boadi personally cultivated the land in dispute while his children cultivated their respective portions. Before his demise, Kwame Boadi stated that upon his death the land dispute should be given to the Aduana family, to which he belonged.

12. Upon his demise, Kwame Boadi was customarily succeeded by Nana Kofi Krah also known as Kofi Agyare. The disputed land devolved to the Aduana family and same was entrusted to Kofi Krah as the customary successor. Kofi Krah cultivated the land and remained in undisturbed possession. In his old age, Kofi Krah entrusted the cocoa farm to his son Mohammed Acquah to cultivate and take care of same on behalf of the Aduana family. Upon the demise of Kofi Krah, the defendant succeeded him as the customary successor. Subsequently, the land in dispute was entrusted to him to hold in trust for and on behalf of the Aduana family. After cultivating the land for about two years, the plaintiff and some children of the late Kwame Boadi began laying claim to the land on the basis that since they practiced the patrilineal system of inheritance, properties of their late father have by custom devolved onto them as the children of the late Kwame Boadi and Kwame Krah. The disputed farmland belongs to the Aduana family and has been entrusted to the defendant as the customary successor.

13. In his submission on behalf of the plaintiff, counsel stated that the land in dispute has already been determined by this court differently constituted in suit number A1/05/2018 titled C.A. Agyapong v. Kwabena Boadi. He admitted that in the said suit, the plaintiff did not indicate the boundaries of the land on the writ of summons. Judgment was given in favour of the plaintiff on 16th December, 2019. C.A. Agyapong is the uncle of the defendant herein. The same land was also determined by the Fomena Divisional Council to belong to the plaintiff. One Yaw Boakye took an action against the plaintiff at the High Court, Kumasi but later abandoned the suit. The plaintiff is also called Kwabena Boadi, hence George Boadi and Kwabena Boadi are one and the same person. The land the subject matter of this suit and that of suit number A1/05/2018 are one and the same. The judgment in suit number

A1/05/2018 has not been appealed against nor set aside by a court of competent jurisdiction. Hence the defendant cannot be allowed to continue to prevent the plaintiff from enjoying the fruits of his victory.

14. On his part, counsel for the defendant submitted that the plaintiff has failed to discharge the burden of proof placed on him by the law in a case such as this. According to him, the plaintiff traced the root of his title to the ruling of the Fomena Divisional Council (Exhibit A) and the judgment of this court differently constituted in suit number A1/05/2018 (Exhibit B). However, nowhere in exhibit A is the identity of the land the subject matter of that ruling mentioned while in exhibit B the size of the land is stated as two acres. Yet in the present suit the plaintiff is claiming for declaration of title to fourteen acres of land. In addition, the boundary owners of the land in exhibit B are different from those in the present suit. Hence the plaintiff has failed to prove his root of title, mode of acquisition, acts of ownership, and boundary owners. On the other hand, the defendant through his evidence and those of his witnesses proved the root of title of the disputed land, the mode of acquisition, acts of possession, and the boundary owners. The defendant led evidence to show that the land in question was acquired by the late Kwame Boadi. The land devolved onto the customary successors of the said Kwame Boadi, namely Nana Kofi Agyare and the defendant herein who have held it in trust for and on behalf of the Aduana family. The boundary owners are Abena Gyankari, Kwame Kyei also known as Okyei, Awo Yaa, Yaa Sarfo, Abena Amo, Ama Adade, Cecilia, Charles Anowuo, and the late Kwame Kraah. When in 2020 Mohammed Acquah laid adverse claim to the land after the death of his father Nana Kofi Agyare, the defendant with the consent of the head of the Aduana family, took action to protect the property. In court, Mohammed Acquah admitted the land was family property and not the personal property of his late father. Consequently, judgment was entered in his favour. After

the defendant succeeded the late Nana Kofi Agyare in 2018, he cultivated the said farm for and on behalf of the Aduana family without any hindrance from anyone until recently when the plaintiff began to lay adverse claim to the land. Having discharged the burden of proof placed on him, the claim of the plaintiff should be dismissed and judgment entered in favour of the defendant.

15. The issues for determination by the court are:

- a. Whether or not the defendant is the proper person to be sued concerning family property,
- b. Whether or not the land the subject matter of this suit is the same land in exhibits A and B,
- c. If not, whether or not the land in question is the personal property of the plaintiff or the family property of the Aduana family

16. To succeed in an action for declaration of title, a party must on a preponderance of probabilities prove his root of title, the mode of acquisition of the land, and various acts of possession exercised over the disputed land: **Yehans International Limited v. Martey Tsuru Family and Another [2018] DLSC2488**. In **Asare v. Donkor [1962] 2 GLR 176**, the court held that *"Title to a parcel of land cannot be declared in a plaintiff or defendant unless evidence has been adduced to prove title."* Likewise, in the case of **Edmund Asante-Appiah v. Madam Kate Amponsah alias Yaa Mensah [2009] SCGLR 90**, the Supreme Court held as follows, *"The law is well established that where a party's claims are for possession and perpetual injunction, he puts his title in issue. He thereafter assumes the onus of proving his title by a preponderance of probabilities, like any party who claims declaration of title to land."*

17. Not only must a party prove title, but he must also lead positive evidence to establish the identity of the land the subject matter of the suit. In the case of **Nii Tackie Amoah VI v. Nii Amarh Okine & Others [2014] DLSC 2910**, the court held that *“The established principle of law requires the plaintiff to lead clear evidence as to the identity of the land claimed with the land the subject matter of the suit.”* The rationale for this condition was stated in **Anane v. Donkor [1965] GLR 188** at page 192 as follows: *“Where a court grants declaration of title to land or makes an order for injunction in respect of the land, the land the subject matter of the declaration should be clearly identified so that an order for possession can be executed without difficulty, and also if the order for injunction is violated, the person in contempt can be punished. If the boundaries of such land are not clearly established, a judgment or order of the court will be in vain. Again, a judgment for declaration of title should operate as res judicata to prevent the parties re-litigating the same issues in respect of the identical subject matter, but it cannot so operate unless the subject matter thereof is clearly identified. For these reasons a claim for declaration of title or an order for injunction must always fail if the plaintiff fails to establish positively the identity of the land to which he claims title with the land the subject-matter of the suit.”*
18. Failure to lead sufficient evidence in proof of these four essential elements will lead to a ruling against the plaintiff. However, the law does not require prove of these elements with mathematical precision. What is required of a party is to adduce admissible evidence based on which the court can reasonably infer title and identity of the land. In the case of **Abed Nortey v. African Institute of Journalism and Communication & 2 Others [2014] DLSC 6124**, the court held that *“In an action for declaration of title to land, recovery of possession, and injunction, a plaintiff must establish by positive evidence the identity and limits of the land he claims... this does not mean mathematical certainty or exactness...”*

19. A plaintiff who fails to discharge the onus of prove set out above cannot simply rely on the weakness of the defendant's case to win his case. However, he is at liberty to take advantage of the weaknesses in a defendant's case to strengthen his case after he has successfully established same. This was the holding in **Odametey v. Clocuh and Another [1989] 1 GLR 14**. This is what Taylor, JSC (as he then was) said *"I think the current principle is quite clear at least since 1st October, 1979 when NRCD 323 came into force... The position is this: If the plaintiff in a civil suit fails to discharge the onus on him and thus completely fails to make a case for the claim for which he seeks relief, then he cannot rely on the weakness in the defendant's case to ask for relief...if, however, he makes a case which could entitle him to relief if the defendant offers no evidence, then if the case offered by the defendant when he does give evidence discloses any weakness which tends to support the plaintiff's claim, then in such a situation the plaintiff is entitled to rely on the weakness of the defendant's case to strengthen his case. This is amply supported by sections 11 and 12, particularly section 11(4) of NRCD 323."*
20. The issue of capacity was raised by counsel for the plaintiff during cross-examination of the defendant on 3rd December, 2024. Counsel asked the defendant for proof that he had the permission of the head of the Aduana family, Abusuapanin Kofi Nuamah to institute the action against Mohammed Acquah. When the defendant responded in the affirmative, he insisted the defendant produce evidence before this court that he had the permission of the head of family to sue Mohammed Acquah.
21. 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 capacity..."* hence, capacity is so fundamental an issue to every case that it remains relevant throughout the life of a case and can be raised at any time, even on appeal. In **the case of Kasseke Akoto**

Dougbartey Sappor and 2 Others v. Very Rev. Solomon Dugbartey Sappor and 4 Others [2021] DLSC 10042, the court speaking on the issue of capacity had this to say, “*Capacity to bring and maintain the action remains a cardinal hurdle that must be jumped if either party is to remain in the case.*” Thus, where the capacity of a party is challenged a court ought to determine the issue before proceeding to determine the merits or otherwise of the case. Failure to determine this issue would result in the proceedings and judgment of the court being nullified if lack of capacity is proved on appeal.

22. In his submission, counsel for the defendant admitted that while capacity is an issue that may be raised at any time, and the proper person to be sued concerning family property is the head of family, where a person who is not the accredited head of family is sued in an action, that person is clothed with capacity to defend the action and make a counterclaim on behalf of the said family. He cited the case of **Anyetey Chantey v. Tei Kwablah Kweinor [2020] 163 GMJ 1 SC**. This is the correct position of the law. In the case of **Hagan v. Kotey and 3 Others [1961] GLR 594**, the court held that where the issue of capacity is raised concerning family property, the proper person to sue and be sued is the head of family. Where there is no head of family, any member of the family authorised by the family to sue, or any person authorised to take care of family property, or any person recognised by popular acclamation as head of the family may sue and be sued in respect of family property. In the present case, the defendant’s claim is that he is the customary successor to Nana Kofi Agyare. As the customary successor, he was entrusted with the Aduana family properties, including the land in dispute to hold in trust for and on behalf of the said family.

23. That the defendant is the customary successor to Nana Kofi Agyare, the Odikro of Afiaso, and a member of the Aduana family was not contested by the plaintiff. A customary successor is the caretaker of the properties of a given family; hence, the defendant has the capacity to sue and be sued in respect of the properties of the Aduana family of Adansi Afiaso. Exhibit 2, which was tendered without objection from the plaintiff, clearly stated that the defendant sued Mohammed Acquah with the consent of Abusuapanin Kofi Nuamah, the head of the Aduana family. The said Abusuapanin was to testify in this suit as the third witness for the defendant but met his untimely death shortly before he was due to testify. This is proof that he had the blessing and consent of the head of family to defend this action. Even if he did not have the authority of the head of family, he would be an unfaithful steward if he sat by idle while someone attempts to wrestle out of his hand family property entrusted to his care, whether through legal means or otherwise.

24. Now to the second issue. The plaintiff is adamant that the land the subject matter of this suit is the same as that ruled on by the Fomena Divisional Council and this court differently constituted in suit number A1/05/2018. Does the evidence he adduced at trial support this assertion?

25. As earlier indicated, exhibit A is a letter from the Fomena Traditional Council dated 14th April, 2004. The only information that can be gleaned from the letter is that a land case between the plaintiff and one Opanin Yaw Boakye was reported to Nana Ofori Agyeman II, Adansihene and the President of the Fomena Divisional Council for determination. The case was ruled in favour of the plaintiff. A directive was given to Opanin Manu to share the proceeds of the cocoa beans with the plaintiff. The plaintiff and the said Opanin Yaw Boakye are said to be residents of Afiaso, while Opanin Manu, the person to whom the letter is addressed is a resident of

Nyamebekyere. Nowhere in exhibit A is the land the subject matter of the ruling mentioned or described.

26. In exhibit B, the plaintiff filed a counterclaim for declaration of title to the disputed land in the case between him and C.A. Agyapong. C.A. Agyapong, the plaintiff in that case, sued the plaintiff herein for recovery of two acres of cocoa farm located at Afiaso. It is to be noted that in Exhibit B, the plaintiff herein raised the issue of estoppel, saying a determination on the land had already been made in his favour by the Fomena Divisional Council and the High Court, Kumasi. However, he was unable to produce the said ruling and judgment during the trial. His plea of estoppel was thus dismissed.

27. In exhibit B, the plaintiff adduced the following evidence concerning his root of title, mode of acquisition, acts ownership, and the boundary owners as follows: The late Kwame Boadi acquired and cultivated land with his children at Afiaso. His father Kwame Krah was one of the children of the late Kwame Boadi. During his lifetime, Kwame Boadi gave each of his children two acres of land to cultivate for their own use. His grandmother Abena Danso was also given two acres. The late Kwame Boadi gave portions of his land to the members of his extended family, including C.A. Agyapong's family. These lands were separate from the one Kwame Boadi gave to his children. Upon the demise of his father, his portion devolved onto him and his siblings. His father's land shares boundaries with Abena Danso, Kwadwo Amoako, Yaw Boakye and Yaw Krah. This is the land C.A. Agyapong was seeking to take from him. The land the subject matter of exhibit B is thus two acres of land lying at Afiaso and sharing boundaries with the farms of Abena Danso, Kwadwo Amoako, Yaw Boakye and Yaw Krah.

28. From Exhibit B we find that upon the demise of Kwame Boadi, his children agreed to surrender the farms given to them by their father to be used to complete a building complex began by their father. However, Kwame Krah, the father of the plaintiff herein refused to give up his portion of the farm. Upon his demise, his brother Yaw Boakye succeeded him as customary successor and took an action against the plaintiff at the Fomena Divisional Council and the High Court, Kumasi for recovery of the land. Francis Boadi, one of the plaintiff's witnesses in that suit, testified that the disputed cocoa farm the subject matter of exhibit B was the same farm sent to the Fomena Divisional Council.
29. In the instant suit, the plaintiff is seeking declaration of title to fourteen acres of a cocoa farm lying at Wawase in Afiaso which shares boundaries with Op. Yaw Sarfo, Okyei, Kofi Ano Wuo, Abena Emo, Abena Gyakai, Aberewa Ataa, Cecilia, and Awo Yaa. It cannot by any stretch of the imagination be said that a two acre farm is the same as a fourteen acre farm. Neither can it be said that Abena Danso, Kwadwo Amoako, Yaw Boakye and Yaw Krah are the same persons as Op. Yaw Sarfo, Okyei, Kofi Ano Wuo, Abena Emo, Abena Gyakai, Aberewa Ataa, Cecilia, and Awo Yaa.
30. From the entire evidence on record, it is either the plaintiff does not know the size of the land he and his siblings inherited from their father, or he is pretending not to know. I say so because for the following reasons: in Exhibit B, the land which the plaintiff counterclaimed for is unambiguously stated. Yet when he was cross-examined by counsel for the defendant, he insisted the land in exhibit B is the same as the land the subject matter of this suit. This is what he said:

"Q: I am suggesting to you that when this honourable court differently constituted visited the land in dispute, it became clear that the land you were laying claim to in your writ was smaller in size to the disputed land.

A: *It is not true.*

Q: *And because the court found that what you were laying claim to in your writ is smaller, he advised you to take steps to amend your writ to include the whole land.*

A: *It is true.*

Q: *So I am further suggesting to you that it is not correct that the land you were given judgment as captured in exhibit B is the same land in this instant suit.*

A: *It is the same land.*

31. Yet in exhibit B, he testified that the late Kwame Boadi cultivated a virgin forest with his children and subsequently gave each of his children two acres of the said farm to develop for their own use. However, in this suit, he made a complete U-turn and said the late Kwame Boadi acquired the land in question with his three children while he acquired land at Aboabo by himself. Again, the plaintiff who in exhibit B stated that each of Kwame Boadi's children was given two acres, said he did not know the size of the land given to each of the children. This is what ensued during cross-examination:

Q: *Now the land at Wawase, what is the entire size?*

A: *14 acres.*

Q: *According to you, the late Kwame Boadi shared portions of land to his sons at Wawase. What is the size of the land given to each of them?*

A: *I do not know. What I know is that he shared it to his children.*

Q: *So the portion allegedly given to your father, that is what you claim judgment was entered in favour of, not so?*

A: *No.*

Q: *So what is the basis of your claim to the land in dispute?*

A: *The land in dispute is mine.*

Q: *I am further suggesting to you that because you don't know the exact size of the land allegedly given to your father, you do not know the land you inherited.*

A: *I do not know, but the whole land is mine."*

32. The same person who in exhibit B told the court the land given to his father by the late Kwame Boadi was two acres, when he was arrested for claiming the land in question is his, told the police in exhibit 1 that the disputed land size is six acres. The plaintiff did not adduce evidence adduce to establish his root of title, mode of acquisition, recent acts of possession, and the boundary owners of the land in dispute. It was open to the plaintiff to call any of the boundary owners of the land in question to give evidence in support of his case, but he did not. The inference is that their evidence is not favourable to him. If evidence is peculiarly within the knowledge of a party and that party would not produce it, the inference of law is that evidence is against him: **Faibi v. State Hotels Corporation [1968] GLR 471 at page 478.**

33. The law is that a defendant who counterclaims for declaration of title is under the same obligation as the plaintiff to prove his root of title, mode of acquisition, recent acts of possession, and boundary owners. Just like the plaintiff, a defendant does not prove his case " *... by his merely going into the witness box, and repeating the averment on oath, if he does not adduce the corroborative evidence which (if his averment be true) is certain to exist:"* **Majolagbe v. Larbi and Others [1959] GLR 190.**

34. The evidence adduced by the defendant can be summed up as follows: the land in dispute measures fourteen and a half poles and is situated at a place commonly known as Wawase in Afiaso. It shares boundaries with Abena Gyankari, Kwame Kyei also known as Okyei, Awo Yaa, Yaw Sarfo, Abena Amo, Ama Adade, Cecilia, Charles Anowuo and the late Kwame Krah. His great-grandfather, the late Nana Kwame Boadi, acquired the land in its virgin state from the Fomenahene, and reduced same into a cocoa farm. He exercised sole ownership, control, and possession of the farm during his lifetime. Upon his death the land devolved to the Aduana family through his customary successor Nana Kofi Agyare also known as Nana Kofi Krah. Upon the demise of Nana Kofi Agyare, he (the defendant) succeeded him as the customary successor and all family properties, including the land in question, were entrusted to him to hold in trust for and on behalf of the Aduana family. Since that time, he has been exercising control over the said land until recently when the plaintiff began laying claim to the land on the basis that he has been declared the owner by this court differently constituted and by the Fomena Divisional Council. DW2 has been cultivating her mother Ama Kuma's land for the past thirty years. Her land shares boundary with the land in dispute. The late Nana Kwame Boadi gave portions of his land at Wawase to three of his children, namely Ama Adade, Abena Kuma, Ama Kuma, and Kwame Krah. A portion was given to his wife Abena Danso while the land in dispute went to the Aduana family. It is worth noting that this narration of DW2 on how her grandfather's lands were shared corroborates the plaintiff's story in exhibit B. The land in exhibit A is located at Nkwatam whereas the land in Exhibit B is, just like the disputed land, located at Wawase but is a different land.

35. The evidence of DW1 and DW2 corroborate the story of the defendant. Their evidence demonstrate they have intimate knowledge of the land in dispute; DW1 is

an uncle of the plaintiff while DW2 is his cousin. DW1 was able to give the location of the farmlands of the late Nana Kwame Boadi's children. The witnesses were also able to state the boundary owners of the land acquired by Nana Kwame Boadi. The plaintiff failed to cross-examine the witnesses on these material evidence. The law is that where a party's testimony on material facts is not challenged under cross-examination, the rule of implied admission would apply: **In re Ashalley-Botwe Lands; Adjetey Agbosu and 5 Others v. Ebenezer Nikoi Kotey & 2 Others [2003-2004] SCGLR 420.**

36. Counsel for the plaintiff submitted that DW2's failure to remember when the defendant was appointed customary successor should not be glossed over. I disagree. The witness admitted she could not remember the exact date the defendant was appointed customary successor. It is therefore reasonable to conclude that whatever follows after this statement is a guess on her part. The most essential evidence of DW2 on this matter is that the defendant is the customary successor to Nana Kofi Agyare. Again, this evidence was not contested by the plaintiff. Hence, the witness' failure to remember how long the defendant has been a customary successor is immaterial to the issues before this court.

37. A party who makes a claim for damages in an action must provide evidence in support of the claim and give facts upon which the damages could be assessed. Failure to do so would be fatal to his claim. A receiver/manager was appointed by this court to be in charge of the farmland until final determination of the suit. The said order was varied to invite both parties to be present during the sale of the cocoa beans. The defendant did not adduce evidence at trial concerning what harm, loss or injury he has suffered as a result of the trespassory acts of the plaintiff for which the court should compensate him.

38. I am satisfied upon the evidence:

- a. That the land the subject matter of this suit is not the same as that in exhibits A and B.
- b. That there is no land lying at Wawase measuring fourteen acres and sharing boundaries with Opanin Yaw Sarfo, Okyei, Kofi Anu Wuo, Abena Emo, Abena Gyakai, Aberewa Ataa, Cecilia, and Awo Yaa.
- c. Consequently, the plaintiff's claim for the defendant to account to him the proceeds from the sale of cocoa beans from the said farm fails. It follows that his claim for interest on the said amount, and general damages for trespass also fail. For the avoidance of doubt, the claim of the plaintiff fails in its entirety.
- d. That the defendant has succeeded in proving the title of the Aduana family to the disputed land. Accordingly, the fourteen and a half (14.5) poles of farmland located at Wawase and sharing boundaries with Abena Gyankari, Kwame Kyei also known as Okyei, Awo Yaa, Yaw Sarfo, Abena Amo, Ama Adade, Cecilia, Charles Anowuo, and the late Kwame Boadi is declared to be the property of the Aduana family of Adansi Afiaso.
- e. That the defendant is entitled to recover the portion of land trespassed unto by the plaintiff.
- f. The plaintiff, his agents, servants, workmen, employees, assigns and all other persons claiming through him are perpetually enjoined from interfering with the defendant family's ownership, possession, control, and occupation of the disputed land.

39. The parties, the receiver/manager and the registrar shall meet to reconcile accounts on all monies paid into court. Same shall be presented to the court at the next

adjourned date for the court's orders on its distribution. Cost, inclusive of legal fees shall be determined at the next adjourned date.

H/W ANASTACIA Y.A. KARIMU ESQ.

[MAGISTRATE]